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OBSERVER

A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES

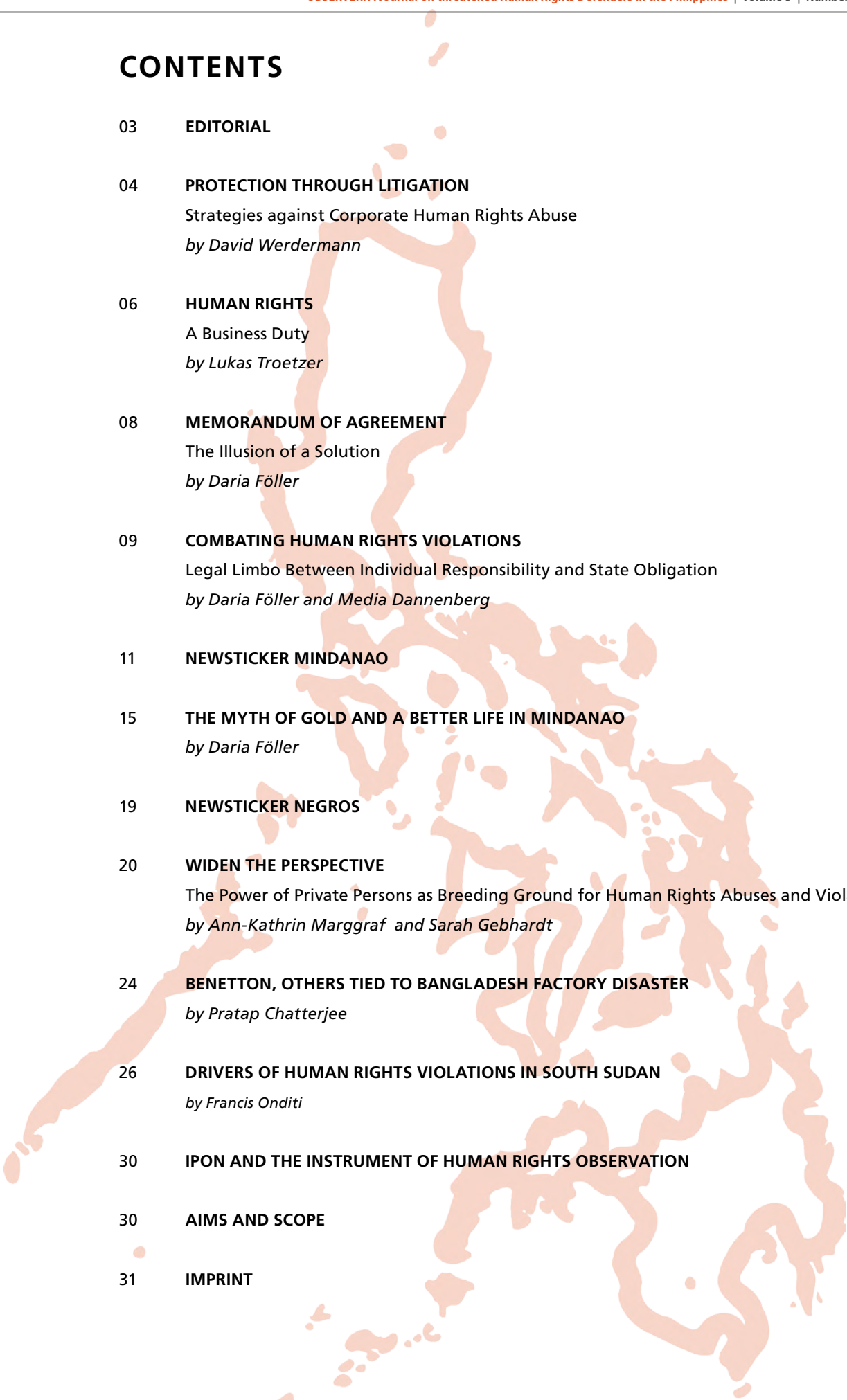
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OBLIGATIONS BEYOND BORDERS

Divisibility of Liability for Fundamental Human Rights

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EDITORIAL

The role of the state and of transnational organisations as the only legitimate institutions responsible to protect human rights seems to be increasingly questioned. Recent debates, centered

für die Welt to serve as a guideline for activists and affected communities by introducing legal instruments for the fight against human rights abuses committed by corporations.



