



**Dialogue** on  
**Globalization**

CONFERENCE REPORT  
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**Report of the Parallel Event  
“Third Generation” Human Rights -  
Reflections on the Collective Dimension of  
Human Rights**

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**Abstract:** On 22 March 2007, FES Geneva organized a parallel event to the 4th Session of the UN Human Rights Council. The public panel discussion, which was attended by approximately 50 people, focused on the collective dimension of human rights, trying to stress the value a collective approach to human rights might add to their protection, promotion and fulfilment.

Starting point of the discussion was the general agreement that the individual person was the holder of human rights, while there was also a group of human rights, a so-called "third generation" emerging which had a clear collective dimension. Additionally, collective aspects were not only obvious in "third generation human rights" but also integral to a number of "first and second generation" human rights. In fact, already the International Covenant on Economic, Social and Cultural Rights started its first Article: "All peoples have the right..."

Through their interventions and the question and answer session at the panel discussion, Professor John Dugard, Ambassador Ibrahim Salama and Professor Rodolfo Stavenhagen underpinned the value of a collective approach. Many rights might be claimed by an individual person, but their enjoyment could only be granted in a collective frame. The parallel event showed that all "generations" of human rights had aspects where the collective dimension was of added value. In thematic issues and country situations, the collective dimension of human rights was clearly supplementary to the existing notion of individual rights.

## 1. Introduction

Respect for fundamental human rights is one of the basic principles of International Law. These rights are standards agreed by contract, emanating for example from the United Nations International Covenants of 1966 or regional covenants on human rights (European Charter on Human Rights, American Charter on Human Rights, African Banjul Charter on Human and Peoples Rights). States are bound to respect (by refraining from intervention), to actively protect (against interventions by third parties) and to fulfil (through positive actions) human rights. The history and development of human rights turns out to be an ample field. Human rights, like we know them today, are the product of a long revolutionary historical process as a reaction to concrete threats to human dignity. Due to their different historical, religious, political and cultural origins, "three generations" of human rights became apparent. The side event aims at the analysis of the similarities of these three generations, focusing on the collective dimensions of human rights.

*First generation human rights* in general are civil or political by nature. As a conclusion of the outcome of the European Age of Enlightenment in the 19<sup>th</sup> century, they focus on the autonomous individual and protect it. Their primary legal foundation (as well as for the second gen-

eration of human rights) derives from the Universal Declaration on Human Rights from 1948. Being considered as so called freedom- or protection rights, they are not only directed against direct interventions by states ("outer freedoms": e.g. right to live, freedom of person, ban on torture, ban on deportation), but also against governmental interventions into privacy of every individual ("inner freedoms": e.g. freedom of thoughts, conscience, religion, opinion, information and press). The United Nations International Covenant on Civil and Political Rights (ICCPR) stands for the guarantee of such individual rights by the state. In addition to these liberal civil rights on the one hand, the politically relayed rights on the other hand protect the democratic idea of participation - e.g. by guaranteeing the right to vote, to file a petition as well as by guaranteeing the freedoms of association, assembly and to form parties.

*Second generation human rights* as laid down in the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) refer to the assurance of adequate social and material general set-ups (e.g. the Right to Food, the Right to Education) for individuals. The reason for their codification refers to the claims of former communist states, which were of the opinion, that collective rights (economic, social and cultural rights) would be rather conform with the socialistic conception of the aiding, dis-

pensing and allocating collective, than the focus concerning human rights standards set by the western bloc. Those, as already mentioned above, placed emphasis on liberal freedom rights which approached firstly to their idea of human dignity. Second generation human rights therefore not only address the autonomous individual, but contain both: individual- *and* collective aspects at the same time. They stand for the civil rights to public welfare (e.g. right to work, right to housing, right to suitable fees, and right to social security). In conclusion, both UN-covenants reason dual guarantees referring to defence and protection by the state. In this context, they have made a significant contribution to the guarantee of human rights standards in international public law. The covenants became effective in 1976. While the first generation UN-civil-covenant primarily appeals to the state to refrain from intervening into individual privacy, the member states of the second generation UN-social-covenant are bound by legal measures to fulfil the rights emanating from the pact.

