



Protecting Dignity:

An Agenda for Human Rights

Whereas recognition of inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

Timeline

April 2008

Brainstorming meeting in Geneva

On 3 April 2008, the Geneva Academy of International Humanitarian Law and Human Rights invites experts in the field of human rights and international humanitarian law to meet in Geneva to share their views on the possible content of a future Agenda on Human Rights and offer advice on how to ensure the processes of agenda writing and implementation are effective as possible. The group was composed of about fifteen experts from universities, international organizations and courts, as well as civil society.

April-June 2008

The Swiss Foreign Minister selects a Panel of Eminent Persons.

June 2008

First meeting of the Panel

On 11, 12 June 2008, at its first meeting in Oslo, the Panel determines its vision for the project. The Panel selects 8 themes to be analyzed further and invites proposals from research teams and institutions to elaborate on these topics.

Summer 2008

The Geneva Academy of International Humanitarian Law and Human Rights sends the selected research topics to universities and institutions and calls for short research proposals.

September 2008

The Panel selects the research proposals.

December 2008

On 5 December 2008, the Panel and the researchers meet in Geneva at the invitation of the Swiss Foreign Minister. In this meeting the Agenda for Human Rights for the forthcoming decade is officially launched.

Follow-up

From December 2008 onwards, Governments, international organisations and academic institutions are engaged in a dialogue on the Agenda.



Preface by Federal Councillor Micheline Calmy-Rey, Head of the Swiss Federal Department of Foreign Affairs

The 60th anniversary of the Universal Declaration of Human Rights provides an opportunity to look back on the achievements of the past 60 years in the promotion and protection of human rights. For some of us these achievements are largely positive, since the need for respect for human dignity has become a widely accepted standard. But it is also our duty to recognize the gap between aspirations and achievements. Too many people in too many regions of the world are still waiting to enjoy their rights and freedoms; they are victims of intolerance, discrimination and serious violations of the rights mentioned in the Declaration. We do not yet live in a world where human rights are universally respected. This is a world where everyone's help and commitment is needed for the realization of human rights.

The discrepancy between rhetoric and reality is why the 60th anniversary should be commemorated in a prospective way and seen as a time to translate the high principles of the Declaration into concrete actions. This is why the Swiss Government has decided to launch an initiative that not only takes stock of what has been accomplished, but is forward-looking, exploring new ways of giving human rights the weight and place they deserve in the 21st Century. The text entitled "Protecting Dignity: An Agenda for Human Rights," presents concrete proposals, and, together with the follow-up research projects, aims to further enhance respect for human rights.

In the hope that this agenda contributes its part towards the enjoyment of human rights becoming a reality for all of us, I invite you to reflect upon the findings of the Panel of Eminent Persons and to engage with the follow-up research projects. May this agenda serve as a reminder to renew our ideas and redouble our action and commitment to the cause of human rights.

The Panel of Eminent Persons



Mary Robinson

Co-chair

President of the NGO Realizing Rights: the Ethical Globalization Initiative, former President of Ireland and former UN High Commissioner for Human Rights.



Paulo Sérgio Pinheiro

Co-chair

Commissioner and Rapporteur on Children, Inter-American Commission on Human Rights, Organization of American States, and Former Independent Expert of the UN Secretary-General for the study on violence against children, 2003 to 2007.



Pregs Govender

Writer, educator and feminist activist, former member of the South African National Assembly. Author of « *Love and Courage, A Story of Insubordination* ». An activist against apartheid since 1974, she served as an MP in South Africa's first democracy until 2002 and currently chairs the Independent Review of Parliament.



Saad Eddin Ibrahim

Professor of political sociology. Founder and first Secretary-General of the Arab Human Rights Organization. Secretary General of Egypt's Independent Election Review Committee. He plays a leading role in Egypt's civil society movement.



Hina Jilani

Human rights lawyer and co-founder of the Human Rights Commission of Pakistan, former Special Representative of the UN Secretary-General on Human Rights Defenders.



Theodor Meron

Appeals Judge, International Criminal Tribunals for former Yugoslavia and Rwanda, Past President ICTY, Dennison Professor Emeritus and Judicial Fellow, New York University Law School.



Manfred Nowak

Professor of International Human Rights Protection at Vienna University, UN Special Rapporteur on Torture and Swiss Chair of Human Rights at the Graduate Institute of International and Development Studies in Geneva.



Bertrand Ramcharan

First holder of the Swiss Chair of Human Rights at the Graduate Institute of International and Development Studies in Geneva and Chancellor of Guyana University. He served as Deputy and then Acting UN High Commissioner for Human Rights.

Protecting Dignity: *An Agenda for Human Rights*

5

To mark the 60th anniversary of the Universal Declaration of Human Rights, the Government of Switzerland asked eight individuals with extensive human rights experience to join together to reflect on contemporary human rights challenges and develop in the form of an Agenda for Human Rights.

The work of the Eminent Persons Panel was also supported by the Governments of Norway and Austria which facilitated working meetings in Oslo and Vienna during 2008.

The Panel's text *Protecting Dignity: An Agenda for Human Rights* is being presented to the Government of Switzerland and to the wider international community on the occasion of the 60th anniversary of the Universal Declaration of Human Rights.

It is hoped that this document, together with the follow-up research projects on select issues listed below, will encourage over the coming years further dialogue and action to improve respect for human rights around the world.

Sixty years ago, the Universal Declaration of Human Rights proclaimed that « recognition of the inherent dignity and of the equal and inalienable rights of the human family is the foundation of freedom, justice and peace in the world ».

Since the Declaration's adoption, the vast majority of governments have formally incorporated international human rights standards into their national law and constitutions, and an ever widening circle of organizations and civil society networks from across the globe have called for accountability. These organizations have themselves increasingly integrated human rights principles into their own policies and practices.

Yet today the dignity of millions of people continues to be violated as a result of weak or ineffective governance, corruption, poverty, oppression, and war. From the ill-treatment of those in detention to the situations of many more lacking access to adequate food, basic health care, and opportunities for decent work, from the failure to protect civilians in danger to the lack of effective action to confront human trafficking, from the plight of migrants and stateless persons to the devastating impact of violence against children, these and other affronts to the dignity and rights of our fellow human beings shame us all.

As a group of independent individuals asked to identify major challenges and to offer proposals for future action, we believe it is essential to return to what binds the human family together – recognition of our shared humanity and dignity. Doing so is the best way to forge a new consensus around a long term vision and strategy – one which recognizes that sustained protection of human rights requires both effective national institutions and enhanced global accountability.

Human Rights Today

The gaps between recognition of human dignity and the realization of human rights remain wide – and have arguably grown even wider in recent years. Cold War divisions have given way to new forms of polarisation between North and South in key areas of policy, including trade, aid, and the environment.

The emergence of a more security-driven political environment in reaction to horrible terrorist attacks has been accompanied by acts of arbitrary detention, torture and enforced disappearance, and other serious assaults on human dignity. We emphasise that all measures taken to combat terrorism must comply with international human rights, refugee and humanitarian law.

Despite the fact that the Universal Declaration has been affirmed and reaffirmed by every government, it is regrettable that a shared understanding of human rights globally remains elusive. Rights are still sometimes perceived as embodying western rather than universal values. Some affirm civil and political liberties but do not recognize economic, social and cultural rights. Others degrade civil and political rights and respect for the rule of law, claiming the need to secure economic and social stability first. The Universal Declaration was conceived as a careful balance of individual freedoms, social protection, economic opportunity and duties to community. This holistic vision is as relevant today as it was sixty years ago.

Meeting the Challenge of Poverty

Today, more than one billion people – one in every six human beings – live in conditions of extreme poverty. The vast majority are women. A human rights strategy for the decades ahead must effectively address the

challenge of poverty. Poverty is an immensely complex phenomenon, rooted in exploitation, discrimination, unequal access to assets, location, capacity, alienation from public institutions, and the legacies of history. No one need be destined to this fate. Poverty can be eliminated by protecting and empowering the most marginalized.

The United Nations Millennium Development Goals (MDGs) mark progress in this regard because governments have made concerted commitments and set an unusually long time horizon for achieving results. How humbling it is therefore to realize that in 2008, after the immense efforts that have been made to bring the MDGs forward and encourage public and official support for them, at the half-way point to the target date of 2015 we already know that most of the poorest countries will not be close to halving poverty or to achieving the other goals which governments solemnly committed to achieving at the start of this century.

This is not to say that rapid progress can never be made. The vast sums that have been recently invested to combat inequities in global health, notably by multi-stakeholder alliances of governments, the private sector, civil society actors and private philanthropy, have had a demonstrable impact on the global vaccine market, on the incidence of tropical diseases, and on health services and immunisation programmes: millions of people have benefited. Yet these initiatives and the organizations involved have been among the most outspoken in stressing that lack of institutional capacity at national level represents the greatest obstacle to further progress.

Access to Justice and the Rule of Law

Strengthening national capacities to combat poverty in turn requires effective institutions which ensure respect for the rule of law. The reality is that billions of people are excluded from enjoying legal rights and protections. In many states judicial and law enforcement systems remain too weak, under-resourced or corrupt to carry out the tasks assigned to them. Efforts to support governments to build and reform their institutions too often assume that this monumental task can be accomplished in a few years. The consistent reiteration of unrealistic targets merely nourishes disappointment and failure. It is therefore crucial to invest in building effective national protection systems for human rights. By this, we mean institutional arrangements that function under a national constitutional and legal order to ensure that human rights - based on the international commitments of states - are protected. That includes the courts, police, prisons, social ministries, legislature, as well as national human rights institutions and other official monitoring bodies.

Human rights cannot be realized in the absence of effective and accountable institutions. Where courts are corrupt, over-burdened and inefficient, basic civil rights will be violated. Where social ministries are under-resourced, disempowered or lack qualified staff, basic rights to adequate health care, education and housing will remain unfulfilled. Effective national protection systems, including properly constituted national human rights institutions, must be complemented by space for civil society and human rights defenders, and support for their relationship with the formal system of promoting and protecting human rights.

A Global Fund for National Human Rights Protection Systems

It is true that reforming and building sound national institutions is a long, complex and expensive process that is rarely newsworthy. But it is essential. Though important work is being done to strengthen institutions, for example, in the fields of health and education, far too little emphasis has been placed on ensuring access to a well-functioning justice system.

We therefore call for the establishment of a new Global Fund for National Human Rights Protection Systems. This new Global Fund should draw on lessons learned from initiatives in health and other areas, and build on the recognition of the importance of preventive strategies and the need for effective and accountable justice systems.

Recognizing Shared Responsibilities

Though national action is fundamental, states also need to develop more effective international arrangements for addressing global problems. In this context, international human rights law must be developed so that it can more effectively regulate issues of accountability and cooperation between states, and define the responsibilities and accountability of non-state actors.

Consider the urgent human rights dilemmas posed by climate change. Few dispute that climate warming is likely to undermine the realization of a broad range of internationally protected human rights: rights to health and even life; rights to food, water, shelter and

property; the rights of indigenous and traditional peoples; rights associated with livelihood and culture; with migration and resettlement; and with personal security in the event of conflict. Responsibility for human rights abuses linked to climate change often lies not with the government nearest to hand, but with diffuse actors, both public and private. This means recognizing shared responsibilities for human rights.

A World Court of Human Rights

One future step which seems to us essential in addressing many of these issues is the establishment of a fully independent World Court of Human Rights. Such a court, which should complement rather than duplicate existing regional courts, could make a wide range of actors more accountable for human rights violations.

We are convinced that progress towards the establishment of a World Court of Human Rights, together with a new Global Fund dedicated to strengthening national justice systems, would constitute constructive initiatives to protect human dignity in the 21st century.

