

**MEETING ON PRIORITIES FOR RESEARCH
TO ADVANCE
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IN AFRICA**

ADDIS ABABA 9 – 11 MARCH 2005

Organized by Addis Ababa University
at the initiative of and in cooperation with UNESCO

UN Conference Centre Room 6

REPORT

(Rapporteur : Prof. N. Rembe)

[April 2005]

DAY 1: WEDNESDAY 9 MARCH 2005
OPENING CEREMONY: THE PROMOTION OF ECONOMIC, SOCIAL AND
CULTURAL RIGHTS AND THE ROLE OF UNESCO

Opening and Welcome

Professor Andreas Eshete, President of Addis Ababa University and UNESCO Chairholder, warmly welcomed the participants to the Conference, which was organized by the University at the initiative of, and in cooperation with UNESCO. He stated that Africa is affected by a series of human rights abuses and this requires the search for the root causes of violations in order to uncover how the wider context, such as the war on terrorism, may be a contributing factor to the realization of certain rights, such as the independence of the judiciary.

The main objectives of the Conference were to come up with proposals how to contribute to the advancement of human rights through research and to identify priority areas in this field. Professor Eshete concluded by introducing the persons that were to make opening statements.

Dr Mohammed Serhaye, Vice-Speaker of the House of Federation of the Parliament of the Federal Democratic Republic of Ethiopia delivered the opening address. He stated that this meeting of experts to discuss priorities for research to ensure effective implementation of economic, social and cultural rights was of paramount importance. The implementation of economic, social and cultural rights demand more positive action. He emphasized that the implementation of social, economic and cultural rights, particularly the right to education, is key to the realization of the Millennium Development Goals. He also pointed out the need to adhere to international instruments on human rights. Ethiopia is a peaceful and stable society and this has been possible because a significant part of its constitution is dedicated to the protection of human rights.

In his remarks, Ambassador Kassa Gebrehiwot, Ethiopian Human Rights Commissioner stated that the Ethiopian Human Rights Commission was the youngest human rights institution in Africa. Referring to the human rights provisions in the Constitution of the Federation of the Democratic Republic of Ethiopia, he emphasized the importance of the rule of law in creating stability and sustainable development. He requested that UNESCO assist in developing human rights among civil society.

Dr Ibrahim Wani, Regional Representative of the OHCHR Regional Office in Addis Ababa, conveyed greetings and words of support from the United Nations High Commissioner for Human Rights, Mrs. Arbour, and informed participants about her personal interest in and the importance she attached to the Conference. He stated that the theme of the meeting was important and timely, little attention having been paid to economic, social and cultural rights. However, the challenges that lie ahead are daunting, bearing in mind the statistics on malnourished children, access to health, school enrolment and retention capacity, especially of girls and AIDS orphans. The gap between the rich and poor is growing while the benefits of globalization are mainly enjoyed by the rich nations and a few within Africa.

He stated that the UN has begun to mainstream human rights in its operational activities and programmes. However, there has been cynicism about economic, social and cultural rights – that they are unrealistic, untenable, and that there are no appropriate tools or instruments to measure their realization. He emphasized the need to ensure that research is relevant, practice-oriented and implementable, and that researchers work closely with the African Union and the United Nations.

Dr Awad Elhassan, Director of the UNESCO Office in Addis Ababa, thanked the organizers of the Conference and delivered a message from Mr Pierre Sané, Assistant Director-General for Social and Human Sciences (attached).

Election of the Chairperson and the Rapporteur

Professor Andreas Eshete and Professor Nasila Rembe were unanimously elected President and Rapporteur respectively.

Introductions

Participants introduced themselves, the institutions they represented and the work they do.

Session 1: UNESCO Strategy on Human Rights

Mr. Vladimir Volodin, Chief of the Human Rights and Development Section of UNESCO, expressed his gratitude to participants to the Conference. The Conference was organized by the University of Addis Ababa, at the initiative and with the support of UNESCO Headquarters and the UNESCO Regional Office in Dakar, in cooperation with the UNESCO Cluster Office in Addis Ababa. Mr. Volodin introduced the UNESCO Strategy on Human Rights. He outlined how the strategy was developed and introduced its main lines of action, emphasizing the integration of a human rights-based approach and human rights research.

