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SPECIFIC HUMAN RIGHTS ISSUES

Technical cooperation in the field of human rights

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* The document was submitted late because of the consultation and coordination needs of the authors.

Summary

The Sub-Commission, in its decision 2004/115, requested Gudmundur Alfredsson and Ibrahim Salama to prepare, without financial implications, a working paper on the content and delivery of technical cooperation in the field of human rights, for the purpose of seeking possible improvements, and to submit it to the Sub-Commission at its fifty-seventh session.

In pursuance of that decision, for the purpose of encouraging debate and seeking possible improvements, the authors examined the content and delivery of technical cooperation in the field of human rights. They also linked the issues to the ongoing discussions about reform of the human rights mechanisms of the Organization and their methods of work. The issues brought up encompass the institutional context within the United Nations system, including the mainstreaming of human rights as well as rights-based activities; the substantive basis for technical cooperation in human rights instruments adopted by the United Nations and accepted by States, including technical cooperation for the realization of economic, social and cultural rights; the focus on dialogue and exchange of positive experiences, for example concerning success stories of several national institutions; national ownership as a crucial element for sustainability; and the technical aspects concerning the delivery of technical cooperation, such as national and international actors, local expertise and independent evaluations.

Introduction

1. Promotion is crucial for the successful realization of human rights, and promotion of human rights is listed amongst the main objectives of the United Nations. Technical cooperation is one of the tools available for the promotion of human rights. Such cooperation deserves constant attention and creative thinking based on lessons learned from experiences all over the world. It is the purpose of the authors of this short working paper to identify and bring up some issues that the Sub-Commission may find interesting and worthwhile to debate and thereby to strengthen the contribution of technical cooperation to the promotion of human rights.

2. A debate on technical cooperation may bring up factors relevant for consideration in the ongoing reform of the human rights mechanisms of the Organization and their methods of work. Nothing much will change for the better unless real problems are addressed in a comprehensive and creative manner. Mere institutional restructuring is not likely to solve these problems. In addition to positive national developments, the improvement of technical cooperation could provide important entry points to addressing the problems and thus furthering the reform process.

3. Many issues relating to technical cooperation in the field of human rights can be approached and considered in innovative ways. The issues can encompass (a) the institutional context within the United Nations system, including the mainstreaming of human rights as well as rights-based activities; (b) the substantive basis for technical cooperation in human rights instruments adopted by the United Nations and accepted by States, including technical cooperation for the realization of economic, social and cultural rights; (c) the focus on dialogue and exchange of positive experiences, for example concerning success stories of several national institutions; (d) national ownership as a crucial element for sustainability; and (e) the technical aspects concerning the delivery of technical cooperation, such as national and international actors, local expertise and independent evaluations. All of these considerations may at the same time contribute to a better international political climate beyond the United Nations system as far as progress on human rights is concerned.

Institutional arrangements and mainstreaming

4. One has to agree with the Secretary-General that “the Economic and Social Council has been too often relegated to the margins of global economic and social governance” (E/59/2005, para. 165). This main body responsible for development cooperation has suffered from an existential crisis, and it has not been able to address technical cooperation in the field of human rights in the midst of new realities. If the Secretary-General’s proposals concerning the Council materialize, this could create new horizons for technical cooperation in the field of human rights. In fact, his vision of a new Economic and Social Council is based on “the need to review trends in international development cooperation, promote greater coherence among the development activities of different actors and strengthen the links between the normative and operational work of the United Nations system. To address this gap, the Economic and Social Council should serve as a high-level development cooperation forum” (ibid, para. 176).

5. An enhanced and more serious role of the Council could also serve to further the mainstreaming of human rights in the United Nations system and to further anchor the approach of rights-based activities. Thanks to initiatives by the Secretary-General and the Office of the United Nations High Commissioner for Human Rights (OHCHR), efforts are being made to systematically include human rights in a wide range of United Nations undertakings. Again, to this end, technical cooperation is one of the available tools for accomplishing the tasks.

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6. The substance of technical cooperation must be based on the international human rights instruments, as adopted by the United Nations and accepted by States. With hundreds of instruments in place and with dozens of monitoring procedures that also produce relevant case-law, knowledge and technical expertise should be readily available to Governments if and when they so wish. Such knowledge is a prerequisite for the successful implementation of human rights at the national level. The expertise can relate to technical review of legislation, human rights training, translations of instruments and case-law, exchange of positive experiences, and so on.

7. Today technical cooperation focuses to a large extent on civil and political rights, and there are good reasons for this emphasis. At the same time, with reference to the indivisibility and interdependence of human rights, there is every reason to actively extend technical cooperation activities to economic, social and cultural rights to a much greater extent than is being done today. Additional focal issues, with a basis in the international instruments, should include the human rights of women, human rights and health and food, the rights of minorities and indigenous peoples, the rights of migrant workers, and the rights of asylum-seekers and refugees. For prevention purposes, special focus should be on human rights shortcomings that may, now or later, generate violent conflicts.