Protecting Dignity:
An Agenda for Human Rights

9

Progress Report of the Eminent Persons Panel
by Manfred Nowak, Panel member and rapporteur

1. Achievements, Problems and Challenges: Human Rights in Crisis

[1]

We know what human rights are, we know the obligations of states and other duty-bearers to respect, protect and fulfil these human rights, and we know that these human rights are systematically violated, disregarded and non-fulfilled in all regions of our planet. Universal standard setting by means of legally binding treaties and universal monitoring of states' compliance with their human rights obligations constitute important achievements from the last sixty years. *The gap between the high aspirations of human rights and its sobering realities on the ground, between human rights law and its implementation, between the lofty rhetoric of governments and their lack of political will to keep their promises is the major problem, and bridging this gap the major challenge of our time.* We know what needs to be done to empower the people of our globalized world to live in dignity, enjoying freedom from want and freedom from fear, and we have the global resources and powers to fulfil this dream.

[2]

Nevertheless, *we lack a clear agenda for action and the political leadership to put this knowledge and these resources to use.* The commitment of governments to take effective action to protect people in other countries suffering from gross and systematic human rights violations has weakened since the turn of the century. For various reasons, including a lack of empathy in rich countries for the billions of people suffering from poverty, a North-South divide, and recurring tensions between East and West, *the international community now finds itself in a veritable human rights crisis.*

[3]

The experience of the last 60 years teaches us that much can be achieved, and actually has been achieved, in the implementation of human rights, even if a common political will has not always been apparent. When the Universal Declaration was drafted, many peoples in Africa, Asia, the Pacific and Caribbean regions were still living under colonial rule and oppression. On the basis of the right of peoples to self-determination, many peoples around the world gained independence and joined the United Nations as equal members. Fascism was eradicated in Western Europe, apartheid in Southern Africa, military dictatorships were overthrown in Latin America, authoritarian Communist regimes in Eastern Europe, and one party dictatorships in Africa. After the end of the Cold War, the leaders of the world assembled in 1993 at *the Vienna World Conference on Human Rights*, reaffirmed the universality, indivisibility and interdependence of all human rights, adopted the Vienna Declaration with a comprehensive Programme of Action and agreed to create the Office of the *High Commissioner for Human Rights* as the UN official with principal responsibility for facilitating the implementation of the Vienna Programme of Action, which still constitutes the main basis for UN activities in the field of human rights.

[4]

For the first time in history, the importance of human rights for the maintenance of *international peace and security* was recognized by the Security Council, and human rights were included as essential civilian components in newly designed peacekeeping and peace-building operations, as well as in UN transitional administrations, such as those established in Kosovo and East Timor. In cases of gross and systematic human rights violations, the Security Council even took enforcement action in accordance with Chapter VII

of the UN Charter by imposing economic sanctions, authorizing military force and establishing *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda. These tribunals led to the rapid finalization of the Rome Statute of the *International Criminal Court* in 1998. In addition to war crimes, these and other criminal tribunals, such as those in Sierra Leone, East Timor and Cambodia, are competent to deal with the most serious and systematic human rights violations, such as genocide and crimes against humanity, committed both during armed conflict and in times of peace.

[5]

Human rights were also linked with the *development discourse*. In 1986, the General Assembly proclaimed the right to development as an “inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”¹. The United Nations Development Programme gradually moved from an essentially macroeconomic notion of development to the concept of human development, which in fact bridged the gap between economic development and the legal human rights discourses. By the end of the century, poverty reduction was regarded by the international donor community, including the World Bank and the International Monetary Fund, as the overarching goal of development cooperation. This process culminated in the unanimous adoption of the UN Millennium Declaration in September 2000 with the *Millennium Development Goals* as a series of time-bound targets for the realization

of essential human rights, such as freedom from extreme poverty and the related rights to food, health, education and gender equality. The MDGs and the fundamental values they seek to protect have come to form a major input into the development philosophy: they provide the framework of the development discourse and the rationale guiding the development activities of many states. Regrettably, the normative force of the MDGs has not, however, been translated into any significant progress in eradicating poverty and realizing essential human rights.

[6]

Poverty remains the gravest human rights challenge in the world, with more than one billion people living in conditions of extreme poverty, and a further three billion people around the world robbed of the chance to better their lives and climb out of poverty. All of the targets, such as halving the proportion of people whose income is less than one dollar a day and the proportion of people who suffer from hunger, or achieving universal primary education, were to be fulfilled by 2015. Whilst some limited progress has been achieved during the first eight years of implementing the MDGs, in particular in East and South Asia, we unfortunately must realize that none of these ambitious global goals and targets will actually be reached in the remaining seven years. Indeed, in the face of a global economic slowdown and the food security and oil crisis, these goals have become even less attainable². The recent food crisis illustrated clearly that the number of people suffering from hunger is on the increase rather than decreasing: various policies of states, in particular biofuel substitution policies, have had a most negative impact on the realization of

¹ Declaration on the Right to Development, *A/RES/41/128* of 4 December 1986.

² United Nations, *The Millennium Development Goals Report 2008* (United Nations, New York, 2008), p 3.

the right to food³ and on poverty eradication. The same holds true for access to education, health care, justice and other services essential to enable the poor to lift themselves out of poverty. With the process of urbanization and the growth of megacities, the number of slum-dwellers is rapidly increasing, as is the prevalence of HIV/AIDS and environmental degradation. Sub-Saharan Africa is at the epicentre of this current development crisis.

[7]

The plight of the poor is aggravated because they are denied access to justice⁴. Other major challenges are security-related, including ethnic and religious tensions and systematic discrimination on various grounds, armed conflicts, organized crime, terrorism and counter-terrorism. In addition, demographic growth, urbanization, climate change, migration, recent developments in science and technology, including biomedicine, and human rights violations by non-state actors represent new challenges which need to be taken into account in a future-oriented agenda for human rights.

2. Human Dignity

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The Preamble of the UN Charter makes an explicit link between human rights and human dignity when reaffirming “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Even though this link can be interpreted as a reaction to the systematic denial of human dignity during the Nazi Holocaust, it was and remains relevant to the experiences of people in all parts of the world as a consequence of colonialism, slavery and racism. The Declaration emphasized this link in its assertion that “recognition of the inherent dignity

and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Dignity was and still is widely perceived to be the essential feature distinguishing human beings from other creatures. Philosophers grounded the claim of human dignity and the uniqueness of human beings in *human free will, in the capacity for moral choice and individual autonomy*.

[9]

Human dignity, which is inherent in all human beings, is the moral and philosophical justification for equality and other universal human rights. At the same time, only certain violations of human rights constitute an attack on human dignity. If a journalist has to pay a fine for having published a critical article, this might constitute a violation of her freedom of expression, but it does not necessarily have any effect on her dignity. If she is put into jail, the situation might change. If she is subjected to rape or any other form of torture aimed at extracting a confession or changing her opinion, this constitutes a direct attack on the core of her dignity. This restricts her free will, autonomy and moral choice, making her powerless by means of humiliation and dehumanization.

The ultimate form of powerlessness is slavery as it legally deprives people of their capacity as human beings, including human dignity and autonomy. Trafficking is a modern manifestation of this. As the World Bank study “Voices of the Poor” has shown, powerlessness is also the central theme of poverty. More than suffering from hunger and ill-health, poor people whose rights are not respected suffer from the lack of power to change their situation and lift themselves out of poverty. That is why pushing people into poverty constitutes an attack on human dignity as much as slavery or torture does. The same holds true for discrimination. If human beings are deprived of certain rights only because they are different from

other human beings on the grounds of their ethnic origin, colour, gender, religion, age, sexual orientation or physical or mental disability, they feel powerless, humiliated and deprived of human dignity. Such an attack on human dignity is aggravated if systematic practices of discrimination lead to apartheid, ethnic cleansing or even genocide, as occurred during the Nazi Holocaust, and more recently in Bosnia and Herzegovina and Rwanda.

[10]

The notion of *human dignity* as an essential feature of human beings is a *universal concept*. Indeed, the concept of dignity transcends cultural difference and can be found in all major religions of the world. As with the Universal Declaration and most core UN human rights treaties, all major regional human rights instruments are based on the concept of human dignity⁵. It follows from a combined reading of various international and regional human rights instruments that, although human dignity serves as a moral and philosophical justification for all human rights, only certain human rights are directly linked to the concept of human dignity. Typical examples of threats to human dignity are poverty and starvation, genocide and ethnic cleansing, slavery, trafficking in human beings, torture, enforced disappearance and other forms of arbitrary detention, racism and similar forms of discrimination, colonialism and foreign occupation and domination.

*Powerlessness, humiliation and dehumanization are the essential dimensions of such attacks on human dignity. The present Agenda primarily aims at addressing human rights issues directly linked to human dignity*⁶.

3. Shared Responsibility: the 21st Century Approach

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In 1948 the General Assembly proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...” According to Article 28, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” *Under international human rights treaty law, it is primarily states that have direct international obligations to respect, fulfil and protect human rights. The obligation to respect requires states to refrain from arbitrary or unjustified interference with human rights.*

⁵ Resolution on the Negative Impact of the Worsening of the World Food Crisis on the Realization of the Right to Food for All, *HRC Res. S-7/1* of 22 May 2008. ⁶ Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor, Vol. 1* (United Nations, New York, 2008).

⁷ See, for example, the following major human rights instruments from all regions of the world: Preamble of the American Declaration of the Rights and Duties of Man 1948; Article 5(2) of the American Convention on Human Rights 1969/78; Preamble and Article 5 of the African Charter on Human and Peoples' Rights 1981/86; Preamble and Articles 2(3), 17, 20(1), 33(3) and 40(1) of the Revised Arab Charter on Human Rights 2004/08; Preamble and Chapter I (Articles 1 to 5) of the Charter of Fundamental Rights of the European Union 2005; Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997/99 with two Additional Protocols on the Prohibition of Cloning and on Transplantation of Organs and Tissues of Human Beings. ⁸ Although genetic engineering, reproductive cloning and similar practices in biomedicine may have consequences directly linked to human dignity, the present Agenda cannot address these problems.

The obligation to fulfil requires states to take the legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the greatest extent possible and that violations are prevented. The obligation to protect requires states to take positive measures aimed at preventing and remedying human rights violations committed by private persons. In other words, traditional human rights law does recognize that human rights may be violated by non-state actors, but – apart from individual responsibility under international criminal law for war crimes, genocide and crimes against humanity – does not establish any procedures for holding them directly accountable at the international level.

[12]

This traditional human rights law approach no longer responds to the actual threats to human rights in the globalized world of the 21st century. There are many reasons why *human rights abuses by non-state actors are on the increase*. Policies of deregulation and privatization have led to an erosion of governmental power and responsibilities and the taking over of essential governmental functions by private business, such as in the fields of education, health services, water management, social security, internal security, policing or prison administration. Transnational corporations operate on budgets which by far exceed those of smaller states and are so powerful that they can no longer be effectively controlled by governmental authorities of the home state or the states in which they operate. Internal armed conflicts and transnational organized crime lead to a weakening of governmental power and in some states, above all in Africa, to the phenomenon of fragile or failed states where various non-state actors exercise power without any direct accountability for human rights violations. In post-conflict situations, the United Nations and relevant regional inter-governmental organizations, by means

of highly sophisticated peace-building operations or transitional administrations, in effect exercise governmental functions without being directly accountable under international treaty law. The same holds true for the military, financial and economic power exercised respectively by NATO, the World Bank, the World Trade Organization and similar inter-governmental organizations. The international community must look for ways to make international institutions accountable under international human rights law standards.

[13]

International law, therefore, must move from the model of exclusive state responsibility to a 21st century approach of shared responsibility. Shared responsibility means, first of all, that non-state actors can be held directly accountable for actions that violate human rights. If a transnational corporation, for example, violates international labour standards, resorts to forced labour, child labour, forced evictions of the local population or arbitrary killings by private security forces, it should be held directly accountable, not only under international criminal law, but also under other fields of international law. In addition, it should avoid complicity in human rights violations committed by governments. But *responsibility also includes positive actions aimed at progressively fulfilling human rights.* If a transnational corporation engages in business in an area where the local population is starving and living under conditions of extreme poverty, it has a responsibility to address this situation. This could be done, for example, by means of community development projects in the fields of education, health care or food production.

