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PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Compilation of the essential aspects of replies received on the
pre-draft declaration on human social responsibilities**

Report of the Office of the High Commissioner for Human Rights*

Summary

In its decision 2004/117, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to solicit views of Member States, intergovernmental and non-governmental organizations on the pre-draft declaration on human social responsibilities.

OHCHR received 30 replies: 27 from Governments, 2 from intergovernmental organizations and 1 from a non-governmental organization. The present report contains a compilation of the essential aspects of the replies received, as requested in the decision.

* The reason for the late submission of this report is the need to reflect the latest information.

Introduction

1. In its decision 2004/117, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR): (a) to circulate to Member States and to intergovernmental and non-governmental organizations the pre-draft declaration on human social responsibilities (E/CN.4/2003/105, annex I), requesting their views on it; and (b) to submit to the Commission at its sixty-first session a compilation of the essential aspects of the replies received. By letters dated 3 and 4 August 2004, OHCHR circulated the pre-draft declaration to Member States and to intergovernmental and non-governmental organizations, requesting their views on it.

2. This report is a compilation of the essential aspects of replies received from Member States and intergovernmental and non-governmental organizations. The following Governments sent replies: Albania, Armenia, Australia, Belgium, Canada, Croatia, Cuba, Czech Republic, Finland, France, Germany, Hungary, Lithuania, Luxembourg, Malta, Mauritius, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America. Replies were also sent by the European Commission, the World Intellectual Property Organization and Amnesty International.

I. VIEWS EXPRESSED BY MEMBER STATES

3. The Governments of Albania, Belgium, the Czech Republic, Finland, Germany, Hungary, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Sweden and the United Kingdom of Great Britain and Northern Ireland submitted a joint comment in which they expressed the view that the pre-draft declaration is contrary to the principles on which the international human rights system is built. The idea that a State can determine which, if any, rights an individual can enjoy in return for the exercise of responsibilities is fundamentally inconsistent with the basic concepts of human rights, according to which human rights are universal and inalienable.

4. The universal and inalienable character of human rights results from Article 55 of the Charter of the United Nations which provides that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". All human rights derive from the dignity and worth inherent in the human person. Individuals are entitled to enjoy human rights without interference or qualification by a State, other than as necessary and permitted by human rights treaties. The pre-draft declaration may undermine this principle and also the principle that individuals are entitled to enjoy the same human rights without discrimination of any kind.

5. It is not disputed that an individual has duties or responsibilities to the society within which he or she lives. Such duties or responsibilities can be important in ensuring social cohesion as long as they are defined in accordance with democratic principles and relevant international law. The domestic law of any State can impose duties on its citizens, but cannot restrict rights and freedoms beyond what is permitted by applicable international human rights law.

6. Conditional linkages between responsibilities and human rights cannot be accepted. The debate on strengthening social and cultural “norms and values” should always be conducted on the understanding that human rights are universal and inalienable and therefore cannot and must not be conditionally linked to, or made otherwise dependent on the performance of duties. If members of any society have a range of responsibilities and duties towards each other and towards democratic society as a whole, in no way can these responsibilities affect the obligations of States towards individuals for the promotion and protection of human rights.

7. According to the Government of the Czech Republic, which supplied additional remarks, the underlying principle of the “objective character” of human rights should be highlighted. This doctrine, based on the dignity of the human being and therefore not conditioned by States’ decisions, is contained in the Vienna Convention on the Law of Treaties. It has been subsequently confirmed by the jurisprudence of the European and Inter-American Courts of Human Rights. Accordingly, the scope of protection of human rights cannot be limited because other States fail to provide such protection.

8. The Government further stated that the area of rights and responsibilities in the domestic field should not be confused with human rights law in the international context. International human rights law does not stipulate any obligations for individuals towards States. It is the exclusive role of the State to provide for an individual’s responsibility towards it. The relevant provisions of the Universal Declaration of Human Rights and the preamble to the International Covenant on Civil and Political Rights are solely intended to provide guarantees for the exercise of internationally recognized rights and freedoms, which can be subjected only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare.

