



## 人权理事会

## 第二十四届会议

## 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 促进民主和公平的国际秩序独立专家

## 阿尔弗雷德·莫里斯·德萨亚斯的报告\*

## 概要

本文系独立专家遵照人权理事会第 18/6 和 21/9 号决议提交的进展报告。报告概要阐述了 2012 年 8 月至 2013 年 6 月期间开展的活动，探讨了任务本身所涉范畴的一系列问题。为便于参考，本报告附件列入了十四份文件及诸宣言。独立专家的理解认为，此任务具有普世性，旨在将公民、文化、经济和社会权利整合为一体，凝结成为实现更民主和公平国际秩序所必需的程序。这些涵盖范围甚广的决议，展示了理事会的前瞻观，并呼吁为各国、各民间社会、各国家人权机构，乃至理事会本身提出各项务实性建议。惟有各利益攸关方协作遵循《联合国宪章》和各项人权条约范例，并统一适用国际法之际，才是实现一个和平与公正国际秩序之时。

\* 本报告附件仅按原文分发。

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## 一. 导言

1. “人民的意志是政府权力的基础；这一意志应以定期的和真正的选举予以表现，而选举应依据普遍和平等的投票权，并以不记名投票或相当的自由投票程序进行”——《世界人权宣言》第二十一条第3款。
2. “所有人民都有自决权。他们凭这种权利自由决定他们的政治地位，并自由谋求他们的经济、社会和文化的发展”——《公民权利和政治权利国际公约》及《经济、社会、文化权利国际公约》的第一条。
3. “民主的基础是人民自由表达决定自己政治、经济、社会和文化制度的意愿，充分参与生活的一切方面”——《维也纳宣言和行动纲领》第8段。
4. 本文是独立专家遵照理事会第18/6和21/9号决议提交的报告，阐述了任务多重层面问题，着重强调了促进全面、公平和有效的参与。

## 二. 活动

5. 2012年8月1日至2013年6月14日期间，独立专家实施了与任务各不同方面直接相关的多层面活动。他向各国、政府间组织、国家人权机构和非政府组织分发了两份调查问卷。他对所收悉的每份回复表示感谢。
6. 2013年5月16日，他在日内瓦举行了磋商会议，目的在于征集对报告的意见。2013年6月6日，他以全球执行机制作为实现国际秩序手段，展开了磋商。该机制将成为他提交大会报告的议题。
7. 在理事会第二十一届、第二十二届和第二十三届会议期间，他应邀参与了无数与任务直接相关的活动。2012年10月，他趁在纽约向大会介绍其报告期间之际，会晤了众多常驻代表团、联合国特别程序负责人及各利益攸关方。
8. 他还参与了其它一些与其任务相关的活动：
  - (a) 2012年10月1日至3日期间，他在理事会社会论坛举行的以人为本的发展和全球化会议上，宣读了关于民主善政问题论文。<sup>1</sup>
  - (b) 2012年12月4日至5日，他出席了工商业与人权问题论坛举行的第一届年度会议。
  - (c) 继2012年11月26日至27日他出席了在瑞士Caux-Sur-Montreux举行的咨询委员会关于《和平权宣言》问题专家闭门会议之后，2013年2月，他出

<sup>1</sup> Martin Khor 编撰的“全球化与南方”，第三世界网络，槟城，2002年。

席了作为后续跟进行动举行的关于起草《联合国和平权宣言》问题第一次不限成员名额政府间工作组会议。

(d) 2013 年 4 月 5 日，他为讲习会撰写了一篇文章，探讨了单方胁迫措施对享有人权的影响。<sup>2</sup>

9. 此外，他还具体参与了：

(a) 2012 年 12 月 10 日，“地球焦点”举行的 2012 年纪念“人权日”会。

(b) 2013 年 2 月 6 日，若干代表团和儿童基金联手举行的“女性生殖器割礼问题国际零容忍日”十周年专题小组讨论会。

(c) 2013 年 3 月 11 日，和平权问题民间社会组织联盟举行了“和平权宣言”辨析会。

(d) 2013 年 3 月 7 日至 8 日，在 Middlesex 大学举行了涉及其任务所涉范围的讲座；2013 年 3 月 8 日至 9 日，在诺丁汉大学举行了两次讲座。

(e) 2013 年 5 月 23 日至 24 日，国际民主法律工作者协会举行了题为“一个新的民主国际经济秩序”研讨会。

10. 参照理事会第 21/9 号决议，独立专家与学术界、思想库和调研所，包括南方中心、各国议会联盟、促进民主联合国委员会、科菲·安南基金会、国际法学家委员会以及欧洲与第三世界中心进行了互动交流。2012 年 10 月 11 日，他与南方中心执行主任，且还与设在日内瓦的各国议会联盟秘书长举行了工作会议。2 月 25 日，他会晤了日内瓦国际人道主义法和人权学院各位教授，探讨了瑞士提议纪念《世界人权宣言》发表六十周年的活动倡议；3 月 6 日，与国际法学家委员会代表探讨了设立“世界人权法院”问题。<sup>3</sup>

11. 2012 年 12 月，他与 Aurea Roldan 女士联名在荷兰《国际法概览》(第五十九卷，第 425-455 页)上发表了一篇分析文章，阐述了人权事务委员会第 34 号一般性意见所述的“见解和言论自由”，在获取信息和传媒自由在确保民主国际秩序方面所起的作用。

<sup>2</sup> 见 <http://www.ohchr.org/EN/NewsEvents/Seminars/Pages/WorkshopCoerciveMeasures.aspx>，Rosa Freedman 编写的“关于美国的例外主义和单边主义”第 7.1 章，联合国人权理事会，Routledge, 2013 年，第 151-154 段。

<sup>3</sup> 见 <http://www.udhr60.ch/docs/World-court-final1211%20.pdf>；<http://www.udhr60.ch/>。

### 三. 民主与公平的亏缺

12. 一个民主和公平的国际秩序是以人类共享各项基本人权为本。<sup>4</sup> 当每个国家的人民意识到这样的国际秩序必须立足于《联合国宪章》和各项人权条约时，这些即共同组成了我们可稳妥地称之为现代世界“宪法”的文书，当然，在视必要推行一定改革情况下，从地方、区域和国际各个层面诉诸行动，逐步加以推进，即可建立起这样的国际秩序。《宪章》的序言及第一条和第二条确立“联合国人民”意在建立一个奉行和平、人权和发展的国际秩序。

13. 关于一个民主和公平的国际秩序，显然，这样的国际秩序，得取决于各国之间的主权是否平等、各国人民是否享有自决权，以及是否愿承诺本着国际团结精神，共同分享全球财富。<sup>5</sup> 虽然自决权与民主制的概念紧密相关，然而，对国际决策的参与，却仍远非平等和公平。联合国安全理事会确实既非民主，也非布雷顿森林机构。另有一些组织在结构上，或运作方式上，并非民主的机构，包括一些上层组织，诸如三边委员会、大西洋理事会和彼尔德堡集团，以及人们熟知的 G-8、G-20、世界经济论坛和一些军事联盟组织，诸如，北大西洋公约组织(北约)。与此同时，各跨国公司对全球决策施加了越来越大的影响力，对国家主权和享有人权形成了冲击。<sup>6</sup> 各公司，不论是本国公司，还是跨国公司，并不立足于民主原则进行运作，而以追求利润为首，然而，这些公司的决策，则影响着国际秩序。改革是必要的，从而可确保各个国家，不论大小，均可平等参与全球决策，特别是涉及维和、环境、贸易关系和人类共同遗产的决策。

14. 在民主制度中，人民是君主。因此，为促进地方、国家和区域各级的民主制度，民间社会必须在所有政治进程中拥有更强的发言权。一些国家的国情颇为严峻，因为言论、和平集会和结社自由，以及自由和公平竞选得不到保障；反对派领袖遭逮捕或杀害；记者、举报人和博客撰写人遭骚扰、恫吓和拘禁；和平示威者遭杀戮；竞选被搞成走过场的儿戏等。若干特别报告员还编撰了文献记载下这些侵权行为；<sup>7</sup> 人权理事会通过了各相关决议，而且人权事务委员会就此颁布

<sup>4</sup> 见如：[http://www.un.org/en/globalissues/democracy/human\\_rights.shtml](http://www.un.org/en/globalissues/democracy/human_rights.shtml)；  
[http://www.un.org/en/globalissues/democracy/democracy\\_and\\_un.shtml](http://www.un.org/en/globalissues/democracy/democracy_and_un.shtml)；  
[http://www2.ohchr.org/english/issues/rule\\_of\\_law/democracy.htm](http://www2.ohchr.org/english/issues/rule_of_law/democracy.htm)；

2012 年 11 月 29 日至 30 日，在布鲁金斯研究所主持的“管理全球项目”下，就“民主、人权与新兴世界秩序”展开了探讨。

<sup>5</sup> 人权与国际团结问题独立专家的报告，A/HRC/23/45 和 Add.1。

<sup>6</sup> 1972 年萨尔瓦多·阿连德在联合国的发言，<http://www.youtube.com/watch?v=knewNLlpkMw>。

<sup>7</sup> 见具体如，少数民族问题独立专家；法官和律师独立问题特别报告员；在反恐中注意增进和保护人权问题特别报告员；寻求真相、司法、赔偿和保证不再重犯问题特别报告员，以及白俄罗斯、柬埔寨、科特迪瓦、厄立特里亚、伊朗伊斯兰共和国和苏丹国情特别报告员编撰的报告。

过各相关的重要判例。<sup>8</sup> 独立专家高度关切这类公然侵犯法治和不尊重诸如自由、公正和竞选的情况。

15. 竞选制度的关键在于自由和公正；确保依据与自由结社的相关最佳做法，让各个党派自由组建和运作；<sup>9</sup> 并尊重不歧视原则，从而让各个团体，包括反对派团体或奉行不同观点的团体，都能参与竞选进程。这些规则不仅应适用于普选和大选，而且还适用于地方磋商。投票远不及参与重要：参与表明了个人和人民能自由表达自己的观点，为之能聆听到这方面的声音，“形成对该族群会带来影响的决策”。<sup>10</sup>