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In a globalized world, it is no longer sufficient to rely exclusively on national and local governments for the protection and fulfilment of human rights, as they are either unable or unwilling to address human rights violations that their populations suffer because of the

actions or policies of entities beyond their control. All of us, the international community, i.e. inter-governmental and non-governmental organizations, civil society, business, the media, the donor community and other organs of society, foreign governments as well as private individuals, have a shared responsibility to find effective ways to facilitate the implementation of human rights for all. This 21st century approach is what the Universal Declaration envisaged 60 years ago when it created the entitlement to a social and international order in which all human rights can be fully realized. Although the progressive realization of human rights through international assistance and cooperation forms part of international treaty law⁷, the international community is extremely reluctant to interpret these provisions as legal obligations of specific duty-bearers. In 2005, world leaders agreed on their joint “responsibility to protect” populations from genocide, war crimes, ethnic cleansing and crimes against humanity⁸. *It is high time to create a similar international responsibility to protect human beings against other attacks on their dignity, above all extreme poverty and consistent violations of economic, social and cultural rights.*

4. Freedom from Want: Eradicating Poverty

4.1 The Millennium Development Goals

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Today, more than one billion people – one in every six human beings – live in conditions of extreme poverty

without adequate access to food, health, education, shelter, clothing, water and justice, and without protection from discrimination, violence and environmental hazards. Four billion people – almost two thirds of the present world population – are robbed of the chance to better their lives and climb out of poverty because they are excluded from the rule of law⁹. *Poverty is not simply a fate, it is made by human beings and it can be eradicated by human beings.* Poverty is by far the most systematic and dramatic violation of essential human rights, both in the sphere of economic, social and cultural rights as well as in the sphere of civil and political rights. But poverty cannot be eradicated solely by actions taken by national governments of the poor countries in which most poor people live. Eradicating poverty is the most striking example of a human rights obligation which can only be undertaken and implemented effectively by the international community as a whole. It is the most urgent responsibility of all of us.

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Poverty eradication has been accepted as the overarching goal of international development by the World Bank, the International Monetary Fund, the United Nations Development Programme, the Organisation for Economic Co-operation and Development and bilateral donors. To halve by 2015 the proportion of people who suffer from hunger and who live under conditions of extreme poverty constitutes the most prominent of the *Millennium Development Goals* solemnly proclaimed by the world’s leaders during the Millennium Summit of September 2000.

⁷ See, for example, Articles 2(1) and 11 of the International Covenant on Economic, Social and Cultural Rights.

⁸ 2005 World Summit Outcome, A/RES/60/1 of 24 October 2005.

⁹ Commission on Legal Empowerment of the Poor, *supra* note 4.

In 2005, a practical plan to achieve the Millennium Development Goals was presented by the Millennium Project¹⁰. In his report “In larger freedom”, the Secretary-General of the United Nations presented a series of far-reaching recommendations to Heads of State and Government on how to reach this ambitious goal, taking into account the development consensus agreed on in 2002 at the International Conference on Financing for Development held in Monterrey, Mexico, and the World Summit on Sustainable Development held in 2002 in Johannesburg, South Africa¹¹. None of these recommendations, addressed both to developing and developed countries and to the international community as a whole, has lost any significance three years later. Now we are more than half way from 2000 to 2015. But the political will to take the action necessary for the effective implementation of the Millennium Development Goals continues to be lacking in both rich and poor countries, and the progress in achieving these goals after eight years is highly disappointing: while the number of people living in extreme poverty decreased in Asia and overall between 1990 and 2005, it rose by 100 million in sub-Saharan Africa; in addition, recent high food prices may have had the effect of increasing the number of poor by over 100 million¹².

[17]

Although the Millennium Development Goals are formulated as precise time-bound targets that address many dimensions of poverty and exclusion, including hunger, lack of education and disease, the international human rights framework has not yet played a central role in supporting and influencing development planning to meet the Goals by 2015. Each Millennium Development Goal should be interpreted in the context of human rights and the existing legal obligations of

states to progressively realize rights to food, education and health among others. Increased efforts should be made to ensure that the MDG targets and indicators effectively correspond to economic, social and cultural rights, that gender equality is mainstreamed and that marginalized and disadvantaged groups are prioritized. *We must, therefore, transform the goal of eradicating poverty from a merely voluntary development target into a legally binding human rights obligation of poor and rich countries and other actors of the international community alike.* Such an obligation should equally be incorporated into the national laws of states, whether as a constitutional right or through ordinary legislation, in order that courts and other domestic organs can apply and uphold the international standards in practice.

4.2 A Human Rights Based Approach to Poverty Reduction

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One way of achieving this aim is by adopting a *human rights based approach to development and poverty eradication*. In 2006, the UN High Commissioner for Human Rights adopted Principles and Guidelines for a Human Rights Based Approach to Poverty Reduction Strategies¹³. These Principles and Guidelines define poverty from a human rights perspective as “the denial of a person’s rights to a range of basic capabilities – such as the capability to be adequately nourished, to live in good health, and to take part in decision-making processes and in the social and cultural life of the community”. The denial of certain human rights is related to poverty when two conditions are met. First, the human rights involved must be those that relate to the capabilities that are considered basic by a given society. Secondly, inadequate command

over economic resources must play a role in the causal chain leading to the non-fulfilment of human rights¹⁰. According to the Principles and Guidelines, the most fundamental way in which empowerment occurs is through the introduction of the very concept of rights in the context of poverty reduction policy-making. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation and implementation of poverty reduction strategies. The Principles and Guidelines propose that *human rights principles should inform both the process of formulating, implementing and monitoring a poverty reduction strategy as well as the content of such a strategy.*

[19]

The key components of the Guidelines are: the identification of the poor and the participation of all; use of the framework of national and international human rights as a basis for a poverty reduction strategy; equality and non-discrimination; monitoring and accountability of states; and international assistance and cooperation. The content of a human rights-based poverty reduction strategy consists in the integration of specific human rights standards concerning rights which are particularly relevant to the context of poverty reduction: the rights to work, to adequate food and housing, health, education, personal security and privacy, equal access to justice, and political rights and freedoms.

4.3 Access to Justice and the Rule of Law

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Another way of empowering the poor to lift themselves out of poverty is a *rule of law approach*. At the end of the Cold War, one of the main conclusions that the Conference on Security and Cooperation in Europe (CSCE) was able to reach at the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE was that human rights are the foundation of freedom, peace and justice, which in turn forms the basis of the rule of law and democracy. The rule of law meant not merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression¹¹. The rule of law approach has since developed and today informs the international community's understanding of empowering the poor. According to the recently published report of the Commission on Legal Empowerment of the Poor, "in the 21st century, legal empowerment of the four billion excluded is the key to unlocking vital energies needed to end poverty and build a more stable and peaceful world¹²". The reasons for legal exclusion of the majority of the world's population are numerous and vary from country to country. However, the Commission identified four major common grounds: Poor people are denied access to a well-functioning

¹⁰ UN Millennium Project, 'Investing in Development: A Practical Plan to Achieve the Millennium Development Goals' (Earthscan, London, Sterling Va, 2005). ¹¹ United Nations Secretary-General, 'In larger freedom: towards development, security and human rights for all: Report of the Secretary-General' of 21 March 2005 on the occasion of the Follow-up to the outcome of the Millennium Summit, UN Doc. A/59/2005, pp. 55 et seq. ¹² United Nations Secretary-General, 'MDG Action Points: Addendum to the background note by the Secretary-General on Committing to Action: Achieving the Millennium Development Goals' (New York, 18 September 2008), p. 2. ¹³ OHCHR, 'Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies' (OHCHR, Geneva, 2006). ¹⁴ See OHCHR, 'Human Rights and Poverty Reduction: A Conceptual Framework' (United Nations, New York, Geneva, 2004), p. 10. ¹⁵ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 29 June 1990) para 2. ¹⁶ Commission on Legal Empowerment of the Poor, supra note 4.

justice system; they lack effective property rights; they suffer unsafe working conditions because their employers often operate outside the formal system; and they are denied economic opportunities because their property and businesses are not legally recognized. Consequently, they cannot access credit, investment, global or local markets.

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On the basis of these findings, and having conducted national consultations in 22 countries around the world, the Commission developed a comprehensive agenda for legal empowerment encompassing four crucial pillars that must be central in national and international efforts to give the poor protection and opportunities: *access to justice and the rule of law, property rights, labour rights and business rights*.⁶ In practical terms, the Commission suggests that the United Nations Development Programme should take the lead and work with other UN agencies, such as the World Bank, the International Labour Organization, the Food and Agriculture Organization, and UN-HABITAT (the United Nations Human Settlements Programme), to develop a coherent multilateral agenda for the legal empowerment of the poor. This agenda should also become a core mission for regional organizations, regional banks, civil society and community-based organizations, the business community, religious communities and professional associations. *Strengthening democracy is considered essential to legal empowerment of the poor: no democracy has experienced famine.* Similar to the High Commissioner's human rights based approach to poverty reduction strategies, the Commission concludes that "It is time for a renewed anti-poverty agenda aimed at including the vast majority of the world's population in the systems of rights and obligations that have shown their ability to foster prosperity over the past 60 years."⁷

4.4 Preventable Poverty

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With almost two thirds of the world's population living in poverty, the elimination of poverty is clearly not achievable in the near future. In light of this, an approach to addressing the actual situation of poverty in which the majority of the world's population live is to *work on creating social security safety nets and to focus on preventable poverty.* Preventable poverty refers to that poverty which could be avoided using the resources already available to the state. Policies of preventable poverty have an essential role to play in protecting against violations of economic, social and cultural rights. States should scrutinize and review what can be done to prevent and reduce poverty by using all available national resources. Moreover, this is not a responsibility which lies with national governments alone. The international community should also accept its responsibility to protect against gross violations of economic, social and cultural rights and to manage preventable poverty. *The international community as a whole should have arrangements and institutions in place to detect and act on situations of consistent patterns of gross violations of economic, social and cultural rights.*

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As a corollary of this obligation of national governments and of the international community, those responsible where parts of the population are suffering from preventable poverty must be held to account. Accordingly, *national courts should be vested with the competence to hear claims from victims of poverty* in situations where the government could have acted to prevent this but failed to do so. For this to occur, relevant international human rights obligations must be incorporated into domestic legal systems, either at a constitutional level or through ordinary legislation. Jurisprudence of the Constitutional Court of South Africa⁸ and the

Indian Supreme Court²⁰ illustrate the role judicial determinations can play in developing a human rights based approach to tackling poverty as a violation of human rights.

4.5 The Global Economy

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Whilst historically the connection between international trade and finance and human rights has not always been apparent, the impact on poverty and powerlessness in a globalized world of international trade agreements and the policies of international financial institutions can no longer be ignored. The issue is partly one of *policy coherence*: the World Commission on the Social Dimension of Globalization noted that different international institutions are assigned responsibility for international finance, development, trade and social policy, and no adequate coordination mechanism between these has been created²¹. This issue can be addressed both at the level of the international institutions, and at a national level, through regular national reviews of the social implications of economic, financial and trade policies²².

[25]

The incorporation of international human rights principles into international trade and finance laws and agreements has the potential both to mitigate the negative effects of globalization on the poor and to contribute to the eradication of poverty. The responsibility to protect human rights in the context of acceptable trade practices and policies lies

not only with states but also with the international institutions involved.

4.6 Migration and Urbanization

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In a globalized world, and often as a result of the negative impacts of globalization on the poor, recent times have witnessed an *increase in migration as a response to poverty*. In this regard, there is a responsibility of states to not only seek to eradicate poverty in all parts of the world, but to mitigate the effects of poverty through their migration policies. *Migration policies should be adopted and implemented in accordance with international human rights obligations*, including principles of non-discrimination and due process, procedural safeguards, and the obligation to ensure that those at risk of persecution not be returned. As migration has an impact on all countries, whether as origin, transit or destination countries, the international community has a shared responsibility in addressing this issue. Related to this phenomenon of global migration is the *growing issue of urbanization and the growing number of slum-dwellers*. By 2030, the level of urbanization in the world is anticipated to increase to 59.9% of the world's population, 13.2% above the level in 2000²³. Research based on current trends shows that by 2050, parallel to rapid urbanization and the growth of megacities, the world slum population is expected to triple from its current level of 1 billion to 3 billion²⁴. A human rights based approach should also be applied by states in formulating policies to manage urban problems.

