



# **Déclarations devant le Conseil des droits de l'homme**

## **2013**



## Déclarations orales

**22ème session (25 février/22 mars 2013)**

### **UN Declaration on Human Rights Education and Training**

It has been just about 15 months since the UN Declaration on Human Rights Education and Training was adopted.

At the same time, it has been 20 years since the Vienna World Conference on Human Rights which decided to launch the UN Decade for Human Rights Education from 1995 to 2004, placing *human rights education* on the UN agenda. Regional initiatives have also been taken including on the Council of Europe Charter<sup>1</sup> and the OSCE Guidelines on Human Rights Education.<sup>2</sup>

Recently, OHCHR has made a call for suggestions and views to submit until 4 April on the third phase of the World Programme for Human Rights Education.<sup>3</sup>

In this regard, an online forum on the third phase has been launched and carried on until 19 March through the listserv network of Human Rights Education Associates (HREA) in partnership with the NGO Working Group on Human Rights Education and Learning in Geneva.<sup>4</sup>

Over the past twenty years, there has been an increased commitment of Member States to human rights education, including highlighting schooling systems. We recognise a proliferation of the engagement of civil society in human rights education, especially in the non-formal education sector, along with human rights teaching and learning resources made widely available.

However, all these are a contrast with that of twenty years ago, and are still far from sufficient. For instance, dissemination and promotion of the UN Declaration on Human Rights Education and Training in local languages in every country are yet to be done in many countries.

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<sup>1</sup> Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (Adopted by the Committee of Ministers on 11 May 2010 at the 120th Session).

<sup>2</sup> Guidelines on Human Rights Education for four target groups: Secondary School Systems; Law Enforcement Officials; Health Professionals; and Human Rights Activists. The former two documents are already launched and available online: <http://www.osce.org/odihr/93969>. The latter two documents are expected to be launched in 2013.

<sup>3</sup> See, OHCHR website on the WPHRE:

<http://www.ohchr.org/EN/Issues/Education/Training/WPHRE/ThirdPhase/Pages/ThirdPhaseIndex.aspx>.

<sup>4</sup> See, [www.hrea.org](http://www.hrea.org)

We further call upon all Member States to fulfil their commitment to human rights education and training in light of the UN Declaration on Human Rights Education, the World Programme for Human Rights Education, related UNESCO's documents as well as regional policy frameworks.

## **Paediatric HIV prevention/treatment and Social Determinants of Health**

The co-signatory NGOs take note of the report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health. Regrettably, the report does not mention explicitly the crucial role of the Social Determinants of Health in determining inequalities that underpin availability, accessibility, affordability, and acceptability of health care for all the children of the world. It also fails to propose clear recommendations to overcome structural and societal obstacles that constitute root causes of poor health.

In sub-Saharan Africa, more than 1,000 new-borns are infected with HIV every day, despite available medical interventions. Approximately 50% of HIV-positive pregnant women in sub-Saharan Africa are not accessing or adhering to the necessary medications to prevent mother-to-child transmission.

Some barriers to PMTCT, which are faced by women, stem from the broader macro-level economic and social conditions. Such as persistent unequal power between men and women; legal discrimination against women; low economic and education status of women; domestic violence and stigma.

Only 28% percent of children living in low- and middle-income countries and in need of anti-retroviral medications are afforded access to them.

To eliminate the vertical transmission of HIV and meet the Millennium Development Goals, interventions need to move beyond the individual-level and address the structural and social barriers that prevent women and children from utilizing PMTCT services and access treatment.

Only through a combination of individual, community, and structural interventions will we achieve an AIDS-free generation.

In this regard, the implementation of the Right to Development is essential for the respect, protection and fulfilment of the right to health and for addressing the social determinants of health.

The co-signatory NGOs call upon the member States to:

- Addressing the Social Determinants of Health as they are crucial for achieving global public health;

- Establishing a post-2015 Development Agenda that takes into account the removal of structural and societal obstacles to global health;
- Implementing speedily and concretely the Right to Development of individuals and peoples by creating an enabling environment at national, regional, and international levels;
- Investment in research on social determinants of health to provide more evidence-based knowledge on how such determinants influence population health and health equity;
- Assurance of universal access to ART (antiretroviral therapy) for adults and children living with HIV/AIDS;
- Development of national HIV/AIDS Strategic Plans that focus on PMTCT and integrate PMTCT programmes into existing public health systems;

## **Intergovernmental Working Group on the Right to Development (13- 14 May 2013)**

### **Please, remember the people**

#### **Role of Experts**

This group of co-signatories welcomes the decision of the Members of the Intergovernmental Working Group to invite experts from various UN Agencies. We would like to invite them to present, in parallel with their views on a specific sub-criterion, the parameters the agencies they represent are using to measure progresses and results in its achievement. This could facilitate the task of the Intergovernmental Working Group to set-up well focused and human rights-based parameters aimed at supporting the criteria and sub-criteria related to the Right to Development.

#### **Indicators/Parameters**

As it emerges from the Declaration on the Right to Development, the Right to Development has an objective (international) side, and a subjective (person-centered) side. According to this group of co-signatories, the parameters aimed at measuring progresses and results in the achievement of the Right to Development through internationally established criteria and sub-criteria should reflect the above-mentioned characteristic. Due so, the Catholic WG on RtD and IS would like to suggest to consider the adoption by the Intergovernmental Working Group of general and internationally effective parameters, leaving the responsibility to States to indicate specific national sub-parameters aimed at better responding to the needs of a specific population/country. Example: access to treatment as one of the general parameters related to the criterion "health"; States must indicate national sub-parameters related to the general parameter

“access to health” in order to fully achieve – responding to national needs – the criterion “health”. The role of this Intergovernmental Working Group will be: setting up the general parameters; helping States to set up nationally focused sub-parameters, coherently with the related parameter; once every 4 years, verifying progresses and results in the achievement of sub-parameters and parameters, and discussing with the concerned State about best ways to do so.

