



Déclarations devant les organes de protection des droits de l'homme

2014

Conseil des droits de l'homme

Déclarations orales

25ème session (3 mars/28 mars 2014)

The Third Phase of the World Programme for Human Rights Education Media Professionals and Journalists

We welcome the third phase of the World Programme for Human Rights Education (2015-2019), in view to promoting social inclusion of marginalised groups; fostering interreligious and intercultural dialogue; and combating stereotypes and violence.

With regard to the focus of the third phase, human rights education and training for “media professionals and journalists”, we would like to emphasise the following views.

A draft plan of action for the third phase being prepared by the Office of the High Commissioner must reflect the views of NGOs, media professionals and journalists in compliance with the Human Rights Council resolution adopted in September, last year, on the World Programme.¹

The plan of action must be beneficial and practical for media professionals and journalists to engage with the World Programme. Media professionals and journalists in many cases are in great need of empowerment through human rights education to protect their own freedoms and rights. At the same time, they are opinion shapers and are accountable for their strong social impact. Their social influence could contribute to increasing stereotypes and prejudices, or even generating false charges and accusation of innocent persons. This is a two-fold aspect of this target group of the World Programme.

On one hand, media professionals and journalists have public responsibilities for respecting human rights standards and principles. On the other hand, the protection of their rights, especially the freedom of expression, must be guaranteed, and the safe environment to exercise that right must be ensured.

The third phase must be built upon the previous phases of the World Programme, in particular, incorporating human rights education into training and education of journalists. The implementation of existing human rights education initiatives within the schooling, higher education and professional training sectors must be maintained.

¹ Human Rights Council resolution A/HRC/RES/24/15, adopted on 27 September, 2013 (paragraph 6, in particular).

26ème session (10 juin/27 juin 2014)

The relevance of a declaration on the right to International Solidarity in a changing world

By presenting the first draft declaration on the Right of Individuals and Peoples to International Solidarity, Ms. Dandan marks a significant achievement in her mandate, and we are thankful for her outstanding work. We hope that the draft declaration will constitute a step ahead to reach a consensus on this important matter.

The recognition of international solidarity as a human right not only is an ideal goal to be achieved for ethical reasons that are rooted in the notion of being a human family, but because such a recognition is an essential necessity for the survival of the world today. A right of individuals and peoples to International Solidarity will change the rules from the zero-sum game-"In order to win, someone else must lose"-to the new perspective "No one wins unless everyone wins."

In the today's world, it is time to recognize that human rights are a shared responsibility and a common basis of interaction between all members of the international community, States and non-States actors; it is time to create an enabling environment where all human rights, including right to development, can be progressively realized for all.

The draft declaration introduces new perspectives such as international assistance and cooperation applied without conditionalities, prevention and removal of the fundamental causes of the asymmetries and inequalities between developed and developing countries and removal of the structural obstacles and factors that generate and perpetuate poverty worldwide.

It also makes a shift from the notion of development focused only on economic growth to the vision of the Right to Development, taking the social and environmental dimension sufficiently into account.

Furthermore, it includes a broader range of actors and highlights the intra-generational and intergenerational dimension of Solidarity as well as preventive solidarity.

Since law should develop as reality develops, these new perspectives may lead to a conceptual framework that is more tailored to the world we are living in.

Finally, the co-signing NGOs urge that the draft declaration of the Right of Individuals and Peoples to International Solidarity progress speedily towards the final text and renew their active support to the work of the Independent Expert on International Solidarity and Human Rights.

Assessment of the educational attainment of students and the implementation of the right to education

We welcome the Report of the Special Rapporteur on the right to Education, Kishore Singh, entitled *Assessment of the educational attainment of students and the implementation of the right to education (A/HRC/26/27)* as the continuation of his previous report concerning quality education and normative action (A/HRC/20/21). Indeed, assessment of the educational attainment of students is essential for measuring quality of education and thus implementing the right to education.