¹⁹ Ibid., pp. 38-9. Business rights consist of rights to vend, and to have a workspace and related infrastructure and services. ²⁰ Ibid., p. 11. ²¹ See, for example, Government of Republic of South Africa v Grootboom 2001 (1) SA 46 (CC). ²² See, for example, Kapila Hingorani v State of Bihar 2003 (6) SCC 1. ²³ World Commission on the Social Dimension of Globalization, 'A Fair Globalization: Creating Opportunities for All' (ILO, Geneva, February 2004), para 509. ²⁴ Ibid., paras 605-6. ²⁵ UN-HABITAT, 'Enhancing Urban Safety and Security: Global report on human settlements 2007' (Earthscan, London, Sterling Va, 2007), p. 337. ²⁶ United Nations Secretary-General, 'Committing to action: achieving the Millennium Development Goals, Background note by the Secretary-General' (New York, 25 July 2008), para 50.

5. Freedom from Fear: Enhancing Human Security by Preventing Violence

5.1. Sources and Manifestations of Violence

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Human beings – from early childhood until old age – have a deeply ingrained desire to be protected against violence. We only feel secure if we live in a society where most of the obvious sources of violence, whether emanating from nature or from our fellow human beings, are well under control. *Some groups of human beings are more vulnerable to violence than others.* For example, women and children are more often victims of domestic violence than men; the elderly or persons with disabilities are easier targets of violent crime than others; aliens and persons belonging to political, ethnic or sexual minorities are more frequently subjected to police violence than other citizens; the poor and homeless are more vulnerable to natural and environmental disasters than the rich; indigenous communities are particularly vulnerable to forced evictions in the interest of business; groups of persons who are discriminated against on ethnic or religious grounds might more easily become victims of internal armed conflicts, ethnic cleansing and genocide than the majority population; and citizens of weak and fragile states are more often targets of organized crime, aggression, international and domestic armed conflicts, occupation and foreign domination than citizens of powerful states. From a human rights perspective, comprehensive anti-discrimination policies, democratic governance and measures aimed at providing special protection to vulnerable groups, therefore, significantly contribute to the prevention of violence and the strengthening of human security.

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Despite being one of the most clearly condemned forms of violence, *violence against children* is possibly one of the most invisible and prevalent forms of violence²⁵. This violence remains unregistered and unpunished, sometimes even condoned by society under the guise of discipline or tradition. The inadequacy of justice and security systems and the pretexts of privacy or incontestable adult authority over children are used to shield perpetrators and keep violence against children insulated by walls of silence. Violence against children, in the settings of the home, school, institutions, workplace and community, takes a variety of forms and is influenced by a wide range of factors, from the personal characteristics of the victim and perpetrator to their social, cultural, and physical environments. Economic development, social status, age, sex and gender are among the many factors associated with the risk of violence. Although the consequences of violence may vary according to its nature and severity, the short- and long-term repercussions are very often grave and damaging.

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Some of the sources of violence and threats to human security, such as natural disasters, armed conflicts, ordinary crime, state repression, torture, slavery and domestic violence, have existed for a long time. Those of a more recent nature include genocide, enforced disappearances and threats emanating from weapons of mass destruction. But there are also threats to human security which emerged only or at least increased dramatically during the age of globalization: transnational organized crime including trafficking in human beings and similar slavery-like practices, global terrorism and human-made disasters, such as those emanating from nuclear power plants and climatic change. The fight against major threats to human security, in particular

international and internal armed conflicts, is at the centre of the traditional security agenda of the United Nations. Since some of the worst human rights violations occur during wartime, preventing international and internal armed conflicts and controlling threats from nuclear, biological and chemical weapons must also become part of a comprehensive agenda for human rights. Other sources of violence, such as state repression, torture, slavery, genocide, racism, colonialism and enforced disappearances have traditionally been at the centre of the struggle for human rights. Most threats emanating from non-state actors, in particular organized crime, trafficking, terrorism and domestic violence, have only recently been recognized as human rights problems triggering obligations for states and the international community to protect victims against such types of violence. Finally, there are threats to human security which are global in nature and which can only be combated by global action, such as the rising sea level caused by global warming and climate change. Irrespective of the nature of such threats, it is essential that we combat them preventively, *by addressing the root causes with effective early warning systems and early action strategies making use of the full range of instruments available as part of the security, development and human rights agendas.* In the following, we will focus on some of the major threats to human security from a human rights perspective.

5.2. Armed Conflicts and Weapons of Mass Destruction

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Since human rights are seriously violated during armed conflicts, reducing the risk and prevalence of

international and internal tensions and armed conflicts is essential for preventing human rights violations. Efforts have been made in recent years to protect the human rights of vulnerable groups in the context or aftermath of armed conflict, including the adoption of the Optional Protocol to the Convention on the Rights of the Child banning the use of child soldiers, and of the Guiding Principles on Internal Displacement. However, human rights principles equally have a role in conflict prevention, as human rights abuses themselves constitute some of the root causes of armed conflict. For example, racism, nationalism, xenophobia and religious intolerance often lead to ethnic and religious tensions which can easily escalate into armed conflicts. Article 20 of the International Covenant on Civil and Political Rights, therefore, requires states parties to prohibit by law any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This important preventive provision has been subject to criticism and reservations for unduly interfering with freedom of expression. This criticism is ill-conceived and has led to a lack of political will to take early and effective criminal action against individuals and groups inciting to racial or religious violence. Despite the fact that freedom of expression is an important human right and a cornerstone of democratic governance, it carries with it special duties and responsibilities and may be subject to certain restrictions necessary for the protection of national security, public order or the rights and reputation of others. Recent experiences have shown the need for a better understanding of the principle of tolerance and the need to demonstrate religious

²⁵ See Paulo Sérgio Pinheiro, 'World Report on Violence against Children: United Nations Secretary-General's Study on Violence against Children' (United Nations, Geneva, 2006).

sensitivity in relation to this right. The concerns of the international community expressed at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 reflect this tension, recognizing at the same time the contribution the exercise of the right to freedom of expression can make to fighting intolerance and promoting respect for human dignity, and the use to which such a right can be put for purposes contrary to respect for human values, equality, non-discrimination, respect for others and tolerance²⁶.

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In general, experience shows that *democratic governance* based on the rule of law, human rights and protection of minorities is one of the best safeguards against armed conflict. Democratic governments usually dispose of effective national capacities to manage conflict without resorting to violent means of suppressing dissent and minority movements. Other means of reducing the risk of armed conflict are combating poverty, exclusion and discrimination, controlling the sale and possession of arms and various mediation efforts.

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During armed conflicts, whether international or internal, human rights continue to be applicable alongside international humanitarian law, unless the respective government derogates from certain obligations in accordance with the procedures foreseen in international human rights treaties for states of emergency. It is not correct to hold that human rights law only applies in times of peace and is simply replaced by international humanitarian law in times of war.

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In post-conflict situations, human rights play an increasingly important role for establishing sustainable peace. Peace can only be achieved on the basis of reconciliation between the different parties to the conflict and between victims and perpetrators of violence, war crimes and gross human rights violations. Reconciliation demands restorative justice, which in turn must be based on the full recognition of the truth by all parties. Impunity for the crimes committed during armed conflict stands in the way of sustainable peace. The widely held opposite view that accountability for human rights violations during armed conflicts constitutes an obstacle to peace negotiations rather than a necessary element of peace agreements is short-sighted.

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In addition to contributing to dealing with the past and the right of victims to know the truth about past human rights violations, human rights and democratization also constitute essential civilian components of contemporary *peace-building operations* under the authority of the United Nations and the respective regional organizations. It is particularly important for post-conflict societies to quickly develop, with the assistance of the international community, effective democratic structures including free and fair elections and media freedom as well as a well-functioning system for the administration of justice, including independent judges and lawyers, professional law enforcement agencies and humane prison conditions. In addition, non-judicial structures for the promotion and implementation of human rights, such as national human rights institutions, equal opportunity commissions, ombuds-institutions and truth and reconciliation commissions, should be developed in post-conflict societies.

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Finally, *weapons of mass destruction* (nuclear, biological and chemical) as well as landmines and cluster bombs constitute particularly grave threats to human security during armed conflicts. From a human rights perspective, it is not only the actual use, but also the production, testing, trade and proliferation of such weapons, especially in violation of international treaties, which constitute a grave threat to the rights to life and physical integrity of many millions of human beings who might possibly be affected.

5.3 Racism, Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity

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Genocide, war crimes, ethnic cleansing and crimes against humanity, which include murder, enslavement, deportation, arbitrary detention, torture, rape and other forms of grave sexual violence, enforced disappearance and apartheid if committed as part of a widespread or systematic attack directed against any civilian population, constitute the most serious violations of human rights. Incitement to racial and religious hatred and discrimination affront human dignity and frequently fuel the commission of these most serious human rights violations.

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The *International Criminal Court* and the *ad hoc* international criminal tribunals play an important role in deterring the commission of genocide, crimes against humanity and war crimes by bringing individual perpetrators to justice. Moreover, the establishment of the International Criminal Court as a global institution independent from national governments is a

major step forward in the enforcement of criminal justice and the establishment of accountability for the most serious crimes of concern to the international community. These courts and tribunals must be given full political and financial support by the international community.

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In 2005, the United Nations World Summit, on the basis of a report by the International Commission on Intervention and State Sovereignty²⁶, adopted the concept of the “*Responsibility to Protect*” with regard to these crimes. The concept was subsequently endorsed by both the General Assembly and the Security Council²⁸. It rests on three pillars: the legal obligation of states to protect their populations from these crimes; the commitment of the international community to assist states in meeting these obligation by taking early, preventive steps; and the responsibility of other states to intervene by all appropriate means, including enforcement measures authorized by the Security Council under Chapter VII of the UN Charter, in order to protect populations against these human rights violations if the respective government is not able or willing to adequately protect them.

[39]

The “*Responsibility to Protect*” is an important new task of the Security Council in the field of human rights, which underscores the fact that gross and systematic human rights violations are no longer considered internal state matters. But the Security Council still has to prove that it lives up to this new task and responsibility within its current structure with five permanent members having the right to veto any enforcement action.

²⁶ Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 31 August – 8 September 2001 UN Doc. A/CONF.189/12, paras 88-92. ²⁷ International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty’ (International Development Research Centre, Ottawa, 2001). ²⁸ A/RES/60/1 of 24 October 2005; S/RES/1674 (2006) of 28 April 2006.

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In addition to the political will required from governments of UN member states, above all from the five permanent members of the Security Council, much still needs to be done to implement fully the concept of the “Responsibility to Protect”. In particular, *the UN should enhance its early warning mechanisms by fully integrating the system’s multiple channels of information and monitoring*, including the human rights treaty bodies, the special procedures of the Human Rights Council and its own Universal Periodic Review mechanism. In addition, *the UN should establish military standby capacities as a first step for a standing rapid deployment force as an early action mechanism*.

5.4 Terrorism and Counter-Terrorism

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Global terrorism constitutes one of the most serious universal threats to human security and the right of human beings to live in freedom from fear. Terrorist attacks are intended to cause death or serious bodily harm to civilians with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act²⁹, so undermining the international world order and the rule of law. They violate fundamental principles of human rights. The victims are usually human beings who have nothing to do with the political purpose behind the terrorist attack, yet whose rights and dignity are inevitably threatened and violated. The growth in global terrorism is emblematic of the increase in recent years in human rights violations and threats to peace and security emanating from non-state actors: it is typically non-state actors who are responsible for terrorist attacks.