Unlike dealing with first- and second-generation of human rights under this aspect, the classification of "third generation rights" into traditional juridical categories appears to be quite difficult. It has been the basis for controversial political and juridical discussions over several decades until today. In comparison to "first"- and "second generation rights", solidarity rights do not primarily focus on the protection of the autonomous individual. They rather address more directly the collective of social groups or peoples. They are based on claims made by developing countries targeted to industrially developed countries in the 70s. With this, they depart from the classical notion of the protection of the individual or the narrowly defined group. The effort of the perception of a newly global complexity by "third generation human rights" is significant for the collective dimension of solidarity rights. Due to the fact that the complexity of "third generation rights" is highly debated by the international community of states, solidarity rights have not yet reached the legally essential status for their full implementation as collective human rights. Such status would in return entail commitments of the industrially developed countries, which they hesitate to accept. However, it appears difficult to name concretely the entitled solidarity rights holders on the one hand, and to define the engaged entities on the other hand throughout the "third generation rights". The juridical dilemma seems to be accomplished. Furthermore, "third generation" solidarity rights

are hardly negotiable. Assuming a right to be "someone's justified claim to something", there always has to correspond a duty to this notion on the other side. If for example the Right to Development as a solidarity right did not entail any accordant duty of the industrially developed countries to support developing countries, it would not answer its purpose at all.

## 2. Statements by the speakers

Opening the session by welcoming and presenting the speakers of the panel, **Felix Kirchmeier**, as the moderator of the event, highlighted the key-issues of the panel discussion. The main question to be considered at the event was if all "generations" of human rights had aspects where the collective dimension might be of added value. Moreover, the speakers were asked to address the question, what could be the supplementary collective dimension of human rights in thematic issues and country situations. The panel discussion focused on the range, scope and reality of collective dimensions of the Rights of Indigenous Peoples, the Right to Development and country issues, exemplified at the Palestinian case. Finishing this thematic introduction, Felix Kirchmeier gave the floor to the first speaker.

**Professor John Dugard**, UN Special Rapporteur on the situation of human rights in the Palestinian territories, and the first key speaker of the event, raised the problem of occupying powers in the Palestinian territories within the context of the collective dimensions of human rights. He started his statement differentiating between the perspective of collective human rights in independent countries on the one hand and the perspective of collective human rights in colonies or occupied territories on the other hand. The main issue in both cases was, whether the government or the occupying power complied with the Right to Development as a collective human right. Although the Right to Development would be closely related to social and cultural rights, Professor Dugard stressed that the Declaration of Right to Development 1986 was not a legally binding treaty detailing or concretizing the Right to Development as such. For this reason, he said, a great debate arose about the issue how collective rights could be linked to political means and monitoring implemented.

Highlighting the broad nature of the Right to Development, Professor Dugard mentioned the recent attempt of the African Union to monitor

collective human rights by committing themselves in the "Banjul Charter" to the Right to Development.

Building on this general introduction, the speaker spotlighted the situation in the occupied Palestinian territories with regard to the implementation of collective human rights. Although the Palestinian People had the Right to Self-determination – which was closely linked to the Right to Development - people had to cope with numerous difficulties in this context. Professor Dugard explained such grievance by saying that the territories would not only be occupied militarily, but that the colonial aspect (settlement in the West bank) also played a role in the Palestinian territories. The political issue therefore had to deal with the Right to Self-determination, the aspect of colonialism and the military occupation at the same time. Having this in mind, little opportunity for the Right to Development as a collective human right was left. Professor Dugard stated, that 90% of the Palestinian People depended on the aid of international agencies, e.g. on food aid. Serious violations of personal liberties were taking place in Palestinian day-to-day life. He also highlighted the fact that in this context social and economic rights (such as the right to health, education etc.) suffered as a consequence of military occupation. The questions he posed towards the audience dealt with the difficulty: how should one approach this problem? Did any obligation of the military occupiers exist to advance the Right to Development? Although this subject would not have been explored completely, Professor Dugard closed his statement by stressing the need to pay greater attention to the Right to Development and its implication during the period of military occupation in the Palestinian Territories.

**Ambassador Ibrahim Salama**, Chairperson of the Working Group on the Right to Development, started his statement addressing a fundamental conceptual difficulty that still haunts the human rights debate and action at the international level in regard to the collective dimension of human rights.