Furthermore, we fully agree with the recommendation made to States to move forward to a more holistic approach in assessing students' attainments. Although there has been a step taken in many countries in the right direction to have the first assessments based on reading, writing and arithmetic (such as PISA), education is much more than that. Assessment should be grounded in a human-rights based approach.

We recognize the importance of the recommendation that the Special Rapporteur made in his report regarding evaluation mechanisms in order to see



the progress of each student aside from school standards: Firstly, it will allow us to see the reflection of the local and national curriculum requirements; an additionally an assessment based on individual conditions of each student is extremely helpful in applying inclusive education. It provides constructive information for teachers

in order to support students to complete each module, and to ensure progressive improvement particularly in to vulnerable groups.

We are pleased to observe the importance of providing teachers with additional training and support.

We would like the Council to organize a consultation with States, experts and civil society about Quality education based on the Special Rapporteur's Reports, and the excellent work made also from UNESCO and the High Commissioner for Human Rights.

We greatly appreciate the significant suggestion that Special Rapporteur has made to add the important issue of Quality of Education in the post-2015 agenda. We would like to reference here our position paper "*Post-2015: Development*

Guided by the Principle of Human Dignity” in which the NGO Platform on the Right to Education explains in a holistic manner our point of view.

Finally, we emphasize again, as the Special Rapporteur has mentioned, the importance of civil society and NGOs as guarantors of quality education. We would like to all member states to maintain constructive dialogue with them.

27ème session (8 septembre/27 septembre 2014)

Statement on Right to Development

In the Fifteenth Session of the Working Group on RTD, no decision was taken on how and when the working group should proceed with the second reading of the criteria and operational sub-criteria.

We feel compelled to raise this urgent question: How long can the international community expect persons and peoples, especially those living in developing countries and in extreme poverty, to wait for an effective implementation of the Right to Development?

The Right to Development has the transformative potential to unleash a paradigm shift that promises to advance human rights, development and peace for us all. If we wish to surmount the challenges to our common future, including poverty, inequality, hunger, unemployment, lack of access to clean water and sanitation, and limited sources of energy and natural resources, we must effectively implement the right to development and ensure respect for all human rights.

Moreover, the post-2015 development agenda must have the right to development at its core procedurally and substantially.

We appeal to the Member States of the Working Group on RTD to consider our proposal of an implementation phase to ensure the effectiveness of the criteria and operational sub-criteria. This phase should come between the first and second reading and before the discussion on measurability, in order to enhance peoples’ participation, collect best practices and have practical inputs on measurability and accountability.

Finally, we thank OHCHR for its efforts to serve as champion in mainstreaming right to development and reiterate our support to its office.

Déclarations écrites

25ème session (3 mars/28 mars 2014)

Question of the realization in all countries of economic, social and cultural rights

We take note of the Secretary General's Report A/HRC/25/31 on the question of the realization in all countries of economic, social and cultural rights, submitted at the 25th regular session of the Human Rights Council pursuant to Human Rights resolution 22/5. The report focuses on the right to a remedy for violations of economic, social and cultural rights as well as on access to justice.

The report contributes to strengthening the legal protection of economic, social and cultural rights by re-affirming the right to remedy for violations of human rights and the need to create remedial mechanisms at national level, as recommended already by several treaty bodies and Special Rapporteurs. It also points out that, conditions such as accessibility, affordability, information, access to adequate legal assistance, non-discrimination, timely and prompt decisions and transparency are paramount for remedial mechanisms to be effective.

In 1993, during the Vienna World Conference on Human Rights, the Committee on Economic, Social and Cultural Rights stated in its report that "States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action"². This is still true today.

It is time to translate the political affirmation of the interdependence of human rights into reality, including through strengthened legal protection of economic, social and cultural rights. There is no hierarchy of rights and therefore there should be no difference in the speed of realisation between civil, political and economic, social and cultural rights.