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In fighting terrorism, governments and the international community have so far primarily addressed the symptoms rather than the *root causes of this global phenomenon*. Even though the UN General Assembly in September 2006 adopted a Global Counter-Terrorism Strategy with a Plan of Action³⁰ which calls upon member states to undertake measures aimed at addressing the conditions conducive to the spread of terrorism, such as prolonged unresolved conflicts, poverty, discrimination, political exclusion and socio-economic marginalization, as well as lack of good governance, rule of law and human rights, the international community, in reaction to the horrible attacks of 11 September 2001, adopted and still maintains a security-dominated counter-terrorism strategy which fails to address the real causes of global terrorism. While the plan of action speaks about promoting dialogue, tolerance and understanding among civilizations, cultures, peoples and religions, promoting a culture of peace, justice and human development, of ensuring the timely and full realization of the Millennium Development Goals by eradicating poverty and promoting sustainable development and global prosperity for all, this lofty rhetoric is in contrast with the way states act in practice. None of the prolonged conflicts in the Middle East has been resolved by any genuine dialogue based on tolerance and mutual understanding, and the eradication of poverty agenda of the Millennium Declaration has in fact been replaced by an eradication of terrorism agenda by military, intelligence and similar security-dominated means.

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The same holds true for the *role of human rights and the rule of law in the fight against terrorism*. While the UN Global Counter-Terrorism Strategy recognizes that “effective counter-terrorism measures and the protection of human rights are not conflicting goals,

but complementary and mutually reinforcing”, and though repeated resolutions of the Security Council, General Assembly, the former Commission on Human Rights and the present Human Rights Council stressed that *any measure taken to combat terrorism must comply with state obligations under international human rights, refugee and humanitarian law*¹¹, in practice the security-dominated counter-terrorism strategy seriously undermines core principles of the international rule of law and protection of human rights. The rights most obviously affected by this strategy are the rights to personal liberty and integrity, to fair trial and equal access to justice, to privacy and above all the right not to be subjected to torture and enforced disappearance. By using the military rhetoric of fighting a “war on terror”, by keeping suspected terrorists in secret places of detention and placing them outside the protection of the rule of law and international human rights, governments in fact play into the hands of terrorists. It is high time to fundamentally change this security-dominated strategy and to take seriously what the Secretary-General so convincingly expressed in his report “In larger freedom”¹²: “Terrorists are accountable to no one. We, on the other hand, must never lose sight of our accountability to citizens all around the world. In our struggle against terrorism, we must never compromise human rights. When we do so we facilitate achievement of one of the terrorist’s objectives. By ceding the moral high ground we provoke tension, hatred and mistrust of Governments among precisely those parts of the population where terrorists find recruits.”

5.5 Organized Crime and Human Trafficking

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With the dramatic increase of *transnational organized crime* in the age of globalization, the links between the crime prevention and criminal justice programme and the human rights programme of the United Nations intensified. Typical examples of gross violations of human rights and human dignity by transnational criminal groups which need to be addressed globally from both a criminal justice and a human rights perspective are the illegal smuggling of refugees and migrant workers, as well as *trafficking in human beings*, in particular women and children, for the purposes of sexual exploitation, forced prostitution, child labour, bonded labour, servitude, forced domestic work, child pornography, the removal of organs and similar slavery-like practices. Trafficking in human beings is one of the most widespread phenomena of transnational organized crime which constitutes a direct attack on the core of human dignity of powerless victims, above all poor women and children in search of a better life abroad as a means of lifting themselves out of poverty.

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In 2000, the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, which combines the criminal justice approach directed against perpetrators with the human rights approach of protecting and assisting victims of trafficking. The main human rights concern and desire of victims of trafficking, namely to feel secure and be

¹² See UN Doc. A/59/2005 of 21 March 2005, supra note 11, para 91. So far, the international community has failed to adopt a universally agreed definition of terrorism.

¹¹ A/RES/60/288 of 20 September 2006. This strategy is based on the report of the Secretary General of 2 May 2006 entitled ‘Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy’, UN Doc. A/60/825 of 27 April 2006. ¹² See, for example, S/RES/1456(2003) of 20 January 2003, A/RES/59/191 of 10 March 2005, 60/158 of 28 February 2006, 61/171 of 1 March 2007 and HRC Res. 7/7 of 27 March 2008. ¹³ UN Doc. A/59/2005 of 21 March 2005, supra note 11, para 94.

enabled to live without fear or want, is, however, not adequately addressed. Although the Protocol rightly recognizes that poverty, underdevelopment and lack of equal opportunity constitute the main factors that make persons, especially women and children, vulnerable to trafficking³⁵, it nevertheless places the focus of inter-country cooperation on the return of the victims to their country of origin. Further, receiving states shall only “in appropriate cases” consider permitting victims to remain on their territory, “temporarily or permanently”³⁶, and return shall only “preferably” be voluntary³⁷. Notwithstanding that these two provisions form part of chapter II entitled “Protection of Victims of Trafficking in Persons”, they do not in fact provide protection to the victims but rather protect the interests of the receiving states to expel the victims. For the victims, return means going back to the conditions of poverty and desperation from which they were trying to escape. In addition, return includes the risk of reprisals from those who originally recruited them. As long as the victims have reason to fear forced deportation, they will mistrust the authorities, they will not fully cooperate with the police and the prosecutors in order to find and punish the traffickers, and they will not be able to enjoy any means of protection offered, including medical, psychological and material assistance.

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Trafficking in persons is exacerbated by the gap between rich and poor countries and by the policies of rich states seeking to combat voluntary migration from poor countries. By closing their borders to migrants, rich countries open the doors to the horrible criminal practices of traffickers, who make business by exploiting the vulnerability of the poor. In the long run, a policy of granting proven victims of trafficking permanent residence, assistance and legal employment in the receiving states together with new migration policies, improved international cooperation and prevention

efforts in countries of origin could succeed in effectively combating trafficking and thus serving both the interests of criminal justice and of human rights. Since trafficking in human beings is the most widespread practice of modern slavery which directly attacks the dignity of the victims, governments and the international community are urged to *shift their focus from an anti-migration to an anti-trafficking policy* by fully applying a human rights based approach and effectively protecting the victims of trafficking.

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Identifying and addressing the root causes of trafficking through a *policy of prevention* would ultimately be the most effective means of managing this human rights challenge. Vulnerability to trafficking is increased by: *economic factors* including poverty, unemployment and indebtedness; *social and cultural factors* including violence against women, gender discrimination and other forms of discrimination in both countries of origin and destination; *legal factors* such as inadequate legislation and public sector corruption; and *international factors* such as, on the one hand, the increased feminization of labour migration, and, on the other hand, increasingly restrictive immigration policies in destination countries, combined with demands for cheap, unprotected and exploitable migrant labour services³⁸.

5.6 Inhuman Prison Conditions, Arbitrary Detention, Torture and Enforced Disappearance

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The *right to personal liberty* is one of the oldest human rights and corresponds to a fundamental desire of human beings, since being detained severely restricts free will and autonomy. That is why many human beings, above all indigenous peoples, regard deprivation of personal liberty as an attack on their dignity. Never-

theless, deprivation of liberty is lawful under international law for a variety of purposes such as imprisonment of an offender after conviction by a competent court, pre-trial detention of persons suspected of having committed an offence, detention of aliens for the purpose of securing their deportation or quarantining of persons to prevent the spread of infectious diseases. In all these cases, the fundamental right to personal liberty needs to be balanced against legitimate state interests in terms of the necessity and appropriateness of such measures. *Detention should only be permitted if no less intrusive measure serves the purpose of achieving the particular legitimate goal, should be subject to judicial control and should be for no longer than absolutely necessary.* Nevertheless, millions of human beings in a great variety of countries around the world are victims of *arbitrary detention* for various reasons. They may be prisoners of conscience, i.e. individuals who are punished for non-violent expression of political ideas and targets of political persecution by governments, often based on discriminatory grounds.

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Most of the victims of arbitrary detention are, however, human beings who spend many years behind bars for the simple reason that the *administration of justice in their countries is not functioning*. They are arrested by police officers without sufficient reasons, held in police custody for excessive periods, often subjected to torture for the purpose of extracting a confession, and charged by corrupt prosecutors solely on the basis of their statements made during police interrogation. Many are held for many years in pre-trial detention because

judges are not independent, and because criminal trials proceed with long delays. They are treated by the police, prosecutors, judges and detention officials as criminals in flagrant violation of the right of accused persons to be presumed innocent until convicted by a competent, impartial and independent court. It is routine practice that judges finally sentence them to prison for exactly the period of time they have already spent in police custody and pre-trial detention. *Poor people* are much more vulnerable to arbitrary detention than rich people, since they lack the means to afford a lawyer, to initiate *habeas corpus* proceedings, to bribe corrupt police officers, prosecutors, judges or prison personnel. In addition, they are subjected to the most *inhuman prison conditions* since adequate food, medicine and proper hygienic facilities are often only affordable for those who pay or who are provided with those services by their families.

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There are over 9 million detainees and prisoners worldwide, whether arbitrarily detained or not⁵⁷. A large proportion of these are kept in conditions which amount to inhuman or degrading treatment and which are in violation of various civil, political, economic, social or cultural rights. In many countries of the world, not only in the South, prisons are constantly overcrowded, filthy, infected with tuberculosis and other highly contagious diseases and lack the minimum facilities necessary to satisfy a dignified existence. Inter-prisoner hierarchy and violence are common features of many prisons, and prison directors in fact often delegate their responsibility to protect detainees

⁵⁵ A/RES/55/25 of 8 January 2001, Article 9(4). ⁵⁶ *Ibid.*, Article 7. ⁵⁷ *Ibid.*, Article 8(3). ⁵⁸ European Commission, 'Report of the Experts Group on Trafficking in Human Beings' (Brussels, 22 December 2004), p. 142. ⁵⁹ International Centre for Prison Studies, 'World Prison Population List' (London, 7th Ed., 2007).

against discrimination, exploitation and violence to privileged detainees. It is not surprising that vulnerable groups, such as juveniles, persons with disabilities, gays and lesbians, aliens or members of ethnic and religious minorities suffer most under these appalling conditions. *One of the major human rights challenges we face is to improve prison conditions, through national action and with international cooperation, such that detainees can live in dignity.*

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In many states, detainees are subject to excessive periods of *solitary confinement*, for preventive and investigative purposes, as disciplinary punishment or as an aggravating condition for persons sentenced to death, life or long-term imprisonment despite the fact that long periods of solitary confinement have serious consequences for the mental health of most detainees. In addition, governments resort to the practice of *incommunicado detention* and, particularly in cases of political prisoners, of enforced disappearance. Any act of *enforced disappearance*, i.e. deprivation of personal liberty followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, is a serious attack on human dignity, as it places the victims in a powerless position outside the protection of the law and makes them particularly vulnerable to torture, arbitrary killings or similar grave abuses.

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Torture is one of the most serious human rights violations and, like slavery and enforced disappearance, constitutes a direct attack on the core of human dignity. Nevertheless, it is practiced in many countries of the world, both against political prisoners and in the course of the normal criminal justice system. It constitutes the most serious form of ill-treatment and can be defined as intentionally inflicting severe pain or suffering on a powerless person, usually a detainee, for such purposes

as extracting a confession or other information, or as punishment, intimidation or discrimination. The prohibition of torture or other cruel, inhuman or degrading treatment or punishment is one of the few absolute and non-derogable rights, even under exceptional circumstances, such as a state of threat of war, internal political instability, terrorism or any other public emergency. Although torture has been practiced on an alarming scale in a great many countries, governments and the responsible officials usually deny such practices and try to obstruct any meaningful investigations. Since torture is usually practiced behind closed doors without any independent witnesses, it is very difficult for the victims to prove such practice. Rather than investigating allegations of torture, officials in many countries resort to the habit of blaming the victims for making false allegations.