Who we are – Some members of IPON Coordination. (Source IPON)

around the topic of globalisation analyse phenomena as global financial flows, companies and organisations, the decentralisation of production and pursuit to find new answers and solutions to the problems of concern. As a result, political debates increasingly raise the question of political responsibility of stakeholders other than the state. Multinational corporations, due to their international presence and economic force, are particularly targeted by these debates and recent trends have shown a willingness to make these corporations accountable for protecting and implementing human rights, especially when related to their economic activities. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework endorsed by the United Nations in June 2011, are clearly representative of this trend.

In this issue Werdermann presents the brochure "Making corporations respond to the damages they cause", published by the European Center for Constitutional and Human rights (ECCHR) in cooperation with the German church-related development agencies Misereor and Brot

A recent and tragic example for such human rights abuses involving famous multinational corporations was the collapse of a factory in Bangladesh, killing more than 400 people. Although some multinationals first tried to distance themselves from their responsibility, activists, particularly labour activists, have insisted that they take responsibility, as Chatterjee reports. However, as Marggraf & Gebhard outline in their article, it is not only corporations that commit human rights abuses, it can also be powerful private persons who engage in commercial activities. Landowners in the Philippines often sell their products in accordance to the anonymous conditions of the world-market, which diffuses the question of the responsibility of merchants, brokers, manufacturing companies and corporations and consumers – but not for the acting individuals and the states responsibility to protect human rights on site.

Trötzer, who briefly explains the Guiding Principles on Business and Human Rights, highlights the importance of the state's responsibility.

This ultimate responsibility of the state seems both undeniable and difficult to

put into practice in the case of countries that have a weak legal system, where political elites enjoy impunity and where people's safety and interests are subordinated to economic interests. The case of the Philippines, illustrated by Paulke, Dannenberg & Föllner, and of the young republic of South Sudan, which Onditi describes, are excellent examples of situations where the gap between theory and practice raise the question of responsibility of the different stakeholders involved.

The state alone cannot ensure the protection and implementation of human rights – it needs the assistance of other stakeholders such as NGOs or corporations – but it should nevertheless uphold the ultimate power to do so. In the case of states where multinational corporations and/or private people have a lot of economic and political power due to the weakness of the state, a lot needs to be done in terms of clarifying each stakeholder's role(s). ■

CALL FOR ARTICLES

Red-Baiting in the Philippines is a political strategy – most notably employed by national security forces – to accuse, denounce and persecute individuals and civil society organisations as members or supporter of front organisations of communist guerrilla groups to obstruct their work.

The upcoming issue (referring to vol. 3 no. 2) will strengthen and gather Red-Baiting and related issues by discussing innovative approaches and dialogues.

We welcome articles of 5,500 or 12,000 characters that contribute a systemic analysis of the topic with a focus on human rights or human rights defenders, until 1st December 2013 (editorial deadline). Please send a short note concerning your presumed topic until 20th November 2013. You can also find our author guidelines and further informations on www.ipon-philippines.org.

Contact: editor@ipon-philippines.org

HUMAN RIGHTS – A BUSINESS DUTY



Lukas Troetzer

1989 (Bonn/Germany), has studied Communication and Political Science in Muenster, Bonn and Washington DC. He is currently working as a human rights observer for IPON in Negros.

As a consequence of the changing power structures in our globalized world, transnational business corporations have gained importance in the international political scenery. This development has a substantial impact on the international protection of human rights.

“It is the absence of broad-based business activity, not its presence, that condemns much of humanity to suffering.” (Annan 2005: 1)

In a very significant way, globalization has changed the world we live in, entailing new and complex challenges for the protection of human rights. Especially international business corporations exercise considerable influence on the rights of individual human beings or demographic groups.