Article 2, paragraph 1 of ICESCR requires States parties "to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant".

As rightly pointed out by the High Commissioner for Human Rights in her report

² A/CONF.157/PC/62/Add.5, para. 5

to ECOSOC in 2006³, for the CESCR the recognition of differing obligations for economic, social and cultural rights in comparison with other rights presupposes a necessary flexibility device for States reflecting the real world, but it should not be misinterpreted as depriving the obligation of any meaningful content.

States bear the primary responsibility to protect human rights and fundamental freedom within their boundaries and must make efforts according to their capacity to realise expeditiously economic, social and cultural rights of their people by including legislation, the provision of judicial remedies, constitutional recognition as well as other appropriate administrative, financial, educational and social measures. Unfortunately, many developing countries are not yet in a position to provide for the full realisation of economic, social and cultural rights of their people; they often lack the financial resources and the technical capacities to effectively meet their obligations. Especially in view of expanding global interdependence, it is imperative to recognize that the respect of human rights is a shared responsibility between all members of the international community, States and non-states actors.

Therefore, we regret the fact that the Secretary General's report focuses only on the domestic level without mentioning at all international structural obstacles that are main root causes of violations of economic, social and cultural rights as well as the perpetuation of poverty and increase of inequities worldwide. Such obstacles are, inter alia, the current international trading system, the profit-oriented market economy and unregulated finance, the asymmetries of power in global governance, environmental degradation and resource depletion, unequal access to information and technology, the problem of external debt for many countries, the issue of property and intellectual rights, lack of protection and remedies against the negative effects of globalisation, conflicts and arms trade, international crime and corruption, the prevailing of greediness on solidarity etc.

The Maastricht Principles issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies and regional human rights bodies as well as former and current Special Rapporteurs, affirm clearly that the human rights of persons, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world, i.e., extraterritorial influence.

It is time to fulfil extraterritorial obligations⁴ that are contained in the

³ E/2006/86

⁴Extraterritorial Obligations according to the Maastricht Principles are:

a) obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and

international human rights law, including the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, other universal and regional instruments and international declarations. It is also time to address the need of remedies at international level.

Without addressing the root causes of violation of economic, social and cultural rights and surmounting the structural international obstacles that contribute to the increase of inequities in the world, it is quite unrealistic to speak about remedies and access to justice only at national level, especially for the least developed countries.

Moreover, it will be difficult, if not impossible, for the millions of starving people whose right to food is violated to claim their right, or for the millions of illiterates in the world who are not able to know their rights, to ask for remedies. Millions of children and adults who don't have yet access to medicines will die before being able to claim a remedy.

As Pope Francis says in his Apostolic Exhortation *Evangelii Gaudium* it is time to say no to an economy of exclusion, no to the new idolatry of money, no to a financial system which rules rather than serves, no to the inequality which spawns violence, bearing in mind that "Inequality is the root of social ills".

The full realization of the rights to health, food, education, shelter, work, safe drinking water and sanitation, and other economic, social and cultural rights, will occur when the principle of equitable contribution and access to and sharing of the benefits of development lead the political choices of States and non-States actors. In this regard, setting the goals, targets and indicators for the Post-2015 Development agenda will be a great opportunity that shouldn't be missed, to progress towards social justice and solidarity as well as a cut off mark to unveil political will.

We urgently need the creation of an enabling international and national environment as envisaged by the Declaration of the Right to Development (RTD) and further strengthened by recognition sought for other solidarity rights such as the Right to International Solidarity and the Right to Peace.

We participate actively to the Open Ended Intergovernmental Working Group (OEIWG) on the RTD by proposing criteria and sub-criteria for the implementation of right to development genuinely relevant for the life of people living in poverty and the most vulnerable. Special attention is given to economic, social, cultural rights whose realisation is essential for the exercise also of political, civil rights.

b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.