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For the first time in many years, the *absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law has been challenged by governments*, including those of highly democratic states, in the context of the *fight against terrorism* after the terrorist attacks of 11 September 2001. On the basis of the “ticking bomb” or similar scenarios, the right of suspected terrorists to personal integrity, humanity and dignity is balanced against national security interests. In order to extract intelligence information on terrorist activities and networks, suspected terrorists are put outside the protection of the law by being detained in special detention centres, often outside the territory of the detaining states, for unlimited periods of time without any criminal charges, by subjecting them to harsh interrogation methods often amounting to torture and by sending them by means of so-called “rendition flights” to countries known for their practice of torture.

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The human rights not to be subjected to arbitrary detention, torture and enforced disappearance and the minimum standards for the treatment of detainees are well defined in international human rights treaty law and the humanitarian law of armed conflict. If practiced in a widespread or systematic manner, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture and enforced disappearance also constitute crimes against humanity³⁸. In addition to the respective provisions of the International Covenant on Civil and Political Rights³⁹, the United Nations adopted special treaties on torture and enforced disappearances. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the International Convention for the Protection of All Persons from Enforced Disappearance of 2006 contain various obligations for states parties to prevent torture and enforced disappearance, to criminalize both these practices under domestic law and bring the perpetrators to justice under various types of jurisdiction, including universal jurisdiction, and to provide victims with the right to a remedy and adequate reparation. In addition, various soft law instruments provide important minimum standards relating to the rights to personal liberty and treatment of detainees⁴⁰. Finally, the Optional Protocol to the Convention against Torture of 2002 requires states parties to establish

national preventive mechanisms, i.e. independent domestic bodies entrusted with the task of carrying out unannounced visits to all places of detention and speaking in private with any detainee.

[55]

If these obligations were taken seriously by governments and properly implemented, the practices of arbitrary detention, torture and enforced disappearance could easily be eradicated. Since these practices constitute direct attacks on human dignity and particularly serious crimes and human rights violations, their eradication must receive top priority in the years ahead. As long as governments and non-state actors continue to resort to these horrendous practices, human beings under their jurisdiction cannot enjoy freedom from fear.

The international community as a whole has a responsibility to ensure that there exists no safe haven for perpetrators of such practices and for those under whose military or political responsibility such practices are tolerated.

³⁸ See, for example, Article 7 of the Rome Statute of the International Criminal Court. ³⁹ Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights.

⁴⁰ Such as the Standard Minimum Rules for the Treatment of Prisoners, ECOSOC Res. 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; the Basic Principles for the Treatment of Prisoners, A/RES/45/111 of 14 December 1990; the Code of Conduct for Law Enforcement Officials, A/RES/34/169 of 17 December 1979; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 of 9 December 1988; the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (OHCHR, Geneva, 2001); the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/55/89 of 22 February 2001; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113 of 14 December 1990; and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/37/194 of 18 December 1982.

6. Climate Change: A Global Challenge to Security, Development, Human Rights and Human Dignity in the 21st Century

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At the beginning of the new millennium, scientists were still discussing whether or not climate change was taking place, and whether or not it was human-induced. Politicians used this climate change skepticism as an excuse for not taking action. Today, this debate is over. The fourth assessment review of the International Panel on Climate Change has established an overwhelming *scientific consensus that climate change is both real and human-made*⁴¹.

[57]

Since the advent of the industrial era in the 19th century, world temperatures have increased by around 0.7°C⁴². There is overwhelming scientific evidence linking global warming to increases in the concentration of greenhouse gases in the Earth's atmosphere. Beyond a threshold of 2°C the risk of irreversible ecological catastrophes leading to unimaginable human suffering will increase sharply. But reversing the effects of climate change is a long-term endeavour. Once emitted, carbon dioxide and other greenhouse gases stay in the atmosphere for a long time. People living at the start of the 22nd century will have to live with the consequences of our emissions, just as we are living with the consequences of emissions from the time of the industrial revolution⁴³. The situation is urgent: at least from 2020, total global emissions will need to fall dramatically until 2050 if we wish to avoid the dangerous climate change threshold of 2°C global warming. Achieving this target will require immediate action and unparalleled international cooperation. So far, the world lacks a clear, credible and long-term multilateral framework that charts a

course for avoiding dangerous climate change. With the expiry of the current commitment period of the Kyoto Protocol in 2012, the international community has an opportunity to put that framework in place.

[58]

Environmental degradation and climate change are widely seen to be one of many challenges to *human development* and, therefore, part of the development agenda⁴⁴. But the recent increase in environmental disasters, which are at least partly caused by climate change, such as floods, droughts, hurricanes and food crises, brought to light that climate change is as much a challenge to *human security* as it is to human development. For poor people living in ecologically - sensitive areas - including low-lying and other small island states, low-lying coastal zones, arid and semi-arid zones, Arctic regions, countries with fragile mountainous ecosystems and areas liable to floods, drought and desertification - the increased risk of environmental disasters poses a major threat to both their aspirations to live in freedom from want and freedom from fear.

[59]

Since the anthropogenic causes of climate change are no longer disputed, this major challenge to humanity is also slowly entering the *human rights discourse*⁴⁵. There are several reasons why climate change urgently needs to be addressed using a human rights based approach. First of all, *climate change causes violations of various human rights, including the rights to food, water, shelter, property, health and life*. Secondly, *climate change raises major concerns about equality and global social justice*. While rich industrialized countries and their people are primarily responsible for climate change, it is the poor communities who suffer most from its effects: poor slum dwellers in low-lying coastal zones, subsistence farmers in arid regions, indigenous communities, people who were displaced because of

environmental disasters and who seek protection as environmental refugees and those migrating to escape the negative consequences of climate change. Finally, *climate change is a global problem that requires a global solution*. International human rights provide a convincing normative framework based on universally accepted values, with legally binding rights of human beings, corresponding obligations of duty-bearers, and mechanisms for accountability and redress. As the United Nations' Human Development Report 2007/2008 rightly stresses, allowing the tragedy of climate change to evolve would be a political failure that merits the description of an "outrage to the conscience of mankind"⁴⁶.

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*A human rights based approach to climate change will sharpen the focus on the human rights effects of both mitigation and adaptation policies*⁴⁷. Mitigation policies will necessarily have to reduce dependence on fossil fuels. Industrialized countries have started, for example, comprehensive biofuel substitution programmes, i.e. the conversion of crops for use as fuel rather than food. The effect has been to encourage farmers in rich and in poor countries to switch from food to biofuel production. Since biomass productivity is highest in tropical environments and the production costs of

biofuels, notably ethanol, are lower in poor countries, this policy has led to considerable changes in the agriculture of these countries with notable negative effects on food security, as became evident during the recent food crisis⁴⁸. A human rights based approach would help to assess the effects of these policies on food security, in particular in poor countries.

[61]

Adaptation policies refer to actions taken to adjust lives and livelihoods to the new conditions brought about by global warming and climate change. It is obvious that rich countries, such as the Netherlands, are in a better position to protect their population from rising sea levels than small island states in the Pacific. So far, climate change adaptation has been treated as a peripheral concern, and the additional funds promised by rich to poor countries in the United Nations Framework Convention on Climate Change have been made available only to a very limited extent. As the United Nations Human Development Report has rightly, though somewhat sardonically, observed, "the world's poor cannot be left to sink or swim with their own resources while rich countries protect their citizens behind climate-defence fortifications. Social justice and respect of human rights demand stronger international commitment on adaptation"⁴⁹.

⁴¹ See Intergovernmental Panel on Climate Change, Susan Solomon et al (Eds.), 'Climate Change 2007: The Physical Science Basis', Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press, Cambridge, New York, 2007). ⁴² For the following, see *ibid* and UNDP, 'Human Development Report 2007/2008: Fighting climate change: Human solidarity in a divided world' (Palgrave Macmillan, New York, 2007). ⁴³ To have a 50:50 chance of limiting temperature increase to 2°C above preindustrial level will require stabilization of greenhouse gases at concentrations around 450 parts per million (ppm) of carbon dioxide equivalent, compared to current concentrations of 380 ppm and preindustrial concentrations of less than 280 ppm. See UNDP's 'Human Development Report 2007/2008', supra note 42, pp. 1-18. ⁴⁴ See, for example, UNDP's 'Human Development Report 2007/2008', supra note 42. ⁴⁵ See, for example, International Council on Human Rights Policy, 'Climate Change and Human Rights, A Rough Guide' (International Council on Human Rights Policy, Geneva, 2008). See also Res. 7/23 of the UN Human Rights Council of 28 March 2008, entitled 'Human rights and climate change', which requests the High Commissioner for Human Rights to conduct a detailed study of the relationship between climate change and human rights. ⁴⁶ UNDP, 'Human Development Report 2007/2008', supra note 42, p.10. ⁴⁷ See, for example, International Council on Human Rights Policy, supra note 45, p. 17 et seq. ⁴⁸ The first special session of the Human Rights Council on a thematic issue was held in May 2008 in reaction to the world food crisis: see HRC Res. S-7/1 of 22 May 2008. ⁴⁹ UNDP, 'Human Development Report 2007/2008', supra note 42, p.13.

[62]

Much more research needs to be done on the effects of climate change and the various mitigation and adaptation policies on the enjoyment of human rights, above all by vulnerable people in poor countries. While rich countries continue to reject the right to development and, in particular, any legal claims of poor people and poor countries against the industrialized world to provide development cooperation, this lack of global responsibility can no longer be sustained in the light of the dramatic present and future effects of climate change on the right of poor people to have access to food, water, housing, health, life and other human rights. It is evident that climate change has been caused primarily by rich countries, while poor people suffer most from its negative human rights consequences. It is, therefore, not just a question of ethics and global justice, but an obligation of rich countries deriving from international human rights to share the major burden of mitigating the causes of climate change and of assisting poor countries in their efforts to adapt to the negative conditions brought about by climate change.

[63]

The human rights effects of climate change reveal the urgent need to move from traditional human rights law with states as the primary duty-bearers to a global human rights regime with many other duty-bearers, including international organizations, the corporate sector and global civil society. Climate change is a major threat to our common global society in the 21st century, and shared responsibility of all has been characterized above as the human rights approach of the 21st century. *But climate change is not only a threat, it also constitutes a major challenge and a window of opportunity for rich and poor countries alike to set aside their disputes about human rights, development and*

security policies and to join their forces in a truly global spirit to protect our planet and humanity against global warming and climate change by effective preventive, mitigating and reactive measures in line with universal human rights, above all those concerning the human rights and dignity of the poor.

7. Addressing the Implementation Gap: Towards a Global Culture of Human Rights

7.1. From Standard Setting and Monitoring to Implementation, Protection, Enforcement and Prevention

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During the second half of the 20th century, much progress has been made in promoting the idea of human rights, in developing a universal normative framework with legally binding rights of human beings and corresponding obligations of states, and in creating effective monitoring bodies and procedures able to assess the actual state of human rights implementation in all countries of our globe. It is exactly our improved monitoring capacity exercised jointly by inter-governmental bodies, independent human rights expert bodies, non-governmental organizations, the media, the academic community and other civil society actors which enables us to realize how large is the gap between legal commitments and the factual situation on the ground.

[65]

The big challenge of the 21st century is to close or at least significantly narrow this implementation gap which clearly undermines the validity and legitimacy of the legally binding universal human rights framework.

We urgently have to move from standard setting and monitoring to genuine protection, implementation and enforcement of human rights and to the effective prevention of human rights violations. At the same time we are in the process of moving from the traditional model of exclusive state responsibility to the 21st century approach of shared responsibility. If human beings are denied enjoyment of the rights to food, housing, property, education, privacy, health, justice, physical integrity or life because of poverty or the effects of climate change, it would be futile and unfair to hold only the state in which they live accountable. Their being displaced from their traditional lands, property and home might have been caused by business practices of transnational corporations, by the rising sea levels due to global warming or by ethnic cleansing policies of rebel groups. Although implementation of international human rights standards remains primarily a task and responsibility of national governments, we must address the implementation gap with remedies that are applicable to all duty-bearers.