16. 但即使在显而易见的民主社会里，也毫无可感到自鸣得意的理由。尽管举行了正式的自由竞选，然而，许多国家的竞选进程已无法履行职能，竞选结果，并非始终符合选民的意愿。为达到民主的要求，就必须与公众展开磋商，而且候选人的推荐必须自由和透明。例如，为确定人民意愿，应确立起通过经常不断地举行民意测验和公民表决的做法。亦如诸多观察人士所述，民主代议制经常显现出议员与人民之间脱节的情况，因此，议员所持议程却并不反映选民的希望。这就导致了許多国家的选举出现民众冷漠、玩世不恭和大规模弃权的现象。为之所需要的，不仅是真正代表选民的议会，还得有代表选民的议员。几乎所有国家，女性代表比例都不足，而且众多国家的妇女基本上被剥夺了权利。<sup>11</sup> 这种妇女无权的现象是不民主的，而且必须采取纠正措施。女性必须被赋予权能，从而让她们能有意义的参与决策。<sup>12</sup>

17. 本篇涵盖理事会第 18/6 和 21/9 号决议诸多方面问题的第二次报告，首先着重阐述了参与问题。报告并不是事实与数字的堆砌，而是意在界定各概念和辩明障碍所在。民主概念——不论我们意指国际民主，还是国内民主——均可予以界定。然而，那些自称为民主的国际组织并不民主，同时，一些国家对民主制的援用，反而暴露了自己集权或专断的做法。当法律并非扎根于人民，而是以专治堯

<sup>8</sup> Jakob Möller 和 Alfred de Zayas “联合国人权事务委员会案例法” 2009 年。

<sup>9</sup> 见和平集会和结社自由权问题特别报告员的报告 A/HRC/20/27。

<sup>10</sup> 见 [www.un.org/en/events/humanrightsday/2012/message.shtml](http://www.un.org/en/events/humanrightsday/2012/message.shtml)。

<sup>11</sup> 消除对妇女歧视委员会(消妇歧会)的结论性意见，在法律和实践中歧视妇女问题工作组的报告 A/HRC/23/50。

<sup>12</sup> 消妇歧会的第 23 号一般性意见；和经济、社会、文化权利委员会的第 15 号一般性意见，第 16 段 a 项；人权事务委员会的第 28 号一般性意见。

断为本时，“民主代议制”即是对选民的背叛。因此，对一些直选民主制概念和模式的研究越来越成为热门专题。<sup>13</sup>

18. 民主制涉及广大民众所表达的公众利益，与对民众产生影响的政府政策之间的关联关系。该词语包含了各种表达形式，包括直接、参与性的民主和民主代议制，然而，政府必须顺应民意，不能只盯着诸如军事工业复合体、金融银行业和跨国公司的具体利益。民主制是包容性的，并不是某种人类贵族群体的特权。民主必须具备建立和构建国家的基本规则，必须建立起与社会之间的关系，并得到公民的接受。民主必须与人民进行磋商，并尊重选民们的愿意。虽然，民主社会虽立足于多数规则，然而，则必须承认和适用个体、少数人和群体的权利。换言之，多数规则必须放置在法治和人的尊严框架内加以理解。正如欧洲人权法院着重指出的：“多元化、容忍和开放的思维，是‘民主社会’的标志。虽然有时个体利益必须服从群体利益，然而民主制并非简单的意味着，服从多数人的观点始终占上风：对之必须得形成某种平衡，从而确保少数人享有公正和适当的待遇，避免任何滥用支配地位的现象”。<sup>14</sup> 这就解决了普遍性与人权之间的紧张关系，因为民主不得被滥用来削弱人权，即通过对酷刑或死刑的合法化，甚至援用或操纵公众舆论，提出贬损人权的要求。因此，这就有必要，通过独立的司法机构，为多数人和少数人的双方利益提供必要保护，加强落实国家和区域权利方案，为民主的繁荣昌盛创建程序和氛围。

19. 民主制具有悠久的演化史，顺应了诸多不同社会的和文化需求。不存在“单一”的民主制模式，<sup>15</sup> 任何人都不应假定存在着一款“通用”模式，而民主制被引入以不同方式运作的其他国家，当政治程序顺应它国国情时，即会形成某一具体的表现形式。在论及民主制概念时，人们应摒弃表象的称呼，询问下述关键性的问题：这个制度在人民的需求与影响人民的政治决策之间形成了什么样的关联关系？对此问题的必然推论是：所提供的真正、可靠和多元化信息在多大程度上可利于民众真正的参与法律与实践的发展？民主制并不是终极成果，只是实现人人享有人权这个目标的手段。

<sup>13</sup> 2012 年 1 月 14 日至 16 日全球论坛在 Montevideo 举行的关于现代直选民主制问题会议：  
<http://2012globalforum.com/>, <http://movementfordirectdemocracy.com/strategy.html>;  
<http://www.directdemocracynow.org/>, Centre for Direct Democracy, University of Zürich;  
<http://www.c2d.ch/>, World Conference on Direct Democracy [http://www.tfd.org.tw/iri-asia/?mod=News&page=Direct\\_Democracy\\_Developments&id=465](http://www.tfd.org.tw/iri-asia/?mod=News&page=Direct_Democracy_Developments&id=465)。

2013 年，伯尔尼，Andrea Good/Bettina Platipodis 编撰的“直选民主制”。Daniel Thürer, 编撰的：“Völkerrechtliches Jus Cogens und Volkssouveränität”载于“Good/Platipodis”，第 439-452 页。Daniel Thürer 编撰的“直选民主制”上。“Eine Form des Widerstands?”载于 Hans v. Arnim (ed.) *Widerstand* 柏林，2012 年，第 63 页以后；René Roca, 编撰的“*Wenn die Volkssouveränität wirklich eine Wahrheit werden soll*”，苏黎士，2012 年；Paul Widmer 编撰的“*Die Schweiz als Sonderfall*”，苏黎士，2008 年。

<sup>14</sup> 欧洲人权法院，Leyla Sahin 诉土耳其案，第 44774/98 号诉案，第 108 段。

<sup>15</sup> 2012 年 3 月 23 日人权理事会第 19/36 号决议，序言。

20. 为了验证近代是否存在或是否有其它的国际民主制，人们不妨询问，各国和人民，包括无代议制代表的民众，是否曾获得过民主机会，参与对相关重要问题，诸如，战争与和平、全球变暖、环境、贸易关系、获取医药和人类共同遗产等问题的决策。更具体一点儿，一部分国家是否批准选择性、不经一致同意地运用制裁制度？这些国家是否曾批准过 1999 年对塞尔维亚、2003 年对伊拉克，和 2011 年对利比亚实施上述制裁制度？在确定所有和平谈判渠道是否均已援用无遗时，国际社会是否曾拥有过发言权？是否曾允许过民间社会在一定程度上参与，对会造成广泛失业后果的自由贸易以及对其它协议的“技术性”决策？此外，在有关区域性安排和区域宪章法规方面，所涉各国的公民是否被允许就可对国家主权形成重大限制的条约，直接投赞成票或反对票，例如：欧洲联盟各国公民是否曾有机会通过公民表决来确定是否通过《里斯本公约》？他们是否有可能针对内战情势，执掌过实施或撤销禁运决策的发言权？关于塞浦路斯岛屿的统一问题，宪制会议是否让所有塞浦路斯族群都有机会参与谈判一项植根基层的宪法，从而形成一项让各利益攸关方均参与打破僵局的民主制文书？<sup>16</sup> 上述这些并不是各种国际乱象详尽无遗的清单，显示出磋商工作弊病无穷，甚至根本不存在磋商，综上所述恰恰证明了公众参与更是大有必要。

21. 为了检验近代是否存在，或是否有其它的国内民主制，颇有助益的做法是探讨如何就如下诸如：加强对个人的电子和录相监控、逮捕、无限期拘留、社会保险、卫生保健、就业、婚姻、堕胎等问题作出或正在作出的决定，以及公众对上述这些决定的真正参与程度。更具体的是，继 2001 年 9 月 11 日恐怖主义袭击事件之后，大部分人口是否同意大幅度限制人权？民众是否接受各国政府作为首位要务实施的“缩减措施”？人民是否同意对各银行的金融救助？人民是否批准扩军备战，并将巨额预算拨给“国防”工业？各国国民是否认同本国不顾未经安全理事会决议批准，无视《联合国宪章》第五十一条的禁止规定，贸然采取军事行动？人民是否认同向海外内战国家的交战各派输送武器？人民是否同意，无视对平民百姓造成的伤亡和附带损害，肆意使用无人机？那 54 个与遣送、秘密扣押囚犯、“黑洞”体制合作国家的国民，是否曾批准过这种以“反恐战争”名义所犯下的非法行径？<sup>17</sup> 人民是否同意运用军事合议庭审判平民百姓？某些传媒违反《公民权利和政治权利国际公约》第二十条关于禁止战争宣传的规定，利用捏造和歪曲的报导，营造威胁临头和恐惧氛围，起了什么样的作用？公民表决是否批准过同性配偶领养儿童？当民众举行抗议，要求民主改革和奉行人权时，遭到警察使用过度武力的回应，究竟意味着什么？法律是否可在不经公众辩论的情况下，由上面强推下来？广大民众是否成为了议员的人质，直至下届选举之前，无

<sup>16</sup> Andreas Auer 及他人编写的“参照国际和欧洲法律。实现塞浦路斯问题公正和永久解决的原则基础”，2005 年，布鲁塞尔。Andreas Auer/Vasiliki Triga 编写的“塞浦路斯国家宪制议会”，2009 年，柏林。A de Zayas 撰写的“安南计划”，载于 2006 年《塞浦路斯国际关系年鉴》，第 163-178 页。

<sup>17</sup> 见 A/HRC/22/52。



法施加影响，而下届选举有可能，甚至不可能有政治上的选择，然而，只有候选人才可作出的决择，有时甚至让选民感到惊诧？诸如此类有许多问题必须举行公众辩论和磋商的问题，而且不应绕过和撇开人民作出决择。

22. 无疑，每个国家都有改进的余地。哪个国家都没有完美无缺的报告记录。有一些国家虽在某些具体领域拥有强大优势，然而，他们在其它一些领域可能存在着缺陷不足。例如，有些国家在公民权利和政治权利方面取得了巨大进展，然而在落实经济、社会及文化权利方面却滞后。有些国家和领地的少数民族、土著人权、被占领地的人民、不拥有代议制代表的人民、生活极端贫困的人民<sup>18</sup>，均无法切实参与决策。<sup>19</sup> 各项有效措施，包括拥有执行权的司法体制应采取赋予妇女、少数民族、土著居民、不拥有代议制代表的人民、残疾人等权能的措施，使之能有意义地参与政治进程，参与对其本身、其自决权、其传统环境、其文化和信仰会产生影响的进程。