This development has been observed by the International Peace Observers Network (IPON) in rural areas of the Republic of the Philippines as well. Large farming enterprises like Del Monte or Dole act in immediate vicinity of IPON’s partner organizations and their presence naturally affects the daily life of the Human Rights Defenders (cf. Reckordt 2012).

As stated above by former UN Secretary General Kofi Annan, the impact of the business corporations can be positive. Cost-effective and profitable enterprises generate new jobs and by paying taxes, they increase the earnings of the state meaning that the public authorities are provided with the opportunity to finance social services or certain public-spirited initiatives. Positive scale effects to regional development and public revenue might be a consequence.

But from a human rights perspective, it’s not difficult to adduce reasons for negative effects of the strategies and guidelines pursued by some business corporations, either. In fact, many enterprises with an international orientation face a barrage of complex and multi-layered criticism. According to Amnesty International’s research for example, the working conditions in some developing countries are unacceptable and in addition, both the exploration and the ex-

ploitation of natural resources by multinational companies have caused distributional conflicts, human rights abuses and an increase in poverty (Amnesty International 2012: 1; cf. Bauer 2012).

Furthermore, there are few effective mechanisms on the national or international level to prevent corporate complicity in human rights abuses or to hold the business corporations accountable.

Implementing Responsibility of Corporations

The UN Guiding Principles on Business and human Rights present three ways in order to proceed against human rights abuses committed by powerful transnational corporations:

1) States have to lend weight to their existing obligations to respect, protect and fulfill human rights and fundamental freedoms across national or regional borders. They should not be allowed to deal with human rights questions separately from other policy fields.

2) Business corporations as specialized organs of society are obliged to abide by the law and respect human rights.

3) Victims of human rights abuses need an effective access to legal remedies. (United Nations Guiding Principles for Business and Human Rights 2011: 6)

Against this background, the debate about the social responsibility of business corporations has gained momentum over the last couple of years. An intense discussion has flared up concerning the question whether and how economic perspectives of big enterprises and human rights can be made compatible.

George Kell, Executive Head of the United Nations Global Compact, expressed in 2008:

"Companies have a vital responsibility to ensure that the global marketplace is one of inclusion and acts as a force for improving, not injuring, social and natural environments. Because business interests increasingly overlap with development objectives in today's global society, there is a growing need for responsible business practices and partnerships with government and civil society. [...]" (Kell 2008: 1)

The Concept of Corporate Social Responsibility

In this context, Corporate Social Responsibility (CSR) has become an iridescent catchphrase that many international enterprises included in their guiding principles codes of conducts.

CSR is a multi-faceted concept marked by numerous understandings and notions from different perspectives. In general, the definitions usually make reference to a concept, whereby companies integrate social and environmental concerns in their business operations on a voluntary basis. (European Competitiveness Report 2008: 774)

In the "Renewed EU Strategy 2011-2014 for Corporate Social Responsibility", the European commission puts forward a definition that emphasizes the responsibility of enterprises for their impacts on society:

"To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

1) maximizing the creation of shared value of their owners/shareholders and for their other stakeholders and society at large;

2) identifying, preventing and mitigating their possible adverse impacts." (European Commission 2011: 6)

This statement exemplifies a trend towards a more mandatory and binding commitment of multinational corporations that seems to be emerging.

Consequences for the work of IPON

With this in mind, the question arises whether the claim that states are the only responsible actors to uphold human rights still reflects the political reality of the 21st century. Does the legalistic approach followed by many Non-Governmental-Organizations still make sense in a world, where 50 of the 100 biggest economies are in fact multinational companies and new communications technology is erasing national borders?

John Ruggie, United Nations Special Representative for Business and human Rights from 2005 to 2011, underlines that simply taking state-based human rights instruments and asserting that many of their bindings are on corporations as well is not a solution. From his perspective, international enterprises are not public interest institutions and making them duty bearers for the broad spectrum of human rights may undermine efforts to build indigenous social capacity and to make governments more responsible for their own citizenry. (Ruggie 2010: 1ff.)