He approached this topic from a right to development perspective. Referring to article 1(1) of the Declaration on the Right to Development, Ambassador Salama highlighted the precise reflection of the collective dimension of the Right to Development. Ambassador Salama considered it to be of great importance to note that the underlying issue in this context was more

than a legal controversy. The political dimension was clear: if the Right to Development was a collective right, this might lead to States considering themselves right-bearers and right-holders. Ambassador Salama stated furthermore, that the political and economic implications of this situation brought to mind the concept of a new international economic order as already mentioned in the introduction. This misconception could be best addressed through practical implications. The ultimate goal of a right would be to empower somebody to enjoy an entitlement, so Ambassador Salama. The legal concept would be simply the intellectual basis on which a concrete action was supposed to be based on and protected by this concept when it would constitute a norm embodied in a legally binding instrument. The problem with the declaration on the Right to Development was precisely that it was just a declaration, and therefore, as such, it was not a legally binding instrument. To the question, how there could be a right without legal enforceability, Ambassador Salama gave the following answer: despite the legal nature of the 1986 Declaration on the Right to Development, its content reflected general principles of law and equity that found their basis in the UN charter, the ICESCR, as well as in many unilateral commitments, State positions and practices in various other fora and instruments, even when the term right to development was not explicitly utilized.

Ambassador Salama emphasized that the Right to Development additionally created an obligation to negotiate, in good faith, in order to give effort to its general principles through their application to specific areas. Concerning the specific scope and content of the collective dimension of the Right to Development, Ambassador Salama considered the Right to Development both an individual and a collective right, referring to its Declaration. The collective dimension of the Right to Development did not mean rights of States, simply because States could not be bearers of "human" rights. The holders of the collective dimension of the Right to Development therefore were the peoples. Ambassador Salama stressed the two phases of the collective dimension of the Right to Development: first as an obligation in principle, the duty to cooperate. Once such negotiations would reach results in the form of detailed and specifying standards of the Right to Development, the second phase would be the implementation of those standards in the legal form and through the institutional means that corresponded to their nature and

content. Ambassador Salama underlined the fact, that in practice, as well as in legal theory, the collective and individual dimensions of the Right to Development would be substantively linked and simultaneously applicable. He closed his statement by saying, that the shortcomings of globalization and the negative effects of neo-liberalism had given rise to calls for a Right to Development approach, to draw a limit (constituted by a human rights framework) that market forces and profit consideration should not transgress.

**Professor Rodolfo Stavenhagen**, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, started his statement by drawing the inextricable connection between the mandate on the human rights of indigenous people and the collective dimension of the rights of indigenous peoples. Referring to collective rights in international standards, Professor Stavenhagen highlighted, that indigenous peoples' rights was possibly the area that had spearheaded the debate on individual versus collective rights in international law since the 1970s. Despite some level of controversy, there was an overarching consensus that the recognition and protection of rights of indigenous peoples needed to go beyond classic conception of individual rights.

Professor Stavenhagen pointed out that the collective nature of indigenous peoples' rights was now well established in international and domestic standards, and had been repeatedly affirmed by international human rights bodies. Indigenous peoples' collective rights were finally included in the text of the UN Declaration on the Rights of Indigenous Peoples adopted by the Human Rights Council in June 2006. No contradiction between individual and collective rights existed. The collective dimension, so the speaker, was particularly evident in the various provisions of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. By using e.g. the term "peoples", the Convention clearly defined a collective subject reflecting the UN process in this context. Furthermore, many of the rights recognized in the Convention would be applicable to indigenous peoples, and not only to individuals. This was particularly important, for instance, with regard to land and resource rights.

Concerning the international process in this context, Professor Stavenhagen stated that Canada (as one of the first States) had recognized the

idea of collective rights constitutionally. The African Union handled the issue by creating a working group on indigenous populations with the underlying question, who could be considered as bearers of these collective rights. By presenting some concerns of collective rights of indigenous peoples to the audience, Professor Stavenhagen brought up the structural relationship between indigenous peoples and minorities. Without any collective protection, individual protection could not exist either. Referring to the right to use their own language, the speaker posed the rhetorical question to the audience, whether an individual should sing its language to the birds, in case the collective dimension of the right to language was not protected. Individual and collective rights were therefore closely connected, and the tension between those aspects could be solved by adequate mechanisms. The needs of the right bearers could only be addressed by the right kind of policies. Professor Stavenhagen emphasized also that the Special Rapporteur's communications combined both individual and collective rights perspectives. Sometimes violations of human rights of indigenous individuals (e.g. indigenous human rights defenders) were concerned, but in most cases the Special Rapporteur's communication concentrated on situations in which collective rights were involved (e.g. land dispossession or removal, legislation affecting the status of indigenous lands or mega projects).