23. 每个国家都有责任改善经济、司法、政治和社会制度。民间社会应获得每一个促进该进程的机会。每个国家若都向前迈进一步，将会惠及全体人口，并有益于国际团结。

24. 许多观察员揭露了国际和国内秩序的缺陷；辨明了对国际和平的威胁；对军事产业公司发出了警告；并谴责社会公正的退步现象和民主制出现的危机。有些人认为，之所以出现这种局面，是因为既无人民的参与，也没有设立某种游说民主制、后民主制或准民主制，民主制只不过徒有虚名，因为真正做出决策的是，既非民选，也不对人民负责的各公司和金融机构。这些包含 Samir Amin、<sup>20</sup> Francis Boyle、<sup>21</sup> Noam Chomsky、<sup>22</sup> Ramsey Clark、<sup>23</sup> Marjorie Cohn、<sup>24</sup> Giovanni Cornia、<sup>25</sup> David Cromwell、<sup>26</sup> Colin Crouch、<sup>27</sup> Barbara Ehrenreich、<sup>28</sup>

<sup>18</sup> 见 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13369&LangID=E>。

<sup>19</sup> A/HRC/13/25, 第二届少数民族问题会议关于少数民族和有效政治参与问题的建议。极端贫困与人权问题特别报告员、土著人民权利问题特别报告员、在法律和实践中歧视妇女问题工作组编撰的报告。

<sup>20</sup> 《不良发展情况——对全球败举的剖析》，第二版，牛津，2011 年。

<sup>21</sup> 《世界政治与国际法》2005 年。

<sup>22</sup> 《希望与展望》，伦敦，2010 年。

<sup>23</sup> 《从民权到人权》；<http://ddce.utexas.edu/news/2012/11/07/nov-12-from-civil-rights-to-human-rights-talk-by-ramsey-clark/>。

<sup>24</sup> 见 <http://www.marjoriecohn.com/>。

<sup>25</sup> 见 [http://www.wider.unu.edu/aboutus/people/external-project-directors/en\\_GB/cornia-external/](http://www.wider.unu.edu/aboutus/people/external-project-directors/en_GB/cornia-external/)。

<sup>26</sup> “为何我们是好人？摒弃狂妄的幻觉，恢复自身的理智”，温切斯特，2012 年。

<sup>27</sup> 《后民主制》，剑桥，2004 年。

<sup>28</sup> Nickel and Dimed 编撰的“关于(不)被美国所攫”，2001 年：<http://www.barbaraehrenreich.com/nickelanddimed.htm>。

Diane Elson、<sup>29</sup> Glenn Greenwald、<sup>30</sup> Stephany Griffith-Jones、<sup>31</sup> Chris Harman、<sup>32</sup> David Harvey、<sup>33</sup> Edward Herman、<sup>34</sup> Richard Jolly、<sup>35</sup> Naomi Klein、<sup>36</sup> Robert McChesney、<sup>37</sup> Justin Lewis、<sup>38</sup> Jeanne Mirer、<sup>39</sup> Ralph Nader、<sup>40</sup> Isabel Ortiz、<sup>41</sup> Karen Parker、<sup>42</sup> Ruth Pearson、<sup>43</sup> John Pilger、<sup>44</sup> Arundhati Roy、<sup>45</sup> Frances Stewart、<sup>46</sup> Alejandro Teitelbaum、<sup>47</sup> Tzvetan Todorov、<sup>48</sup> Roland Weyl、<sup>49</sup> Luis Roberto Zamora、<sup>50</sup> Jean Ziegler<sup>51</sup> 和 Howard Zinn<sup>52</sup> 在内的企业进行分析，结症显而易见，但要改变现状亦困难不小，因为当选者不执政，执政的却不是当选者。

<sup>29</sup> “以经济决策为重点的新兴问题”，载于联合国欧洲经济委员会编撰的“性别差距与经济政策”，联合国欧洲经济委员会，日内瓦，2007年。

<sup>30</sup> “为了某些人的自由和公正：法律如何被用于摧毁公平和保护权势的”，纽约，2012年。

<sup>31</sup> Stephanie Griffith-Jones 及其他人编撰的《观察一只可见手的时刻：2008年金融危机的教训》，牛津，2010年。

<sup>32</sup> 《经济精神病院：当今的资本主义和市场》，伦敦，1995年。

<sup>33</sup> 《新自由主义简史》，牛津，2005年。

<sup>34</sup> 《自由传媒之迷：Edward Herman 读本》，1999年。

<sup>35</sup> Richard Jolly 及其他人编撰的《大声疾呼：另有择途》，2012年。

<sup>36</sup> 《休克理论：灾难资本主义的兴起》，2007年。

<sup>37</sup> 《富传媒、穷民主：疑虑时代的交流政治》，纽约，2000年。

<sup>38</sup> 《构建公众舆论：为何政治精英们可随心所欲，而我们为何显然唯其马首是瞻》，纽约，2001年。

<sup>39</sup> 见 <http://www.iadllaw.org/en/node/390>。

<sup>40</sup> 《奋力一搏：宣布独立并弥合民主差距》，2004年。

<sup>41</sup> 见 <http://www.isabelortiz.info/>。

<sup>42</sup> 人道主义律师联合会，<http://www.humanlaw.org/>。

<sup>43</sup> 见 <http://www.polis.leeds.ac.uk/about/staff/pearson/>。

<sup>44</sup> 《世界新规则》，伦敦，2002年。

<sup>45</sup> 《倾听草蜢：关于民主制的实地笔记》，新德里，2009年。

<sup>46</sup> 《横向不公平现象与冲突：探究各多种族社会的族群冲突问题》，Basingstoke，大不列颠及北爱尔兰联合王国，2008年。

<sup>47</sup> 见 <http://www.rebellion.org/mostrar.php?tipo=5&id=Alejandro%20Teitelbaum&inicio=0>。

<sup>48</sup> 《民主制的最亲密敌人》，巴黎，2012年。

<sup>49</sup> 《我们联合国人民：走出国际权的柜橱》，CETIM，日内瓦，2008年。

<sup>50</sup> 见 <http://www.nlgazcentral.org/luis-roberto-zamora-bolanos-speaks-on-peace/>，和 <http://www.peaceasahumanright.org/Peace/HOME.html>。

<sup>51</sup> 《大规模毁灭：饥谨地缘政治》，巴黎，2011年。

<sup>52</sup> 《史上未兑现的承诺》，纽约，2012年。

## 四. 障碍

25. 2013 年 5 月 16 日至 6 月 6 日期间，对这些调查问卷给出的无数回复，磋商会议期间的介绍发言，以及独立专家收悉的来文，均揭露了在国际和国家两个层面上均无法履行各利益攸关方的民主和平等参与职能。

26. 国际舞台上遏阻真正参与决策的障碍诸多。一个民主和公平的国际秩序必须承诺举行无条件的对话，从而让所有国家和人民均有机会参与全球决策。战争构成的是，造成大会第 2625 号决议规定所述各国家之间友好关系崩溃，违反《联合国宪章》第二条第 3 款和第二条第 4 款规定的行径。许多国家的战备产业以及所有各类武器贸易，在全世界四处催促腐败的滋长，冲突的加剧，因为武器交易是有利可图的买卖。拥有极其巨大实力的军事工业复合体对国际和国内民主制均构成了威胁，因为军事工业复合体遵循着自身的逻辑，独自运作，并不顾及民众的期望。1961 年 1 月 17 日，美利坚合众国总统，德怀特·艾森豪威尔曾发出过这样的警告。<sup>53</sup> 专为军备及其他战争产业活动投入的巨大预算比额，几乎再无可促进人权的余地。此外，在大规模毁灭性武器的时代，除了和平共存之外，再无别的选择。单边主义就其本质而言，不符合国际民主秩序。尽管国际社会有此意愿，然而，有些国家则违反先前一致通过的大会决议，依然丝毫不受惩罚地奉行单边主义。

27. 经济、政治和军事不平衡的现实导致了那些别无选择，只能屈从于各类形式胁迫、威胁、制裁或胡萝卜加大棒手法的弱国在强压之下俯首称臣。这种一边倒的局势导致了不结盟运动组织和其它无数区域性组织(我们美洲人民玻利瓦尔联盟、拉加共同体、南美共市、伊斯兰会议组织)的涌现。这些组织的成员国虽并非始终适用民主规则，则力图平衡少数几个拥有压倒性经济和政治实权的国家。

28. 2013 年 5 月 16 日，独立专家在日内瓦举行专家磋商期间，与会者们表示希望改革有关全球决策，包括有关战争与和平、贸易不平衡、初级商品价格、金融市场、环境以及国际维和等问题的决策方式。就国际货币基金组织和世界银行赋予了发达国家政府大部分表决权而论，这两机构的表决制度并不公平，形成了牺牲穷困国家，偏袒顶端国家利益的结果。这些金融机构、<sup>54</sup> 安全理事会<sup>55</sup> 以及世界贸易组织的改革势在必行。也许该筹划组织别的取代机构。<sup>56</sup>

<sup>53</sup> President Dwight D. Eisenhower, <http://www.youtube.com/watch?v=8y06NSBBRtY>. 美利坚合众国总统，德怀特·艾森豪威尔的国情咨文，第 1035 至 1040 页。

<sup>54</sup> Yılmaz Akyüz 编撰的《国际货币基金组织的改革：返回绘图板》，第三世界网络组织，槟城，马来西亚，2006 年。

29. 国内领域同样存在着诸多障碍。从民间社会组织收悉的来文宣称，由于种种不同原因——国与国之间所涉原因可能各有差异，有些人们无法参与决策。正如关于在法律和实践中歧视妇女问题工作组着重指出的，由于对妇女的结构性和社会歧视，妨碍了她们参与世界上几乎所有国家的政治和公共决策。<sup>57</sup> 世界各地，一些参与和平抗议的妇女遭暴力侵害，包括性侵暴力之害，是不可接受的现象。各国必须显示出制止结构性暴力行径的决心，并推行积极的措施，确保全球半数以上人口参与公共和政治生活。