## Appeal

This group of co-signatories is conscious of the fact that decisions taken at international level must be taken with caution. But this group would also like to emphasize the fact that cautiousness must not be an excuse to not take decisions, especially in regard to the Right to Development. Our role, the role of NGOs directly involved with the poorest of the society, is to represent before this Intergovernmental Working Group and other UN bodies and agencies people most in need, to speak on their behalf: we are here to represent an homeless living in a developed country that needs assistance in order to become active part of the society; we are here to represent an HIV-positive child living in a developing country that needs child-friendly fixed-dose combinations adapted for his/her setting. But your role – which is fundamental – is to give them responses. They cannot wait years and years, they need immediate actions. We would invite you, while discussing for the effective realization of a people- and person-centered development, to not forget that behind the Right to Development, there are people in need, and they are waiting for your decisions.



## **23ème session (27 mai – 14 juin 2013)**

### **Justiciability of the Right to Education**

We welcome the very important report of the Special Rapporteur dedicated to the justiciability of the right to education as it is key to the effectiveness of this right.

As demonstrated by the international and national case law and as confirmed by Treaty Bodies,<sup>5</sup> judicial systems should play an important role in ensuring remedies for victims of human rights violations, including the right to education.

We believe that the right to education should be justiciable through judicial and quasi-judicial mechanisms both at the international and national level. This NGO coalition also welcomes the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and calls on all Member States to ratify it.

In accordance with the recommendations of the report (paragraphs 81 and 82), the NGO coalition calls to all Member States, to take the following actions at national level for ensuring the justiciability of the right to education:

- 1) Establishing clear criteria and indicators to identify violations of the right to education, both under the jurisdiction of the existing courts and through the establishment of additional bodies if needed;
- 2) Providing specific trainings for lawyers, parliamentarians, judges and professionals involved in proceedings to address violations of the right to education;
- 3) Considering the General Comments and recommendations of Treaty Bodies as the primary guiding principles for the national implementation of the ICESCR;
- 4) Organizing a consultation with the States, experts and civil society about the obstacles and actions needed to reinforce the justiciability of the right to education;
- (6) Addressing all factors that might discourage victims of violations to seek and access judicial or quasi-judicial remedies. Poverty, ignorance and general distrust in the rule of law are some of the most common obstacles, especially among vulnerable groups of people;

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<sup>5</sup> See, CRC General Comment No.5, "Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. [...] the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable" (para.6) and "as noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It's essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective" (para.25).

(7) Creating strong partnerships with civil society actors to develop adequate awareness and disseminate relevant information to empower all people.

The judicial enforcement of human rights is fundamental. A right without a remedy is no right at all. Ensuring the right to education for all is a prerequisite for national development and for the prevention of all human rights violations. The judicial enforcement of the right to education is essential in all countries.

## **The Right to International Solidarity and the Post 2015 UN Development Agenda**

The co-signatory NGOs, welcome the report of Ms. Virginia Dandan, the Independent Expert on International Solidarity and Human Rights, submitted at the 23rd regular session of the Human Rights.

In her report, Ms. Dandan refers in page six at point (g), to the importance of a declaration of the right to International Solidarity in the Post-2015 UN Development Agenda by saying “*the achievement of the Millennium Development Goals requires international solidarity and cooperation. The proposed declaration on the right to international solidarity could inform and strengthen the targets of the Goals, especially those related to Goal 8, as they presumably evolve into the sustainable development goals that are already in the planning stage.*”

In September 2011, the Secretary-General established the UN System Task Team on the Post-2015 UN Development Agenda to coordinate system-wide preparations for the agenda, in consultation with all the stakeholders. Such an agenda should help create an enabling environment to meet shared objectives, support global solutions to global problems and guide national development efforts, while supporting the empowerment of people to determine their own futures. The preliminary report of the SG “*Realizing the Future We Want for All*” of June 2012, states that new agenda should be reorganised along four key dimensions of more holistic approach: (1) inclusive social development; (2) inclusive economic development; (3) environmental sustainability; and (4) peace and security. These dimensions are consistent with the principles of the Millennium Declaration which set out a vision of freedom from want and fear for present and future generations and builds on the three pillars of sustainable development.

We firmly believe that a declaration of the right to International Solidarity and the implementation of the Right to Development are both keys for achieving the full respect of all the others human rights and for establishing a Global Partnership, which is crucial to respond to the global challenges that require global solutions.

As Ms Dandan said in several occasions " *we must strive for a socially resilient, more equal and more inclusive world community, and the vehicle that will bring us towards that goal is international solidarity.*"

## **24ème session (9 – 27 septembre 2013)**

### **Nouvel ordre démocratique et équitable**

Le mandat de M. de Zayas est de la plus haute importance. L'urgence d'un nouvel ordre démocratique et équitable s'impose alors que nous réfléchissons aux objectifs de développement post 2015.

