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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by International Federation of Human Rights Leagues,
a non-governmental organizations in special consultative status

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

[7 February 2003]

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

Justiciability of economic social and cultural rights

The impact of globalisation on the full enjoyment of economic, social and cultural rights has been one of the main concerns of the Commission in the last years. In that context, the FIDH would like to draw the attention of the Commission on two specific country situations.

Argentina

The FIDH would like to recall the dramatic situation that Argentina is still facing, following the economic crisis. The recession, which affects the country since 1997, has led to heightened inequality of revenues, a rise of unemployment, a degradation of public services of health, infrastructure and education.

The transformation of the recession into an open political and economic crisis, since December 2001, has aggravated these tendencies and created a poverty shock.

Following an investigative mission, the FIDH concluded that the primary responsibility for the flagrant violations of economic, social and cultural rights and the deterioration of living conditions is incumbent upon the Government and of the minority who benefited from the economic policies in place.

For the FIDH, such policies constitute a crime against economic, social and cultural rights. The responsibilities of the IMF and its inflexible positions are also evidenced in the report.

Niger

Following an investigative mission on the ground, the FIDH released a report entitled “Le droit à l’eau potable au Niger”.¹ The report underlines cases of drinking water pollution in Tibiri-Niger, which has consequently affected approximately 5 000 children with bone diseases. The report analyses the various responsibilities in the contamination of the water and in the handling of the case, which took 15 years to be addressed by the authorities. The mission took place following an earlier mission of the UN Special Rapporteur on the right to food, which gave it a follow-up dimension.

Following this investigation, the FIDH and its member organisation in Niger - the ANDDH - are currently helping victims and their families to obtain redress and compensation through judicial action before national courts.

These two examples show the crucial importance of a real “justiciability” of economic, social and cultural rights and thus underline the necessity to adopt an Optional protocol to the International Covenant on economic social and cultural rights. This optional protocol should help clarify the responsibilities of States, which increasingly hide behind the growing influence of external actors.

¹ Rapport FIDH n°341, Octobre 2002, Droit à l’eau potable au Niger, Enfants de Tibiri: quand l’eau se transforme en poison – privatisation de la distribution de l’eau: un processus à surveiller.

The adoption of this Protocol would represent an essential step forward, by giving each individual a means of appeal on an international level to ensure that his or her most fundamental rights are respected. The FIDH believes that the recognition of the individual right of appeal is vital in this respect. It is worth noting that, on an international level, a growing number of instruments provide for an individual or collective right of appeal in cases of non-respect for economic, social and cultural rights.

The additional protocol would strengthen this worldwide trend towards increased - and eventually inescapable - enforceability. The FIDH points out, in particular, that, at the Council of Europe level, the European Committee on the European Social Charter can consider appeals from trade unions or non-governmental organisations. A similar procedure also appears in the Charter's additional protocol providing for a collective complaints system. Under the inter-American system, the 2000 San Salvador Protocol allows individual complaints regarding trade-union rights and the right to education to be submitted to the Inter-American Commission and Court. The additional CEDAW protocol of 22 December 2000 provides for an individual right of appeal for civil, political, economic and cultural rights.

Finally, it must be stressed that the additional protocol does not create any new obligations in accordance with the ICESCR, and merely supplies a new mechanism with a view to ensuring that the rights, which the international community is committed to defending, are fully realised.

This is why the FIDH is asking the Commission to make a clear commitment to promote the swift adoption of an additional protocol, notably by setting up a working group. This would amount to a message from the Commission to the international community as a whole, calling for respect for and the increased enforceability of ESCR. This group would also allow representatives of States and civil society organisations to discuss issues together and to define the organs, which are competent to hear complaints concerning non-respect for ESCR. Furthermore, working group consultation could constitute a good way to convince reluctant states that limited financial resources is not an obstacle to economic, social and cultural rights' enforcement and justiciability.

Right to development

The World Bank and Human Rights

Without questioning, the World Bank policies impact directly, when they do not simply orientate the policies of development in numerous countries.

The FIDH issued a report on the World Bank and Human Rights, in which it analyses how fundamental Human rights principles should guide the Bank in the conceptualisation and implementation of its social policies, and establish the respective responsibility of the State and of the Bank in this regard. It further evaluates the Bank's social responsibilities in light of these principles and its responsibility, and show how, after announcing reorientations towards the reduction

of poverty, the fundamental orientation of the Bank has merely been corrected, in order to reduce the disastrous social impact of its policies.

The report highlights how international Human rights law must be considered as the sole framework within which the social policies of the World Bank should be conceived developed, implemented and evaluated.

It recommends that the World Bank address the following points, in framing its policies and practices:

- The Bank should not only avoid policies and practices that facilitate violations or obstruct the fulfilment of their shareholders' treaty obligations, but also take directly into account international Human Rights obligations in framing poverty reduction and development strategies.
- The Bank should take into account the international principles concerning Human rights as it draws up its strategies in the fight against poverty, and as it works out its operational procedures ("operational policies", "bank procedures" and "good practices").
- The Bank should proceed to an evaluation of the impact of its policies in order to fully consistent with the general principle of non-discrimination.
- The Bank should adopt a specific procedure to evaluate the general impact of its activities on Human Rights. The adoption of a specific operational procedure would thus allow the Inspection Panel to deal with claims related to Human rights.
- The Bank's approach to human rights should be holistic and address civil and political rights as well as economic, social and cultural rights.
- The Bank should involve NGOs early on in the formative stages of this initiative.
- Finally, the Bank should think about appropriate internal and external accountability mechanisms.

The NEPAD Agreements

The FIDH wishes to draw the attention of the Commission on the NEPAD agreement. The FIDH welcomes this step that African heads of states have taken regarding the development of their continent within a democratic framework, and hopes that this initiative effectively responds to the development needs of Africa.

The FIDH welcomes in particular the foundation of NEPAD, the «Declaration on Democracy, Political Economic and Corporate Governance», which refers to regional and international Human rights instruments, thereby respecting the "primacy of human rights" principle.

It will therefore be up to the NEPAD partners to ensure that their initiative is rooted in human rights principles. In this regard, the FIDH is concerned that the NEPAD does not sufficiently address the indispensable indivisibility of all rights, including economic and social rights.

The FIDH is concerned with NEPAD's logic regarding investment and growth financing as well as policies relating to the fight against poverty. For example, the allocation of funds has not been sufficiently committed. As a result, states therefore

neglect their obligation to prioritize funding to basic public services, such as primary education, health and access to water. As such, states risk contravening their obligations (according to the conventions that they ratified) of using “*the maximum of their available resources*” to satisfy their populations’ fundamental rights.

In addition, the document ignores redistributive policies in the fight against poverty, whether land or fiscal redistribution. The absence of such public redistributive policies is precisely one of the essential causes of the powerful income inequalities between the different groups in Africa.

- The FIDH urges the Commission to reaffirm that the NEPAD, and more generally any policy linked to development or to economic and commercial issues, be conceived within the human rights framework established by the Universal Declaration of Human Rights and its subsequent texts;