In the OEIWG on Right to development, we NGOs advocate for the use of human rights language in revising the work of the High Level Task Force⁵, and propose new criteria and sub-criteria that will be consistent with the creation of enabling national and international environment⁶ conducive to the implementation of right to development.

For example, “free access to effective justice” is a new sub-criterion that we will suggest on the criterion 2(c) “to ensure non discrimination, access to information, participation and effective remedies” at the 15th session of the OEIWG on RTD that will take place in May.

In fact, people living in poverty, especially those living in rural areas, of developing countries face many obstacles in accessing effective justice including lack of money to reach the court and pay a lawyer, inability to explain and claim their rights because of illiteracy, lack of facilities for communication etc. Building up a system that guarantees free access to national justice will contribute to raise awareness in the citizens and fight local corruption.

In conclusion, the co-signing NGOs support the necessity of remedies for the violation of economic, social and cultural rights as stated by the Secretary General report. On the other hand, being constantly present at grass-root level and working with people living in poverty, we would like to emphasize that such remedies should not be limited at a domestic level but established also at regional and international level.

Moreover, we urge all States that have not yet signed and ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 5 May 2013 to do so as it is a step forward in strengthening the promotion and protection of economic, social and cultural rights worldwide. We also encourage States to use the Guiding Principles on Extreme Poverty and Human Rights⁷ in the formulation and implementation of poverty reduction and eradication policies.

26^eme session (10 juin/27 juin 2014)

Assessment of the educational attainment of students and the implementation of the right to education

We welcome the Report of the Special Rapporteur on the right to education, Kishore Singh, entitled *Assessment of the educational attainment of students*

⁵ A/HRC/15/WG.2/TF/2/Add.2: The right to Development Criteria and Operational Sub-Criteria

⁶ A/HRC/WG.2/14/CRP.5

⁷ A/HRC/21/39

and the implementation of the right to education (A/HRC/26/27) as the continuation of his previous report concerning quality education and normative action (A/HRC/20/21) presented in 2012. Indeed, assessment of the educational attainment of students is essential for measuring quality education and thus implementing the right to education. We would like here to recall Mr. Singh's proposition of a holistic conceptual framework for quality education which comprises: "(i) a minimum level of student acquisition of knowledge, values, skills and competencies; (ii) adequate school infrastructure, facilities and environment; (iii) a well-qualified teaching force; (iv) a school that is open to the participation of all, particularly students, their parents and the community."⁸This framework needs to be considered and carried out in order to ensure quality education in a more efficient manner.

We are pleased to see that the Special Rapporteur recommends in his report that assessment of students' attainments should be based on the four pillars of education, as described in the report to UNESCO of the International Commission on Education for the Twenty First Century, known as the Delors Report –This pillars include: learning to know, learning to do, learning to be and learning to live together. In this regard, we appreciate the Spain's new education law for his commitment in assessing students' attainments.

In the same terms, we completely agree with the recommendation made to States to move forward to a more holistic approach in assessing students' attainments which goes beyond reading, writing and arithmetic, including in this new approach the essential human rights objectives. Although it has been a step in the right direction to have the first assessments based on reading, writing and arithmetic (such as PISA), education is much more than that. So assessment should be founded on a human-rights based approach. We do acknowledge the improvements made in this sense by Guyarta State in India.

It is also important for us to see that the Special Rapporteur recommends student-based evaluation mechanisms in order to see the progress of each student aside from school standards. This approach about assessment mechanisms is extremely important for two primary reasons. Firstly, it will allow us to see the reflection of the local and national curriculum requirements. Secondly, a personalized assessment for each student is extremely helpful in applying inclusive education. It provides constructive information for teachers in order to support students to complete each module, and to ensure progressive improvement to vulnerable groups in particular. Ecuador has made good efforts in order to achieve this goal.