9. The Government of Armenia maintained the human person is the central subject of human rights and fundamental freedoms. Members of any society have responsibilities towards each other and towards society. Many of these responsibilities are also associated with rights. At the same time, the very concept and the source of human rights, on the one hand, and civil responsibilities, on the other, exclude any conditional linkage between them. While “all human beings are born free and equal in dignity and rights”, duties and responsibilities are established by States. These duties are included in article 29 of the Universal Declaration of Human Rights. At the same time, such duties or responsibilities are defined and regulated by national legislation, which in turn must be in compliance with the norms and principles of international human rights law and cannot restrict universal and inalienable rights and freedoms beyond what is permitted by applicable international human rights law.

10. Enjoyment of human rights and freedoms by an individual cannot and must not be dependent or conditioned by the “good” or “bad” performance of particular duties. The idea that a State can determine which rights an individual can enjoy in return for the exercise of responsibilities is entirely inconsistent with the fundamental concepts of human rights and constitutes a direct attempt to challenge the very foundations of international human rights law. Accountability of individual citizens can be considered only in the context of the universal and inalienable nature of human rights and fundamental freedoms and the unconditional commitment by States to place the duties of their citizens against the background of full respect for their rights and freedoms as defined in international human rights law.

11. While the Government of Australia agreed that States have a vital role to play in elaborating the responsibilities and duties of individuals in their community primarily through domestic laws and regulations, it considered that all individuals should enjoy universal and inalienable human rights as established in international law. In the view of the Government, consideration of the pre-draft declaration would undermine the fundamental role of States in safeguarding and guaranteeing the human rights of all individuals in accordance with obligations freely assumed under international law.

12. In the view of the Government of Canada, the main thrust of the pre-draft declaration runs contrary to the purpose of the Commission on Human Rights, which is to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction. Human rights serve to protect the inherent dignity and equality of every individual. The primary responsibility for the promotion and protection of human rights rests with the State. States have binding international legal obligations to respect human rights under a number of treaties and under customary international law. States are internationally responsible for compliance with their international human rights obligations, and have created a variety of international mechanisms, such as the human rights treaty bodies, and the Commission on Human Rights and its system of special procedures, to provide a framework for monitoring compliance with human rights.

13. In contrast, the document of the Sub-Commission on the Promotion and Protection of Human Rights would purport to impose responsibilities and duties directly on individuals and link them to the exercise of human rights. Further, the pre-draft declaration would purport to subordinate the enjoyment of human rights to the performance of these duties and to other vague and undefined interests of society. Such language could, if adopted, be used to justify restricting or otherwise violating human rights contrary to international law.

14. Various specific articles in the pre-draft declaration would conflict with and violate the existing international human rights obligations of all States. Many provisions fall below or otherwise conflict with the obligations provided in various human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention for the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

15. According to the Government of Croatia, States cannot predicate the enjoyment of an individual right on the exercise of responsibilities, since human rights are universal, indivisible and interrelated as set forth in international human rights instruments. It is the inalienable right of each individual to enjoy his or her human rights and States cannot restrict these rights unless permitted in human rights treaties. The pre-draft declaration is contrary to this principle.

16. Every State is entitled to impose duties on its citizens, but at the same time these duties cannot restrict rights and freedoms beyond the scope permitted in international human rights law. Making human rights conditional or dependent on the performance of particular duties is contrary to the basic principles of international human rights law.

17. The Government of Cuba expressed the view that the notion of rights implicitly and inevitably means that other persons, groups, and the State as a whole have responsibilities or duties concerning the recognition and effective realization of these rights and the creation of an environment conducive to their enjoyment. The pre-draft declaration constitutes an important contribution to resolving the acute discrepancy existing between, on the one hand, the enormous conceptual advances made on the subject of rights and, on the other, the lack of precise definitions concerning what duties result from article 29, paragraph 1, of the Universal Declaration of Human Rights and the last (fifth) common preambular paragraph of the International Covenants on Human Rights. The texts of the Universal Declaration and of the Covenants leave no doubt that all individuals have duties (or responsibilities) towards the community/society in which they live. This is the only environment that cannot only afford everyone the possibility of fully developing his or her personality, but also ensure the effective realization of the rights and freedoms enshrined in the Universal Declaration itself.