He stated that the mandate of UNESCO includes the promotion of all human rights, with particular emphasis on the right to education; the right to freedom of opinion and expression; the right to take part in cultural life; and the right to enjoy the benefits of scientific progress. UNESCO is faithful to the principles of indivisibility and interdependence of all human rights. UNESCO considers human rights education as an integral part of education and asserts that education for human rights should promote tolerance, non-discrimination, democracy and peace. Mr. Volodin also outlined the standard-setting activities of UNESCO and its monitoring procedures. The UNESCO Strategy is also aimed at strengthening partnerships with OHCHR, regional inter-governmental organizations, National Commissions for UNESCO, National Human Rights Institutions, UNESCO Chairs, Training and Research Centres and NGOs.

He concluded by conveying the wish expressed by Mr Pierre Sané that the meeting should be productive and come up with concrete results.

Session 2: UNESCO Regional Activities in Africa

Ms. Carrie Marias, regional adviser for Social and Human Sciences, UNESCO Dakar Office, presented UNESCO's regional priorities and activities in Africa on economic, social and cultural rights. She welcomed the meeting as a collective reflection and debate on how best to clarify the contents of economic, social and cultural rights, contextualize them, and discuss best means and practices for their effective implementation.

She pointed out that over the last years there has been increasing regional cooperation and networking among research institutions, universities, social science organizations and UNESCO Chairs. IN addition to the annual international meeting of Chairs in in Austria, regional meetings have been organized by UNESCO Chairs in the SADC sub-region, as well as meetings of a regional Network of UNESCO Chairs in west and Central Africa held in Benin. She shared with participants the conclusions of the regional meeting held in Libreville, Gabon, on "Consolidation of democracy and economic, social and cultural rights in Africa" organized by the UNESCO Chair on Social Development and Democracy. A regional mechanism for cooperation was put in place through the establishment of an electronic network of Chairs and research institutes in Sub-Saharan Africa. She highlighted some of the issues that emerged from these meetings, namely the role that the State can play in view of its weakening by external forces and increasing demands placed on it at the same time; resource constraints and high levels of impoverishment; the debt burden and unjust international trade which affect the capacity of the State to implement social and economic rights.

Mr. J. Nkinyangi, UNESCO Regional Adviser for Social and Human Sciences, UNESCO Office Nairobi, presented UNESCO's efforts in the struggle against poverty. The programme on poverty eradication has been allocated one million US dollars, which will be used to build capacity in research for the realization of the MDGs on eradicating poverty by the year 2010. The grant will target young professionals.

The discussion that followed raised a number of pertinent issues such as:

- The eradication of poverty and inequality entails an integrated approach to human rights; for example, a project on irrigation or water supply could be linked to the rights to life, food and health
- Availability of statistics on how pervasive and prevalent poverty is and how it affects people and impedes the realization of their basic rights.
- Links between research and policy and policy implementation, as well as the role of research in addressing the eradication of poverty.
- The need to focus on corruption and to evolve ethics in leadership.

Professor Amii Omara-Otunnu, UNESCO Chair in Comparative Human Rights of the University of Connecticut, introduced the Network of UNESCO Chairs, focusing particularly on the global network of UNESCO Chairs in the field of democracy, human rights, peace and tolerance. He highlighted the objectives of the Chairs network and its achievements in the areas of networking and collaboration in joint activities. He stated that there is a need to move from theory to finding more innovative and practical approaches to issues such as poverty. The work of the Chairs should focus on issues

that affect the daily lives of the majority of people, rather than be limited to philosophical and intellectual debates, however important they may be. Poverty itself is exacerbated by high incidences of wars in Africa, therefore there is need to understand the pathology of power in Africa and how to cut down on military expenditure.

Session 3: Implementation of Economic, Social, and Cultural Rights: experiences of the African Commission on Human and Peoples' Rights

Professor Viktor Dankwa, Commissioner of the African Commission on Human and Peoples' Rights (ACHPR), presented the experience of the ACHPR in the implementation of economic, social and cultural rights in Africa, which are considered of equal importance as political and civil rights. The right to education, the right to take part in cultural life and the right to share the benefits of scientific advancement are provided for in the African Charter, among others. The question is: how do Africans enjoy these rights in a meaningful way? He underscored the importance of education and rights and duties attached to individuals. He highlighted some of the problems encountered with respect to submission of periodic reports and compliance with the decisions of the Commission. The operation of the Commission and its promotional activities are also limited by the resources at its disposal.

Professor Dankwa also brought out some of the problems raised by the creation of the Court of Justice of the African Union, and its relation to the protocol establishing the African Court on Human and Peoples' Rights.