⁸ SINGH.K.*Report of the Special Rapporteur on the right to education, Normative action for quality education* (2012) [pag.6, paragraph 21]

We are glad to see that the recommendations made by Mr. Singh related to assessment mechanisms are not limited to primary and secondary education, but apply also to technical and vocational education and training (TVET). We are concerned about the importance of this formation due to its profound implications in the twenty-first century new economy. That is why we think such an important form of education must be assessed like the others, including a holistic approach. An exemplar country in the assessment of TVET is South Africa.



We are pleased to observe the importance of providing teachers with additional training and support. As far as we understand the key role of teachers to improve quality education they need to receive continuing training for two main reasons: 1st. To learn and teach a curriculum that should be periodically updated because of new discoveries in science and the new important historical events that may have happened 2nd. To know and understand which human rights values or democratic principles should be embedded in the curriculum, depending on the local circumstances.

We greatly appreciate the efforts of the Special Rapporteur, especially for the significant suggestion he has made to add the important issue of Quality of Education in the post-2015 agenda. We are living in a changing world with a lot of new challenges that education must meet -increased migrations, the increase proportion of jobs in the tertiary level, the increasing importance of information technology and its access. At the same time, education systems must radically evolve due to several deep changes new challenges they have to face -for example: the access to information that students have is changing the role of teachers, the financial problems of the school need a new answer, the definite integration of human rights approach in education programs. Thus, these reasons, together with the extreme importance of the creation of an

international quality framework, should have an essential role in ensuring worldwide development in the following years. We would like to reference here our position paper "*Post-2015: Development Guided by the Principle of Human Dignity*" where the NGO Platform on the right to education explains in more details our point of view.⁹

Finally, although Mr. Singh has commented that "government encourages NGOs and civil society organizations in their valuable role in raising the level of the public debate on key issues and in defending a holistic approach to student assessments"¹⁰ we want to emphasize again the importance of civil society and NGOs as guarantors of quality education. We would like to encourage States and governments to maintain constructive dialogue with them.

27ème session (8 septembre/27 septembre 2014)

The transformative vision of Right to Development

We take note with appreciation of the report of the Working Group on Right to Development on its fifteenth session and the Consolidated report of the Secretary General and High Commissioner for Human Rights, both delivered at the 27th regular session of the Human Rights Council¹¹.

Since 2011, we have participated actively in meetings related to the work of the Open Ended Intergovernmental Working Group on Right to Development. We also have submitted three written contributions on the revision of criteria and operational sub-criteria for the implementation of the Right to Development.

The above-cited Report represents an accurate summary of discussions held and consensus reached during the Fifteenth Session of the Working Group. We are pleased that Member States were able to mitigate the polarisation and politicisation of debate that emerged on previous occasions, and, in particular, during the two-day informal inter- sessional meeting on 3 and 4 April 2014. The Working Group managed to finalise the first reading of the remaining draft operational sub-criteria proposed by the High-Level Task Force on the implementation of the right to development and to propose new draft operational sub-criteria, including those suggested by our network. However, no decision

⁹http://www.ngoeducation.org/Plateformedroiteducation/documents/Platform_Education%20post%202015%20_final_EN.pdf

¹⁰ SINGH.K.*Report of the Special Rapporteur on the right to education, Assessments of the educational attainment of students and the implementation of the right of education* (2014) (pag.20, paragraph 96)

¹¹ A/HRC/27/45; A/HRC/27/27

has yet taken on how and when the working group should proceed with the second reading of the criteria and operational sub-criteria.

According to the UNDP report 2014¹², despite recent progress in poverty reduction, more than 2.2 billion people are either near or living in multidimensional poverty. Nearly 80 per cent of the global population lack comprehensive social protection. About 12 per cent (842 million) suffer from chronic hunger, and nearly half of all workers - more than 1.5 billion - are in informal or precarious employment.

