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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity of perpetrators of violations of economic, social and cultural rights

Report by the Secretary-General prepared in pursuance of
Commission on Human Rights resolution 1999/58

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Introduction

1. At its forty-third session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested two of its members, Mr. El Hadji Guissé and Mr. Louis Joinet, to draft a working paper examining in depth the question of the impunity of perpetrators of violations of human rights (decision 1991/110).
2. After considering the guidelines proposed in the working paper (E/CN.4/Sub.2/1992/18) prepared by Mr. Guissé and Mr. Joinet, the Sub-Commission decided, in resolution 1992/23, to request them to draft a study on this subject in order, in particular, to propose measures to combat the practice. An interim report (E/CN.4/Sub.2/1993/6) was submitted to the Sub-Commission at its forty-fifth session. Subsequently, Mr. Guissé and Mr. Joinet were also entrusted with the task of continuing their study on the aspect of the question of impunity which relates to economic, social and cultural rights (resolution 1993/37).
3. At its forty-sixth session, the Sub-Commission welcomed the preliminary report (E/CN.4/Sub.2/1994/11) with satisfaction and, in order to facilitate the treatment of the question, decided to entrust Mr. Joinet with the completion of the question of impunity which relates to civil and political rights, and Mr. Guissé with the question of impunity which relates to economic, social and cultural rights.
4. Mr. Guissé submitted his first interim report (E/CN.4/Sub.2/1995/19) on the question of opposition to the impunity of perpetrators of violations of economic, social and cultural rights to the Sub-Commission in 1995; a second report (E/CN.4/Sub.2/1996/15) was submitted in 1996, and in 1997 a final report (E/CN.4/Sub.2/1997/8) was submitted in pursuance of Sub-Commission resolution 1996/24.
5. In paragraph 2 of its resolution 1999/58, the Commission on Human Rights took note of the final report submitted by Mr. Guissé. The Commission requested the Secretary-General to disseminate it widely, and invited States, intergovernmental organizations and non-governmental organizations to provide him with their views and comments thereon.
6. In accordance with this resolution, the United Nations High Commissioner for Human Rights, acting on behalf of the Secretary-General, sent notes verbales to the Permanent Missions of Member States and letters to intergovernmental and non-governmental organizations inviting them to forward to the Office of the United Nations High Commissioner for Human Rights their views and comments on the resolution.
7. In paragraph 5 of its resolution the Commission requested the Secretary-General to collect the information and comments received in pursuance of the resolution and to submit a report thereon to the Commission at its fifty-sixth session.
8. In addition to the introduction, this report contains some of the information transmitted by Governments and intergovernmental and non-governmental organizations, a final analysis based on the information received, and a conclusion.

I. INFORMATION AND COMMENTS FROM GOVERNMENTS

9. By the deadline set at 15 November 1999, the Office of the United Nations High Commissioner for Human Rights had received information and comments from the Governments of Chile and Cuba.
10. The Government of Cuba made a number of comments on Mr. Guissé's final report. It considered that the report was "the result of a praiseworthy effort to grant due attention at the theoretical level to an issue which in the past has tended to be relegated to the background".
11. One of the essential elements of any system of redress and/or compensation is that the perpetrators of serious violations of human rights should be required to shoulder their responsibilities. Violations of economic, social and cultural rights are committed "by States as well as by officials, groups of States, national or international private organizations, individuals or groups of individuals. However, when a State allows individuals to commit acts on its territory which constitute violations of economic, social and cultural rights ... it bears responsibility for them and must ensure that the acts do not go unpunished".
12. Combating impunity means in practice "combating the failure to apportion blame or the inadequacy of the penalty which is or should be imposed, both in terms of punishment and in terms of redress. The obligation to promote and protect all fundamental rights goes hand in hand with the obligation to punish the perpetrators of violations of those rights and to make amends for the wrong committed and the damage caused".
13. "Efforts to combat the impunity of the perpetrators of violations of these rights must also apply to the practices that have been consigned to history, such as slavery or colonization. These violations constitute international crimes which must be considered to be subject to universal jurisdiction but not to be subject to statutory limitations."
14. Among the international practices involving grave and large-scale violations of these rights, the Government of Cuba places "mechanisms used to collect the external debt of the developing countries, the programmes of structural adjustment imposed by the Bretton Woods institutions, the deterioration in the terms of world trade at the expense of the countries of the South, fraudulent agreements concluded by multinational enterprises and international financial capital, the dumping of toxic wastes on the territory of developing countries and the unilateral imposition of economic, trade and financial blockades".
15. "As for the economic, trade and financial blockade imposed against Cuba by the Government of the United States of America, which has remained in force for four decades, it constitutes a veritable international crime of genocide."
16. The report submitted by the Government of Chile contains information and comments relating to resolution 1999/58 from the viewpoint of the Chilean Ministry of Planning and Cooperation. Regarding the violation of collective rights, "the Economic and Social Council, criticizing traditional development strategies, warns of the consequences of such strategies, which lead to the emergence of a privileged national elite ... This is a constant concern of the

Chilean authorities, whose main focus is not only economic growth, but also equity, and which has accordingly devised social policies to benefit the poorest people in order to remedy the effects of the market economy model”.