[66]

In principle, implementation efforts take place at the domestic, regional and international levels by courts, non-judicial expert bodies and political bodies. Courts are important for dealing with individual complaints against the respective duty-bearers and for providing victims with adequate reparation. At the domestic level, only very few specialized human rights courts exist. However, in various countries specialized courts or panels with special powers, or even government administrative bodies have been created to deal with claims of discrimination, or pertaining to asylum, immigration and employment. Such bodies address claims concerning denial of equal employment opportunities, voting rights, civil rights and denial of

equal protection. Human rights litigation usually takes place before ordinary courts or, as far as they exist, before constitutional courts. But for many victims, judicial protection is difficult to access, and even in successful cases of human rights litigation, victims are not provided with adequate reparation for harm suffered. It is therefore important that states should establish effective specialized bodies with judicial powers in matters important for the realization of civil and economic rights. At the regional level, there are human rights courts in the Council of Europe, the Organization of American States and recently also in the African Union. However, apart from the European Court of Human Rights, access to these courts is very difficult. Individuals have no direct access to the Inter-American Court of Human Rights and currently hardly any access to the African Court on Human and Peoples' Rights. In addition, these Courts primarily deal with civil and political rights, have only limited powers to provide adequate reparation and cannot be addressed with complaints against non-state actors. Human rights litigation at the UN level takes place before a number of quasi-judicial treaty monitoring bodies with no power to hand down legally binding judgments and to award reparation to victims.

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Judicial protection and enforcement constitutes, however, only one method of inducing states and other duty-bearers to implement their international human rights obligations. It is always reactive and only attempts at providing some reparation for harm which has already been suffered by the victims. In the final analysis, the ultimate goal must be prevention. In order to achieve this noble goal, a broad variety of implementation measures are required, which are of a non-judicial nature and should be taken primarily

at the domestic level with the proper assistance of regional and international bodies. The central bodies for non-judicial implementation are *national human rights institutions* with broad powers, including reaching out to non-state duty-bearers, which ought to be established in every state. At the regional level, a broad variety of non-judicial bodies with the task of promoting human rights have been established by different regional organizations. The Inter-American Commission of Human Rights and the African Commission of Human and Peoples' Rights are good examples of regional bodies with a broad mandate of awareness-raising and other promotional activities concerning all human rights. In Europe, the Council of Europe Commissioner for Human Rights and the recently established Fundamental Rights Agency of the European Union play a similar role. More specialized bodies are the OSCE High Commissioner on National Minorities, the European Commission against Racism and Intolerance and the European Network of Ombudspersons for Children. At the universal level, the most important non-judicial institution for the promotion of human rights is the UN High Commissioner for Human Rights. In addition, various treaty monitoring bodies, with the task of examining state reports under various treaties as well as country-specific and thematic special procedures of the Human Rights Council, contribute to fact finding, monitoring, awareness-raising and promotion of human rights.

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Finally, effective human rights implementation demands a clear division of labour between courts, non-judicial bodies and political bodies with the necessary enforcement powers. At the domestic level, parliaments and governments, including law enforcement organs, are the political bodies with the primary responsibility

for ensuring that international human rights obligations are implemented and enforced. At the regional level, political bodies such as the Committee of Ministers of the Council of Europe, the General Assembly of the Organization of American States, the Assembly of Heads of State and Government of the African Union, the Ministerial Council and Summit of the OSCE, the ASEAN Summit and the Council of the League of Arab States are responsible for ensuring that the respective decisions and recommendations of judicial, quasi-judicial and non-judicial expert bodies are implemented in practice. At the universal level, this responsibility is entrusted to the Human Rights Council, but the General Assembly and the Security Council have also taken up certain human rights implementation and enforcement functions.

7.2. Non-Judicial Human Rights Implementation Bodies⁵⁰

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Proactive and preventive human rights implementation means taking or facilitating action aimed at creating general conditions conducive to the respect, protection and fulfilment of human rights. Effective implementation of all international human rights obligations is a huge, demanding and complex task which requires political will and strategic planning at the local, national, regional and global level. While the political will must come from governments, international organizations, transnational corporations and other powerful actors, the precise development of Human Rights Action Plans and the supervision of their implementation requires the widest possible input from civil society, including independent experts.

[70]

That governments need to be assisted and supervised in their function of implementing human rights at the local, national, regional and global level by independent non-judicial human rights implementation bodies has increasingly been recognized by the international community. In 1993, the General Assembly, by adopting the *Paris Principles*, called upon all states to establish, by constitutional or ordinary legislation, independent and pluralistic *national human rights institutions* with as broad a mandate as possible aimed at preventing and combating human rights violations and ensuring the domestic implementation of international human rights obligations⁵⁰. In recent years, international treaties have been adopted which require states parties to establish special independent domestic monitoring and implementation bodies, such as national preventive mechanisms under the Optional Protocol to the Convention against Torture entrusted with the task of carrying out preventive visits to all places of detention, and special independent mechanisms to promote, protect and monitor the domestic implementation of the Convention on the Rights of Persons with Disabilities.

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Although more than 100 governments in all regions of the world responded favourably to the call of the General Assembly to set up national human rights commissions or similar non-judicial mechanisms, only approximately half of these institutions were accredited by the International Coordinating Committee as having fulfilled all the criteria of the *Paris Principles*⁵¹. Often, these institutions lack independence or some

of the key competences of a national human rights institution. Only a handful of countries have adopted a National Human Rights Action Plan. Much more needs to be done in order to effectively address the implementation gap at the local and national level. *It is high time that all states establish truly independent and well-resourced national human rights institutions and adopt a comprehensive National Human Rights Action Plan* with clear goals, priorities, time-bound targets, indicators and benchmarks. These action plans should be oriented at the various obligations under the respective international human rights treaties and establish their goals on the basis of a thorough and independent analysis of the overall situation of human rights in the country concerned. After adoption, national human rights institutions should be fully involved in facilitating and monitoring the implementation of the goals, targets and benchmarks established in the action plans. They may be assisted in this task by the international community.

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Rather than increasing the number of non-judicial human rights bodies at the regional and universal level, it is imperative that the implementation of international human rights standards is strengthened by the creation and development of truly independent and effective national institutions for the protection of human rights and by assistance provided to these institutions. The implementation of international human rights obligations in the state depends to a large extent on the effectiveness of the state's national protection systems – the institutional arrangements

⁵⁰ For national judicial bodies, see para 66 supra. ⁵¹ A/RES/48/134 of 20 December 1993.

⁵² See International Coordinating Committee, Chart of the Status of National Institutions.

that function under the national constitutional and legal order to ensure that human rights are protected. In the absence of effective and accountable institutions, including the police, courts, prisons, national human rights institutes and commissions, human rights cannot be realized. Such institutions are frequently overburdened, under-resourced or inefficient. The UN High Commissioner for Human Rights, international development agencies and the bilateral donor community should define assistance to well-functioning national human rights institutions as a priority of their technical cooperation activities. *A Global Fund for National Human Rights Protection Systems should be established which supports and strengthens human rights implementation*, not only by national human rights institutions, but by all of these relevant national institutions. This Fund would constitute a 21st century, multi-stakeholder approach to strengthening national capacities to make human rights a reality for all. In light of our shared responsibility to protect against attacks on dignity, funding could come from a range of actors including governments, the private sector and civil society, as has occurred in the context of initiatives to combat inequalities in global health.

[73]

In order to fulfil the 21st century approach of shared responsibility, it is not enough that only national governments address the implementation gap. In the context of their corporate responsibility policies, transnational corporations and other powerful business enterprises should adopt action plans with clear targets and benchmarks relating to the fulfilment of their human rights responsibilities. National human rights institutions should play an active role in encouraging and facilitating a human rights based approach to corporate responsibility. Regional and global inter-

governmental organizations also need a clear vision of how to address the implementation gap. The present Agenda for Human Rights aims at providing the United Nations with guidance in this respect.

7.3. The Need for a World Court of Human Rights

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The idea of a World Court of Human Rights is not new. As early as 1947, the Australian Government strongly argued for the establishment of an International Court of Human Rights. In 1946, the Commission on Human Rights established three working groups to draft a Declaration of Human Rights, a binding Convention and measures of implementation. For lack of consensus, only the Declaration Group succeeded in agreeing within a relatively short period of time on the text of the Universal Declaration of Human Rights which was adopted by the General Assembly on 10 December 1948. The drafting of a binding Convention was soon submerged into the ideological debates of the Cold War, which finally led to the adoption of two International Covenants with weak implementation measures in 1966. Further reaching structural proposals, such as the Australian initiative of an International Court of Human Rights, the Uruguayan idea of a High Commissioner for Human Rights or the establishment of an International Penal Tribunal as envisaged in Article VI of the Genocide Convention of 1948 had no chance of realization during the Cold War. But soon after the fall of the Berlin Wall, these ideas were revitalized. The need for a High Commissioner for Human Rights was agreed upon during the Vienna World Conference on Human Rights in 1993 and established soon thereafter by resolution of the General Assembly. The International Criminal Court

was created by the Rome Statute of 1998 after two ad hoc criminal tribunals for the former Yugoslavia and Rwanda had been set up by the Security Council in 1993 and 1994, respectively. Only the World Court of Human Rights is still considered by many as a utopian idea notwithstanding the fact that regional human rights courts have been established in Europe, the Americas and Africa.

[75]

The proposition that where there is no remedy there is no right was one justification for the early proposal for an International Court of Human Rights and is a notion found in most legal systems. This idea was later confirmed by the General Assembly when it adopted in 2005 the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law³³. The term “human rights” with its corresponding obligations of duty-bearers implies accountability, i.e. the rights-holders should have the legal possibility in case of an alleged violation of such obligation to hold the duty-bearer accountable before an independent national, regional or international court. If the court finds a violation, it must have the power to order adequate reparation, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. This is the general legal approach to civil wrongs. Why should it be different for violations of human rights? Needless to say, binding judgments of human rights courts need to be enforced by the competent law enforcement agencies.

[76]

Like the International Criminal Court, the World Court of Human Rights could be a *permanent court with professional full time judges to be established by a multi-lateral treaty under the auspices of the United Nations*³⁴. It should be *competent to decide in a final and binding manner on any complaints brought by individuals, groups or legal entities alleging a violation of any human right found in an international human rights treaty binding on the duty-bearer*. Such complaints could be lodged against states which have ratified the Statute of the Court and the respective human rights treaty. Taking into account the global responsibilities of inter-governmental organizations, such as the United Nations and its specialized agencies, the World Bank and NATO, such organizations should also be subject to the jurisdiction of the Court. The Court should also have jurisdiction over transnational corporations and other business enterprises, faith-based organizations and any other legal entities which have their seat or operate in the territory of a state party.

[77]

Individual complaints should only be admissible after exhaustion of all available domestic remedies. In order to avoid flooding of the court with thousands of complaints, as has happened with the European Court of Human Rights, states could be encouraged to establish or design domestic human rights courts competent to directly apply all human rights treaties subject to the jurisdiction of the World Court for the state concerned. If domestic remedies do not provide satisfactory relief to the victim, he or she should have the right to submit a complaint to an international human rights court, either at the regional or global level. It is up to the victim to choose which international remedy seems to be the most

³³ FA/RES/60/147 of 21 March 2006.

³⁴ Manfred Nowak, 'The Need for a World Court of Human Rights' (2007) 7(1) Human Rights Law Review 251 at 255-6.

effective, but the cumulative use of international remedies should be excluded. No appeal from a regional human rights court should, therefore, be admissible. It would, however, be desirable if regional human rights courts were entrusted with similar broad powers, including the power to order appropriate reparation for harm suffered.

[78]

We consider the establishment of a World Court of Human Rights a major goal in the human rights agenda in the coming period and *call for a more detailed study by an expert group to be commissioned by the Secretary-General of the United Nations on ways of advancing towards the establishment of a World Court of Human Rights.*

8. Conclusions and Recommendations

8.1 Achievements, Problems and Challenges: Human Rights in Crisis

[79] Despite significant achievements since the adoption of the Universal Declaration of Human Rights in 1948, and in particular since the end of the Cold War, the international community today finds itself in a veritable human rights crisis in the absence of a clear agenda for action.