Nous félicitons l'Expert indépendant d'avoir choisi « la participation » comme thème de son rapport. En effet, sans participation il ne peut pas y avoir de démocratie véritable. L'établissement d'un bilan des systèmes démocratiques dans le monde est un préalable indispensable pour proposer des solutions concrètes à nos sociétés.

La démocratie est un processus évolutif, elle est toujours imparfaite, inachevée. Les systèmes de représentation manquent ainsi parfois de légitimité et les structures permettant l'exercice de la démocratie peuvent présenter de graves déficiences, y compris au niveau international, à commencer par certains mécanismes des Nations Unies. L'actualité nous montre aussi que la démocratie n'est pas toujours synonyme d'état de droit. La liberté d'opinion et de conscience, par exemple, nous semble être un aspect essentiel de cet ordre démocratique.

Il est donc urgent de repenser un monde qui n'est plus celui de 1949. L'ordre démocratique ne consiste pas à imposer la volonté majoritaire à la minorité mais à articuler, en droit et en fait, des politiques visant au bien commun, dans le respect de la diversité des composantes de toute société. Par ailleurs, la réussite de ces politiques repose sur l'implication conjointe des Etats, de la société civile et du secteur privé.

Comme le rappelle M. de Zayas: Au dessus des « intérêts » des Etats se trouvent la dignité humaine, les droits de l'homme proclamés par les instruments internationaux.

La justice et la paix s'enracinent dans les droits de la personne humaine. C'est la personne humaine qui doit être au centre des politiques démocratiques, qui ne sont que des moyens d'aboutir au développement intégral de la personne et de la société.

Nous appuyons les recommandations de l'Expert indépendant lorsqu'il propose:

- De revoir les systèmes de participation à tout niveau ce qui nécessite un changement de paradigme et une évolution des mentalités.
- D'établir partout une vigoureuse culture de la démocratie, patrimoine de toutes les sociétés
- De promouvoir et défendre le pluralisme idéologique des sociétés notamment au niveau des media, de l'enseignement et de la recherche.
- Rejeter un positivisme dans le domaine des droits fondamentaux qui ne dépendent pas de la volonté des Etats ni d'un consensus mais qui sont inhérents à la condition humaine.



### **The third phase of the World Programme for Human Rights Education**

We welcome the OHCHR report on the third phase, released in June.<sup>6</sup> Human right education is a sustainable approach to deal with the root causes of any human rights violations, concerning all people - children, women, men, elderly people, indigenous peoples, migrants, marginalised groups and all others. Each phase of the World Programme must ensure the clear accountability of States and realistic goals and means for national actions involving all stakeholders including civil society actors.

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<sup>6</sup> UN Doc., A/HRC/24/24 [26 June 2013] "Views of States, national human rights institutions and other relevant stakeholders on the target sectors, focus areas or thematic human Rights issues for the third phase of the World Programme for Human Rights Education: Report of the Office of the United Nations High Commissioner for Human Rights."

Keeping these in mind, we call upon all Member States to ensure the following:

Firstly, continuity of the implementation of each phase must be maintained. Each phase highlights a specific focus, intended to pragmatically facilitate national efforts. At the same time, the implementation of all human rights activities must continue unabated, regardless of the focus of each phase. As for the current phase focusing on the range of higher education, civil servants, law enforcement officials and the military, we anticipate that a number of countries require more time to formulate a national framework and plan of action.<sup>7</sup>

Secondly, training trainers is essential. The integration of human rights education in preparation of teaching and training personnel of all sectors is critical for ensuring sustainability in human rights education across all sectors.

Thirdly, national and local authorities are accountable for human rights education at national level.

There must be further efforts to mainstream human right education in the UPR, Special Procedures as well as treaty bodies along with the implementation of the World Programme and the UN Declaration on Human Rights Education and Training.

For this, all stakeholders including civil society actors have a critical role to play.

## **Les formes contemporaines d'esclavage**

Les organisations cosignataires tiennent à féliciter la Rapporteuse spéciale sur les formes contemporaines d'esclavage, Mme Gulnara Shahinian pour le travail accompli pendant les 6 années de son mandat.

Malgré certaines avancées constatées çà et là notamment en matière législative, beaucoup de défis restent à relever par les Etats et les autres acteurs impliqués. Lorsque les instruments internationaux pertinents sont ratifiés, l'harmonisation avec le droit interne n'est faite, ce qui empêche l'invocation des normes internationales sur le plan national. Lorsque la loi est adoptée, elle ne définit pas les formes contemporaines d'esclavage, ne les interdit ou ne les sanctionne pas. Aussi, au manque de mesures de mise en œuvre des lois adoptées, s'ajoute la non reconnaissance de l'existence des formes contemporaines d'esclavage, ce qui hypothèque la capacité des Etats à faire appliquer la loi.

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<sup>7</sup> See, UN Doc., A/HRC/21/20 (26 June 2012) "Progress report on the implementation of the World Programme for Human Rights Education -Report of the United Nations High Commissioner for Human Rights."

**Question:** *Quelles sont les démarches concrètes que les Etats devraient mener pour que le cadre juridique et institutionnel puisse répondre efficacement aux challenges des formes contemporaines d'esclavage?*

Par ailleurs, Mme Shahinian relève que la paupérisation, la discrimination, la marginalisation des victimes et leur impuissance à influencer les politiques publiques contrastent avec la situation des employeurs qui procèdent souvent par corruption pour influencer sur le contenu des lois et leur application, ce qui perpétue l'exploitation des victimes.