30. 土著团体<sup>58</sup> 坚称，他们被剥夺了有效的代表权，而他们的参与基本上是走形式，因为不论土著人民持有何种观点，各国政府一概推行其本身的议程，只不过为了敷衍他们而作些聆听之态。一些土著人具体指称，存在着一些违反土著先辈与欧洲强权所签署条约<sup>59</sup> 的确凿行径。土著人民坚称，他们享有的自决、自治和特征权，包括对其自然资源的主权，均被剥夺殆尽，既未曾征得他们同意，也没有给予过相应的赔偿，违反了《公民权利和政治权利国际公约》和《经济、社会、文化权利国际公约》共同第一条所列的规定。对于许多土著人民的一个根本性问题是，他们作为民族所拥有的地位，因为他们并不想加入对他们实行殖民化国家的国籍；有时，他们质疑就自决权举行的公决，对此，他们宣称公决并不会或有可能使之表达他们本身的愿意。<sup>60</sup> 他们坚称，自决权的行使不能违背所涉民众的意愿，而只有让土著人民拥有表决权，而不是由殖民者执掌表决的情况下，才可举行关于自决权的公决。

31. 许多其他处于风险的群体——包括人权捍卫者、学生、少数民族和生活贫困的人们均无法真正参与社会 and 决策。各国必须采取适当措施，确保各障碍不会“加剧对他们的排斥，并且往往维护上层社会得以直接影响决策的特权”。<sup>61</sup>

<sup>55</sup> 国际法协会，联合国改革问题研究小组，[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1971008](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971008)；海牙法学院，Vera Gowlland 的讲座：“安全理事会与国际刑事法院的关系”。[http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas\\_PS.html](http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas_PS.html)；“集体安全与国家责任之间的关系”，[http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas\\_S.html](http://untreaty.un.org/cod/avl/ls/Gowlland-Debbas_S.html)；Alejandro Teitelbaum 编撰的“国别研究：改革还是重建？”，发表于 *Derechos de los pueblos y gobernanza mundial*, Facultad de Humanidades y Ciencias de la Educación (HUHEZI) de la Universidad de Mondragón, Iruñea, 2007 年，第 77–118 页；Erskine Childers 和 Brian Urquhart 编撰的“审视联合国体制”，Uppsala 1994 年；Joseph Schwartzberg 编撰的“重振联合国”，纽约，2004 年。

<sup>56</sup> Samir Amin 编撰的“全球史——南方视角”，牛津，2010；Samir Amin 编撰的“结束资本主义危机，还是结束资本主义？”，牛津，2011 年。

<sup>57</sup> A/HRC/23/50。

<sup>58</sup> 见土著人问题特别报告员的报告。还见，2013 年 5 月 22 日，土著人问题特别报告员在联合国土著人问题常设论坛第十二届会议上的发言。

<sup>59</sup> 见 <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec>。

<sup>60</sup> 见例如，土著团体提交人权事务委员会和关于消除种族歧视小组委员会的“影子报告”，和相关结论性意见所载的建议；<http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>。

<sup>61</sup> A/HRC/23/36, 第 14 段。

32. 对众多抗议者要求民主改革，以及土著和“占领”运动的关注，更引起了对民主问题和纠正行动的关注。民主参与不不只是指竞选；民主还涉及就如何实现民主进程所施加的直接影响。独裁政权不举行竞选；半推半就的民主政权玩弄竞选把戏；而有名无实的民主制则搞形式竞选，均有碍国际民主秩序。竞选制度应逐步得到完善，而各国政府应欢迎全世界来监督竞选制度。<sup>62</sup> 但是，真正的参与始于基层，必须包含牢靠的推荐制度，推举真正代表选民的候选人。当党派机制推荐出了候选人之后，那么，当得到举荐只是那些上层人士时，这样的竞选制度即丧失了职能，所推举出的候选人并不会致力于各自的选民，只不过为党派的原则效劳，并为那些为该党供资的人效力。

33. 民主制按定义是以公共利益为取向，不应效命于持股者的利润或市场。各方面不受规约的资本主义和私营化，根本就不符合民主概念，因为这些显然根本就不符合所要表达的意愿，乃至需求，只不过满足一小撮打着“涓滴渗透”效应会最终支助贫困者幌子的投资者，牟取最大程度利润的奢望。然而，人们是否认同，在大多情况下不会有收效的涓滴渗透论？然而，当不受规约的市场一败涂地，随之带来普遍失业时，又能如何去追究金融机构的职责呢？然而，各国政府却“拯救”了银行业，出资予以救助，却牺牲了对普遍滥权现象束手无策的“涓滴渗透”贫民。

34. 公职机构的私营化是一种对民主制的打击，因为公共利益只能由公共实体——不论是市政厅，还是议会来保护，绝不可拱手让给以利润和扩大市场为取向的公司董事会。

35. 本人提交理事会的初次报告列出了若干障碍，包括那些与之相关的词语障碍。毫无疑问，当所采用的术语含糊其辞，或形成误导时，或当不同国家和传媒采用的“民主”、“自由”、“法治”、“国际社会”、“协商一致”、“全球化”、“和平”、“恐怖主义”等措辞带有不同的含义时，语言本身即会对社会和经济问题的分析形成干预效应。还有一些通常类型的障碍，诸如，傲慢、自以为是、道德上的玩世不恭、精神虚无主义，以及那些人为自封的思想壁垒：诸如，自认为只有实证法才是法律，只有实证权才是权利等等。另一个障碍是，民间社会代表之间缺乏团结精神。这些代表本应显示出致力于维护每位受害者的人的尊严，驳斥传媒只注重报告“政治上正确”的受害者，却屏蔽掉其他受害者的做法。受害者之间竞争是一令人悲哀的现象，显现出的是双重标准做法。民间社会不仅有权，且有义务，必须恪守道德，尽责履行。各国的国家人权机构、政府间组织和非政府组织必须展示出为维护人类同胞情义和普世人权，不只是维护某种时下流行权利，所履行的同等义务。

36. 本报告的期许之一是，民主必须具备向公众传达信息，使之得以凭良心作出判断，从事自由的新闻报导，既不受政府的新闻检查，也不受传媒公司操纵。

<sup>62</sup> 竞选、民主和安全问题全球委员会编撰的“深化民主：增进世界范围一体化的战略”。

传媒不仅要有多元化的思想，而且还得归属不同的所有权，这是合乎情理的民主期望。国内的每届政府都应密切审核电信立法；传媒所有权的集中度；运用反托拉斯立法，打破阻碍公开辩论和多样化的集团营体。许多国家的新闻报道，实际上是在向民众进行思想灌输，而不是传播信息。新闻往往更多反映的是上层、政府和公司利益的结构性的偏见。

37. 尽管见解、传媒、和平集会和结社自由，是每个民主制的绝对根本，然而，有些国家则并不具备这些权利，而在另一些国家只是空洞无物之谈。政府的新闻检查制显然是违反《公民权利和政治权利国际公约》第十九条的做法，但是新闻检查也有私营部门的参与，可酿成危害性的不民主后果：一群被操纵的公众。政府干预传媒和互联网是全世界范围的普遍问题。2011 年 7 月 17 日，人权事务委员会通过了第 34 号一般性意见，指出对见解和言论自由的威胁，包括诽谤法、亵渎法和回忆录法问题，均系对思想自由交流的干预，并就此开展了必要的辩论：

(a) “诽谤法必须审慎编纂，以确保这些法律……不会实际上窒息言论自由。所有这类法律，特别是惩戒性的诽谤法，应列入诸如真相辩护之类的各类辩护……” (第 47 段)；

(b) “禁止不尊重宗教或其它信仰表现的制度，包括亵渎法，均与《公约》不符……” (第 48 段)；

(c) “针对就一些历史事实表达的见解实施惩罚的法律，不符合《公约》赋予各缔约国尊重见解和言论自由的义务。《公约》并不允许普遍禁止对过往事件发表错误的见解或作出不正确解释……” (第 49 段)。

38. 这类法律具有集权的所涉影响和后果，侵犯人的尊严、辩论权、学术自由权，最终会形成学术知识的停滞和自行检查之效<sup>63</sup>，对人民参与决策的能力带来不良影响后果。

39. 从各不同消息来源获取真正和可靠的信息，是负责任的公民和行使表决权必不可缺之需。言论自由与和平集会自由不只是权利，也是每个民主制下的公民应自由和公开履行的义务。言论自由不只是对正确政治思维的响应，也是表达个人信念的权利，为之亦必须包含犯错的权利。有些国家，游行示威权显然遭遇遏制，并深受繁文缛节的阻遏；另一些国家则逮捕，甚至杀害游行示威者。

40. 一些传媒显然越来越趋向于首先报导上流阶层的观点。即使在报导一些有争议的问题时，亦做不到平衡，除了购买转播时间出资方主推的观点之外，其它观点几乎无力与之竞争。传媒无休止的广告和超高程度的商业化，也产生了误导

<sup>63</sup> 人权事务委员会第 25 号一般性意见，第 4 段；人权事务委员会第 34 号一般性意见，第 49 段；Alfred de Zayas 和 Aurea Roldan Martín 编撰的“见解自由和言论自由：对联合国人权事务委员会第 34 号一般性意见的一些反思”，载于荷兰《国际法概览》，2012 年，第 425-454 页。



公众，分散人们对真正问题的注意力之效，致使受众嗜好夸张的情绪宣泄、花边或垃圾新闻。唯利是图，无视民众利益的公司传媒经营，达不到民主传媒的标准。对于利润体制，往往过分频繁地践踏公民社会的做法，人们必须得有普遍的认识。

41. 只要民间社会无法建立起来，例如，以民主方式推动放弃满足军费开支优先，致力于军备裁减；摒弃对公民的监视，致力于追查腐败和犯罪；放弃“紧缩措施”，致力于推动社会公正之类确保推动变革的机制，就不可能建立起一个民主和公平的国际秩序。

## 五 良好做法

42. 独立专家欢迎众多国家推出若干旨在增进参与的立法措施，鼓励各国将之付诸实施。

43. 在这些良好做法中，独立专家盛赞各国批准《经济、社会、文化权利国际公约任择议定书》并于 2013 年 5 月 5 日生效，以及批准 2012 年 2 月 15 日生效的《非洲民主、竞选和执政宪章》<sup>64</sup>。他鼓励批准更多文书。他提醒地指出，2008 年 5 月 3 日《残疾人权利公约》生效，据此，各缔约国应承诺“确保残疾人能够在与其他人平等的基础上，直接或通过其自由选择的代表，有效和充分地参与政治和公共生活……”。<sup>65</sup> 残疾人权利委员会通过《任择议定书》所设审议程序，发表的结论性意见和对个案情发表的意见，已建立了一些重要的案例。<sup>66</sup>