18. There is a need to specify what the duties (or responsibilities) of every person are towards the community in which he or she lives. A future codification of human social responsibilities should include the following duties: to respect international peace and security; to refrain from any propaganda for war and advocacy of national, racial or religious hatred; to uphold the rules of international law and all human rights for everyone; to oppose actions that are incompatible with the purposes and principles of the Charter of the United Nations; to protect the environment; to respect and promote the right of peoples to self-determination and cultural and religious diversity; to work to promote the economic, social and cultural development of all the world's peoples; to strengthen solidarity and respect between all human beings and peoples of the world; and to promote the establishment of an international order based on the principles of humanity, equity, solidarity and social justice.

19. National efforts should be pursued to incorporate human duties/responsibilities in domestic legislation. International and domestic codification of human social responsibilities can move forward in parallel and mutually reinforce each other. The development of international codification will guide domestic legislation. The obligation to stipulate responsibilities is a key factor for arriving at a system of equitable justice and, ultimately, reconciliation and stability at both the national and the international level.

20. According to the Government of France, the pre-draft declaration is contrary to the principle of inalienability of human rights as it conditions the recognition of human rights on respect for rules established by a State. In addition, the declaration is contrary to the principle of the universality of human rights in that it conditions respect for human rights on conduct determined by State authorities. Finally, the pre-draft declaration is contrary to article 29 of the Universal Declaration of Human Rights, in that the recognition of individual duties towards the society in which he/she lives does not exempt the State from fulfilling its obligations to respect human rights.

21. The Government of Malta stated that the pre-draft declaration should be drafted around the principles on which the international human rights system is built, including universal respect for human rights as stipulated in Article 55 of the Charter of the United Nations. All human rights derive from the dignity and inherent worth of the human person who is the

central subject of human rights and fundamental freedoms. Individuals are entitled to enjoy human rights without interference or qualifications by a State other than as permitted by human rights treaties.

22. An individual has duties or responsibilities to society to ensure social cohesion, but these duties and responsibilities should be defined in accordance with democratic principles and international law. Nothing in the pre-draft declaration should run counter to the universality and inalienability of the human rights of individuals irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

23. The Government of Mauritius indicated that chapter II of its Constitution provides for the protection of fundamental rights and freedoms of the individual, and also that human social responsibilities as referred to in Commission decision 2004/117 are codified in articles 7-25, 102-111 and 203-226 of the Civil Code.

24. The Government of New Zealand considered that by making human rights conditional, and promoting the idea that a State can determine which, if any, rights an individual may enjoy, the pre-draft declaration undermines the basic principle that individuals are entitled to enjoy fundamental human rights without discrimination, interference or qualification. Both the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, adopted by consensus, clearly state that human rights are universal and inalienable.

25. The Government of Norway expressed the view that human rights are universal and inalienable, and that all human beings are entitled to enjoy human rights and fundamental freedoms without any qualifications, interference or discrimination. It rejected the idea that the enjoyment of human rights should be conditional on, or in any other way linked to, a “responsibility or duty” on the part of the individual. The pre-draft declaration promotes the idea that States can decide to what extent an individual may enjoy his or her human rights and thereby undermines the responsibility of States to protect human rights, which is contrary to the very essence of human rights law.

26. According to the Government of the Russian Federation, the introduction of the concept of human social responsibilities appears to be fully justified and is a step forward on the way to the observance of human rights globally on the basis of the principles of universality, objectivity and non-selectivity. The pre-draft declaration can be seen as an extension and development of the fundamental international legal instruments in the field of human rights, including, first and foremost, the Universal Declaration of Human Rights and notably its article 29. It arises from the objective need to create and encourage a generalized awareness that the individual not only has rights that provide legal framework for his or her freedom, but also duties towards the society in which he or she lives, and that there exists an unbreakable link between one and the other.