**Question:** *En quoi le non accès des victimes ou de potentiels victimes aux droits fondamentaux tels que l'éducation, le travail et la santé, aggrave la situation des victimes et les rend plus vulnérables?*

En outre, la Rapporteuse spéciale souligne que l'absence de ressources et la méconnaissance du problème se traduisent souvent par des défaillances de l'inspection du travail et autres institutions publiques censées prévenir et protéger les victimes. Même si l'inspection du travail s'engage dans des investigations, elle éprouve des difficultés d'abord à identifier les victimes car certaines, comme les migrants en situation irrégulière, craignent d'être harcelées, arrêtées et expulsées, puis à les localiser à cause notamment de l'isolement de certaines régions dont profitent les employeurs pour asseoir leur impunité. Ainsi, l'absence de poursuites et de condamnations des personnes impliquées dans les formes contemporaines d'esclavage liée notamment au manque de coordination et de coopération interinstitutionnelle, demeure un grand défi pour les Etats développés ou en voie de développement.

**Question:** *En dehors de l'absence de coopération interinstitutionnelle, quels sont les autres problèmes qui favorisent l'impunité des personnes impliquées dans les formes contemporaines d'esclavage?*



## **The Right to Development and the 2015 Agenda**

The co-signing NGOs welcome the report on Right to Development of the Inter-governmental Working Group and the consolidated report of the Secretary General and High Commissioner for Human Rights.

Our organizations are present at grass-root level and work with people living in poverty, in both developing and developed countries. On a daily basis, we observe how crucial and urgent it is for all countries to fully implement the Right to Development in order to overcome structural international and national obstacles that are root causes of increasing inequities and that perpetuate extreme poverty.

We commend the High Commissioner for Human Rights and the OHCHR Right to Development Section for their continuous efforts to mainstream Right to Development in all UN events and OHCHR documents. Especially, we appreciate the letter of Madame Pillay, to all the Permanent Missions in New York and Geneva, entitled "Human Rights in the Post- 2015 Agenda", which clearly invites inclusion of the Right to Development in the agenda of relevant United Nations structures and processes.

The co-signatory NGOs firmly believe that the Post-2015 development agenda should avoid the limited view of the previous MDG agenda and adopt, at every level, human rights based approach that includes a focus on the Right to Development.

In this regard, we welcome the report of the High Level Panel of Eminent Persons since it explicitly mentions the Right to Development in the paragraph referring to a new global partnership.

We also believe that International Solidarity to be recognised as a right and the Right to Development are interlinked and mutually reinforcing, and both are keys to the achievement of a true integral development of individuals and peoples.

In view of the on-going debate on the Post-2015 Agenda, it is important to put more emphasis on the implementation of the Right to Development for realising an enabling international and national environment to eradicate poverty and inequities. It is also necessary for the Intergovernmental Working Group on Right to Development to speed up the process of revising the criteria and operational sub-criteria.

There is no need to “reinvent the wheel” when, as a human family, we already have at our disposal the right lenses to set our sight on the best post-2015 goals for the common good of humanity. Such lenses are Right to Development and International Solidarity!

## Déclarations écrites

**22ème session ( 25 février/22 mars 2013)**

### **The Full Enjoyment of the Right to Health for Children Living with HIV or HIV/TB co-Infection**

Anti-retroviral treatment (ART) determines the difference between life and death for a significant number of the 3.3 million children less than 15 years of age now living with HIV<sup>8</sup>. If HIV-positive children do not have access to treatment that is appropriate to their needs, particularly those related to their physical development and the settings in which they live, they may be subjected to unnecessary suffering and die faster than do HIV-positive adults.

Despite evidence that treatment is very successful in children living with HIV, even in resource-limited settings, there remain significant obstacles to expanding access of children living with HIV to ART. In fact, only 28% percent of children living in low- and middle-income countries in need of ART are currently able to access them, compared with 50% of adults<sup>9</sup>. As a result, 30 children under 15 years of age living with HIV die every hour<sup>10</sup>. For children living with both HIV and tuberculosis (TB), the situation is even worse: despite the fact that TB remains the main cause of death among children with AIDS, paediatric drug formulations are not available to treat HIV/TB co-infection in children.

### **The Need for More and Better Diagnostics for Children Living with HIV**

One major barrier to treating children with HIV is the difficulty of detecting the infection in babies younger than 18 months. Several factors may impede accurate HIV diagnoses among children, including: inaccuracy of standard HIV antibody testing among babies up to 18 months of age; the limited availability of diagnostic tests capable of accurately identifying HIV among infants that are adaptable for use in low-income settings; low rates of access to prevention of mother-to-child transmission (PMTCT) services; problems with transportation of specimens and results; long distances to health centres where a child can be tested; fear of stigma and discrimination that a child and their family often face once diagnosed; lack of knowledge about the importance of testing and treating HIV-infected adults and children; weak health and laboratory systems; and a lack of capacity in hospitals and clinics to follow-up with mothers and children after testing.

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<sup>8</sup> UNAIDS, *Report on the Global AIDS Epidemic*, 2012.

<sup>9</sup> UNAIDS, *Report Together We Will End AIDS*, July 2012.

<sup>10</sup> Dr. Karusa Kiragu, *The Global Plan for the Elimination of New HIV Infections among Children by 2015 and Keeping their Mothers Alive*, presentation given in conjunction with the Catholic HIV/AIDS Network meeting, 13 October 2011.