[80] The gap between the high aspirations of human rights and its sobering realities on the ground, between human rights law and its implementation, between the lofty rhetoric of governments and their lack of political will to keep their promises is the major problem, and bridging this gap the major challenge of our time.

8.2 Human Dignity

[81] Human dignity is the essential feature which distinguishes human beings from other creatures. Human dignity and the uniqueness of the human being are grounded in human free will, in the capacity for moral choice and individual autonomy. Inherent in all human beings, human dignity is the moral and philosophical justification for equality and other universal human rights.

[82] While all human rights find their moral and philosophical rationale in human dignity, not every violation or denial of human rights also constitutes an attack on human dignity. The present Agenda aims primarily at addressing those core human rights issues directly linked to human dignity, which is characterized by powerlessness, humiliation and dehumanization. This core is composed of fundamental civil, political, social, economic and cultural rights.

8.3 Shared responsibility: The 21st century approach

[83] International law should move from a model of exclusive state responsibility to a 21st century approach of shared responsibility of all actors in order to respond both to the increase in human rights abuses being committed by non-state actors and to the need to involve non-state actors, including international institutions, transnational corporations and faith-based institutions in the international protection of human rights.

[84] Shared responsibility includes not only accountability for actions that violate human rights, but also positive actions aimed at progressively fulfilling human rights.

[85] The international community has a joint responsibility to find effective ways to facilitate the implementation of all human rights for all. The responsibility to protect should therefore extend to all attacks on human dignity, and above all, to extreme poverty, consistent patterns of violations of economic, social and cultural rights and the negative effects of global climate change.

8.4 Freedom from want: Eradicating poverty

[86] The goal of eradicating poverty must be transformed from a merely voluntary development target into a legally binding human rights obligation of rich and poor countries and of other actors in the international community alike.

[87] Eradicating poverty is a human rights obligation which can only be undertaken and implemented effectively by the international community as a whole; national governments of the developing countries in which most poor people live need solidarity to help eradicate poverty.

[88] Poverty can be eliminated by adopting and implementing a human rights based approach to development and poverty eradication. Human rights principles should inform both the process of creating, implementing and monitoring a poverty reduction strategy, as well as the content of such a strategy.

[89] The poor must be empowered to lift themselves out of poverty through a rule of law and access to justice approach. Access to justice, equal and fair property rights, labour rights and business rights, as well as the strengthening of democracy are essential to enable the legal empowerment of the poor.^[90]

Poverty should be addressed preventively – states should reduce poverty by creating social security nets and employing all available national resources, and national courts should be vested with the competence to hear claims from victims of poverty where the government could have acted preventively but failed to do so. Moreover, the international community should take responsibility to protect against gross violations of economic, social and cultural rights.

[91] International human rights principles should be incorporated into international trade and finance laws and agreements to mitigate the negative effects of globalization on the poor. A human rights based approach should also be applied in formulating policies relating to the problems of urbanization, the growing number of slum-dwellers and global migration flows.

8.5 Freedom from fear: Enhancing human security by preventing violence

[92] Threats to human security should be combated preventively, by addressing the root causes of such threats with effective early warning systems and early action strategies making use of the full range of instruments available as part of the security, development and human rights agendas.

[93] During and following armed conflicts, the applicability and relevance of human rights protection must be maintained by the international community. In particular, human rights principles should inform the development of post-conflict societies in the establishment of effective democratic structures and systems for the administration of justice.

[94] More should be done to implement the ‘responsibility to protect’. In the context of genocide, war crimes, ethnic cleansing and crimes against humanity, the United Nations should enhance its early warning mechanisms by fully integrating the system’s multiple channels of information and monitoring. In addition, the United Nations should establish military standby capacities as a first step towards the creation of a standing rapid deployment force as an early action mechanism. The United Nations should support the prosecution of the perpetrators of gross violations of human rights and humanitarian law by international and national criminal courts and tribunals.

[95] Terrorism undermines core human rights values and the international rule of law. Much more needs to be done in taking concerted efforts to address the root causes of global terrorism, including poverty, global injustice and unresolved conflicts, as well as the reasons for increasing religious fundamentalism and intolerance. The security-dominated strategy for addressing terrorism should be tempered by consideration of the obligations of states under international human rights, refugee and humanitarian law.

[96] Trafficking in human beings, which directly affects human dignity as the most widespread modern day manifestation of slavery, should be addressed by governments and the international community through the application of a human rights based approach and by shifting the focus from anti-migration to anti-trafficking policies.

[97] The use of imprisonment as a punishment for crime, pre-trial detention and other forms of lawful deprivation of personal liberty must balance the right to personal liberty against legitimate state interests

and such measures must be necessary and appropriate. Detention should only be permissible if no less intrusive measures serve the purpose of achieving a legitimate goal, the detention must be subject to judicial control, must be for no longer than absolutely necessary, and must be under conditions that ensure dignity and justice for detainees.

[98] Millions of detainees and prisoners worldwide are kept in conditions amounting to inhuman or degrading treatment. Prison conditions in violation of civil, political, economic, social or cultural rights should be improved through national and international efforts so that prisoners can live in dignity.

[99] Arbitrary detention, inhuman conditions of detention, torture and enforced disappearance constitute direct and serious attacks on human dignity. States should take preventive measures by opening up places of detention to inspection and unannounced visits by national preventive mechanisms. Moreover, the international community has a responsibility to ensure that there exists no safe haven for perpetrators of these practices, or for those under whose military or political responsibility such practices are tolerated.

8.6 Climate change: A global challenge to security, development, human rights and human dignity in the 21st century

[100] Climate change is a global problem requiring a global solution. Climate change causes human rights violations – particularly concerned are the rights to food, water, shelter, property, health and life; and climate change raises major concerns about equality and global social justice – having a greater impact on the poor.

[101] Thus, a human rights based approach to climate change is needed, which will sharpen the focus of climate change policies on their effects on the fulfilment of human rights, and which will acknowledge not only the role of states, but also the roles of international organizations, the corporate sector and global civil society as duty-bearers.

[102] Mitigation policies – in particular biofuel substitution policies – should assess the effects of crop conversion on food security, in particular in poor countries.

[103] Adaptation policies should be focussed on supporting poor countries less able to protect their populations from the effects of climate change.

[104] More research must be conducted on the effects of climate change and consequent mitigation and adaptation policies on the enjoyment of human rights.

8.7 Addressing the implementation gap: Towards a global culture of human rights

[105] It is imperative that the international community close, or at least significantly narrow, the implementation gap between the legal and political commitments of governments and the international community to respect, protect and fulfil human rights, and the contrasting situation on the ground. This is the biggest challenge of the 21st century.

[106] We must urgently move from standard setting and monitoring to genuine protection, implementation and enforcement of human rights, and to the effective prevention of human rights violations.

[107] Non-judicial as well as judicial human rights

implementation bodies, and national human rights institutions in particular, should be established in all states, and should be independent and have as broad a mandate as possible in order to prevent and combat human rights violations and to ensure the domestic implementation of international human rights obligations.

[108] To build an effective national protection system for human rights, a Global Fund should be established to support and strengthen all national human rights protection systems, ranging from national human rights institutions to the police, prisons and courts.

[109] Transnational corporations should adopt action plans, with clear targets and benchmarks, aimed at respecting and fulfilling human rights.

[110] A fully independent World Court of Human Rights should be created, as a counterpart to the newly established Human Rights Council, entrusted with the judicial protection of human rights against all duty-bearers.

[111] The World Court of Human Rights should be a permanent court established by a multilateral treaty under the auspices of the United Nations. It should be competent to decide in a final and binding manner on complaints of human rights violations committed by state and non-state actors alike and provide adequate reparation to victims.

[112] The United Nations Secretary-General is requested to commission an expert study on ways to advance towards the establishment of a World Court of Human Rights.

The Panel chose to highlight **8** themes to be prioritized and further researched.

Following a call for proposals, the Panel selected **10** research projects which relate to these themes.

01 Human Dignity

This concept transcends cultural difference and can be found in major religions. Protecting dignity requires dedication to human flourishing, to valuing equally each individual, and a recommitment to the importance of solidarity among all people.

02 Prevention

The implementation of human rights depends to a large extent on the effectiveness of national protection systems – the institutions that comprise the national legal order. New strategies are needed to build effective and accountable police forces, courts, prisons and national human rights institutions.

03 Detention

There are over 9 million detainees and prisoners worldwide with a large proportion kept in inhuman and degrading conditions. Many are arrested without sufficient reasons, held in pre-trial detention for excessive periods and often subjected to torture. More must be done to address the forgotten human rights abuses experienced by people in detention.

04 Migration

As population and poverty trends continue to further divide the world between overpopulated, young and poor states on one hand, and wealthy, aging and declining population states on the other, migratory pressures will only intensify. There is an urgent need for a human rights approach to migration which protects the rights of migrants and the victims of trafficking.

05 Statelessness

The plight of people lacking legally enforceable claims on any state has not been given adequate international attention. The injustices of not being able to vote, travel, send children to school, or receive protection from a state are clear. We need to understand how citizenship can make a difference to the enjoyment of human rights.

06 Right to Health

Millions of people living in poverty, the majority of which are women, are denied access to adequate housing, food, decent work and basic education, and even the most basic health services. We need policies based on principles of equity and social justice, and the human right to the highest attainable standard of health.

07 Climate Change and Human Rights

The most dramatic impacts of climate change occur in the world's poorest countries, where human rights protections are often weak. We need more attention to how human rights could contribute to assessing future harms, identifying areas of likely vulnerability and evaluating potential policy measures.

08 A World Human Rights Court

The idea for such a court was already discussed in the 1940s alongside proposals for a High Commissioner and an International Criminal Court. Human rights violations require remedies. With legal accountability comes protection and prevention. We now need concrete proposals to elaborate how such a World Court might ensure greater accountability for all in the 21st Century.

SELECTED RESEARCH PROJECTS

- *Human Dignity*,
J. Donnelly, Univ. of Denver, USA.
- *The Potential of 'Human Dignity' as a Framework for Emerging Human Rights Issues*,
F. Mégret, McGill Univ., Canada
and **F. Hoffmann**, LSE, UK.
- *Prevention is Better than Cure: What Role can Human Rights Education Play in Preventing Human Rights Violations?*
P. Gerber, Monash Univ., Australia.
- *Democracy, Human Rights and Prison Conditions in South America*,
F. Salla, Univ. of São Paulo, Brazil.
- *Protection of People Outside their State: An Integrative Analysis*,
M. Hayes, Mahidol Univ., Thailand.
- *Statelessness and the Benefits of Citizenship: A Comparative Study*,
B. K. Blitz, Oxford Brookes Univ., UK
and **M. Lynch**, Refugees International, USA.
- *The Right to Health: An Enquiry Focusing on Southern Africa into the Right of Women Living with HIV to Control their Fertility*,
K. Stefiszyn, **L. Hye-Young**
and **M. Moletsane**, Univ. of Pretoria,
South Africa.
- *Climate change and Human Rights: The Status of Climate Refugees in Europe*,
M. Ammer, Ludwig Boltzmann Inst.
of Human Rights, Austria.
- *A World Human Rights Court*,
M. Scheinin, European Univ. Inst., Italy.
- *World Court of Human Rights*,
M. Nowak and **J. Kozma**, Univ. of Vienna,
Austria.



Schweizerische Eidgenossenschaft
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Swiss Confederation

Département fédéral des affaires étrangères DFAE
Federal Department of Foreign Affairs DFA

Académie de droit international humanitaire
et de droits humains à Genève
Geneva academy of international humanitarian law
and human rights

adh
genève

Whereas recognition of inherent dignity
and of equal and inalienable rights
of all members of the human family
is the foundation of freedom, justice
and peace in the world...

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