During the discussion, the following was raised:

- Deficit in good governance, lack of transparency and accountability being among the factors that militate against the realization of economic, social and cultural rights.
- Justiciability of economic, social and cultural rights is still a problem within African countries.
- Responsibility of the ACHPR to educate the Heads of State and Government on the contradiction inherent in the protocols establishing the two courts.
- Financial and institutional problems that inhibit African researchers to be more effective.
- Lack of long-term planning within governments to implement economic, social and cultural rights.

The representative of the OHCHR stated that different attitudes towards civil and political rights and economic, social and cultural rights persist. African academia should cooperate more actively with the African Commission and complement or challenge its work; otherwise the emerging jurisprudence would be dominated by western scholars.

During the discussion, Commissioner Karusoke of the Uganda Human Rights Commission raised a number of issues:

- Implementation of economic, social and cultural rights should be made part of national priorities, leading to relevant planning and budgeting.

- Human rights principles should guide the process of setting national priorities, planning and budgeting.
- Corruption is an evil that militates against good governance and accountability and should be eradicated as much as ignorance, poverty and diseases.
- The level of conflicts and wars especially in Africa affect human rights and the ability of governments to achieve meaningful development.
- Unfair terms of international trade, as well as the debt burden, has driven many governments into perpetual debt, and therefore expenditure or debt servicing takes precedence over current expenditure.

The following points were also raised during the discussion:

- Lack of competence among parliamentarians and practitioners to comprehend the complexity of human rights issues and lack of ability to critically evaluate budgets and policy documents. It was noted that some intellectuals in government tend to compromise their integrity in this regard.
- The need to introduce human rights education in the school system in order to develop greater awareness of human rights.
- There is too much focus on the obligations of governments and less on the role of beneficiaries and power dynamics within the community.
- State reports on MDGs pay little attention to the challenges that governments face, or fail to acknowledge the level of literacy, education, health etc.
- Most States fail to submit periodic reports on implementation of economic, social and cultural rights or submit superficial reports.
- Research in the field of human rights should guide and harness the opportunities, common synergies and commitment created by the Millennium Declaration and other policy frameworks.

<p>DAY 2: THURSDAY 10 MARCH 2005 <u>GENERAL ISSUES RELATED TO ECONOMIC, SOCIAL</u> <u>AND CULTURAL RIGHTS</u></p>
--

Session 1: Justiciability of Economic, Social and Cultural Rights

Professor Frans Viljoen made a presentation on the justiciability of economic, social and cultural rights; experiences and problems. He argued that socio-economic rights are essential to meet the bare necessities of life and to make life possible, the obligation of the State being to respect, protect and fulfill. Implementation does not necessarily imply that justiciability is effected. Justiciability of socio-economic rights encounters problems such as:

- Non-inclusion of justiciable socio-economic rights in normative instruments;
- Inherent difference between social, economic and cultural rights, and civil and political rights;
- Resources constraints;
- Threat to separation of powers;
- Vague formulation of rights;

- Inappropriateness of courts as the fora to adjudicate on social and economic rights; and
- Inappropriateness of courts to deal with collective claims.

Justiciability is linked to the traditional role of courts. However, courts may have a smaller role to play, as they have to be supplemented by monitoring institutions. Judges are not well acquainted with adjudicating on socio-economic rights and they have to be trained so that they can progressively interpret them.

Professor Viljoen examined justiciability at the national, regional and UN levels and demonstrated how each level has addressed the problem. International and constitutional socio-economic norms should be translated into enforceable norms within legal systems. However, maintaining international standards may become illusive for countries that have different socio-economic capabilities.

During the discussion, it was contended that the view that the implementation of civil and political rights does not require resources while the implementation of socio-economic and cultural rights does, is not always self-evident. For example, restricting working hours to protect workers health does not necessarily require resources from the State. Another point made was that civil and political rights can be used to adjudicate on socio-economic rights. Violations of socio-economic rights could be addressed by invoking violations of other rights. For example, homelessness violates fundamental human rights like the right to privacy, or the right to vote if there is a residential requirement. The weakening role of the State was addressed and the increasing power of non-State actors in the provision of social services, which may require the attribution of obligations to non-State entities.

Judicial intervention is more effective when cases do not require major changes in State policy, or affect one or a limited number of individuals. However, class action and pressure from mass movements have contributed to courts being more decisive.

Session 2: Indicators to Measure the Implementation of Economic, Social and Cultural Rights

Professor Audrey Chapman presented indicators to measure the implementation of economic, social and cultural rights. Having realized the need for a methodology to measure the implementation of economic, social and cultural rights in order to make States accountable, the American Association for the Advancement of Science has developed relevant instruments. Tools and aids are available, as well as a thesaurus in three languages on the right to food, health and housing.