In high-income countries, children can be diagnosed accurately within 48 hours of birth. However, these virological (PCR) tests are not commonly available in low-income countries because they require expensive laboratory equipment and trained staff. Moreover, scale-up of testing programmes for children requires investment in training and technical assistance for health care providers, improvement of laboratory capacity and facilities, and referral networks and community mobilization. In relation to PMTCT, even though interventions are available to prevent the transmission of HIV from mother to child, approximately 330,000 children were newly infected with HIV during 2011<sup>11</sup>, mainly through mother-to-child transmission. This mode of transmission is responsible for 90% of all HIV infections among children under 15 years of age. If access to PMTCT services were increased, not only the number of children newly infected with HIV would decrease, but also the immediate initiation of ART among children born to HIV-positive mothers would delay the onset of HIV-related illnesses. Indeed, mother-to-child transmission of HIV can be reduced to less than 2 percent through increased access to and uptake of effective prevention of mother-to-child transmission programmes.

### **The Need for More and Better Treatment and Care for Children Living with HIV**

Without adequate care and treatment, up to one third of all children born with HIV die before their first birthday, and half of them will die before they are two years old. Yet children being treated with Highly Active Anti-retroviral Therapy (HAART) must take three or more different anti-retroviral drugs several times a day in order to avoid developing resistance to a single drug, and therefore to prevent the further progression of HIV disease. These medicines must be formulated differently than those for adults, and in a way that takes into consideration the climatic conditions in the areas in which they will be distributed and used. It also should be noted that, in many low-income settings, clean drinking water, adequate nutrition, and a continuous supply of electricity are not always available and can therefore further jeopardize the quality of treatment that a child can access. Indeed, an insufficient variety of formulations of antiretroviral medicines are available for specific use among children, “*largely because the HIV medicine market for children was judged too small to warrant investments in such research*” 5. As a consequence, caregivers have to halve or crush adult tablets, with the risk of under- or over- dosing, which means that at best the treatment will not yield its full benefits, and, at worst, may actually cause harm. Therefore, the lack of child-friendly fixed-dose combinations (FDCs) (3 pills in one) that are adapted to the climatic and other conditions of resource-limited settings is a major challenge to treating HIV in children. Paediatricians often have only liquid formulations available for use since tablets need to be taken with food and water, which can be scarce in remote settings or urban slums.

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<sup>11</sup> UNAIDS, *Together We Will End AIDS*.

The poor state of health systems in many countries most seriously affected by the pandemic, and the shortage of skilled healthcare workers, in particular of paediatricians and nurses familiar with treating children, also negatively affects children's access to ARVs. Unlike adults, children taking ARVs require constant check-ups and advice from trained personnel in order to receive maximum benefit from and to adhere to their treatment programs. Moreover, they need to be under treatment protocols that are in conformity with the most updated treatment guidelines issued by the World Health Organization, particularly as treatment recommendations vary based on age of the child and previous exposure to ARVs during PMTCT.

### **The Obligation to Uphold Right to Health of Children Living with HIV**

The above-mentioned barriers thwart the child's Right to the Highest Attainable Standard of Physical and Mental Health recognized, *inter alia*, in the Convention on the Rights of the Child (CRC). Access to medicines is a fundamental element of the child's Right to Health under article 24 of the CRC, as interpreted by the Committee on the Rights of the Child in its General Comment on HIV and AIDS. Indeed, the Committee declared "*States must ensure that children have sustained and non-discriminatory access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services*". In particular, "*States should negotiate with the pharmaceutical industry to make the necessary medicines locally available at the lowest costs possible*". Article 24 of the CRC builds on article 6, which recognizes that every child has the inherent Right to Life and that States Parties shall ensure, to the maximum extent possible, the survival and development of the child.

Moreover, the Millennium Development Goals (MDGs) recognize that other stakeholders, including pharmaceutical companies, should share this responsibility. The Committee on Economic Social and Cultural Rights also confirmed that the private business sector has responsibilities regarding the realization of the Right to the Highest Attainable Standard of Health.

Thus, while governments have the primary responsibility for implementing the Right to Health, pharmaceutical companies can exert a profound impact on the realization of this right. It also must be recognized that pharmaceutical companies set the prices of diagnostic equipment for detecting HIV in children or of paediatric ARVs at an unaffordable level. When they fail to do so, and when they do not invest in research and development of much needed medications to treat HIV in children or advocate for legal standards that limit access to medicines for HIV-positive people, these companies obstruct the State's ability to respect, protect and fulfill the Right to Health, and "*when the child's Rights to Life and Health are being denied, it is not only these rights, but all Human Rights that are in jeopardy*".



## Proposals for Action for Governments and Pharmaceutical Companies, Including Generic Companies

Governments and pharmaceutical companies play a major role in ensuring access to medicine for children. In order to contribute to the efforts to achieve the full realization of the Right to Health for all, in particular for children living with HIV or HIV/TB co-infection, the co-signing NGOs urge the United Nations Human Rights Council to call upon its Members to:<sup>12</sup>

- Invest in innovative financing mechanisms that promote research and development of paediatric testing and medicines, in particular paediatric triple fixed-dose combinations (FDCs) adapted for infants and children living in resource-limited settings, and 2nd and 3rd line paediatric ARVs and FDCs;
- Support and promote negotiations toward development of a binding convention on research and development to deliver products focused on priority health needs of developing countries, including children in those countries;
- Invest in training and technical assistance for paediatric HIV and HIV/TB health care providers;
- Make every effort to ensure that Trade-Related Intellectual Property Agreements (TRIPs) do not constitute obstacles for access to medicine, especially among poor and vulnerable populations;
- Develop National Essential Medicines Lists for children that include paediatric FDCs for both HIV and TB;
- Negotiate with the pharmaceutical industry to make necessary paediatric medicines locally available at the lowest cost possible, including, for example, by taking part in initiatives such as the Medicines Patent Pool;