44. 若干举措力争通过提供司法和宪法审查，以及执行机制，特别是突尼斯政府关于设立国际宪法法院<sup>67</sup>的提案，力推建立一个民主和公平的国际秩序。主张建立世界人权法院的各提案得到瑞士纪念世界人权六十周年倡议<sup>68</sup>、国际法学家委员会和《国际人权宪章》协会<sup>69</sup>的赞同。在里约+20 会议上讨论了联合国和平大学<sup>70</sup>和可持续未来利益攸关方论坛<sup>71</sup>旨在创建国际环境法庭的倡议。

<sup>64</sup> 见 [http://www.ipu.org/idd-E/afr\\_charter.pdf](http://www.ipu.org/idd-E/afr_charter.pdf)。

<sup>65</sup> 第 29 条，<http://www.un.org/disabilities/convention/conventionfull.shtml>。

<sup>66</sup> 见 <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>。

<sup>67</sup> 2013 年，突尼斯，创建国际宪法法院特设委员会，“创建国际宪法法院项目”。

<sup>68</sup> 见 <http://www.udhr60.ch/report/hrCourt-Nowak0609.pdf>；还见，Julia Kozma and Manfred Nowak 编撰的“世界人权法院：综合法规草案和评注”，2010 年 5 月。<http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/ConsolidatedWorldCourtStatute.pdf>。

<sup>69</sup> A/HRC/19/NGO/124, <http://www.internationalbillofrights.org/>。

<sup>70</sup> Joost Pauwelyn 编撰的“世界环境法庭”，《国际环境管理》(差距与不足/改革提案)工作文件，东京，UNU-IAS, 2002 年。Cf. Ellen Hey 编撰的“关于国际环境法庭的思考”，2000 年；Ole Pedersen 编撰的“国际环境法庭”，牛津，2012 年。

45. 在争取实现千年发展目标方面所取得的进展以及正在致力于使 2015 年后可持续发展议程切实有意义的工作，均值得赞扬。2013 年 1 月举行了拉丁美洲和加勒比与欧洲人民高峰会议，探讨了“促进社会公正、国际团结和人民主权”问题，驳斥了将自然与生活商业化的做法，导致颁布了《智利圣地亚哥宣言》。

46. 他欢迎，2013 年 3 月 27 日，各国议会联盟第 128 届大会通过的各国议会联盟《第五号公告》，其中阐明“福利政策必须由全体公民，尤其是弱势群体，诸如妇女、青年、土著人民和贫困者参与决策。反过来，福利事业也需要公民有效参与对公共事务的管理。为之，参与及对参与者的透明度和问责制，是推行民主制和从全球、国家到地方所有各级政府，以民主方式施政，顺应公民需求的关键支柱”。<sup>72</sup> 世界各国的所有议员都应依据此《宣言》行事。

47. 可导致民主变革的公众倡议和公民表决应予以褒扬，诸如，2013 年 3 月 3 日，瑞士对执行官的薪酬问题举行了旨在实现更公平民主秩序的公民表决。<sup>73</sup>

48. 他欢迎民间社会倡议的声音越来越响亮。一项民间社会倡议的实例已赢得了普遍认可，形成了 2010 年 12 月 10 日通过的《圣地亚哥—德孔波斯特拉宣言》<sup>74</sup>、2013 年 5 月 16 日通过的《奥斯维辛宣言》<sup>75</sup>，以及世界各地举行研讨会<sup>76</sup> 讨论的《和平权宣言》。世界各地对此运动的参与，已将创建和平工作列为人权理事会议程<sup>77</sup> 及其咨询委员会<sup>78</sup> 的当务之急，且无疑必将会导致增强对和平作为建立一个公正和可持续世界秩序核心价值的认识。

49. 几十年来，一直在讨论举行世界议会联合大会<sup>79</sup> 或联合国议会联合大会的设想。这个设想是为了通过表达全球观念，并通过当选官员纳入公民参与全球决策，解决民主制的缺陷。这可通过联合国大会，以《联合国宪章》第二十二条规定为据，设立这样的联合大会，或先在各国之间签定一项新条约，继而再由各国

<sup>71</sup> 见 <http://www.uncsd2012年.org/rio20/index.php?page=view&type=400&nr=222&menu=45> and [http://effectius.com/yahoo\\_site\\_admin/assets/docs/InternationalCourtForTheEnvironment\\_StephenHockmanQC\\_Effectius\\_Newsletter14.21260322.pdf](http://effectius.com/yahoo_site_admin/assets/docs/InternationalCourtForTheEnvironment_StephenHockmanQC_Effectius_Newsletter14.21260322.pdf)。

<sup>72</sup> 见 <http://www.ipu.org/conf-e/128/quito-comm.htm>。

<sup>73</sup> 见 [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205403530\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205403530_text)。

<sup>74</sup> 见 <http://www.aedidh.org/?q=node/1292>。

<sup>75</sup> 见 <http://www.aedidh.org/?q=node/2191>。

<sup>76</sup> A/HRC/14/38. 见，[http://www2.ohchr.org/english/issues/rule\\_of\\_law/workshop/](http://www2.ohchr.org/english/issues/rule_of_law/workshop/)。

<sup>77</sup> 见 <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx>；关于起草联合国和平权宣言问题不限成员名额政府间工作组，A/HRC/WG.13/1/2。

<sup>78</sup> 见 <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/RightToPeace.aspx>；and [http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CRP.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/docs/session6/A.HRC.AC.6.CRP.3_en.pdf)。

<sup>79</sup> Joseph Schwartzberg 编撰的“创建一个世界议会联合大会”，促进民主联合国委员会，柏林，2012 年。Richard Falk 和 Andrew Strauss 编撰的“走向全球议会”，《外交事务》，2001 年，<http://ssrn.com/abstract=1130417>；“全球议会”，2011 年。



政府与联合国达成相关协议，创建这类各国议会联合大会。不论设立上述哪个机制，都不必推行《宪章》改革。前任联合国秘书长，布特罗斯·布特罗斯-加利曾是力推创建这类议会联合大会的倡导者。为更有效地解决全球危机，“必须在世界公民与世界政府之间建立起直接的民主关联关系”。他欢迎全世界国家层级推行民主制的表达，注意到一些新兴国家越来越多地被列入了全球政府间的辩论。他注意到，“几乎被遗忘殆尽的民主化第三个层面因素：发展超越国界的全球民主制”。<sup>80</sup> 奥斯陆和平研究所的创建者，Johan Galtung 曾写道：“任何相信民主制——依同意规则治理——的人，世界民主制是其中的一部分。一个民主的联合国，伴随着不断演进的议会联合大会，是一条向前推进的途径”。<sup>81</sup> 确实，若大会代表的是人民及各国，那么通过公民的投入和参与，全球决策必将会有更大程度的合法性。

50. 公民社会的其它一些应得到支持的倡议是：国际笔会推出的“2012 年数字化自由宣言”<sup>82</sup>；“史记自由”(Liberté Pour l'Histoire)；2008 年发表的“森林呼声”(Appel de Blois)倡议；<sup>83</sup> 世界另类论坛；<sup>84</sup> 2013 年 3 月 15 日提出的“人类共享惠益普世宣言”倡议；<sup>85</sup> 和 2013 年 5 月 25 日国际民主律师协会提出的“巴黎宣言”倡议。<sup>86</sup>

<sup>80</sup> 见 <http://en.unpacampaign.org/news/379.php>；Joseph Schwartzberg 在“创建一个世界议会联合大会”一文中写道：“若无一个有效运作的联合国体制，我们这个越来越趋于相互依存的世界即无法运作。但出于各种不同——主要与仍以现实政治为主导的世界陈旧思维和令人置疑的外交惯例——相关的原因，人类社会相当大部分人已丧失了对联合国体制的信任……。一个以民主形式构建的世界议会联合大会，将在国家和国际两级层面，挺胸出面纠正这些疲弱无效的局面，并将大为增进更合理、更透明、更具代表性、更负责任和更具应对力的执政管理。依据联合国组建时所基于的人类利益，提供多元的人类标准，透过有切实意义的声音，作出将奠定人类命运的决策，将会比任何我所能想象的其它改革，能使该全球性组织更合乎情理”(第 96 段)。Saul Mendlovitz 和 Barbara Walker 编撰的“对第二大会和议会提案的解读”，联合国改革教育中心，怀恩，新泽西州，美利坚合众国，2003 年。还见，Dieter Heinrich 编撰的“联合国议会联合大会案例”，世界联邦运动，阿姆斯特丹，1992 年；和 Andreas Bummel 编撰的“联合国议会联合大会的构成”，柏林，2010 年。

<sup>81</sup> 援引，Schwartzberg，第 6 段。

<sup>82</sup> 2012 年，在大韩民国举行的第 78 届国际笔会年度会议上通过；<http://www.pen-international.org/pen-declaration-on-digital-freedom/>。

<sup>83</sup> 见 annexes, [http://www.lph-asso.fr/index.php?Itemid=14&id=47&lang=fr&option=com\\_content&view=article](http://www.lph-asso.fr/index.php?Itemid=14&id=47&lang=fr&option=com_content&view=article)。

<sup>84</sup> 见 <http://www.especieenpeligro.cult.cu/index.php/debates-y-alternativas/articulos/1521-universal-declaration-for-the>。

<sup>85</sup> 见 <http://www.forumdesalternatives.org/en/universal-declaration-for-the-common-good-of-humanity-project>。

<sup>86</sup> 见 <http://www.iadllaw.org/>。

## 六. 结论和建议

51. 第 18/6 号决议创建了旨在汇集公民、文化、政治和社会权利为一体的广泛任务。决议敦促每个国家采取向前推进的步骤，审议民主进程和平等问题，以及推行增强本国管辖下所有人参与的针对性措施。这就必须变革规范和思维，具备诚意和自我批评精神。自我满足必然是争取进步的一个障碍。

52. 汇报各国和民间社会正在不断推进，增强民主风气的思维、民主感知和民主行动，不失为一件好事。不幸的是，人类活动的大部分领域，似乎被囿于其各自的逻辑和动力范围，为之，民主所追求的是实现现状的合法化，并不考虑赋予参与和磋商概念，或赋予联合国的核心价值观，包括透明度和问责制生命力。然而，民主精神却根植于男男女女的思想之中，每个社会、国家和区域都可逐步索求或再探求民主。这种民主风气必须由本土成长而就，既不能引进，也不能自上而下强加。政府应服务于人民，而政府权力必须受宪法和法治规约的信念，是至为关键。Juvenal 的提问：“谁来看管监管者？”(*quis custodiet ipsos custodes*)仍是民主的一个核心问题，因为人民必须始终监督领导人的行为是否符合宪法规定，只要领导人违反职责，即对之进行弹劾。宪法法院必须解决这一需求，而民间社会应声援人权捍卫者和监察警报方，他们绝非不爱国，而是在履行维护祖国和世界民主制义务。