The co-signers of this Statement feel compelled to raise this urgent question: How long can the international community expect persons and peoples, especially those living in developing countries and in extreme poverty, to wait for an effective implementation of the Right to Development? When will the Working Group on Right to Development focus more seriously on the search for the common good for all humanity and thus avoid becoming embroiled in political power games?



In 1986, the General Assembly of the United Nations adopted the Declaration on the Right to Development, thereby proclaiming the right of all humanity – as peoples and as individuals - to the constant improvement of their well-being as human persons. The world has come a long way since that occasion. As an international community, we have seen unprecedented progress in virtually every sphere of human activity, including the emergence of a unified global economy and an interdependent human community. On the other hand, and, increasingly during recent years, development policies based exclusively on economic growth and showing little regard for overall wellbeing of the entire

¹² Human Development Report 2014 Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience, page 3

human family, have advanced a profit making mentality and thus has facilitated the widening of the gap between rich and poor and the rise of inequalities between and within countries. Such policies also have caused additional inter-related threats, challenges and crises as well as an unnatural and unsustainable ecological habitat. Fostered and facilitated by advances in information, communications and technology, globalization has provided the context and framework of development that offers many benefits. However, those benefits were, and continue to be, overwhelmingly concentrated among the already privileged, nations and populations alike. The interdependence and interconnectedness reinforced by globalization also has resulted in negative impacts that cross national boundaries with increased speed and ease, and that affect, inter alia, such systems as the global economy, finance, food, energy, and climate.

The Right to Development has the transformative potential to unleash a paradigm shift that promises to advance human rights, development and peace for us all. It is time to effectively implement the right to development. If we wish to surmount the challenges to our common future, including poverty, inequality, hunger, unemployment, lack of access to clean water and sanitation, and limited sources of energy and natural resources, we must ensure respect for the right to development and for all human rights. The multiple crises of recent years further confirm the call of the Declaration on the Right to Development for meaningful reform in global governance, most notably in the economic arena, to ensure equality, democracy and accountability in line with human rights standards.

In this regard, our network of Catholic Inspired NGOs suggested new criteria and operational sub-criteria to the Working Group on RTD in an effort to identify a proper balance between national and international responsibilities in order to create an enabling environment while striving toward the realization of the right to development. Some of the sub-criteria are, inter alia, the removal of inequities in global decision-making in international institutions, the removal of asymmetries in international trade, the elimination of tax havens, the cancellation of foreign debt, tackling the root causes of climate change, and development of a new model of international cooperation based on solidarity.

Since the Open-Ended Intergovernmental Working Group decided, during previous sessions, to maintain the matrix of the High Level Task Force in the revision of the Criteria and Operational sub-Criteria, we suggested that, at the end of the first reading and before the beginning of the second reading, a compiled report will be drafted by the Secretariat. Such a compiled report should contain the suggestions proposed by all the stakeholders, civil society included, during the first reading.

The debate on measurability of the criteria and operational sub-criteria remains a very divisive issue in the Working Group. We agree with other stakeholders who point out that every major human rights instrument has been created by first

agreeing on a legal obligation and defining the core principles, and only then considering mechanisms to measure whether or not the respective right is being observed. Experts might be more competent and neutral in the process of identifying indicators, while States should indicate specific national sub-parameters for responding to the needs of a specific population/country. Our network proposed a two-year phase of implementation between the first and second reading and before the discussion on measurability, to ensure the effectiveness of the criteria and operational sub-criteria while experts can be tasked with making proposals on indicators. Such an implementation phase should be set up because of the centrality of the person and the people within the Right to Development.

During this implementation phase, States, in collaboration with International Organizations and Civil Society Organizations, including Faith-Based Organizations, should collect good practices and/or organize national consultations by involving people at grass-root level, paying particular attention to the most vulnerable in society.