17. Regarding violations of the economic, social and cultural rights of individuals, “the Economic and Social Council describes as fundamental rights the right to work, to adequate food, to health, to housing and to education. Meeting these fundamental needs is the direct responsibility of the ministries concerned; the Ministry of Planning plays a role in preparing precise diagnoses by providing specialist staff and carrying out the important task of coordinating the implementation of the various policies”.

18. For the prevention of violations of economic, social and cultural rights, “a fundamental role in this regard is the role which international organizations and States should play. However, and in the new context of globalization, where a new concept is coming to prevail over the traditional concept in social policy, the State no longer bears sole responsibility for social development, and there is a need to involve other actors”.

19. “In conclusion, the Chilean authorities, through the Ministry of Planning, and together with the related services, has, in a modern perspective, faced up to the problems and challenges posed by the resolution in question, and plans, through the design of social policies, to reduce poverty and exclusion, with special emphasis on the groups which international organizations consider to be the most vulnerable.”

20. “Moreover, ... the Chilean authorities have also helped to strengthen civil society organizations, which, in the words of the resolution in question, should become ‘critical poles’ or ‘agents of pressure’ on States to detect violations of individual and collective economic, social and cultural rights and propose solutions. It will be for the bodies specializing in legal matters to refine the legislation so as to offer compensation to those who historically have been the victims of these violations.”

II. INFORMATION AND COMMENTS FROM NON-GOVERNMENTAL ORGANIZATIONS

21. By the deadline set at 1 November 1999, the Office of the United Nations High Commissioner for Human Rights had received 12 replies from non-governmental organizations. Among intergovernmental organizations, the World Health Organization and the Economic Commission for Latin America and the Caribbean replied that they had no information on the subject.

22. In the view of the Centre Europe-Tiers Monde (CETIM) and the American Association of Jurists, it is greatly to the credit of Mr. Guissé’s final report that it proceeds from the historical background, including slavery, which still has an impact on economic, social and cultural rights, and states that those violations should be regarded as crimes against humanity, and hence are not subject to statutory limitations; that it denounces current international economic practices such as the external debt of the countries of the South, the programmes of structural adjustment, the practice of imposing blockades, etc; and that it shows how those practices affect economic,

social and cultural rights and proposes both preventive and coercive measures to resolve the question of the impunity of the perpetrators of the violations of these rights.

23. The proposals made by CETIM and the American Association of Jurists for combating impunity in respect of economic, social and cultural rights at the international level include those of appointing a special rapporteur or setting up a working group with the task of collecting all relevant information concerning violations of those rights, appointing a special rapporteur on reforms to be introduced in relation to the international financial and trade institutions, and adopting an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

24. Regarding action to punish violations of these rights, CETIM and the American Association of Jurists make various proposals such as the promotion of a declaration by the General Assembly on large-scale violations of economic, social and cultural rights and on the misuse of economic power and international financial mechanisms or efforts to explore the scope for including violations of economic, social and cultural rights in the jurisdiction of the International Criminal Court.

25. Terre des Hommes-France considers that an effective way of combating the impunity of those who violate economic, social and cultural rights at the international level would be the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. This would make it possible to lodge “individual or collective” complaints once domestic remedies have been exhausted, and to establish a body of case law to secure progress in the understanding of these rights. In addition, as States do not bear sole responsibility for violations of economic, social and cultural rights, a protocol should make it possible to clarify the roles of the various actors and factors involved in impunity.

26. Domestically in each country, efforts to combat the impunity of the perpetrators of violations of these rights depend on the existence of legislation protecting the realization of these rights, the existence of resources enabling Governments to pursue social policies and the establishment of means whereby civil society can monitor the conditions in which these social policies are implemented, making it possible to check that the resources available are properly used. If these conditions are not met, as in many countries in the South but also in the North, the resources used and the checks carried out by civil society are inadequate, hampering efforts to combat impunity at the domestic level.

27. The International Federation of Rural Adult Catholic Movements (FIRMAC) states that “among the perpetrators of violations of economic rights, it is necessary to identify all those who hinder the realization of the right to development and the right to a healthy environment. Some activities of transnational [corporations] should be denounced, such as, for example, biotechnology research which leads to a decline in biological diversity, the enslavement of peasants and indigenous peoples and population displacement, which have an adverse impact on human rights and on the realization of the right to development”.

