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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N°3: INTERNATIONAL HUMAN RIGHTS LAW

Following the 2nd World War, there was awareness that non-respect of human rights poses a serious threat to peace and international security. Thus, the UN Charter specifically mentions human rights in its preamble and in articles 1 and 55.

The UN system for the protection of human rights is much more complex than European, Inter-American or African regional systems. This is due to the considerable heterogeneity amongst member states. There is, however, a common base, with the UN Charter, the 1948 Declaration and the international covenants.

➤ *The Universal Declaration of Human Rights*

The UDHR of 1948 enshrines both traditional civil and political rights as well as economic and social rights. This declaration does not constitute an international treaty to be used as a source of obligations. However, it is no different as regards its legal scope from other declarative resolutions of principles adopted by the GA. Owing to the assumption of its principles in different legal systems; the UDHR has a customary legal value at the very least.

➤ *The International Covenant on Civil and Political Rights*

The ICCPR guarantees the right to life (article 6), freedom and safety (art. 9 - 1) and the right to privacy (art. 17). It prohibits torture and cruel, inhuman or degrading treatment (art. 7). In addition, it recognises freedom of thought, conscience and religion (art. 18), peaceful assembly (art. 21), association, including the right to form trades union (art. 22), and free movement (art.12). Finally, it proclaims the cultural rights of minorities (art. 27).

• **The Human Rights Committee**

The Human Rights Committee is a body composed of independent experts which oversees the application of the International Covenant on Civil and Political Rights by States which are parties to the Covenant.

All States which are parties to the Covenant are obligated to submit to the Committee regular reports on how the rights laid down in the Covenant are implemented. The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of « concluding observations ».



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Under article 41 of the Covenant, the Committee may also examine communications of States Parties concerning other States. Governments are only bound by this procedure if they declare that they accept the competence of the Committee. The competence of the Committee likewise extends to the Second Optional Protocol to the Covenant, which is aimed at the abolition of the death penalty, for States adhering to this protocol.

- **The First Optional Protocol to the International Covenant on Civil and Political Rights**

The First Optional Protocol to the Covenant gives the Committee the competence to examine communications from individuals relating to alleged violations of the Covenant by States Parties to the Protocol. The Committee examines communications from individuals in closed session.

- **Procedure**

- *What are the conditions for admissibility of the communication?*

The communication must not be anonymous and must come from an individual who comes under the jurisdiction of one of the States Parties to the Protocol. Normally, it must be sent by the individual claiming to be the victim of a violation of the rights recognised in the Covenant on civil and political rights.

The Committee may however agree to examine a communication from any other persons who can provide evidence that they are authorised to act on behalf of the victim. A third party who does not have any apparent connection with the victim may not submit any communication. The complaint should evidently be compatible with the provisions of the Covenant, and it cannot be accepted if the same matter is already being examined before another international court of investigation or settlement. Finally, all domestic remedies should have been exhausted.

Before decided on the admissibility of the communication, the Committee may ask the alleged victim or the State Party concerned to provide information or additional comments in writing, and will set a given deadline to this end. If the State concerned provides a reply at this stage, the originator of the complaint receives a copy of this reply for the purposes of comment. If the communication is sent back to the originator for additional information and turns out subsequently to be inadmissible, no document is sent to the State in question.

- *What happens once a communication is declared as admissible?*

When a communication has been declared as admissible, the Committee requests the accused State to provide explanations and to indicate if it has taken measures to remedy the situation. The State has a period of six months in which to reply. The originator of the complaint may then comment upon the State's reply. The Committee then formulates its conclusions, which are communicated to the State concerned and to the originator of the complaint.

Throughout the procedure: respect for equality between the individual and the State, with both parties having the opportunity to comment upon the arguments of the other. Any views or opinions from the Committee are always made public.

Deadline of six months to one year for a decision on the admissibility of a communication. The conclusions of the Committee are made public one or two years later. It takes two to three years to examine a complaint from start to finish.

The Committee has the option, whenever the presumed victim of a human rights violation needs to be protected, to provide a provisional opinion to certain States without prejudging the merits of the complaint. For

example, the Committee has requested for an execution not to be carried out while a communication is on-going.