8. The indivisibility of all human rights and the duty to address them on an equal footing in a fair and objective manner, in accordance with the Vienna Declaration and Programme of Action, is not a matter of detail. It is one of the issues that may determine the future of one of the most influential political movements of modern history. Furthermore, if the financing of human rights activities is not balanced, the whole approach of the international community to human rights issues is hardly balanced either. This type of strategic approach to technical cooperation could help in decreasing the level of controversy and politization surrounding human rights. Unsolicited and unfounded foreign interventions in such understandably sensitive areas can indeed be counterproductive. At the same time, human rights are a legitimate matter of international concern and accountability insofar as States have agreed to a number of norms and standards in this respect. Such concerns should be addressed within the proper spheres of competence of the relevant human rights bodies and mechanisms, through other United Nations institutions and agencies where human rights have been integrated, and through dialogue and cooperation.

9. In addition to the mainstreaming of human rights in institutional efforts, the mainstreaming of ideas should also be facilitated. International standards and guidelines on the rule of law, democracy and good governance, including anti-corruption measures, are often suitable to integration with technical cooperation in the field of human rights.

10. The past few years have witnessed an increasing emphasis on numerous regional and global initiatives, such as the New Partnership for Africa's Development (NEPAD) and the proposed democracy fund, aimed at accelerating the promotion of democracy, good governance and human rights in different parts of the world. If analysed properly, existing international human rights standards cover all the components of political reform processes. It is worth remembering that already in 1993, the Vienna Declaration and Programme of Action was clear in linking democracy to human rights in the following terms by recommending:

“that priority be given to national and international action to promote democracy, development and human rights. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening the pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes”
(Part II, paras. 66-67).

Positive experiences and dialogues

11. Remarkable achievements have been made in the field of human rights over the last few decades. Global standards have been set, some of the human rights treaties enjoy wide and growing acceptance, and dozens of monitoring procedures have been established with wide coverage. The same is true for regional undertakings where these exist. At national levels democracy is spreading, human rights awareness and human rights education have increased quite dramatically, the media and non-governmental organizations report on problems, and more and more countries are equipping existing institutions and/or setting up new ones for implementation purposes. It would be worthwhile to analyse the reasons for these developments and how the lessons can be best incorporated in technical cooperation activities.

12. In light of success stories from many countries, independent national human rights institutions (NHRIs) should be seen as key partners for technical cooperation in the field of human rights. They often play the role of catalyst at the national level. Their role in technical cooperation deserves more focused attention, as well as additional financial resources, because of their uniqueness in ensuring genuine and lasting reforms and “cultural legitimacy”. NHRIs can bridge a gap that frequently occurs between national ownership of human rights approaches and the universality of the human rights standards.

13. Human rights problems cannot always be attributed to the lack of political will. They can also result from the lack of proper or adequate national capacities to ensure respect for the relevant obligations of States. In light of the unique role of NHRIs there should be a comprehensive plan for promoting and expanding this experience as much as possible in all countries. States should be encouraged to give priority within their national human rights plans and programmes to the establishment and/or enhancement of independent NHRIs.

14. NHRIs should be encouraged to assess technical cooperation needs and to elaborate methodologies and indicators for such programmes. Many objectives can be achieved in this manner: nation-specific opinions, integration of cultural elements and national ownership into the cooperation processes, the ensuring of follow-up to capacity-building, and the enhancement of sustainability.

15. It is important to establish South-South cooperation, including contributions to capacity-building and in-kind donations. Technical cooperation should aim at the end of technical cooperation. From that perspective, special emphasis should be put on qualifying local trainers in key sectors of human rights promotion and protection, particularly in developing countries. This can foster national human rights cultures. Training national trainers should in itself be a central component of technical cooperation programmes, to be repeated regularly and introduced into the curricula of schools, like judicial colleges, police academies and other similar institutions. This would be a very useful approach, not only in terms of sustainability but also for reducing the costs of cooperation programmes and increasing their efficiency.

National ownership

16. As mentioned above, national ownership plays an important role in the promotion of human rights. Building national capacities in the field of human rights can best be achieved in an “inner-generated” manner respectful of popular wishes and of local cultures. This is important for establishing the genuine universality of human rights norms and standards and for avoiding claimed or real political misuse.

17. Fairness and accuracy require paying careful and equal attention to legal, cultural and social variations between societies. The notion and movement of human rights did not start with the adoption of the Universal Declaration of Human Rights in 1948, and the rights do not belong to one civilization only. Analysis of cultural factors in the field of human rights calls for a process that does not take place often enough, and then it is frequently and unfortunately conducted in a sceptical and contrarian frame of mind. This is understandable in light of the fact that the notion of cultural particularities has in many instances largely shown its negative sides. The promotion of rights and freedoms may challenge negative manifestations of age-old beliefs, traditions or Government practices that deny people equal opportunities and equal treatment and yet have gained some kind of supposed social legitimacy with time. Such beliefs, traditions or practices have no foundation or roots in religion, in letter or in spirit, and more often than not they contradict the very norms and values professed and advocated by different religions. A certain degree of scepticism is therefore required, on condition that mutual respect and deeper understanding between different cultures remain the objective. For these reasons, the need for dialogues within, and not only between cultures is evident. Nothing hinders the promotion and protection of human rights as much as seeing them as impositions of Western notions.

