

WORKING GROUP ON HUMAN RIGHTS

Human Rights: The Heart of the United Nations Actions in the 21st Century

In the year celebrating, the 50th Anniversary of the Universal Declaration of Human Rights, there are great advances in the philosophy and practice of promoting and protecting fundamental freedoms shared by all. The Human Rights Working Group focuses on the pioneering issues facing the human rights community.

National Human Rights Commissions: Creating a Culture of Human Rights to Ensure an Effective and Efficient Protection and Promotion of Human Rights

While National Human Rights Commissions (NHRC) work from Australia to Uganda, there is no prescribed composition of members serving the people and state. The crucial characteristics of democratic pluralism should include broad civil society representation rooted in economic, social, legal, spiritual, philosophical, academic and cultural membership of the national community.

The creativity and compassion of the national community can be ensured through the selection of representatives with broad background in the civil society experiences. Representatives can be chosen but not limited to the following areas of expertise: professional assemblies (health officials, judges, journalists, labor, lawyers, police, religious associations, students, teachers and human rights non-governmental organizations).

The primary functions of promoting awareness and educating about human rights is crucial. The NHRCs focus on provoking dialogue and discussion that cultivates a proactive citizenry. Also, the NHRCs advise and assist the government toward ratification, implementation and monitoring international instruments. The NHRC provides service in effectively enhancing the UN charter and conventions. The important role of investigating alleged human rights violations can be carried out in a variety of forms such as to ensure punctuality of reports to committees, to examine and coordinate national reports as well as to distribute to community and to even author special reports concerning vulnerable groups.

Recommendations for National Human Rights Commissions, Regional Frameworks for Cooperation and the International Level at the Office of the High Commissioner for Human Rights are: NHRCs:

- *Give advice to the Judiciary regarding the enforcement of international Human Rights law into domestic law.

- *Assist the parliament in the process of making the law to verify if it is in contradiction with the Human Rights international law ratified by the country.

- *Promotion of Human Rights throughout the implementation of primary, secondary and University Human Rights educational programs.
- *Advise and assist journalists involved in Human Rights issues.
- *Implementation of Human Rights education for the police and armed forces.
- *Establish a Public Human Rights Library.
- *Assist in the preparation of Human Rights Covenants country reports to the UN committees.
- * Establish an overall, inclusive body representing all vulnerable components of society; Avoid splitting-up different vulnerable groups.
- *Recruit members of NHRC by 1) nomination through NGOs, 2) appointment through the Legislature to ensure pluralistic and representative composition.
- *Let the governments take more into responsibility for funding, first by drafting their budget to effectively finance HR activities and secondly by approval of the funding through the legislature; Reduce influence of legislature to simple review and evaluation; Guarantee that NHRCs can function independently by transparent strategy of promotion and protection with report to the legislature; Seek further support from Human Rights Foundations, United Nations Technical Assistance and Voluntary Fund, Regional Organizations, National and International Enterprises, Individual Donations, and Publications.
- *Ensure to receive and to act not only on complaints against governments but also on complaints of human rights violation committed in the private sphere that have not been duly covered by the national system of justice.
- *Document every violation of HR by establishing a network of data (maybe in cooperation with other NHRCs, in the region); Develop on the basis of the collected data action programmes, mechanisms, strategies - how to formulate a positive legislature answer for instance.
- *Strive to prevent future human rights violations by investigating certain circumstances that may produce future human rights violations; Develop programmes on how to eradicate the cause of the problem - for example - the ethnic hatred or xenophobia as a dormant seed of future human rights violations; counterpart the causes of the problem by different means that may provide a "change of mentality"; contribute and commit yourself to the promotion of more tolerance and mercy in the consciousness of individuals in the society by working on your own or with the governments to give due attention to the projects and researches on how to obtain this "change of mentality".

- *Investigate the human rights violations -- initiate actions for beginning ADR (Mediation).