- Take measures to increase food security by children as part of a comprehensive response to HIV/AIDS, since lack of food is a major barrier to children's access to medicines;
- Develop national HIV and AIDS strategic plans with a strong focus on PMTCT, diagnosis of HIV and TB in babies and children, and treatment for babies and children living with HIV, HIV/TB co-infection, and other HIV-related opportunistic infections;
- Address children's access to medicines in the broader context of the Social Determinants of Health;
- Fulfill governmental obligations to provide international assistance and cooperation to facilitate access to medicines by children;
- Build national and local laboratory capacity to facilitate HIV and TB diagnosis in infants and children, including skilled staff;
- Develop national policies to make paediatric HIV testing a routine element of care in high burden countries;
- Incorporate paediatric HIV testing into established entry points of care;
- Integrate PMTCT programmes into existing public health systems;
- Provide HIV counseling and testing as part of the routine package of screening tests during pregnancy and delivery care;
- Make clinics accessible, for instance, by providing travel services and changing opening hours;
- Increase efforts to reach women who deliver outside the clinic settings;
- Support/develop door-to-door and home-based testing systems, always accompanied by counseling;
- Treat babies of HIV-positive women immediately after birth;
- Provide counseling and support on infant feeding options to women living with HIV.

Moreover, the co-signing NGOs recommend to the United Nations Human Rights Council to call upon its Members to urge pharmaceutical companies and generic companies to:

- Develop less expensive fixed-dose combination drugs (FDCs) suitable for babies and children living in low-income settings, and 2nd and 3rd line paediatric ARVs and FDCs, and explore ways of doing so collaboratively, such as by joining the Medicines Patent Pool;
- Address the research and development gaps in medicines for TB/HIV co-infection in infants and children, and in medicines for treating children co-infected with HIV and diseases such as malaria and/or HIV-related opportunistic infections.

## 24ème session (9 – 27 septembre 2013)

### The Justiciability of the Right to Education

We welcome the latest report of the Special Rapporteur on the Right to Education dedicated to the justiciability of the right to education.

The effective implementation and the full enjoyment of the right to education for all requires Member States to proactively take necessary actions as well as refrain from interfering with appropriate exercise of this right.

We uphold the view that the right to education should be justiciable through judicial and quasi-judicial mechanisms at national level for which Member States are accountable in their fulfilment of applicable international obligations regarding the implementation of the right to education.

International and national case law have demonstrated that judicial systems can play an important role in monitoring the progressive realisation of the right to education, and also in ensuring remedies for victims of violations. The Treaty Bodies, such as the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC)<sup>13</sup> have always sustained the justiciability of economic, social and cultural rights and the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights attests to this viewpoint, allowing individuals to resort to the complaint procedure. Prior to the adoption of the aforementioned Optional Protocol, in its contribution submitted at the 1993 Vienna World Conference on Human Rights, the CESCR observed as follows:

“States Parties should, *inter alia*, “establish appropriate national and local mechanisms by which they and other relevant actors can be called to account in relation to situations in which the enjoyment of economic, social and cultural rights is clearly being denied. It has often been suggested that these rights are not justiciable, by which it is meant that they are lacking in any elements which might be susceptible to determination by the courts. It is clear, however, that many and perhaps all of the rights do have at least some elements which are already, in the law and practice of some States, justiciable. [...]”<sup>14</sup>.

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<sup>13</sup> See, CRC General Comment No.5, “Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. [...] the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable” (para.6) and “as noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective” (para.25).

<sup>14</sup> UN Doc., A/ CONF.157/PC/62/Add.5 (March 26, 1993) World Conference on Human Rights, Preparatory Committee Fourth Session, 19-30 April 1993, “Status of Preparation of Publications, Studies and Documents for the World Conference” (paras.16-17).

Moreover, the CESCR has clearly affirmed and reiterated in its recommendations to States Parties<sup>15</sup> the justiciability of economic, social and cultural rights in which the right to education is included.

The first concrete step to take is to formulate the definition of State's obligations and establish clear criteria and indicators to identify violations of the right to education. The vagueness of the legal framework regarding the right to education at national level is a major factor in the judicial difficulty of determining whether a violation of the right to education has occurred.



We call upon Member States to ensure at national level that the right to education is admitted as justiciable in the jurisdiction of existing courts and that additional judicial or quasi-judicial mechanisms are established if they are needed. We recognise that introducing the justiciability of the right to education in certain legal systems would be a challenging effort in many countries, particularly in those where this would be a novelty, in terms of interpretation and application in judicial and quasi-judicial proceedings at the domestic level. In order to properly

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<sup>15</sup> E.g., UN Doc., E/C.12/POL/CO/5 (2 December, 2009), Committee on Economic, Social and Cultural Rights, Forty-third session, "Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Poland", para.8, "The Committee is deeply concerned that the State party still views the Covenant as programmatic, aspirational and not justiciable. The Committee remains concerned that the State party has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order, especially in the light of the decision of the Supreme Court in 2000 to the effect that the Covenant provisions could not be invoked by individuals before national courts. The Committee reiterates its position that all the Covenant rights are fully justiciable and urges the State party to take the necessary measures, in line with its general comment No. 9 on the domestic application of the Covenant, to ensure that the provisions of the Covenant are made justiciable and that effective remedies are available to victims of violations of economic, social and cultural rights".

address challenges that justiciability might imply, we encourage Member States to put in place integrated efforts involving lawyers, judges and academics and for their expertise and counselling to be provided to judicial courts in dealing with alleged violations of the right to education.