Indicators to measure compliance or violations of economic, social and cultural rights require statistical data. There is consensus that rights indicators may have a different focus, for example, whether the State is protecting rights arising from a universal or regional instrument, or whether data should be disaggregated on variables such as gender, etc.

Indicators can be used as a standard to measure the degree to which human rights are realized, the degree to which a particular country is expected to move to alter a

particular goal or benchmark it has set to achieve within a time period. They can be used to evaluate and monitor rights obligations with a view to improve over time, build capacity, and prioritize.

Professor Chapman presented three kinds of human rights indicators, namely structural indicators, process indicators and outcome indicators. They may be used to assess the progress made, identify unintended impact, determine actors that have impact within institutions, provide early warning or bring out issues that are often neglected. She alluded to issues that cannot be easily resolved, for example:

- Should human rights, for example the right to education, be assessed on the way it is articulated in the international standards or should it be regional or country specific?
- Should that assessment be based on the same data?
- How should the balance be determined?

The discussion focused on the collection of data and the experience in the use of indicators by human rights institutions.

- The South African Human Rights Commission, for example, is mandated to report to Parliament on the measures that have been taken and difficulties encountered in implementing social and economic rights. This requires the cooperation of organs of State and protocols have been prepared to facilitate the process of providing such information. However, it has been realized that such information is inadequate and as a result, it has been necessary to supplement it by fieldwork.
- The Kenyan Commission for Human Rights presented a scenario where the Commission reports, while the relevant government departments do not take the human rights component into account.
- Professor Asbjorn Eide drew attention to the distinction between outcome indicators and process indicators, and the difficulty of getting disaggregated data. For example, good data on national minorities may not necessarily satisfy indicators on economic and social rights.
- Political reluctance on having data was also cited as an obstacle.

Session 3: Indivisibility and Interdependence of All Human Rights

In presenting the principles of indivisibility and interdependence of all human rights, Professor Asbjorn Eide examined the genesis of the concept of human rights as a common aspiration and the nature of the claim to universality. Making reference to the Universal Declaration of Human Rights (1948), the Vienna Declaration and Programme of Action (1993) and other relevant instruments, he elaborated on the meaning and content of universality, interdependence and interrelatedness of human rights. He stated that the vision of the world at the time of the adoption of the Universal Declaration of Human Rights was dominated by the doctrine of the sovereignty of State and the division of the world into two camps. However, today the world is founded on the need to eliminate the anomalies that existed among States which entails the duty to cooperate. While the UN is committed to realize economic and social development, the process of globalization has also affected the vision conceived in 1945-1948. There is tension on the role of the State, as well as tension concerning who should ultimately bear responsibility.

He raised a number of pertinent issues:

- Regarding the implementation of human rights: is it lack of capability or lack of will?
- The issue of relativism versus universality: relativism was rejected by the Vienna Declaration. The issue is not a total rejection of human rights but a rejection of some rights.
- It is clear that all rights are now considered to be important and the argument that civil and political rights cannot be implemented until social and economic rights are realized is no longer tenable.
- Attention should be given to the lack of capability to realize economic and social rights and what should be done to improve that capability. An important issue in this regard is the lack of the will of certain sectors of the society.
- The fragmentary structure of State administration means that different segments of rights fall under different governmental departments that may not relate well to each other.
- There are also different kinds of demands imposed by the international community on States, such as the WTO, IMF and the World Bank, which may be controversial.
- Another problem in the international system is that international law is no longer one system but consists of different systems developing in different directions.
- The implementation of one set of rights may depend on, or affect, the implementation of other rights.

<p style="text-align: center;">DAY THREE: 11 MARCH 2005 <u>ECONOMIC, SOCIAL AND CULTURAL RIGHTS WITHIN THE MANDATE OF</u> <u>UNESCO</u></p>
--

Session 1: The Right to Education

Professor Fons Coomans presented the normative content of the right to education. He referred to relevant provisions in international and regional instruments, in particular the Universal Declaration of Human Rights (Article 26), the International Covenant on Economic, Social and Cultural Rights (Article 13-14); the UNESCO Convention on Discrimination in Education (Article 1-2); the Convention on the Elimination of All Forms of Discrimination Against Women (Article 10); the Convention on the Rights of the Child (Article 28-29); and the African Charter on Human and Peoples' Rights (Article 17), among others. He underlined the normative content of the right to education in terms of availability, accessibility, acceptability and adaptability. These instruments create specific and general obligations for State parties, the content of which has received further interpretation by General Comment No 3, 11 and 13 adopted by the Committee on Economic, Social and Cultural Rights.