Regional Cooperation

- *Organize further Regional and International Workshops on National Commissions (like in Tunis 1993 etc.) to achieve regional cooperation arrangements; seek case-by-case sponsorship by regional organizations such as OAS, ASEAN, COE, OAU, and OIC.

OHCHR:

- *Make recommendations and call upon the governments to give a broader mandate to the National Institutions in order to be able to play a more active role in receiving and acting on individual complaints of human rights violations
- *Seek the regular participation of NHRC members in UN Human Rights Committee meetings; ensure they can act as independent members (not only as observers)
- * Establish further regional or global technical cooperation projects in order to widen the training of military staff or lawyers and the training of NHRCs in treaty reporting.

Post-Conflict Reconstruction

Pillars of post-conflict reconstruction focus on political, social and structural transformation through technical co-operation, Human Rights education and reconciliation in a bottom-up approach.

Every person should be aware of the historical development of people's struggles for Human Rights and of the moral heroism of diverse peoples asserting the right to be human and to remain human.

In order to improve these activities, we urge the High Commissioner for Human Rights to take the following suggestions into consideration:

Technical Assistance/ Co-operation

Encourage long-term, sustainable approaches to post-conflict reconstruction, which include regular follow-up evaluations that include flexibility and local presence by an OHCHR representative and highlight prevention.

Co-ordinate technical assistance activities among UN branches/treaty bodies/NGOs and other relevant international and regional organisations in order to focus on human resource development.

Ensure adequate training at all levels of program initiatives.

Increase/Deepen OHCHR partnership/involvement with other UN bodies and NGOs and civil society (i.e. NGO nomination of Human Rights Fellows).

Initiate international post-conflict reconstruction campaigns to educate people in all parts of the world in an effort to internalise this knowledge, increase awareness about Human Rights, elicit private sector donations (i.e. distribution of annual reports, television commercials, UNICEF models).

Provide inter-agency training for officials of the UN and other international and regional organisations so as to increase information exchange, skills development, activity coordination and to minimise bureaucratic competition.

Human Rights Education

Engage communities in creating a Human Rights education and development plan, focusing on universal, dynamic, discursive and democratic participation.

Educate people as to their individual rights and responsibilities vis-à-vis the Universal Declaration of Human Rights thereby empowering them to encourage their governments to implement Human Rights at all societal levels.

Activate formal/informal learning through institutions at all levels of society, i.e. family, schools, mass media, educational NGOs.

Assist in organising grassroots independent monitoring groups in order to empower communities to express/lobby their interests with the objective of creating a system of checks and balances and constitutional provisions for Human Rights protection and promotion.

Develop a common universal Human Rights discourse for use in the training of all peoples involved

in social construction (teachers, lawyers, activists, security forces).

Reconciliation

Establish a Conflict Resolution/Reconciliation Office within the OHCHR with the mandate of highlighting the interdependence between reconciliation efforts and Human Rights promotion/protection and initiating programs to support this mandate.

Develop a multi-track approach to conflict resolution and reconciliation programmes which focus on transformation at all levels of society

Partner with NGOs and civil society trained in conflict resolution and reconciliation processes in order to document Human Rights violations in a standardised and expeditious manner, taking care not to overlap activities and to consider cultural factors.

Initiate workshops for psychological healing which include a forum for acknowledging wrongdoing expressing contrition and the offering of forgiveness; and support trust and confidence building measures.

Examples of suggested activities

Use of Human Rights thematic theatre focusing on role playing and audience participation in an imaginative context to develop cultural tolerance and unity.

Create sister cities in different regions for Human Rights capacity building and dialogue exchange.

Human rights help line/hotline initiatives for legal, educational and psychological support.

Mobile Human Rights vehicles to disseminate information and support educational activities.