53. 在尊重国家主权和人民自决权的同时，各国的“核心利益”必须得以联合国的宗旨和原则为准绳。依然存在的问题是，虽在谈论改革，然而，那些既得利益却阻碍推行改革；虽然出现了一些“吵吵闹闹”和“占领”运动，然而，却无有效机制，将公众的抗议转化为具体的改革。很快一切都依然如故，民众照样无足轻重。鉴于获取信息、言论自由和传媒自由是推行改革所必不可缺，因此就必须确保传媒的民主化，从而传媒可履行其监督职能。国家对传媒的不公正管控，或出于公司利益将之押为“人质”的做法，均有害于民主。传媒渲染炒作虽可不良地影响决策，然而，负责任的传媒，通过报道信息和开展教育可推进人权。体制化权力与人权之间的鸿沟必须予以弥合。在此必须重申：民主即是参与。“正规民主”不是民主。

### A. 对各国的建议

54. 独立专家回顾，《世界人权宣言》第二十八条的措辞阐明：“人人有权要求一种社会和国际秩序，在这种秩序中，本宣言所载权利和自由能获得充分实现”。

55. 关于国际层级的参与：

(a) 各国应合作改革安全理事会，从而扩大理事会的成员，并赋予所有国家，不论大国，还是小国，不论富裕，还是贫困，更大程度对全球决策的民主参与。在这个充满活力，日益变幻的世界大趋势下，定期改革是稳定的条件。

(b) 在安全理事会被五大常任理事国以使用或威胁使用否决权方式所封杀的情况下，大会各成员国和观察员国应重振大会，从此大会可在国际决策中发挥更大的作用。为此，大会应敦促各国对拒绝遵守理事会、大会和人权理事会决议的国家实行经济制裁。大会还应就涉及民主、参与、平等分配世界资源、人类共同遗产和人民自决权之类的法律问题，提交国际刑事法院征求意见。

(c) 各国应确保所有国家更民主和更平等地参与诸如世界银行、国际货币基金组织和世界贸易组织(世贸组织)之类的金融机构，<sup>87</sup>，例如，根据《宪章》第五十七和第六十三条的规定，将这些机构置于联合国的管控之下，使之依据《联合国宪章》的宗旨和原则行事。此外，加入为世贸组织成员国，应以是否接受国际规章和权利为条件，在相当大程度上犹如加入为欧洲委员会的成员国，均以是否接受《欧洲保护人权公约》为条件一样。

(d) 各国应统一适用国际法，摒弃对“实证主义”的过度依赖，并力图规避履行人权条约所列义务的做法。人权不存在“法律上的黑洞”，因为所有人都可享有源于人的尊严而形成的一切权利。

(e) 各国应批准联合国各项核条约及其议定书；相关申诉机制；《国际刑事法院规约》；以及国际劳工组织的相关公约，包括第 169 号公约。各国应允许个人、民间社会和国家人权机构全面参与编撰提交联合国各条约机构和理事会普遍定期审议(普定审)的报告。

(f) 各国应本着诚意将其所倡导的付诸实施，并检验他们的行为是否符合联合国的宗旨和原则；确认结果并不证明手段正当，而且按定义国际法普遍适用，绝非自择适用。

(g) 最重要的是，各国应严格遵守《联合国宪章》第二条第 3 款所载义务，参与所有各国以和平方式解决争端，以及第二条第 4 款规定禁止威胁使用或使用武力。<sup>88</sup> 各国必须本着诚意谈判，不采取欺凌行动，划出“红线”或提出“最后通牒”。各国应在本国的宪法和法规中承认和平与团结的权利和义务。

(h) 各国应放弃依赖单方面措施，当这类措施有碍国际合作和引起国际社会无必要的紧张时则更有必要；各国尤其不应直接和间接地干预别国事务。

(i) 各国应对金融和初级商品市场实行管控，禁止“影子银行”，并管制投机行为。针对金融支配地位问题，应举行商讨如何解决此问题的国际会议。

<sup>87</sup> Martin Khor 编撰的“某些世贸组织规则对实现千年发展目标的所涉影响”，檳城，马来西亚，2005 年；M. Khor 编撰的“农产品贸易自由化对发展中国家的冲击”，2008 年；Yilmaz Akyüz 编撰的“世贸组织关于工业产品税的谈判：对于发展中国家究竟有何风险”，2005 年。

<sup>88</sup> Antonio Cassese 编撰的：“实现乌托邦—国际法的未来”，牛津，2012；“呼吁建立基于人权为核心的全球社会”和“促进增强法治的作用”。

## 56. 关于国内层级的参与：

(a) 各国应加强法治，并执行分权制原则。各国尤其应采取一切必要立法和行政措施，致使民间社会更有效参与决策，尤其要通过民众倡议行动、公决、撤回和弹劾，得以形成更直接民主制。此外，不仅在法律上，而且还得在行动上作出评估。若要赋予民众权能，就必须实施人权教育方案，包括和平权。

(b) 各国应采取必要的立法、行政和司法措施，切实实施《世界人权宣言》，以及《公民权利和政治权利国际公约》各缔约国应执行《公民权利和政治权利国际公约》第二条、第十九条、第二十一条、第二十二条和第二十五条，坚守国际常设刑事法院咨询意见所阐明的原则，“据此，一个签约恪守有效国际义务的国家会对其立法作出必要的可能修订，以确保履行所承诺的义务”。<sup>89</sup>

(c) 敦请各国不仅遵循《公民权利和政治权利国际公约》第二十五条划定的范围，还得确保参与竞选的多元化，并增强与各利益攸关方之间的磋商。各国尤其应执行联合国各条约机构一般性意见所列与参与和磋商相关的建议。

(d) 应促进多党竞选制度和组建代表各类多样化广泛观点的政党。各国应审议本国关于组建政党和政党参与的立法。一党制是民主制的一个缺陷，而倘若只允许一个党派运作，就应规定促进和鼓励公众参与制订政策工作，以及在党内能够持有或发表不同的观点。

(e) 各国应确保可获得公共信息<sup>90</sup>并废除不符合《公民权利和政治权利国际公约》第十八和十九条规定的立法；尤其是亵渎法和回忆录法，以及任何可能有碍就政治和历史事件举行公开讨论的法律。各国应制止滥用反恐立法，恫吓和压制不同政见，由此，阻碍对民族进程的参与。<sup>91</sup>各国应确保网线上的言论自由，且不实施检查制度，但出于健康和道德原因则除外。

(f) 各国绝不应对人权捍卫者实施报复，并废除那些有碍实施公共和民间领域和平结社权；对游行示威者实施无理罚款或监禁；或限制结社和集体谈判自由权的法律。

(g) 各国应确保各自的国家机关承担起责任，重振当选议会，从而执行政权不得以不必听取咨询意见和征得同意直接下达指令和签订协议的方式，绕过民主程序。

<sup>89</sup> 关于希腊与土耳其人口交换案的咨询意见。[http://www.worldcourts.com/pcij/eng/decisions/1925.02.21\\_greek\\_turkish.htm](http://www.worldcourts.com/pcij/eng/decisions/1925.02.21_greek_turkish.htm)。

<sup>90</sup> 2009 年欧洲委员会关于获取文件公约；非洲联盟成员国关于获取信息法的草案范本；美洲国家组织关于公众获取信息问题模式法。

<sup>91</sup> 各联合中心如何窥探占领华尔街行动的。<http://ufppc.org/us-a-world-news-mainmenu-35/11479/>还见，Sheldon Wolin 编撰的“民主融入：掌控下的民主制和逆向集权主义的魅影”，2008 年。

(h) 各国应考虑到基本公共服务私营化可随之带来的巨大风险、私营化的服务必须遵循人权标准，包括不歧视、问责制、可承担得起、质量和充足的标准，须铭记一旦非国家行为方参与了提供服务，国家即应将更多的重点转移至提供保护的义务。

(i) 各国应确保民众可获得真正和可靠的信息，鼓励在线或非在线传媒的多元化和民主化，若有必要可通过运用反托拉斯立法，拆散卡特儿和传媒联营集团，以免损害民主进程必不可缺的多样化见解和辩论。

(j) 各国应建立空间和创造条件，以利于就公众所关心的问题开展自由辩论和自由表达各种不同的意见。

## B. 对理事会的建议

57. 独立专家提出了下列建议：

(a) 独立专家欢迎人权理事会在讨论咨询委员会编拟的“和平权宣言”草案方面取得的进展，并鼓励理事会继续进行研究，以作为致力于构建公平国际秩序的建设性步履。该宣言应提交大会供通过。

(b) 独立专家指出，自决议题是人权委员会议程上的永恒项目。在铭记自决是《宪章》所列的支柱之一，而且是许多土著人民、少数人、不拥有代议制代表的人民以及被占领下的人民尚未实现的权利之际，理事会应继续将自决权列为其议程项目的第 3 和 4 部分内容进行审议。

(c) 理事会应考虑举行有关自决和真正参与问题的研讨会。民主制出现的一个缺陷，最终即是一个自决权方面的缺陷。

(d) 理事会应考虑指派咨询委员会(一) 更新充实 1999 年小组委员会编撰的条约研究报告<sup>92</sup>；(二) 拟订出一项战略，重振 2004 年关于联合国与民间社会关系问题的卡多索报告(A/58/817)，以期增强民间社会在理事会工作中发挥的作用，并至少赋予非政府组织当年参与原人权委员会工作一样多的时间和机会；(三) 编撰一份关于世界议会联合大会将如何促进真正参与的研究报告；(四) 编撰一份关于研究报告，阐述如何加强执行理事会本身决议、普定审建议，以及各条约机构决定和意见，包括确保特别程序任务负责人能如何为各国起草扶持性立法，提供咨询服务和技术援助，和(五) 撰写一份阐述建立世界人权法院所提升意义的报告。

(e) 理事会应建议大会通过简化赋予非政府组织咨商地位的程序，从而废除政治化，并增进民间社会参与理事会工作的通道。

<sup>92</sup> 见 E/CN.4/Sub.2/1999/20。

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec>。

(f) 理事会应考虑向大会建议将涉及自决、战争、和平、民主、社会责任和债务减免等各具体法律问题，融入国际刑事法院发表的咨询意见。

### C. 对民间社会和国家人权机构的建议

58. 《世界人权宣言》第二十九条列明“人人对社会负有义务，因为他只有在社会中个性才可能得到自由和充分的发展”。独立专家认识到，在许多国家不存在可让民间社会发挥作用和提出合法要求的空间。然而，他鼓励民间社会：