We fully agree with the High Commissioner for Human Rights who said the following in her opening statement: *"... procedurally and substantially, the post-2015 development agenda must have the right to development at its core. The goals, targets and indicators of the new development agenda must explicitly align the development framework with human rights, including the right to development"*. During the 24th regular session of the Human Rights Council, we organised a side event entitled "Right to Development and Post 2015 Agenda" to which OHCHR participated speaking on the theme "Realizing the transformative vision of the Declaration on the Right to Development". Such event is also mentioned in the consolidated report of the Secretary General and High Commissioner for Human Rights.

In fact, right to development is the most useful lens at disposal of our human family to set sight on the best post-2015 development goals for the common good of humanity. If the Post-2015 agenda will not be set on the vision of the right to development, it will be a great loss for the peoples of the world.

We welcome the new United Nations High Commissioner for Human Rights, Prince Zeid Ra'ad Zeid al-Husseini. We reiterate support to the work of OHCHR, particularly in its efforts to serve as champion in mainstreaming right to development. We would like to conclude with a quote by the former United Nations Secretary-General Kofi Annan who said as follows: *Even if he can vote to choose his rulers, a young man with AIDS who cannot read or write and lives on the brink of starvation is not truly free. Equally, even if she earns enough to live, a woman who lives in the shadow of daily violence and has no say in how her country is run is not truly free. Larger freedom implies that men and women everywhere have the right to be governed by their own consent, under law, in a society where all individuals can, without discrimination or retribution, speak, worship and associate freely. They must also be free from want - so that the*

death sentences of extreme poverty and infectious disease are lifted from their lives - and free from fear - so that their lives and livelihoods are not ripped apart by violence and war. Indeed, all people have the right to security and to development.

Comité pour l'élimination de la discrimination à l'égard des femmes

58ème session (30 juin/18 juillet 2014)

Le droit à l'éducation des filles. Les leçons de la Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement de l'UNESCO

La Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement (CADE) adoptée par l'UNESCO en 1960 est l'un des plus anciens instruments normatifs de protection des droits de l'homme. Son objectif était de s'attaquer à l'un de problèmes majeurs de la communauté internationale dans les années soixante: la discrimination et en particulier la discrimination des filles.

Selon la Convention: »le terme « *discrimination* » comprend toute distinction, exclusion, limitation ou préférence qui, fondée sur la race, la couleur, le sexe, la langue, la religion, l'opinion politique ou tout autre opinion, l'origine nationale ou sociale, la condition économique ou la naissance, a pour objet ou pour effet de détruire ou d'altérer l'égalité de traitement en matière d'enseignement.» (Article 1).

Peut-être plus que dans un autre domaine, l'éducation exige une définition nuancée de la discrimination. En effet, il est habituel d'assimiler la séparation à la discrimination. Mais en éducation les différences ont joué toujours un rôle fondamental. Pour cela, il n'est pas possible de considérer toute séparation entre élèves comme discriminatoire, l'éducation doit s'adapter aux différences si elle veut respecter la personne : homme et femme. De manière plus générale, il convient de souligner que la reconnaissance de l'universalité des droits de l'homme doit aller de pair avec la reconnaissance du droit à la différence.

En ce qui concerne le droit à l'éducation, le rapport préliminaire de la Convention souligne que certaines distinctions sont non seulement légitimes, mais aussi nécessaires, à tel point que dans certains cas, c'est paradoxalement le manque de distinctions qui constitue une situation discriminatoire due au non-respect de la différence. *Les éducateurs reconnaissent que certaines différences dans l'éducation dispensée aux enfants ne constituent pas des mesures discriminatoires. De façon générale, les différences d'enseignement sont considérées comme admissibles si elles constituent des adaptations à des différences d'aptitudes entre les élèves, ou aux nécessités de la formation professionnelle ou technique, ou encore à certaines situations ou à certains besoins individuels, par exemple aux handicaps physiques. Certains éducateurs affirment même que, lorsque l'enseignement n'est pas adapté aux aptitudes des enfants et ne tient pas compte des buts visés ni de certains besoins particuliers,*

il aboutit à une sorte de discrimination à l'encontre des élèves qui s'écartent de la moyenne.