Human Rights and Refugees in Europe

Protection and promotion of human rights standards for refugees and so called internally displaced persons (IDP's) is on the agenda of the United Nations High Commissioner for Human Rights (UNHCHR). By analysing and evaluating the theoretical and empirical framework of refugees, focussing on Europe, we want to recommend to the UNHCHR the following.

1. The ambiguity of who has the mandate on promoting and protecting human rights for refugees, the UNHCHR and/or the UNHCR, should be cleared on a priority basis. A well defined mandate makes real co-ordination possible and more effective. It is also a condition sine qua non for the elaboration of a policy of preventing human rights violations, the root cause of the actual refugee problem. To see that UNHCHR takes a leading role in advocacy actions, in order to create awareness of refugees and human rights.
2. a) Towards asylum seekers: we urge a mandate for a special rapporteur on the following thematical issues: human rights violations of asylum seekers in the EU, especially violations of the right to seek and enjoy asylum, the right to entry, the right to freedom of movement and the right not to be subjected to inhuman treatment. On the basis of this special report UNHCHR should stimulate and promote more precise

definitions of the following concepts, which are often stressed by the Member States as a reason for not

allowing freedom of movement, namely protection of national security, public order, health and moral, etc. To strongly continue the promotion amongst asylum seekers of their human rights, including gender issues. To support states to integrate this information formally at the beginning of the refugee procedure .

b) Towards refugees: to promote effectively the right to employment as a means for temporary or long term integration, for example as advisor in the asylum procedure.

c) Towards the public, in order to avoid xenophobia to support the elaboration of a positive image of the refugee as a global and integrated objective.

3. To collaborate with and to mobilise, through co-operation with autonomous and independent NGO's, in case of absence of political will of the international actors. To promote co-operation between NGO's the UN system, in particular strengthening local NGO's through advisory services and technical co-operation.

4. To mainstream States' diverse interpretation of what is a refugee, or to come up with a new and different conventional definition of a refugee, especially on the following topics :

- * The inclusion of ecological refugees.

- * The legal term "persecution" (state and non-state actors).

To promote the idea of "burden-sharing mechanisms" regarding refugees, more specifically by stimulating scientific research concerning the creation of financial supporting funds at EU level.

5. There is no forum to address the human rights violations of IDP's. Therefore we recommend the creation of a mandate within the UN institutions for the protection of IDP's. If this is not possible, modify the definition of refugees to include the condition of IDP's .

6. * To ensure that all refugee policies take into account the new background of the refugee situation, whereby the typical refugee is nowadays a woman or a child.

- * To ensure and promote an honest and coherent policy of human rights protection so that women do not have to compromise themselves to get food and protection.

- * To incorporate sensitivity to gender-based persecution, including rape and other forms of sexual violence, sexual slavery and forced pregnancy into international humanitarian law and a gender perspective into international human rights law.

- * To promote the application of a speedier family reunion procedure and actively see to that this urgent question is dealt with in an appropriate manner.

La Santé, L'Enfant, Les Femmes

I. La Situation des femmes

A. État des lieux

Dans plusieurs sociétés, la femme est considérée comme "le maillon faible de la chaîne sociale".

Nombreuses sont celles qui sont mutilées génitalement (excision, infibulation, introcision, exposées à toutes formes de contamination (VIH)) à des problèmes psychologiques, physiques (infection). Leur vie est sans cesse mise en jeu (problème de la dote en Inde par exemple).

Le Haut-Commissariat aux Droits de l'Homme et la commission de la condition de la femme oeuvrent dans le cadre de la défense des droits de la femme. Ils font de ces droits la responsabilité de tous en réaffirmant leur aspect fondamental, et en luttant pour réduire les inégalités entre les sexes.

B. Les critiques et recommandations

Les actions menées par les institutions des Nations Unies doivent être concrètes, effectives pour arriver à briser les tabous dans les sociétés traditionnelles.

Les populations rurales doivent être formées, éduquées, sensibilisées aux problèmes qu'entraînent ces pratiques rétrogrades.

