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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR  
REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND  
TERRITORIES

Letter dated 11 November 1985 from the International Labour Office  
addressed to the Assistant Secretary-General for Human Rights

At its recent session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to transmit to the Commission on Human Rights, for examination by a Working Group of the Commission, the draft body of principles and guidelines on the right and responsibility of individuals, groups and organs of society to promote and protect human rights and fundamental freedoms, set out in document E/CN.4/Sub.2/1985/30.

I send you herewith (in English and French) a note containing comments by the International Labour Office on this question, and would be grateful if it could be circulated to the Commission on Human Rights.

(Signed) K.T. Samson  
Co-ordinator for Human  
Rights Questions

Annex

Comments by the International Labour Office

Draft body of principles and guidelines on the right  
and responsibility of individuals, groups and organs  
of society to promote and protect human rights and  
fundamental freedoms

(document E/CN.4/Sub.2/1985/30)

1. The draft body of principles and guidelines set out in document E/CN.4/Sub.2/1985/30 gives rise to a number of important questions of approach in standard-setting in the human rights field. These involve particularly the relationship of any proposed new standards to existing international instruments, the need to distinguish between obligations incumbent on public authorities and any responsibilities imposed on individuals and non-governmental entities, the potential effect on existing rights of any general statement of responsibilities of individuals and groups, and the possibility of giving practical content to the principles in question.

2. Relationship to existing international instruments. A number of provisions in the draft body of principles repeat the enunciation of rights already provided for in existing human rights instruments, in particular, the Universal Declaration of Human Rights, the International Covenants on Human Rights and certain international labour Conventions. As regards areas of special concern to the ILO, reference may be made to draft principle 31 (relating to the right to work) and principles 32 and 33 (relating to the right of association and the right to establish and join trade unions). The draft principle relating to the right to work appears to be based on Article 6, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights but omits the more detailed provision of Article 6, paragraph 2, which seeks to define the responsibility of States to take measures for the realization of the right to work. The draft principle is also more limited than Article 23, paragraph 1 of the Universal Declaration of Human Rights, which recognizes the right of everyone "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". The provisions concerning the right to establish and join trade unions fall short of those contained in Article 8 of the aforementioned Covenant (not to speak of ILO Conventions). Also, in contrast to that Article and to Article 22 of the Covenant on Civil and Political Rights, draft principle 32 does not define specific limitations on the right to establish and join trade unions, and principle 33 would limit the rights of assembly and association by reference to only one criterion, in contrast to the more detailed enunciation of limitations in Articles 21 and 22 of the Covenant on Civil and Political Rights. The draft body of principles however sets out a number of responsibilities of general scope which would also govern the principles in question. These examples show that the proposed text appears to diverge in significant respects from existing international human rights standards. The question arises whether, in these circumstances, it may not appear to call into question the continuing validity of those earlier standards. Among other examples where similar questions arise, reference may be made to draft principle 9, dealing with freedom of expression in regard to human rights (as compared with Article 19 of the Covenant on Civil and Political Rights), draft principle 17, on the right to life (as compared with Article 6 of the same Covenant), and principles 18 and 37, embodying certain guarantees of fair trial (as compared with Articles 14 to 16 of the same Covenant).

3. Distinction between the obligations of public authorities and responsibilities of individuals and non-governmental entities. To ensure the observance of human rights, public authorities may have to take a series of measures. They have to ensure that there exist any necessary laws and regulations, and that suitable remedies are available where such laws and regulations are not observed. They may have to take active measures to supervise and enforce the observance of laws and regulations. They may have to adopt active programmes to permit the realization of rights, such as the right to work or the right to education. They may also have to initiate promotional activities, for example, to spread awareness of human rights and to secure general acceptance and observance of principles of non-discrimination. Such measures can benefit greatly by the collaboration of individuals and groups, and the latter should enjoy full freedom to contribute to the promotion and safeguarding of human rights. Individuals and non-governmental entities may also have specific obligations to respect human rights, such as the obligations imposed upon employers not to discriminate in employment practices or conditions and to observe requirements concerning wages, hours, industrial health and safety, etc. However, individuals and groups do not have general responsibilities commensurate with those of the public authorities to which reference has been made above.

4. The foregoing distinction appears not to be sufficiently taken into account in the draft principles. Thus it is difficult to see how every individual, group or organ of society could be required to promote and protect all human rights and freedoms set out in international human rights instruments (principle 4), to strive for the promotion, recognition and universal and effective protection of human rights (principle 5), to promote awareness of human rights among all the peoples of the world community (principle 10), to strive by teaching and education to promote the achievement of a social and international order in which human rights can be fully realized (principle 19), to strive for the promotion, protection and restoration of the rule of law and human rights (principle 20), to promote observance of the purposes and principles of the United Nations, the rules of international law (principle 23), etc.