28. The Federation suggests that a declaration should be adopted on the problems caused by the debt burden in many countries as well as the programmes of structural adjustment which place an intolerable burden on the developing countries. Mention should also be made of the

embargoes which seriously affect the most vulnerable population groups, and a serious analysis should be carried out of the phenomena of globalization which merely increase poverty.

29. The Brahma Kumaris World Spiritual University (BKWSU) notes the persistent and continuing nature of the violation of economic, social and cultural human rights, and considers that any impunity for violators, whether actual or perceived, can only encourage further violations. While steps are being taken for remedial and related action, BKWSU believes that preventive action that aims to eliminate the occurrence of violations must not be overlooked. Successful prevention is an ideal solution, which must not be forsaken simply because of its idealism or the obstacles that stand in its way.

30. BKWSU believes that the effort required in this regard is primarily one of the re-education of the individual, the creation of a better-informed public and the taking of a more committed stance by political and other leaders and policy makers.

31. The International Federation of Surgical Colleges identifies a new category of disaster: "man-conceived disasters". This type of disaster is an act against humanity and the very antithesis of human rights. It goes beyond a man-made Chernobyl and is not just another war on the pretences of protecting national security or another environmental calamity resulting from ignorance. It results from actions like genocide, deportations, death camps, ethnic cleansing, etc. conceived, planned and perpetrated by evil leaders in cold blood with the purpose of inflicting maximum suffering and destruction in full violation of the natural, social, economic and cultural rights of humanity. Such disasters must be soundly condemned by the United Nations High Commissioner for Human Rights and dealt with by the International Criminal Court.

32. The Pugwash Conferences on Science and World Affairs submitted that all over the world, the international community confronts the tensions between its obligations to protect human rights and threatened minorities and the historical principles of State sovereignty. The Pugwash Council believes strongly that the United Nations and regional organizations can play an even more effective role in this area in the next century. Ultimately, the Council considers that an important element of State sovereignty - the capacity to wage war - should be eliminated. An important step in this direction would be to make the first use of nuclear weapons a crime against humanity, which in turn would support the process of achieving a nuclear-free world.

33. In the view of North-South XXI, "resolution 1999/58 expresses a determination to extend the existing responsibility in the field of violations of civil and political rights to that of violations of economic, social and cultural rights". Resolution 1999/58 thus constitutes a text essentially opposing the tide, one which is aimed at restoring a genuinely humanist and all-embracing conception of human rights. The legal aspect of the issue of impunity as regards violations of social, economic and cultural rights should be studied in depth in order to overcome the "bogus objections" which are based on the fact that removing this impunity opens up prospects which would run counter to the interests of those who benefit from the ongoing globalization. The organization also observes that transnational companies originate from a very small number of States and that a State which has created favourable conditions for their unlawful acts by playing an auxiliary role or by adopting legislation which enhances its own powerlessness could therefore bear responsibility for their conduct.

34. North-South XXI concludes that the possibility of invoking the personal liability of decision makers in the companies responsible for human rights violations should also be studied.

III. ANALYSIS OF THE QUESTION OF THE IMPUNITY OF PERPETRATORS OF VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

35. The Governments and non-governmental organizations mentioned above forwarded information and comments both on Mr. Guissé's final report and on the resolution relating to the same subject. Among the information and comments received, proposals have been put forward concerning efforts to combat the impunity of perpetrators of violations of economic, social and cultural rights, to which Mr. Guissé devotes chapter IV of his report.

36. In efforts to combat impunity, Mr. Guissé considers two possible actions: "preventive action, including all political, economic, legislative and administrative measures aimed at eliminating all practices and all procedures conducive to violations of economic, social and cultural rights" and penalties or compensation "aimed at penalizing violations which have already been committed".

37. The Member States as well as the non-governmental organizations, for the most part, identify the same strategy for combating the impunity of the perpetrators of these violations.

38. By way of prevention at the national level, there would be a need to include legislative, administrative and legal measures which States should adopt for the realization of the economic, social and cultural rights of individuals and peoples. At the international level, international organizations and States are given a principal role. Where prevention is concerned, the proposals made include:

(a) The adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights under which violations could be reported;

(b) The adoption of a declaration against violations of economic, social and cultural rights;

(c) The reform of financial institutions, notably the International Monetary Fund and the World Bank.

39. Where redress is concerned, among the proposals made is the inclusion of violations of economic, social and cultural rights in the jurisdiction of the International Criminal Court.