Le travail des Nations Unies doit être avant tout un travail d'éducation, surtout pour les enfants en bas âge. Doivent être inclus dans les programmes scolaires, l'étude des Droits de l'homme surtout dans les pays en voie de développement.

Pour les garants de la tradition, changer les moeurs n'est pas chose facile, pour cela, doivent être créés de petits comités locaux, qui seraient soutenus par l'ONU et qui diffuserait le message en langue vernaculaire surtout en Afrique.

II. Les plus faibles parmi les faibles: les enfants

A. Situation des enfants dans le monde: la dimension sanitaire

Certains, en Afrique notamment, se retrouvent le plus souvent seuls, abandonnés, orphelins à la suite des ravages causés par la pandémie du VIH/ SIDA. D'autres, travaillent pour aider leur famille faute de moyens et quelquefois se retrouvent dans une situation d'avilissement personnelle, de négation de la personne (la prostitution, la pédophilie).

L'UNICEF réalise des actions efficaces pour reconstruire les communautés, pour aider psychologiquement les enfants qui ont été entraînés dans les conflits armés, afin de surmonter les traumatismes de la guerre, et coopère avec les gouvernements pour améliorer les lois en faveur des enfants.

B. Critiques et recommandations

Dans certains pays, la convention relative aux droits de l'enfant, bien qu'ayant été ratifiée, semble être restée "lettre morte".

La Thaïlande par exemple ne semble pas s'inquiéter de la "mode pédophilique" qui est à la une dans ses rues animées. Un organe de contrôle doit être mis en place au sein du comité pour les droits de l'homme afin de veiller à la bonne application de la convention et condamner les États qui ne prennent aucune mesure pour lutter contre la pédophilie, la prostitution des enfants.

*Un encadrement renforcé des enfants qui vivent dans la rue et qui y travaillent pour aider leur parents doit être réalisé par les institutions spécialisées de l'ONU pour éviter toutes les formes de prostitution.

*Un véritable partenariat entre les organisations internationales et les ONG locales dans le domaine de l'éducation (création d'institutions scolaires dans les milieux ruraux) doit être mis en place afin de mettre un frein au travail des enfants par rapport aux pressions familiales (mise en place des programmes d'aide aux enfants déscolarisés, qui par faute d'argent sont contraints de quitter l'école pour aller travailler. Le Haut-Commissariat des droits de l'homme doit soutenir cet effort).

*Des campagnes de sensibilisation doivent être menées dans le cadre de la protection de l'enfant contre l'infection à VIH conjointement par les ONG locales et les institutions spécialisées des Nations Unies (ONUSIDA, Haut-Commissariat pour les Droits de l'homme, UNICEF).

Right to Development

Systemic dimension

Since the implementation of the right to development is not legally binding, the States are not obliged to comply nor to report on their domestic situations with honesty. More efforts must be made to solicit States to report voluntarily and even through informal means.

When monitoring States' compliance with the right to development, the relevant UN agencies or treaty bodies should pay adequate attention to the region-specific democracy.

Inter-agency relations : it is necessary to achieve a more systematic, comprehensive co-operation among the related committees and subsidiary agencies in order to maximize productivity from streamlined coordination and planning, as well as to eliminate the unnecessary, time and money consuming duplicative efforts.

Relations with the civil society: the involvement and active participation of the civil society is indispensable. The people themselves, who are actually affected by the implementation of various policies, are

in a better position to assess the needs of their country and possess the more efficient know-how has accrued over the years.

II. Cultural Development - Education

Children should become aware of the racial and ethnic diversity of the world from an early age. Hence children will learn to observe and respect human rights as well as claim their rights to development without infringing on others' rights.

Actions should be taken to eliminate all direct and indirect discrimination against women in education and to take specific measures to ensure that they be able to fully develop their potential capacities.