General Comments and recommendations issued by the CESCR should primarily be taken into account in these domestic efforts of interpretation and application of the right to education. The entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the consequent work of the CESCR to consider individual complaints on alleged violations will constitute a precious opportunity for clarification on the scope of the right to education as enshrined in the international human rights legal framework. In this regard, the provision of a specific training for lawyers, judges and professionals involved in judicial and quasi-judicial proceedings to address violations of the right to education needs to be integrated in their pre-service and in-service training process in order to ensure effective and adequate enforcement of the right to education.

While recognising the importance of establishing judicial and quasi-judicial systems for addressing violations of the right to education, we underline that this measure alone is not sufficient to ensure the justiciability of the right to education. There are several factors that might discourage victims of violations from bringing their cases before a judicial or quasi-judicial competent body. Ignorance of the existence of such possibility, general distrust in the rule of law and a lack of financial resources are some of the most common obstacles hindering in practice legal recourse to enforce the right to education, especially among vulnerable groups. States should, therefore, pay special attention to develop adequate awareness and disseminate relevant information in order to enable victims to seek and access judicial or quasi-judicial remedies. In this regard, civil society actors including NGOs have a vital role to play in helping implementing the right to education and its justiciability.

In many forms of human rights violations and injustices, poverty is often a surrounding factor of such violations or the injustice itself. Therefore, free and public legal aid should be ensured to victims belonging to the most vulnerable and marginalised sectors of society<sup>16</sup>.

In conclusion, the judicial enforcement of human rights is fundamental. A right without a remedy may not make it a right in the first place. While the judicial enforcement is not the only way of protecting the right to education, it has a clear role in providing judicial remedies in cases of evident violations. Ensuring the right to education for all is a foundation of national development and the prevention of human rights violations. Taking necessary measures for this both

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<sup>16</sup> See, the report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, submitted in accordance with Human Rights Council resolution 17/13, in UN Doc., A/67/278 (9 August 2012).

within the international human rights standards and in the national justiciable framework is now essential in all countries.

## **The Right to Development in the Post 2015 agenda**

We welcome the report on Right to Development of the intergovernmental Working Group and the consolidated report of the Secretary General and High Commissioner for Human Rights, both delivered at the 24<sup>th</sup> regular session of the Human Rights Council.

Three years ago, as the Geneva Forum of Catholic Inspired NGOs, the co-signers formed a working group on the Right to Development and International Solidarity. In this manner, our Working Group actively contributes to the debate of the Intergovernmental Working Group on Right to Development and supports the mandate of the Independent Expert on International Solidarity and Human Rights.

Our organizations are present at grass-root level and work with people living in poverty, in both developing and developed countries, as they strive to achieve their integral human development. On daily basis, we observe how crucial and urgent it is for all countries to fully implement the Right to Development in order to overcome structural international and national obstacles that are root causes of increasing inequities and that perpetuate extreme poverty.

In this regard, we regret the slow pace of the Intergovernmental Working Group in discussing the criteria and operational sub-criteria for the implementation of the Right to Development. We believe that the discussion on the issue of indicators should be less politicised and polarised. Indicators are surely necessary to monitor the implementation of the Right to Development but it can be determined at a second stage after the criteria and sub-criteria have been selected properly. Furthermore, experts may be more competent and neutral during the process of identifying appropriate indicators for the criteria and sub-criteria while States should indicate specific national sub-parameters aimed at better responding to the needs of each specific population/country.

We commend the High Commissioner for Human Rights and the OHCHR Right to Development Section for their continuous efforts to mainstream Right to Development in all UN events and OHCHR documents. In a special way, we appreciate the letter of Madame Pillay, dated 6<sup>th</sup> June 2013, to all the Permanent Missions in New York and Geneva, entitled "Human Rights in the Post-2015 Agenda", which clearly invites inclusion of the Right to Development in the agenda of relevant United Nations structures and processes.

In September 2011, the Secretary-General established the UN System Task Team on the Post-2015 UN Development Agenda to coordinate, in consultation with all the stakeholders, system-wide preparations for the agenda. This Task

Team should help to create an enabling environment to meet shared objectives, support global solutions to global problems and guide national development efforts, while supporting the empowerment of people to determine their own futures. The preliminary report of the SG “*Realizing the Future We Want for All*” of June 2012, states that new agenda should be reorganised along four key dimensions of more holistic approach: (1) inclusive social development; (2) inclusive economic development; (3) environmental sustainability; and (4) peace and security. These dimensions are consistent with the principles of the Millennium Declaration, which set out a vision of freedom from want and fear for present and future generations and builds on the three pillars of sustainable development<sup>17</sup>.

The recently published Report of the High-Level Panel of Eminent Persons<sup>18</sup> on the Post-2015 Development Agenda focuses on the main goal of eradicating extreme poverty and envisions five big, transformative shifts as priorities for a forward-looking, compelling and integrated sustainable development agenda based on the Rio principles. Such shifts are: 1. Leave no one behind. 2. Put sustainable development at the core. 3. Transform economies for jobs and inclusive growth. 4. Build peace and effective, open and accountable institutions for all. 5. Forge a new global partnership.