➤ **The International Covenant on Economic, Social and Cultural Rights**

The Rights protected in the ICESCR include in particular: the right of peoples to self-determination (art. 1) and exploitation of their natural resources (art.25); the right of each person to work in fair and satisfactory conditions (art.6 and 7); the right to belong to a trade union and go on strike (art.8); the right to benefit from social security (art.9); protection of the family (and mothers and children in particular) (art.10); the right to an adequate standard of living (including food, clothing and housing) (art.11); the highest attainable standard of health (art.12); the right to education (art.13); the right to take part in cultural life and enjoy the benefits of scientific progress (art.15).

For each of these rights, States have three levels of legal obligation. They must:

- Respect them, i.e. the State must not impede the realisation of the right in question;
- Protect them, i.e. The State must ensure that third parties must not infringe upon them;
- Satisfy them, i.e. the State must make all possible provision to provide access to all individuals with regard to access to the right in question.

Evidently, the ICESCR does not ask the impossible of the poorest countries. States are obliged to act « to the maximum of their available resources, with a view to continually ensuring the full exercise of the rights recognised in this Covenant » and should for this reason rely on « international assistance and cooperation » (art. 2).

States may be considered as failing in their obligations in the event that they do not act « to the maximum of their available resources » and they do not respect the principle of non-discrimination in access to these rights.

• **The United Nations Committee on Economic, Social and Cultural Rights**

In 1985, The Economic and Social Council decided to create the « Committee on Economic, Social and Cultural Rights », with responsibility for overseeing the implementation of the Covenant by participating States. The members of the Committee on Economic, Social and Cultural Rights are elected by the United Nations Economic and Social Council (ECOSOC), (and not by States Parties), as the Committee comes under the Council.

The Committee also has responsibility for drafting documents which interpret and clarify the provisions of the Covenant, which are called « general comments », and which are intended to assist States in performing their obligations. It is also responsible for examining periodic reports from States. After they are examined, the Committee may, in its conclusions, put forward recommendations and conclude, where necessary, that the Covenant has been breached.

• **Additional Protocol to the International Covenant on Economic, Social and Cultural Rights**

This was adopted by the UN General Assembly on 10 December 2008 and signed by States on 24 September 2009. 10 ratifications are required for its entry into force.

In relation to communication procedures specified for other treaty bodies of the United Nations, this optional draft protocol introduces a certain number of new elements. It introduces a new criteria for admissibility, which stipulates that any communication must be made in the year which follows the exhaustion of legal remedies at national level. Article 4 stipulates that the Committee on Economic, Social and Cultural Rights may refuse to accept a communication if it appears that the applicant is not at any manifest disadvantage, unless the Committee considers that the application raises a problem of general importance. The Committee may also offer its good offices to parties seeking a peaceful solution to a dispute.

➤ *Other conventional instruments*

Other instruments, from an early stage, and on the basis of optional declarations, provide for the option of individual communications, however, practice remains limited.

Mention can be made of art 14 of the Convention on the Elimination of All Forms of Racial Discrimination, or art 22 of the 1984 UN Convention against Torture, as well as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Family.

Since the Vienna World Conference on Human Rights, held in 1993, a meeting of the Presidents of conventional committees has been held each year and has allowed for increasingly significant contact through considerable efforts to standardise working methods; however each system is still characterised by its own particularisms.

➤ *The institutional system*

The Economic and Social Council (ECOSOC) sends recommendations to the General Assembly on matters relating to human rights. To assist the General Assembly in its work, the Council created the Human Rights Commission (1946-2006), the Committee on the Status of Women and the Committee on Crime Prevention and Criminal Justice. On 15 March 2006, the United Nations General Assembly adopted a resolution to enable the creation of a Human Rights Council and the cessation of the Human Rights Commission.

The High Commissioner for Human Rights: created in 1997, its mandate is to promote and protect the enjoyment and application by all persons of all rights proclaimed by the United Nations Charter and in international treaties on human rights (cf resolution 48 / 141 of the General Assembly). Its mission is therefore to prevent violations, guarantee the respect of all human rights, promote international cooperation and reinforce and integrate all human rights within the entire United Nations system.

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-Communications/complaints procedure in the United Nations system:
<http://www2.ohchr.org/english/bodies/complaints.htm>

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