



# General Assembly

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## Human Rights Council

### Sixteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by International Educational Development, Inc., a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **The right to self-determination and defending the will of the people\*\***

International Educational Development, Inc. and the Association of Humanitarian Lawyers draws to the attention of the Council Article 21 of the Universal Declaration of Human Rights, which provides, in pertinent part: “The will of the people shall be the basis of the authority of government . . .”<sup>1</sup> This provision played a prominent role in the decolonization process and in informing the right to self-determination.

Exercising the right to self-determination and defending the true will of a people can occur a variety ways such as in periodic, democratic and fair elections; plebiscites and referendums, organized by the United Nations or some other authority; peaceful revolt; organizing national liberation movements; or a *levée en masse* and resort to armed conflict. Some occurrences involve an entire State, others involve a portion of a State, usually based on ethnicity or historic nationality.

The latest expressions of peaceful revolt have just occurred in Tunisia and Egypt, but in recent history have also occurred throughout the world. Some of these lead to the break-up of multi-national States, others to a change of governance. The latest example of a referendum was that carried out in January 2011 in Sudan’s south as a result of the 2005 peace agreement between the north and south of Sudan in what was an ethnic conflict. As over 60% voted for independence, the area will become independent South Sudan in July 2011.<sup>2</sup>

There are two situations in which the United Nations promised a people a plebiscite or referendum to determine their will but which have not yet been carried out: Western Sahara and Kashmir. Regarding Western Sahara, the United Nations has actively sought conditions under which the referendum can take place, through the offices of the United Mission for the Referendum in Western Sahara (MINURSO), established in 1991 after the ceasefire between Western Sahara’s military forces and those of Morocco. However, we are profoundly troubled that progress has been very slow. The United Nations and the international community need to act with renewed resolve to ensure the right of the Sahrawi people to their referendum. Inaction or delay will not nullify their right, but will only prolong their misery.

We are equally troubled by the failure of the United Nations to fulfil its promises to the Kashmiri people. The United Nations Military Observer Group for India and Pakistan (UNMOGIP) was established in 1949 as a result of the clashes between India and Pakistan and the actions of Kashmiri militias. The Security Council authorized a plebiscite to determine the will of the Kashmiri people as to their governance. Five United Nations plebiscite administrators were unable to achieve sufficient stability under which to carry out the vote. Since the mid-1950s there has not even been a plebiscite administrator. While India and Pakistan have held talks periodically about the status of Kashmir, most of these take place without the active participation of the Kashmiri people and their leadership. The major last uprising began in the early 1990s and the Kashmiri people formed various militias. Most of the militias have now been dismantled in favor of the use of peaceful

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\*\* The Association of Humanitarian Lawyers (AHL), an NGO without consultative status that also shares the views expressed in this statement.

<sup>1</sup> This article responds to the third preambular paragraph of the Declaration providing for the right to rebel against tyranny and oppression .

<sup>2</sup> The official tally indicates over 95% voted for independence. The elections were monitored by the European Observation Mission.

means to achieve the plebiscite. However, recent peaceful demonstrations, primarily by Kashmiri youth, have been met with tanks and gun fire by the Indian military forces in Indian-administered Jammu and Kashmir. After resisting Indian rule since 1948, it should be patently clear to the international community that the Kashmiri people will never acquiesce to rule by India, and it must act accordingly. At time of writing, India and Pakistan are again discussing the issue, but again, without the voice of the people whose rights are at stake. In our view, this is completely against the fundamental elements of the right to self-determination. We urge the United Nations to address this situation with renewed resolve. As a minimum, the Council should urge the Secretary-General to appoint a plebiscite administrator as soon as possible. Recent polls have indicated as many as 90% of Kashmiri people want complete independence, and a plebiscite administrator may be able to validate informally such results to further the formal plebiscite.

In addition to these troubling situations, there are situations in which the people vote in an opposition party, but the party in control refuses to transfer power to the winners. We submitted a written paper to this session, using Myanmar and Cote d'Ivoire, to illustrate this blatant disregard for the will of the people. The United Nations and the international community must uniformly and consistently refuse to recognize the legal authority of losing parties and candidates. Rather, it must support and strengthen the parties and persons who won elections.

We finally bring up situations in which a people, usually an ethnic nationality, fail to be able to realize human rights or their political will by any means at all and they remain at the mercy of an oppressing power. One such situation is that of the Tamil people in Sri Lanka. Since 1949 the Tamil people had tried negotiations and peaceful protests to address grievances, only to be met with massacres at the hands of the Sinhala majority. They finally resorted to a type of *levée en masse*, forming their own military and attempting to achieve their rights by the use of force. After 26 years of war, this effort failed and the Tamil people are now back under the same type of oppression that brought them to war in the first place. We note no meaningful possibilities for the Tamil people in Sri Lanka.

In other situations, the oppression is so strong that the affected people are barely able to use even the most modest, peaceful means to achieve rights. This is, for example, true of ethnic Kurds in the Islamic Republic of Iran. That government seeks its policy of "dekurdistanization" by imposing its version of Islam, its language and its culture and tradition on the Kurds. Those defending the rights of the Kurds are targeted with arrest, torture and summary execution. According to information provided by our partner organization, the Association of Human Rights in Kurdistan of Iran-Geneva (KMMK-G), many Kurdish prisoners are human rights, civil rights, women's rights activists, teachers and students. Most of them have been sentenced to lengthy prison terms following behind the door "trials" with no counsel. At least 11 of the hundreds of Kurdish political prisoners are on death row, with the execution of Mr. Sherko Moarefi imminent. In addition to the 5 persons executed on 9 May 2010 five others have been executed since.<sup>3</sup> For the Kurds in Iran and for many other ethnic nationalities, seeking rights comes at a very high price. When the price is as high as this, then the right to self-determination ripens as the only possible remedy.

In our view, a major impediment to resolving many of these situations is that the Human Rights Council devalued the right to self-determination, keeping only the issue of the use of mercenaries alive and well on its agenda. The last significant United Nations studies on self-determination were issued 31 years ago. The absence of the impact that the right to self-determination can bring to discussion of serious problems is used to buttress an

<sup>3</sup> Regarding the executions of 9 May 2010, please see our written statement A/HRC/14/NGO/7.

extreme version of State sovereignty that provides no remedy for seriously abused peoples. While especially true in situations involving ethnic nationalities, it also applies in situations where particular governments have maintained power for far too long by severely restricting opposition parties or even cancelling elections. In these cases, we also consider that the right to self-determination arises as the will of the people is not the basis of authority. We urge the Council to restore the impact of the right to self-determination to its debates and to its aim of protecting human rights. In our view, considering the high placement of the right in international law as a norm of *jus cogens*, we think the Council should appoint a Special Rapporteur on the right to self-determination and defending the will of the people and provide this topic with its own agenda item.

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