5. It thus appears necessary to reconsider the proposed principles in order to distinguish between obligations of individuals and groups to respect human rights and freedoms, and the freedom which they should have to engage in such activities as they may deem desirable to promote a wider enjoyment of human rights and freedoms.

6. Potential effect on existing rights of any general statement of responsibilities. Principle 6 proclaims the indivisibility of all human rights, and principle 7 provides that human rights must be seen as an aspect of professional, ethical and social responsibility (inter alia) in all fields of work. Principle 9 states that responsibility, like human rights, shall be considered indivisible. According to principle 50, not only States and governmental organizations, but also individuals and groups of individuals shall comply with the conventions of the United Nations system and of other international organizations relating (inter alia) to the achievement of economic and social progress. These principles, read together, raise the question what responsibility is intended to be imposed on individuals as regards, for example, the realization of the rights provided for in the International Covenant on Economic, Social and Cultural Rights. While that Covenant defines certain restrictions or obligations affecting individuals (e.g. limitations on trade

union rights, under Article 8, punishment of illegal employment of children and young persons, under Article 10, or provision for compulsory education, in Articles 13 and 14), the obligation to act for the realization of the various rights provided for in the Covenant is imposed on States Parties, and not on individuals. The question may be raised, for example, what responsibilities the proposed principles would impose on employers to provide employment to permit the realization of everyone's right to work, or to pay a particular level of wages, in accordance with Articles 6 and 7 of the Covenant, or more generally what would be the responsibility of individuals to ensure the right of everyone else to an adequate standard of living and the continuous improvement of living conditions or to the highest attainable standard of health (Articles 11 and 12).

7. Other examples where similar questions as to the significance of the proposed standards as compared with existing international instruments arise include the following:

(a) Principle 22 would require every individual and group not merely to tolerate but to respect the political and religious views etc., of others. It is not evident how far such a provision would coincide with or differ from the much more specific provisions in Articles 18 to 20 of the International Covenant on Civil and Political Rights. Nor is it clear what significance it is sought to attach to the distinction between toleration and respect of views;

(b) Principle 28 would require every individual and organ of society to contribute (inter alia) to friendly relations among people and nations and to social justice. The first of these responsibilities would appear to go beyond the limitations on freedom of expression defined in Articles 19 and 20 of the International Covenant on Civil and Political Rights. The latter raises similar questions as to the locus of responsibility for ensuring the realization of economic, social and cultural rights to those mentioned in paragraph 6 above;

(c) Principle 38 would require every individual and group to refrain from any kind of abuse in the exercise of their human rights and fundamental freedoms. This formulation goes beyond the limitations to be found in Articles 29 and 30 of the Universal Declaration of Human Rights and in Article 5 of each of the Human Rights Covenants (the provisions of which are already reflected in principles 35 and 39).

9. Feasibility of giving practical content to the draft principles. Apart from the question of general principle whether it would be appropriate to place upon individuals and groups the wide range of responsibilities set out in the draft, its provisions would also merit careful examination from the point of view of their feasibility. For example, one may doubt whether every individual and group can have a right to self-determination (principle 8). Nor is it clear how, in practice, one could require every individual or group to strive for the recognition and universal and effective protection of human rights for all (principle 5), to promote awareness of human rights among all peoples of the world community (principle 10), to strive by teaching to promote the achievement of a social and international order in which human rights can be fully realized (principle 19), to act for the promotion and protection of the rule of law and of the rights and freedoms of everyone (principles 20 and 21), to promote the purposes of the Charter of the United Nations, the rules of international law etc., (principle 23). Similar questions arise with respect to principles 24, 25 (second paragraph), 26, 27, 28, 29, 34, 37, 44 and 51.

10. In the light of the foregoing comments, it would seem desirable to undertake a careful examination of the draft principles and to clarify the purpose which the adoption of such principles should serve. In that connection, the following considerations might be borne in mind:

(a) There appears to be little point in enunciating principles which merely restate provisions already contained in international human rights instruments;

(b) It may create confusion and uncertainty to enunciate rights already recognized in international human rights instruments but in formulations differing from those found in earlier instruments, unless the clear purport of the new provisions is to improve the protection guaranteed by existing instruments;

(c) It would accordingly be desirable to direct any new standards at the recognition of rights not yet provided for. Consideration might, for instance, be given to measures to safeguard the establishment and functioning of associations and groups having as their objective the promotion and protection of human rights (bearing in mind that the rights provided for in the Covenant on Civil and Political Rights are granted to individuals). Such standards might extend to the associations and groups concerned rights of expression and assembly, freedom from arbitrary interference in their privacy, correspondence, etc;

(d) One may question the desirability of adopting international standards to define the responsibilities of individuals and non-governmental entities for promoting and protecting human rights, as distinct from the inclusion in instruments aimed at recognition and protection of human rights of limitations governing their exercise.