We should promote exchanges of scholars and teachers between different countries and educational systems so that the world, as a whole, can benefit from a more widely spread and deeper knowledge that the individuals gain from other cultures and societies.

III. Economic Development - Structural Adjustment Programs

Loan possibilities targeted to help countries out of their financial crises are certainly a necessity, but should be designed from the beginning with sustainable development in mind and should focus increasingly on the development of a minimal social security provisions, virtually non-existent in many developing countries.

Spending cuts should be closely controlled so that the national budget is better allocated. Overambitious and unnecessary military expenditures need to be reduced and poured into the public sector instead.

Higher attention should be paid to the increasing prominence of multinational corporations in world trade today.

IV. Communication - Public Relations

Regionalise the programs: Although much positive improvements has been made in paying higher attention to the regional or domestic socio-economic and political situations, the programs need to be even more specific at both stages of design and implementation to suit the region.

Improve mutual credibility through effective communication : for example, it would be worthy to have personnel of the respective national origin represent and relay the voice of the UN to their respective governments, not only to facilitate communication but also to build credibility. Take note of the two-step flow communication - reaching out to the public through the opinion leaders. Additionally, it would be more effective to use the local mass media, whether print or electronic, than to use other international media channels. The United Nations should try to equip itself with personnel highly competent in the languages of the developing nations other than in English and French.

Increase awareness: make the citizens and the NGOs more aware of the power and rights that they are entitled to. It is often the case that people at the grass roots level do not even realize what rights they have, or even if they know, they do not know the means to project them and be heard.

La Cour Pénale Internationale

Les derniers événements dans le monde ont fait prendre conscience à la communauté internationale de la nécessité de créer une cour pénale internationale permanente, pour mettre fin à l'impunité dont bénéficient les auteurs de ces actes inqualifiables et pour prévenir les générations futures de ces crimes.

La création de cette cour trouve son fondement juridique dans la Charte des Nations Unies (préambule et article 1) qui met à la charge de l'Organisation la création des conditions nécessaires au maintien de la justice. Cette institution internationale est créée par traité multilatéral, elle devra servir des droits de l'homme et appliquera le droit criminel international.

Cette Cour traitera la responsabilité pénale individuelle engagée pour des crimes les plus graves en complémentarité avec les juridictions pénales nationales.

Afin de mieux cerner le symbole et l'enjeu de la création de CPI, nous tenterons d'étudier les crimes relevant de la compétence de la Cour (I), ainsi que le rôle et les relations qu'entreprendront la cour et les différents acteurs du mécanisme de déclenchement de sa compétence (II).

1. Crimes relevant de la compétence de la Cour

L'article 5 du Statut de la Cour énumère 4 crimes qualifiés de plus graves.

1. Crime de génocide: article 6

Il y a une conscience internationale de la gravité du crime de génocide. En 1948, l'Assemblée Générale a adopté la Convention pour la prévention et la répression du crime de génocide qui a défini et proclamé contraire aux lois internationales qu'elle est commise en temps de paix ou de guerre.

2. Crimes contre l'humanité: article 7

La décision n'a pas été facile pour définir les crimes contre l'humanité. Est-ce qu'il faut inclure les crimes commis en temps de paix? Le statut n'a pas déclaré explicitement qu'il accepte les crimes commis en temps de paix dans la compétence de la Cour, mais le tribunal ad hoc pour l'ex-Yougoslavie a déclaré dans sa décision de Tadic case: "it is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict."

3. Crimes de guerre: article 8

La Cour est compétente en ce qui concerne les crimes de guerre commis aussi bien dans les conflits entre Etats que dans les conflits internes.

Le statut de la Cour contient 4 types de crimes de guerre: 1) graves violations de la Convention de Genève de 1949; 2) violations sérieuses des lois et coutumes applicables dans les conflits armés internationaux; 3) violations sérieuses de l'article 3 commun de la Convention de Genève de 1949; 4) autres violations sérieuses des lois et coutumes applicables dans les conflits armés n'ayant pas un caractère international.

