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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by Associazione Comunita Papa Giovanni XXIII, American Association of Jurists, Association Points-Coeur, Company of the Daughters of Charity of St. Vincent de Paul, Edmund Rice International Limited, International Association of Democratic Lawyers (IADL), International Volunteerism Organization for Women, Education and Development - VIDES, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco, World Union of Catholic Women's Organizations, non-governmental organizations in special consultative status, Mouvement contre le racisme et pour l'amitié entre les peuples, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2022]

Time has come to adopt the draft declaration on the right to international solidarity.

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.

Associazione Comunita Papa Giovanni XXIII and nine co-signing NGOs, namely American Association of Jurists, Association Points-Coeur, Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), Company of the Daughters of Charity of St. Vincent de Paul, Edmund Rice International Limited, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco (IIMA), International Association of Democratic Lawyers (IADL), International Volunteerism Organization for Women, Education and Development - VIDES, World Union of Catholic Women's Organisations (WUCWO) welcome the report of the Independent Expert on human rights and international solidarity, Mr. Okafor, presented at the 50th regular session of the Human Rights Council and entitled "International solidarity and the extraterritorial application of human rights: prospects and challenges".

In view of the interactive dialogue with the Independent Expert, we would like to recommend Mr. Okafor, whose second mandate will expire next year, to put all the efforts in making the draft declaration on the right to international solidarity being adopted by the Human Rights Council.

We live in a globalized and interdependent world where the notions of sovereignty and territoriality are being significantly reshaped and influenced by the surging of economic powerful actors such as transnational corporations whose globalized activities directly impact on the human rights of individuals and groups and challenge the power of States to regulate and control their actions. Moreover, contemporary cross-border human rights related issues such as climate change, pandemics, global poverty, food security and access to water to name a few have amply demonstrated how extraterritorial obligations are a missing link in the universal human rights protection system. Given the transboundary nature of such human rights challenges, it is impossible to guarantee human rights universally without adhering to both domestic and extraterritorial obligations.

In 2011, a group of international human rights experts adopted the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights that do not create any new law or obligations, but rather restate and clarify the obligations that States have already accepted under international law. Yet, these principles continue to be ignored despite the international human rights law clearly affirms that States have an obligation to respect, protect and fulfil human rights both within their territories and extraterritorially. Regrettably, most States continue to think of human rights with a national mindset, thus overlooking their obligation to avoid causing harm and to protect the human rights of people outside of their borders.

As a result, the current international human rights regime suffers from major gaps and most importantly, many victims of human rights violations remain deprived of their right to justice and reparations.

It is quite clear that, in times of global interdependence, it is necessary to recognize that human rights are a shared responsibility between all members of the international community (State and non-state actors).

In regard to climate change, the recent declaration of the right to a healthy environment at the 48th regular session of the Human Rights Council with the resolution HRC/RES/48/13 and the establishment of the new Special Rapporteur on human rights and climate change marked two historical further steps towards the recognition of the importance of acting multilaterally and collectively in counteracting the crisis of environmental degradation and climate change.

We are wondering how much time will still be needed for the international community to recognize international cooperation as a duty and not an option, to admit the existence of extraterritorial obligations and to realize that making the principle of international solidarity effective is an inescapable necessity to guarantee the survival of mankind and our mother earth?

As humanity, we have a remarkable tool at our disposal: the Draft declaration on the right to international solidarity which was presented by Ms. Virginia Dandan, the former Independent Expert on human rights and international solidarity, at the 35th regular session of the Human Rights Council in 2017.

The current Independent Expert, Mr. Okafor, especially during the turmoil created by the COVID-19 pandemic has appealed on several occasions for the adoption of this draft declaration, underlying that time has come to give a legal dimension to the principle of international solidarity in the current world scenario so full of dramatic threats such as pandemics, climate change, increasing inequities and proliferation of conflicts.

On May 6, 2020, Mr. Okafor released a statement that was also endorsed by the Special Rapporteur on the right to development, Mr. Saad Alfarargi, and the Independent Expert on the promotion of a democratic and equitable international order, Mr Livingstone Sewanyana, urging States at the UN Human Rights Council and the General Assembly to adopt the draft UN Declaration saying that “this would help to focus minds on the absolute necessity of practising international solidarity in the struggle to realise human rights for everyone, but would also help provide a vital additional soft law resource in order to ensure that the global human rights situation after this pandemic will become better than it is today.”

The preamble of the draft declaration stresses « that international solidarity is a fundamental concept of mutually reinforcing relations among individuals, peoples and States, an essential element that underpins global partnerships, a key approach to peace, disarmament and poverty eradication, and an indispensable component of the efforts to realize all human rights, including the right to development, and internationally agreed development goals ».

Moreover, it recognizes « that international solidarity is essential in overcoming global challenges such as natural disasters, health emergencies and epidemic diseases, the adverse effects of climate change, armed conflict, poverty and hunger, especially among children, terrorism and transnational armed militias, and violence against women ».

International solidarity requires that States —as a minimum— should respect the exercise and enjoyment of human rights in other countries, and refrain from actions with adverse extraterritorial consequences.

The translation of the universal principle of solidarity into the legal category of a human right is the subject of an intense debate. States voting against the resolution on international solidarity insist on the vagueness of the juridical contents of a right to international solidarity, a flaw that according to this criticism makes the process of the recognition of this right as a rhetorical move. Solidarity is considered an ethical/moral concept associated with a voluntary choice, and those who oppose the idea of a right think that the concept is hardly declinable in the right/liability mechanism. The argument is that turning solidarity into a right would frustrate its spirit.

Such an argument when genuine and not an excuse to maintain the status quo may be valid if we intend solidarity in terms of love, charity and generosity, all values that cannot be imposed but only proposed and chosen.

In reality, the right to international solidarity derives from the principle of human fraternity recognised with the foundation of the United Nations and its legal aspect is dictated and imposed both by our common origin and by the equality in rational nature of all men and women, whatever nation they belong to. Its recognition stems from the need to restore justice and equality and from article 28 of the Universal Declaration on Human Rights which affirms “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized “.

This article is the origin of the so-called solidarity rights, in particular with regard to the right to development, and implies removing the structural obstacles, both internal and international, that impede the full realization of all human rights (so-called structural approach to human rights).

Giving a legal dimension to the principle of solidarity in international human rights law will make this “universal right” not just an aspiration but a reality.