In the wake of these shifts, the panel provides an example of new goals and measurable targets<sup>19</sup>.

Global Partnership (MDG 8) was key to the realisation of all MDGs by focusing on the means to achieve development goals, but it had some shortcomings, as rightly was pointed out by the UN System Task Team in its thematic reflection<sup>20</sup>.

First of all, the lack of explicit links with other related MDGs compromised the relevance of MDG8 as a driving goal. Secondly, targets and indicators lacked precise goals to fulfil or benchmarks, and many indicators were not consistent with the targets. Thirdly, it did not foster a true partnership and did not move away from the traditional “donor-recipient” paradigm. Mostly, it was not based on Right to Development and the human rights aspect including the duty to international cooperation was not made explicit.

<sup>17</sup> The United Nations 2005 World Summit Outcome Document refers to the “interdependent and mutually reinforcing pillars” of sustainable development as economic development, social development, and environmental protection.

<sup>18</sup> A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development, Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, May 2013.

<sup>19</sup> The suggested goals are: 1. End Poverty; 2. Empower Girls and Women and Achieve Gender Equality; 3. Provide Quality Education and Lifelong Learning; 4. Ensure Healthy Lives; 5. Ensure Food Security and Good Nutrition; 6. Achieve Universal Access to Water and Sanitation; 7. Secure Sustainable Energy; 8. Create Jobs, Sustainable Livelihoods, and Equitable Growth; 9. Manage Natural Resource Assets Sustainably; 10. Ensure Good Governance and Effective Institutions; 11. Ensure Stable and Peaceful Societies; 12. Create a Global Enabling Environment and Catalyse Long-Term Finance.

<sup>20</sup> UN System Task Team on the Post-2015 UN Development Agenda, “Assessment of MDG8 and lessons Learnt”, Thematic Think Piece by UTU, OHCHR, UNDESA, January 2013

The co-signatory NGOs firmly believe that the Post-2015 development agenda should avoid the restricted view of the previous MDG agenda and adopt, at every level, a human rights based approach that includes a focus on the Right to Development. In this regard, we welcome the report of the High Level Panel of Eminent Persons since it explicitly mentions the Right to Development in the paragraph referring to a new global partnership.

In fact, the right to development provides an integrated, holistic and cohesive normative framework for achieving just and equitable development for all people. It encompasses both the civil and political and the economic, social and cultural dimensions of human rights and addresses both the national and international dimensions of development.

The debate on the Post-2015 Development is still going on at national, regional and international levels. Hence, it is important to put more emphasis on the implementation of the Right to Development as a key factor for realising an enabling international and national environment to eradicate poverty and inequities. For this reason, it also is necessary for the Intergovernmental Working Group on Right to Development to speed up the process of revising the criteria and operational sub-criteria for the implementation of the right.

We live in a globalised era and interdependent world. The recurrent economic and financial crises, climate change, and food crises re-emphasize the relevance of the right to development and the need for its implementation. Moreover, increased inequalities within and between countries worldwide show how the Right to Development is relevant for both developed and developing countries. These inequalities also demonstrate that it is not possible to guarantee other human rights without the realization of the Right to Development. The need to make progress with consolidating the principles of solidarity, collective and shared responsibility, with due respect for the sovereignty of peoples, and to facilitate effective international cooperation without conditionality, as well to find a balance between the national and international responsibilities, becomes more and more imperative.

The Declaration on Right to Development contains all the principles mentioned to date in the main reports of the Post-2015 agenda's debate; these include: Comprehensive, People and Person Centred Development, Participation, Non-discrimination, Social Justice, Peace, Security and Disarmament, Equality of opportunities between men and women, Accountability, Indivisibility of Human Rights, Fairness in the distribution of wealth and benefits, Sovereignty of Peoples over all natural wealth and resources, International Cooperation, Self-determination of Peoples, Responsibility of all and Responsibility of States at national and international level.

Only the concept of sustainable development, fruit of Rio +20, and the principle of International Solidarity are not explicitly mentioned in the Declaration, even if, in fact, they are implicitly contained in this document. In our opinion, these two concepts should also be guiding the Post-2015 agenda debate.

International Solidarity includes, but is not limited to, international cooperation, and springs out of the notion of a communion of responsibilities and interest among individuals, groups and States, and is connected to the ideal of fraternity and the search for the common good. It also emphasises the concept of collective and extraterritorial obligations of States with respect to international cooperation and assistance, a concept firmly established within international human rights instruments.

We firmly believe that International Solidarity should be recognised as a right and be interlinked with the Right to Development, since the two are interlinked, mutually reinforcing, and are both keys to the achievement of a true integral development of individuals and peoples.

To build a better world based on international solidarity is possible in spite of the present worldwide scenario: it is a matter of our personal choices as individuals and the political will of governments, of turning from being imprisoned in fear, intolerance and individualism, to opening ourselves to hope, mutual acceptance and awareness of being a global community. At present, many signs (natural disasters, pacific revolutions seeking democracy, climate change and multiple crises,) tell us that we should go in the direction of building a new world social order.

There is no need to “reinvent the wheel” when, as a human family, we already have at our disposal the right lenses to set our sight on the best post-2015 goals for the common good of humanity. Such lenses are Right to Development and International Solidarity!