Nous devons noter que ces catégories de crimes sont inapplicables à des situations de tensions et perturbations internes. Par exemple, il est difficile de déterminer si une situation est une perturbation interne ou un conflit armé non-international dans le sens de l'article 3. En réalité, cela est laissé entièrement à la discrétion des Etats.

Recommandation

-Le seuil de crimes de guerre n'est pas encore clair. Il faut un organe législatif qui puisse déterminer la nature d'un conflit donné.

4. Crime d'agression

A ce sujet, les Etats ont été partagés sur la question de savoir si la détermination de l'acte d'agression relevait de la compétence du Conseil de Sécurité ou non. En effet, il y aurait une incompatibilité à ce qu'un organe politique s'immisce dans les affaires de la Cour, organe judiciaire.

Recommandations:

-Il est nécessaire d'instaurer un équilibre entre le rôle du Conseil de Sécurité mandaté par le Chapitre 7 de la Charte des Nations Unies et le rôle de la Cour.

-Il serait indispensable d'inclure dans la compétence de la Cour d'autres crimes ayant des effets néfastes sur la société internationale tels que les crimes contre le personnel des Nations Unies, le terrorisme et le trafic international de la drogue.

II. Rôle et relations entre les différents acteurs et la Cour: mécanisme de déclenchement

D'après l'article 13 (6), les acteurs du mécanisme de déclenchement sont:

-les Etats parties / le Conseil de Sécurité/ le Procureur.

*la Cour et les Etats

Les Etats parties contribuent d'une façon effective au fonctionnement de la Cour. Les Etats saisissent la Cour (article 12) et ils ont une obligation de coopération et d'assistance envers elle (articles 85, 86 et 90 quatre).

Toutefois cette relation de coopération entre la Cour et les Etats n'est pas toujours mise en oeuvre du fait de l'article 111 bis qui permet aux Etats dans une période de 7 ans de refuser la compétence de la Cour pour les crimes de guerre. Un représentant d'une ONG disait que cette disposition "est une licence pour tuer pendant 7 ans."

Recommandation

-il serait souhaitable de supprimer l'article 111 bis qui risque d'être un argument pour écarter la compétence de la Cour

***Conseil de Sécurité**

Le deuxième mécanisme prévu par l'article 13 est la saisine de la Cour par renvoi du Conseil de Sécurité. Le statut donne aussi au Conseil de Sécurité la possibilité de suspendre l'enquête (article 16), cette disposition remet en question le principe de séparation des pouvoirs qui garanti l'indépendance et l'impartialité du corps judiciaire. Toutefois, on ne peut négliger le rôle que peut jouer le Conseil de Sécurité au profit du bon fonctionnement de la Cour, puisqu'il est l'organe international suprême responsable de maintien de la paix et la sécurité dans le monde.

Recommendations

- Il serait préférable de limiter le champs d'intervention du Conseil de Sécurité pour la saisine aux seules affaires ne pouvant être traitées à l'initiative du Procureur ou des Etats .
- Il faudrait éviter l'intervention du Conseil de Sécurité pour suspendre les poursuites de la Cour pouvant être utilisées par celui-ci comme moyen d'entrave à l'efficacité de l'activité de la Cour.
- Le Conseil de Sécurité doit avoir la possibilité d'intervenir au niveau de l'application et l'exécution des décisions de la Cour en utilisant son pouvoir de contrainte.

***Le Procureur**

Le Procureur peut, d'après les articles 12 et 15, ouvrir une enquête à sa propre initiative . Le statut de la Cour prévoit l'indépendance du Procureur , une indépendance contrôlée par l'Assemblée d'Etat (article 15-3-)

Recommandation

- Pour garantir l'indépendance et l'efficacité du travail du Procureur , il faut préciser et limiter les cas où on peut le décharger de ses fonctions.