27. The inclusion of such notions as social ethics, conscience, equity and solidarity in the text of the pre-draft declaration makes an important contribution to the development of the concepts of a culture of peace, tolerance and dialogue among civilizations aimed at encouraging relations of mutual respect and equal rights between human beings and States. The fact that most of

the norms of the pre-draft declaration are to be found in the area of ethical, moral and religious precepts is a valuable innovation and a major step forward on the way to bridging the gap between the concepts of law and morality.

28. According to the Government of Switzerland, the main objective of the pre-draft declaration is to condition human rights, making their exercise and enjoyment dependent on the fulfilment of social responsibilities. But according to the Universal Declaration of Human Rights, human rights are inherent to human dignity and all human beings are born free and equal in dignity and rights. The first article of the pre-draft declaration wrongly links “duties” and “responsibilities” of the individual, which are two different notions as set forth in article 29 of the Universal Declaration of Human Rights. It noted that, on the one hand, there are responsibilities indirectly imposed by article 29, paragraph (2), of the Universal Declaration on individuals in the exercise of their rights and the enjoyment of their freedom, and that, on the other hand, there are duties of individuals towards the community.

29. According to the Government of the United States of America, the pre-draft declaration, by attempting to condition the exercise of human rights on the fulfilment of “responsibilities” to the State or to the community, would eviscerate the very birthright of individuals throughout the world. It also reflects an intent to elevate the interests of the State over the rights of the individual, leaving all relevant interpretation with the State.

II. VIEWS EXPRESSED BY INTERGOVERNMENTAL ORGANIZATIONS

30. The European Commission fully supports the position which has been articulated by the European Union with respect to the concept of human social responsibilities, as reflected in the European Union’s opposition to the decisions of the Commission on Human Rights related to this issue. The European Union took the view that the pre-draft declaration could be seen as conditioning respect for human rights and providing the basis for selective observation of human rights standards.

III. VIEWS EXPRESSED BY UNITED NATIONS BODIES

31. The World Intellectual Property Organization proposed to add the following second paragraph to article 23 of the pre-draft declaration, based on article 27, paragraph (2), of the Universal Declaration of Human Rights:

“(b) Every person has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.”

Alternatively, this paragraph could be formulated as article 24.

IV. VIEWS EXPRESSED BY NON-GOVERNMENTAL ORGANIZATIONS

32. Amnesty International expressed the view that the Commission on Human Rights is not an appropriate forum for addressing the broad moral and ethical issues associated with responsibilities of the individual towards the community. The breadth of the issues associated with responsibilities goes well beyond those related to human rights.

33. A declaration on human social responsibilities in the Commission may undermine the essential principles of inalienability and universality of human rights. Furthermore, responsibilities associated with human rights are already well elaborated. In addition to article 29 of the Universal Declaration, common article 5 of the International Covenants and similar general provisions in human rights instruments, responsibilities are reflected in many specific provisions of international human rights standards in which particular rights carry corresponding duties and responsibilities.

IV. CONCLUSIONS

34. **Two general approaches could be discerned from the replies. Some respondents placed emphasis on the principle that individuals are entitled to enjoy human rights, as laid down in the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights instruments, without interference or qualification by a State other than as permitted in human rights instruments. Members of any society have a range of duties and responsibilities towards each other and towards society as a whole. Such duties and responsibilities are regulated by States through their national legislation. But they should in no way affect the obligation of the State to respect and protect human rights. No conditional linkage between the exercise of human rights and the fulfilment of civil responsibilities is acceptable.**

35. **Other respondents consider the pre-draft declaration as an instrument that contributes to the awareness that the individual has both rights and duties towards the society, and that there exists a close link between them. In this sense, the pre-draft declaration is seen as an extension and a development of the fundamental international human rights instruments, and in particular of article 29 of the Universal Declaration of Human Rights. It contributes to resolving the discrepancy between rights and the lack of precise definitions of duties, as addressed by article 29 of the Universal Declaration, as well as the fifth common preambular paragraphs of the International Covenants on Human Rights. The pre-draft declaration is an attempt to bridge the gap between the concepts of law and morality.**