Hence, it becomes clear, why IPON favors a legalistic human rights approach, shaped by the following definition:

"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all inter-related, interdependent and indivisible. Universal human rights are often expressed and guaranteed by

law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups." (Office of the United Nations High Commissioner for Human Rights 2009)

Only states can sign and ratify the international human rights conventions and are, as a result, the only ones who can violate human rights. It is their duty to respect, protect and fulfill human rights under international law and the respective state should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Of course, it is important to recognize and not to deny the increasing significance of transnational corporations in our globalized world, but according to the United Nations, this realization should not result in an equal status of states and corporations. The state as a "born" subject of international law can still be considered as the essential player of international human rights protection.

In this respect, IPON distinguishes between human rights violations and human rights abuses. While the latter can be committed by non state actors, the first (the actual violation) can be only committed by state actors.

Nevertheless, IPON does not disavow the increasing role of private actors, especially in areas of limited statehood, where transnational companies or powerful landlords take over government functions. IPON regards this development with great concern and therefore, in case a certain private group systematically abuses human rights, the organization documents what is happening and reports to the relevant government institutions.

In order to ensure that the interna-

tional protection of human rights is consistent with the ongoing processes of systemic social and economic changes on a global scale, the creation of an effective international human rights regime that includes nation-states, regional organizations, transnational companies and non-governmental organizations might be a first starting point. In this context, the leading role of states as the major subjects of international law should not be questioned, but the creation of such a regime – were states uphold ultimate responsibility – could function as an answer to the changing power structure of our globalized world. ■

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SOURCES

- Amnesty International (2013): Demand Dignity Campaign – <http://www.amnesty.org/campaigns/demand-dignity> (last viewed 12 June 2013).
- Annan, Kofi (2005): The Business Contribution to the Millennium Development Goals – <http://www.un.org/sg/statements/?nid=1508> (last viewed 12 June 2013).
- Bauer, Lukas (2012): Large-Scale Land Acquisitions and Leases – The Right to Food versus the Right to Development – In: Observer, Vol.4, No.2. pp. 34-37.
- European Commission (2008): European Competitiveness Report 2008 – http://ec.europa.eu/enterprise/newsroom/caf/_getdocument.cfm?doc_id=4058 (last viewed 12 June 2013).
- European Commission (2011): A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF> (last viewed 12 June 2013).
- Kell, George (2008): The Future of Corporate Responsibility – http://www.enewsbuilder.net/globalcompact/e_article001076831.cfm (last viewed 12 June 2013).
- Office of the United Nations High Commissioner for Human Rights (2013): What are Human Rights? – <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx> (last viewed 12 June 2013).
- Ruggie, John (2010): The UN „Protect, Respect and Remedy“ Framework for Business and Human Rights – <http://198.170.85.29/Ruggie-protect-respect-remedy-framework.pdf> (last viewed 12 June 2013).
- Reckordt, Michael (2012): The True Nature of Mining – Unustainable, Irresponsible, Dirty and it costs Lives – In: Observer, Vol.4, No.2. pp. 24-28.
- United Nations Human Rights Office of the High Commissioner 2011: Guiding Principles on Business and Human Rights – http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (last viewed 12 June 2013).