Marc Bossuyt, a mené une analyse de concept de discrimination qui permet de disposer d'une terminologie plus claire à ce propos. Il est aujourd'hui universellement admis que le terme «*discrimination*» doit être réservé à des différences de traitement arbitraires et illégales. «*Distinction*», en revanche, est un terme neutre utilisé dans le cas d'une différence de traitement dont le bien-fondé reste à déterminer. «*Différentiation*», au contraire, s'emploie lorsqu'une telle différence a été réputée légale.

Face à cette situation certes, délicate, il est essentiel de disposer d'un critère permettant de déterminer quelles sont les « bonnes » et les « mauvaises » distinctions dans l'éducation si l'on peut s'exprimer ainsi. La notion d'« égalité qualitative », développée par le Rapport préliminaire mentionné précédemment, semble convenir comme critère, d'autant plus que les experts proposent quelques points de repère pour la mesurer :

Dans le cas d'écoles distinctes pour les filles et pour les garçons, ou pour les élèves de races différentes, les termes de comparaison pourraient être les suivants :

- dépense par élève,*
- bâtiments : surface par élève, état, équipement ;*
- manuels, auxiliaires de l'enseignement, fournitures, etc. : quantité, qualité, taux de renouvellement ;*
- maîtres : nombre d'élèves par maître, titres professionnels ;*
- programmes : la différenciation répond-elle à des différences individuelles d'aptitudes, ou au contraire à des prétendues différences d'aptitudes entre certaines catégories d'élèves (race, sexe), ou encore à une politique de discrimination sociale ?*

On remarquera que cette notion «d'égalité qualitative» n'implique pas une égalité de contenu. Elle suppose plutôt que l'on adapte le contenu au besoin de l'apprenant, l'égalité portant alors sur l'investissement pour chaque élève qui devrait être indépendant du sexe, de la race, de la religion, etc. Ainsi reste ouverte la possibilité de séparer les élèves pour des motifs d'ordre divers, tant que cette séparation ne remet pas en cause l'égalité qualitative ou «l'égalité de traitement en matière d'enseignement », selon la formule de l'article 1er. C'est ainsi que la Convention fait état de trois cas qui ne sont pas forcément à considérer comme des discriminations car ils peuvent dignifier une adaptation aux besoins de l'apprenant:

- les systèmes d'enseignement séparé pour les élèves des deux sexes ;*
- les systèmes d'enseignement séparé, pour des motifs d'ordre religieux ou linguistique ;*
- les établissements d'enseignement privé.*

Au sein des organisations internationales, l'UNESCO a été la première à théoriser un droit à la différence. Cette théorisation se trouve dans la Déclaration sur la race et les préjugés raciaux adoptée en 1978: *Tous les individus et tous les groupes ont le droit d'être différents, de se concevoir et d'être perçus comme tels* (art 1, 2) affirme la Déclaration.

La Recommandation générale 25 de votre Comité évoque une différence structurelle: celle qui distingue l'homme de la femme : « *Il ne suffit pas de garantir un traitement identique des femmes et des hommes. Il faut plutôt tenir compte des différences biologiques entre les hommes et les femmes et de celles qui sont le résultat d'une production culturelle et sociale. Dans certains cas, il n'est pas possible de traiter de la même façon les hommes et les femmes du fait de ces différences. Pour atteindre cet objectif d'égalité réelle, il est également indispensable de suivre effectivement une stratégie de lutte contre la sous-représentation des femmes et de redistribution des ressources et des responsabilités entre les hommes et les femmes* ».

Il est donc nécessaire, au moment d'élaborer une Observation générale sur le droit à l'éducation de la fille/femme, de repenser l'éducation en tenant compte de la différence et du droit à la différence parce que les systèmes actuels ne résolvent pas les problèmes de l'égalité de chances.