(a) 将之视为公民义务及其申索权，来应对这项挑战，提出举行磋商的要求，有效参与决策、举行可靠的民意测验和履行公决权利，尤其是涉及国家下令实施可能侵害公民权利和政治权利的监视行动问题，和一些社会服务退缩<sup>93</sup>问题，包括“紧缩措施”、基本公共主管出现的私营化，诸如民间社会应利用新的数字化技术和社会传媒重振民主，即要求提供社会服务、管控金融市场、谴责战争叫嚣和侵犯人权行为等问题；

(b) 援引联合国程序，包括《经济、社会、文化权利国际公约》的新《任择议定书》。各国应要求其代表依赖和参与国内和国际法庭，包括区域各级审议和解决机构以及联合国各条约机构；

(c) 鼓励和平抵制各国政府和公司对他们实施的结构性暴力。为了恢复民主参与可援用和平集会和结社自由权；<sup>94</sup>

(d) 坚持政府人员的问责制并揭露各国政府侵犯人权的行为。一旦民主当选的政府显然无误地采取了或正在实施擅自越权和违背国际法，包括联合国各人权条约，以及 1949 年《日内瓦四公约》和 1977 年附加议定书的行动时，民间社会尤其应就举报方揭露的侵权情况展开调查并采取行动。民间社会应拒绝政治领导人以及金融业界和公司管理层人士的白领犯罪行为不受惩罚现象；

(e) 若已设立，即应更大程度地利用，或要求其代表制订、讨论和通过相关的立法，促进公共倡议行动、举行公决、采取撤职和弹劾行动。民间社会应要求经常举行国际和国家层级的民间测验。当可对推荐候选人所产生影响更多的是走形式，而不是真正的推举时，致为关键的是政策决择权，就不只是投票支持某位具体候选人的问题；

(f) 探讨建立一个由直选代表组成，可在联合国内或联合国外运作，咨商性机构的世界议会联合大会的利与弊；

<sup>93</sup> 《经济、社会、文化权利国际公约》第二条第 1 款确立了不承认的原则。美洲人权委员会承认《美洲人权公约》第二十六条承认的“逐步发展义务”。

<sup>94</sup> Stéphane Hessel 编撰的“令您愤怒”，2011 年。Norman Finkelstein 编撰的“甘地”，2012 年。

(g) 确认了解真正和可靠信息的权利，并坚持各国政府必须履行《公民权利和政治权利国际公约》第十九条和第二十五条，并实现公开透明。民间社会应要求推行传媒改革，从而确保多元化和尊重新闻报导的监督职能。诽谤中伤和人为操纵行为应予以揭露。基层的参与和互动尤其应予以促进，包括应分配归人民专用，不隶属多国公司或传媒管理层的播放频道。对新闻报导与广告业务之间的关系必须重新审议，因为公众具有获得真正信息并给予各类不同解释的民主权利。民众应要求新闻服务保持中立，而新闻应与评论分开。一旦新闻报导依赖于广告商时，客观性就会遭贬损；

(h) 谴责传媒违反《公民权利和政治权利国际公约》第二十条规定，进行战争宣传，或要求就战略罪和危害人类罪进行道歉。此外，民间社会应呼吁通过有效的反托拉斯立法或落实现行反托拉斯法，以打破有碍多元化的传媒联营集团和垄断行为。各民间社会应要求公众参与对播放频道的分配和管控，广播频道必须被视为一个公共空间领域；

(i) 要求各公司恪守有关工商业与人权问题的指导原则，而政府应执行“联合国的保护、尊重和补救框架”。

59. 遵循《巴黎原则》开展工作的国家人权机构应促进和便利公众参与公共事务。<sup>95</sup> 这些机构应揭露假民主程序，并坚持国际法的统一适用。这些机构应向各国政府提出关于如何执行拟议立法的咨询意见，并成为监察是否符合宪法问题的监督机构行事。

60. 独立专家承认，自 1948 年《世界人权宣言》通过以来，取得了相当大的进展，建立起了各项准则和机制，要承认的是在执行方面长期存在着差距。然而，一个更民主和公平的国际秩序并不是乌托邦。当每一个人、每个民间社会和联合国共同携手努力，力争使这一期望成为我们这个时代的现实时，这个秩序就能够，亦必将会实现。我们承担的责任是，确保《联合国宪章》的宗旨和原则不只是承诺，而要为今世后代结出硕果。

<sup>95</sup> 丹麦人权研究所，“丹麦人权研究所与公众参与”，问题论文，2013 年 4 月。



## Annex

*[English only]*

### Excerpts or full text of relevant documents

#### **I. Universal Declaration on Democracy, Declaration adopted without a vote by the Inter-Parliamentary Council at its 161st session, Cairo, 16 September 1997 (excerpts)<sup>1</sup>**

1. Democracy is a universally recognised ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.

2. Democracy is both an ideal to be pursued and a mode of government to be applied according to modalities which reflect the diversity of experiences and cultural particularities without derogating from internationally recognised principles, norms and standards. It is thus a constantly perfected and always perfectible state or condition whose progress will depend upon a variety of political, social, economic, and cultural factors.

3. As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.

4. The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity, drawing mutual enrichment from their differences.

5. A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit.

6. Democracy is inseparable from the rights set forth in the international instruments recalled in the preamble. These rights must therefore be applied effectively and their proper exercise must be matched with individual and collective responsibilities.

16. Individual participation in democratic processes and public life at all levels must be regulated fairly and impartially and must avoid any discrimination, as well as the risk of intimidation by State and non-State actors.

17. Judicial institutions and independent, impartial and effective oversight mechanisms are the guarantors for the rule of law on which democracy is founded. In order for these institutions and mechanisms fully to ensure respect for the rules, improve the fairness of the processes and redress injustices, there must be access by all to administrative and judicial remedies on the basis of equality as well as respect for administrative and judicial decisions

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<sup>1</sup> <http://www.ipu.org/cnl-e/161-dem.htm#Reserve>



both by the organs of the State and representatives of public authority and by each member of society.

22. The institutions and processes of democracy must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance.

23. Democratic institutions and processes must also foster decentralised local and regional government and administration, which is a right and a necessity, and which makes it possible to broaden the base of public participation.

24. Democracy must also be recognised as an international principle, applicable to international organisations and to States in their international relations. The principle of international democracy does not only mean equal or fair representation of States; it also extends to the economic rights and duties of States.

25. The principles of democracy must be applied to the international management of issues of global interest and the common heritage of humankind, in particular the human environment.

26. To preserve international democracy, States must ensure that their conduct conforms to international law, refrain from the use or threat of force and from any conduct that endangers or violates the sovereignty and political or territorial integrity of other States, and take steps to resolve their differences by peaceful means.

27. A democracy should support democratic principles in international relations. In that respect, democracies must refrain from undemocratic conduct, express solidarity with democratic governments and non-State actors like non-governmental organisations which work for democracy and human rights, and extend solidarity to those who are victims of human rights violations at the hands of undemocratic régimes. In order to strengthen international criminal justice, democracies must reject impunity for international crimes and serious violations of fundamental human rights and support the establishment of a permanent international criminal court.

## **II. Inter-Parliamentary Union Quito Communiqué, Adopted by the 128th IPU Assembly, Quito, 27 March 2013 (excerpts)<sup>2</sup>**

By definition, well-being policies require *all* citizens, and particularly vulnerable groups such as women, youth, indigenous peoples and the poor, to participate in decision-making. Being able to participate in the decisions that affect our lives and the social and environmental context around us is in itself a key dimension of well-being. Inversely, well-being is also necessary for citizens to participate effectively in the management of public affairs. Participation and its attendants of transparency and accountability are in turn key pillars of democracy and of the way democracy applies to the functioning of government at all levels - global, national and local - and in response to citizens' needs.

Participation, transparency and accountability constitute the core of *democratic governance*, which is an end in itself and an enabler of sustainable development. There can be no true prosperity without respect for the universal values of democracy, the rule of law and human rights. Democratic governance should therefore be a stand-alone goal among the new Sustainable Development Goals, as well as a dimension of other goals that will be part of

<sup>2</sup> <http://www.ipu.org/conf-e/128/quito-comm.htm>

the future development framework. This is further supported by the results of a survey of hundreds of members carried out during the Assembly.

To help steer sustainable development on a new course, a rebalancing of the role of the market and that of government is called for. Effective ways to help reconcile market needs with social imperatives include the development of private-public partnerships, community-based enterprises and other forms of cooperative models. Government intervention to guarantee the rights of the very poor and to safeguard the natural resource base will also be needed. The interdependent challenges of sustainable development require a concerted approach that only governments can initiate and help implement.

To this end, it will be more important than ever for parliaments to assert their legitimate place in the decision-making process at the national and international levels. The institution of parliament is pivotal to the entire architecture of democratic governance and needs to be strengthened virtually everywhere in the world, with greater oversight capacities and legislative authority. More specifically, stronger parliaments will have to play a central role in the implementation of the future Sustainable Development Goals. This will include ensuring that development policies and plans are drawn up through participatory and inclusive processes, and with regular progress reports submitted to parliament for review.

This debate should continue in national parliaments as a way of engaging them in the global consultations foreseen in the Rio outcome document, aptly called *The Future We Want*.

### III. Rio Declaration on Environment and Development, 12 August 1992 (excerpts)<sup>3</sup>

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

#### *Principle 10*

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

<sup>3</sup> <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

*Principle 20*

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

*Principle 22*

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

#### **IV. ILO Declaration on Social Justice, 10 June 2008 (excerpts)<sup>4</sup>**

*Scope and principles*

The Conference recognizes and declares that:

A. In the context of accelerating change, the commitments and efforts of Members and the Organization to implement the ILO's constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO, through which the Decent Work Agenda is expressed and which can be summarized as follows:

- (i) promoting employment by creating a sustainable institutional and economic environment in which:
  - individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being;
  - all enterprises, public or private, are sustainable to enable growth and the generation of greater employment and income opportunities and prospects for all; and societies can achieve their goals of economic development, good living standards and social progress;
- (ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances, including:
  - the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes;
  - healthy and safe working conditions; and
  - policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection;
- (iii) promoting social dialogue and tripartism as the most appropriate methods for:

<sup>4</sup> [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_094042.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_094042.pdf)

- adapting the implementation of the strategic objectives to the needs and circumstances of each country;
- translating economic development into social progress, and social progress into economic development;
- facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems; and

(iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives, noting:

- that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and
- that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

B. The four strategic objectives are inseparable, interrelated and mutually supportive. The failure to promote any one of them would harm progress towards the others. To optimize their impact, efforts to promote them should be part of an ILO global and integrated strategy for decent work. Gender equality and non-discrimination must be considered to be cross-cutting issues in the abovementioned strategic objectives.