### 3. Questions and Comments

Highlighting the clash between local justice systems of indigenous peoples on the one side and national justice systems on the other side, *Professor Stavenhagen* pointed out that there existed persistent demands of indigenous people for the recognition of their own justice systems. Although the right of indigenous people to have their own social and legal system was very important, many times it was not accepted by higher national levels. Professor Stavenhagen explained that fact referring to human rights violations within these local justice systems of indigenous peoples. Nevertheless he also referred to some African States, Columbia, Ecuador or Mexico as examples that were already recognizing traditional justice systems of indigenous peoples. The issue of how to make these justice systems compatible to national standards was also part of the human rights agenda, so Professor Stavenhagen.

Broaching the issue of a right to secession of indigenous peoples, *Professor Dugard* emphasized two perspectives within this context. With regard to the postcolonial society minority groups had the right to internal self-determination, being able to develop their interests within one state. This internal self-determination had nothing in common with the right to secession, so *Professor Dugard*. Indeed, the right to secession would gain greater importance in cases where human rights of indigenous peoples were not respected. The issue of a qualified right to secession arose in the moment a minority group was suppressed by the government or suffering collective human rights violations. *Professor Dugard* underlined the great reluctance of states towards secession-plans and instanced African States for having a strong resistance to the issue of right to self-determination of minority groups with regard to their wide variety of ethnical groups. It was a very difficult issue to deal with, so *Professor Dugard*.

The three key-speakers agreed upon the difficulties coping with the human rights of indigenous peoples in situations of conflicts. Being conscious of collective human rights violations within indigenous peoples, the speakers found fault with the exclusively morally binding nature of the MDGs.

Responding to a question from the audience, *Ambassador Salama* was drawing comparison to the theoretical "Human Rights Goals" when he criticized the fact, that the MDGs merely aspired lowering poverty at 50% until the year 2015 instead of aiming at the total combat of the issue. By excluding this human rights aspect -or at least by cutting it into halves-, the development goal gave reason to tension between the MDGs and human rights, so *Ambassador Salama*. The speaker stressed further the positive facet of so called Human Rights Goals, emerging explicitly from a human rights basis. *Ambassador Salama* favored the idea of the concrete establishment of Human Rights Goals and stressed the concept of putting such open issue on the Working Group Agenda for 2008, emphasizing its symbolic content with regard to the Human Rights Declaration from 1948. Furthermore, the Right to Development e.g. would hold many different

interpretations (social, cultural, political, sustainable...) - a fact that made it difficult to concrete the idea of establishment of this right, so all the three speakers. The critical conditions of peoples (emerging from migration-problems, human rights violations, HIV-issue...) were seen as the result of a constant displacement of minorities and indigenous peoples. There was a significant need for human rights policies, whose assessment should be of major concern. And although the clumsy elephant as a fitting Right to Development metaphor already tended towards the right direction, there was still a lot of work to be done in order to let him walk by himself.

*Felix Kirchmeier* closed the session by thanking the speakers not only for showing how misconceptions over the collective dimension of human rights could lead to political controversy but also for presenting passable ways to solve this through practical application and the linkage to accepted rights. By drawing the attention to the difficulty of justiciability of "third generation" rights, the problem of groups and peoples under occupation would have become greatly apparent, so the moderator. Summarizing the essence of the event, the presentations of the three speakers brought out significantly the importance, a "collective" approach to human rights can have in the obvious area of indigenous peoples' rights, the dual nature of the Right to Development and also in country situations.

#### 4. Conclusion

Recapitulating the discussion, reflections on the collective dimension of human rights seem to entail a number of different appendages for the establishment of "third generation" rights. And although no one appeared questioning seriously their existence, many debates on the issue of collective human rights arose during the years. Not only the pondering about the bearers of collective rights, but also the difficulty to name the debtor as the claimant's counterpart seem to color the debates on the issue of "third generation" human rights. Consensus has still to be developed on many issues within the context, and differing interpretations have to be consolidated at a common denominator.

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