MEMORANDUM OF AGREEMENT: THE ILLUSION OF A SOLUTION

The last issue tackled the precarious situation of the indigenous Mindanao-based Human Rights Defenders (HRDs) of the Panalsalan-Dagumbaan-Tribal-Association (PADATA). Ten years ago, PADATA applied for an Ancestral Domain title so as to gain the exclusive power of disposal over their tribal territory, based on the Indigenous Peoples Rights Act (IPRA, a Philippine law enacted to guarantee the IPs right to land, customary and religious autonomy). However up until now, large parts of the area are occupied by the private rancher Ernesto Villalon who controls this area with the help of private security guards, despite the expiry of his license in 1997. This is a clear violation of the IP's legitimate claim. The land conflict culminated in 2010 when violent acts against PADATA members resulted in the assassination of Welcie Gica. Now, almost three years later, justice seems to be more elusive than ever: the last perceivable effort of the Philippine National Police (PNP) to execute outstanding Warrants of Arrest dates back to July 2012. The National Committee on Indigenous Peoples (NCIP) that is responsible for the implementation of IPRA, made no noticeable progress in the processing of PADATA's land title claim. On the other hand, one of the other state agencies is intervening more frequently than ever: the Department of Environment and Natural Resources (DENR). The DENR awards ranch licenses and grants permits for other non-agricultural land use, and is thus involved in the land conflict. While both the PNP and the NCIP remain inactive,

IPON AND THE INSTRUMENT OF HUMAN RIGHTS OBSERVATION

The International Peace Observers Network (IPON) is a German independent non-intervening and non-profit organisation which aims for improving the human rights situation in the Philippines by sending observers to conflict areas.

The Instrument of human rights observation is based on the idea that, if a country has ratified the UN "Universal Declaration of Human Rights" (and/or other relevant international declarations on human rights), it is therefore responsible to enhance, respect, and implement human rights. If a country does not follow these responsibilities independent international observers will document these violations of human rights and bring it to public attention. IPON follows this legalistic approach to human rights. Since 2006 IPON accompanies organisations of human rights defenders (HRD) in the Philippines, starting with the request of the farmers organisation KMBP (Kilusang Magbubukid ng Bondoc Peninsula) in Bondoc Peninsula, Quezon Province. Since 2008 IPON observers are present in Negros Occidental accompanying the HRD of TFM (Task Force Mapalad).

IPON will not intervene in any internal conflict and will not interfere in the strategies of the accompanied HRD. The organisation will only go into a conflict area after a request from a human rights defender organisation and after preliminary studies which include an examination whether the instrument of human rights observation is suitable for the present situation.

The work of IPON is based on four pillars:

Presence: The IPON observers will be present at the side of HRD who are exposed to human rights violations because of their work. Their presence is supposed to prevent assaults and enable the unhindered work of the HRD. The presence of international observers is believed to rise the inhibition threshold for encroachments.

Accompanying: HRD are accompanied to different ventures like political actions, meetings with governmental institutions, or conferences. In some cases individuals who are especially endangered get company by IPON members.

Observation: It can be difficult to get unfiltered information from conflict areas. The possibility to document events in situation makes the reports of the IPON observers very valuable. The documentations always take place in regard of human rights. Because of the legalistic approach the role of the state actors is essential in the critical analysis of the human rights situation.

Informing action: The information that has been gathered directly in the conflict area and has been analysed by the observers are brought to the attention of an international public. IPON is in touch with different institutions of the Philippine state and points out their responsibility of implementing human rights. In Germany the reports are handed over to the public. They serve as a basis for the work of organisations, pressure groups and politicians. This way the international pressure on the Philippines to guarantee human rights rises. IPON is convinced that the publication of human rights violations will finally lead to their decrease and prevention.



Partner groups in the Philippines:

PADATA (Panalsalan Dagumbaan Tribal Association)

TFM (Task Force Mapalad)

Current Project:

IPON highlights Red-Baiting in the Philippine human rights discourse and offers platforms both to state and civil society actors to tackle the issue.

AIMS AND SCOPE

OBSERVER: offers a forum for analysis, strategies and debates regarding human rights observation in the Philippines with a focus on human rights defenders. How does the implementation of the UN Human Rights Charter is performed by Philippine Institutions? Which are the elemental dangers human rights defenders in the Philippines are exposed to? These are some of the possible topics. Comparisons with other countries will expand the handling and perspectives of human rights observation. Each publication has its own thematic emphasis. Guest articles from different disciplines and organisations are welcome.

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Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Adopted by General Assembly resolution 53/144, of 9 December 1998

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;

- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally

authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:
 - (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
 - (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
 - (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

„[...]“

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.