18. While technical cooperation programmes apply international human rights standards, one should not lose sight of national realities, local cultures and particularities which, if properly defined, can contribute constructively as a dynamic force for change, leading to better and more credible promotion and protection for human rights. Positive cultural particularities should be

respected, when they do not contradict States' obligations in the field of human rights, for generating positive energy. In fact, contrary to general belief, some Western countries also carry on with particularities of their own; a mind open to the notion of cultural particularities that enjoy popular approval may potentially enrich the human rights movement.

19. Generating regional support for technical cooperation in the field of human rights is an important dimension that also serves the causes of cultural legitimacy and national ownership. Furthermore, regional approaches create additional possibilities for South-South technical cooperation. The role of regional organizations cannot be overemphasized in this respect.

Delivery of technical cooperation

20. While the wishes of States should be the main basis for technical cooperation programmes, it is also necessary to take into account recommendations made by treaty bodies and the special procedures. This is a fundamental requirement to ensure coherence within the human rights system, to avoid duplications and trade-offs, and to achieve better results. To the extent possible, technical cooperation programmes should be integrated into national development policies and plans so as to provide a nationally owned rights-based approach. The possibility of responding to requests for technical cooperation from other actors than Governments, such as minorities or trade unions, should be examined (while it is understood that official consent would be required for carrying out such activities).

21. The most effective way of delivering technical assistance should be of constant concern. Experiences show that deploying foreign expert consultants may not necessarily achieve the best results in terms of effective exchange and follow-up, especially when such expertise or consultancy is deployed on a short-term basis. It is necessary and useful to resort to such expertise when special knowledge or a particular background is required. However, when possible, it would be better to give priority to national, or regional, resource persons and their education and training before employing the expertise internationally. This approach deepens the human rights culture, and at the same time ensures national ownership and sustainable results.

22. The creation of local and regional institutional partnerships between intergovernmental organizations and NGOs in respect of education, training, research, think-tanks and other academic efforts would contribute to human rights capacity-building and promote a sustainable and effective delivery structure for technical cooperation. A multiplicity of objectives can thus be achieved, including mainstreaming a genuine and locally owned human rights culture and bringing international cooperation on human rights to where it belongs, i.e. on the ground. In this way, OHCHR would be enabled to become what it should be as far as promotion is concerned: a centre of excellence, a focal point, a melting pot of different experiences, a coordinator, a sensitizer and facilitator, a mobilizing force, an advocate, a trainer for trainers, and an identifier of gaps.

23. Along these lines, it would be useful to establish a roster of potential partners in technical cooperation programmes and projects in the field of human rights. Such a roster could include international and national actors, available areas of expertise and languages. It could also facilitate South-South cooperation by allowing developing countries direct access to expertise.

Direct contacts between multiple partners can produce better outcomes and sustainable results and would furthermore complement the efforts of OHCHR and other United Nations actors. A user-friendly compendium of good practices might also be a useful tool for achieving more efficient technical cooperation.

24. In order to maximize the benefits of lessons learned from practice, technical cooperation projects under the auspices of or in collaboration with OHCHR should be followed by an impact assessment, the results to be shared with all interested parties. It is very important for OHCHR to make sure that technical cooperation does not overlap with its monitoring activities, as both lines of work may suffer as a result. Periodic reviews of and meetings to assess technical cooperation projects implemented under the auspices of or in collaboration with OHCHR should be conducted in a transparent manner, and the assessments should be taken into account in preparing future policy orientations. A tripartite evaluation by OHCHR, representatives of the concerned Governments and NHRIs could eventually be foreseen.

25. In addition to the reviews and assessments involving Governments and other immediate partners in technical cooperation programmes and projects, there is every reason to call for independent external evaluations of OHCHR and other actors' undertakings in this area. Considering the expertise required and the interests involved, this is an essential element of efficient and effective delivery of technical cooperation.

26. In this paper, we do not address fund-raising for the technical cooperation functions of OHCHR nor, keeping mainstreaming in mind, of other United Nations actors. We are aware of arguments to the effect that the funding of technical cooperation should come from the United Nations regular budget and that voluntary contributions would better reflect the initial vision of the Charter if they were either for unrestricted use or allocated to a single common fund, without earmarking.

Concluding remarks

27. The authors are convinced that the issues brought up in this working paper, while only addressing part of a vast field, deserve further attention. As stated in the introduction, it is the hope of the authors that the paper will generate a much-needed debate and the presentation of new ideas in the Sub-Commission.