Professor Coomans stated that the duty to respect, protect and fulfill places obligations upon states to identify and prevent violations and discrimination. In this regard, a distinction should be made between the inability of states to comply for objective reasons, for example, lack of resources, as opposed to indifferent attitudes or lack of will.

The following issues were raised during the discussion:

- The danger of commercialization of education. Although privatization of education is not prohibited, the State has responsibility to ensure that privatization meets international standards.
- Inadequate budget allocations for education not only affect the availability, access and quality of education but also the welfare and motivation of teachers. As a result, they may have to leave public schools for private schools or join other professions.
- Education is being driven to respond to globalization and the dictates of the market forces to the detriment of values and other broader aims of education.
- Language, exclusion and discrimination are still obstacles faced by many communities.
- There is need to train policy-makers in the field of human rights and the right to education.

Session 2: The Right to Take Part in Cultural Life

Dr Yvonne Donders' presentation focused on the right to take part in cultural life. She stated that although the right focuses on important aspects of dignity such as language and religion, it is one of the least developed rights compared to other categories of human rights. An attempt to view cultural issues in terms of rights is necessarily difficult, because culture is not fixed but dynamic and evolving, and cultural rights embrace individual as well as collective aspects. Therefore cultural rights are transversal in character and overlap with many other human rights.

She focused on the right to take part in the cultural life as laid down in the Universal Declaration of Human Rights (Article 27) and subsequently the International Covenant on Economic, Social and Cultural Rights (Article 15(1)), illustrating how the scope of the right has been widened over the years to include not only cultural products, but the whole process of culture, including education, language, religion etc.

During the discussion the following issues were raised:

- The State has positive as well as negative obligations to respect, protect and fulfill the right to take part in cultural life. The danger was flagged, however, that States might protect a certain culture, which may be at the expense of others, or which may limit the dynamic development of cultures.
- The tension between culture and human rights was raised. While cultural practices should not constitute violations of human rights, any attempt to modify culture must be carefully approached, because culture is deeply embedded in societies and it may lead to a backlash.
- The issue of universality and cultural relativism was raised. While the universal norm exists, its implementation may take time and require sensitivity.
- A number of examples emerged on how cultural practices die hard, often defying policy and legislative interventions designed to bring the practice in harmony with human rights. The need to educate is important so that alternatives, benefits and detriments can be clearly seen and appreciated.

Session 3: The Right to Benefit from Scientific and Technological Progress

Professor William Schabas explored another human right that is very much neglected and underdeveloped: the right to benefit from scientific progress and its applications. Professor Schabas discussed the elaboration of this norm and its historical context. Nowadays this right receives increasing attention, because of the process of globalization and the apparent tension between this right and the protection of intellectual property, especially in relation to the WTO and its TRIPS Agreement (Trade-Related Aspects of Intellectual Property). The Committee on Economic, Social and Cultural Rights has adopted a Statement on the relationship between the right to enjoy the benefits of scientific progress and the protection of intellectual property.

Professor Schabas mentioned several aspects of scientific progress that have a direct link with economic, social and cultural rights, such as the development of medicine and food products. In relation to civil and political rights, scientific progress relates, for example, to new communication technologies, such as the Internet. While scientific and technological progress can be positive for human beings, there is also the possible abuse of science and technology, which may contradict human rights. The question is how to protect individuals and groups from abuse of scientific progress, for example the development of weapons of mass destruction.

During the discussion, it was acknowledged that the right to benefit from scientific progress has particular importance for Africa. In the result of high or even prohibitive prices, many States, groups and individuals are deprived of access to the achievements of science. This is particularly true for medicine, although some of them have been developed using indigenous knowledge. It was also stressed that additional efforts are needed to further elucidate the content of this right as well as its inherent link with other human rights, such as the right to information, education and the emerging right to a clean and safe environment. The question was also raised whether scientific progress also implies technological progress and what would be the consequences in relation to this specific right.

Session 4: Adoption of Recommendations Concerning the Creation of an African Research Network on Economic, Social and Cultural Rights and Final Document of the Conference

The draft final document of the Conference was tabled. Participants expressed their willingness to create an African Research Network on Economic, Social and Cultural Rights. They discussed the document paragraph by paragraph and unanimously adopted it as the Final Statement (attached).