C. How Members achieve the strategic objectives is a question that must be determined by each Member subject to its existing international obligations and the fundamental principles and rights at work with due regard, among others, to:

- (i) the national conditions and circumstances, and needs as well as priorities expressed by representative organizations of employers and workers;
- (ii) the interdependence, solidarity and cooperation among all Members of the ILO that are more pertinent than ever in the context of a global economy; and
- (iii) the principles and provisions of international labour standards.

#### *Method of implementation*

The Conference further recognizes that, in a globalized economy:

A. The implementation of Part I of this Declaration requires that the ILO effectively assist its Members in their efforts. To that end, the Organization should review and adapt its institutional practices to enhance governance and capacity building in order to make the best use of its human and financial resources and of the unique advantage of its tripartite structure and standards system, with a view to:

- (i) better understanding its Members' needs, with respect to each of the strategic objectives, as well as past ILO action to meet them in the framework of a recurring item on the agenda of the Conference, so as to:
  - determine how the ILO can more efficiently address these needs through coordinated use of all its means of action;
  - determine the necessary resources to address these needs and, if appropriate, to attract additional resources; and

- guide the Governing Body and the Office in their responsibilities;
- (ii) strengthening and streamlining its technical cooperation and expert advice in order to:
- support and assist efforts by individual Members to make progress on a tripartite basis towards all the strategic objectives, through country programmes for decent work, where appropriate, and within the framework of the United Nations system; and
  - help, wherever necessary, the institutional capacity of member States, as well as representative organizations of employers and workers, to facilitate meaningful and coherent social policy and sustainable development;
- (iii) promoting shared knowledge and understanding of the synergies between the strategic objectives through empirical analysis and tripartite discussion of concrete experiences, with the voluntary cooperation of countries concerned, and with a view to informing Members' decision-making in relation to the opportunities and challenges of globalization;
- (iv) upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations; and
- (v) developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO operational programmes and activities, enlist their support in any appropriate way, and otherwise promote the ILO strategic objectives. This will be done in consultation with representative national and international organizations of workers and employers.

B. At the same time, Members have a key responsibility to contribute, through their social and economic policy, to the realization of a global and integrated strategy for the implementation of the strategic objectives, which encompass the Decent Work Agenda outlined in Part I of this Declaration. Implementation of the Decent Work Agenda at national level will depend on national needs and priorities and it will be for member States, in consultation with the representative organizations of workers and employers, to determine how to discharge that responsibility. To that end, they may consider, among other steps:

- (i) the adoption of a national or regional strategy for decent work, or both, targeting a set of priorities for the integrated pursuit of the strategic objectives;
- (ii) the establishment of appropriate indicators or statistics, if necessary with the assistance of the ILO, to monitor and evaluate the progress made;
- (iii) the review of their situation as regards the ratification or implementation of ILO instruments with a view to achieving a progressively increasing coverage of each of the strategic objectives, with special emphasis on the instruments classified as core labour standards as well as those regarded as most significant from the viewpoint of governance covering tripartism, employment policy and labour inspection;
- (iv) the taking of appropriate steps for an adequate coordination between positions taken on behalf of the member State concerned in relevant international forums and any steps they may take under the present Declaration;
- (v) the promotion of sustainable enterprises;

(vi) where appropriate, sharing national and regional good practice gained from the successful implementation of national or regional initiatives with a decent work element; and

(vii) the provision on a bilateral, regional or multilateral basis, in so far as their resources permit, of appropriate support to other Members' efforts to give effect to the principles and objectives referred to in this Declaration.

C. Other international and regional organizations with mandates in closely related fields can have an important contribution to make to the implementation of the integrated approach. The ILO should invite them to promote decent work, bearing in mind that each agency will have full control of its mandate. As trade and financial market policy both affect employment, it is the ILO's role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies.

#### *Final provisions*

A. The Director-General of the International Labour Office will ensure that the present Declaration is communicated to all Members and, through them, to representative organizations of employers and workers, to international organizations with competence in related fields at the international and regional levels, and to such other entities as the Governing Body may identify. Governments, as well as employers' and workers' organizations at the national level, shall make the Declaration known in all relevant forums where they may participate or be represented, or otherwise disseminate it to any other entities that may be concerned.

B. The Governing Body and the Director-General of the International Labour Office will have the responsibility for establishing appropriate modalities for the expeditious implementation of Part II of this Declaration.

## **V. African Charter on democracy, elections and governance, 30 January 2007 (excerpts)<sup>5</sup>**

### **Preamble**

We, the Member States of the African Union (AU);

Inspired by the objectives and principles enshrined in the Constitutive Act of the African Union, particularly Articles 3 and 4, which emphasise the significance of good governance, popular participation, the rule of law and human rights;

Recognising the contributions of the African Union and Regional Economic Communities to the promotion, nurturing, strengthening and consolidation of democracy and governance;

Reaffirming our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries;

<sup>5</sup> <http://www.achpr.org/instruments/charter-democracy/>

## Chapter 2

### *Objectives*

#### Article 2

The objectives of this Charter are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional Economic Communities and the International Community on democracy, elections and governance; and
13. Promote best practices in the management of elections for purposes of political stability and good governance.

#### Article 3

State Parties shall implement this Charter in accordance with the following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;

5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

#### Chapter 4

##### *Democracy, Rule of Law and Human Rights*

##### Article 4

1. State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.
2. State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.

#### **VI. The Dar Es Salaam Declaration on budget transparency, accountability and participation, 18 November 2011 (excerpts)<sup>6</sup>**

The world we want.

It is often the case that citizens, and particularly those most marginalized, are excluded from participating in public budget decisions. It is both essential and possible to transform this current paradigm, by adhering to the following core principles:

- Public budgets must be transparent, meaning that all information related to the way in which public money is raised, allocated, spent and accounted should be made available to the general public in an accessible, timely and comprehensible way.
- Budget processes must be inclusive, ensuring open and ample opportunities for all citizens to fulfill their right to know about, participate in, and influence all decisions with regard to the collection, allocation and management of public funds.
- Budgets must be raised and spent efficiently, effectively, and equitably and must ensure that public resources achieve the greatest impact possible, in the elimination of poverty and the achievement of equity.

<sup>6</sup> [http://www.aefgh.org/website/index.php?option=com\\_content&view=article&id=104:the-dar-es-salaam-declaration-on-budget-transparency-accountability-and-participation&catid=1:latest-news&Itemid=2](http://www.aefgh.org/website/index.php?option=com_content&view=article&id=104:the-dar-es-salaam-declaration-on-budget-transparency-accountability-and-participation&catid=1:latest-news&Itemid=2)



- Budget data must be accurate, relying on publicly known estimates and ensuring that governments spend public monies on the priorities for which they were approved, thereby reducing the room for leakages, corruption and inefficiencies.
- Budgets have to be comprehensive, encompassing all revenues and expenditures, regardless of their origin -- including international aid, para-statal funds and the management of internal and external debt.
- Budgets have to be sustainable, ensuring that public finances serve common objectives over the long term, for current and future generations.
- Budgets have to be regularly and consistently reported against by all levels of government.
- Budgets must be the object of permanent monitoring, oversight and accountability by legislatures, internal and external audit institutions, the media and citizens.

We call upon:

All governments at the national and subnational levels to:

1. Recognize, legislate, enact and operationalize the right to information generally and to public budget information specifically;
2. Actively engage citizens and all other stakeholders in setting public budget priorities-- including para-statal and para-fiscal funds-- as early and inclusively as possible,
3. Produce, and publicly discuss, in a timely fashion, at least eight key budget documents: re-budget statement, executive's budget proposal, enacted budget, citizens budget, in-year report, mid-year review, end-year report, audit report;
4. Comprehensively report on all public financial flows and institutions, including those that are managed outside of the formal budget process;
5. Include all resources used for the implementation of public, fiscal and economic policies, regardless of their origin, in their public budget documents and processes;
6. Ensure that legislatures and auditors are independent of government and have sufficient resources to increase their capacity and thus fulfill their oversight mandates effectively.
7. Publish and disseminate budget information in easy and accessible formats through all possible means, including digital open data formats through the internet, public libraries, information centers, etc.

## **VII. European Grid Declaration on Transparency and Public Participation, 5 December 2012 (excerpts)<sup>7</sup>**

1.1 The Parties aim to improve the public acceptability of grid development to accommodate renewable energy in Europe, by increasing transparency and enabling public participation. Trustful cooperation is the basis to deliver solutions jointly for best practice in grid planning processes.

<sup>7</sup> [http://renewables-grid.eu/fileadmin/user\\_upload/Files\\_RGI/European\\_Grid\\_Declaration\\_2nd\\_Part.pdf](http://renewables-grid.eu/fileadmin/user_upload/Files_RGI/European_Grid_Declaration_2nd_Part.pdf)

1.2 The Parties recognise the need to undertake suitable initiatives to improve public acceptability, and jointly to communicate the necessity of grid development in the transition towards renewable energy. These steps are needed so that:

- renewable electricity generation is not constrained by bottlenecks in the transmission system; and
- plans and investments to accommodate renewable energy enjoy greater understanding, provoke less public opposition and encounter fewer delays.

1.3 The Parties recommend adapting planning and permitting practices so that:

- investments are planned, consented and undertaken in a more transparent way;
- stakeholders have access to all relevant information that they need to form and express their views;
- there are opportunities for dialogue and participation as well as formal consultation processes in place for stakeholders' and the public's knowledge and views to be expressed, at a point in time when their input can still be taken into account;

3.1 Coherent need definition at EU and national levels

3.1.1 The Parties agree it is desirable to establish the need for new infrastructure development through consistent, coherent and transparent methodologies and participation/consultation processes, including at EU and national levels.

3.1.2 They also recognise the benefits of public participation and consultation at these levels, in order to build support for later, more local planning procedures.

3.6 Early and continuous involvement to allow substantial participation.

3.6.1 Ensuring that stakeholder and local knowledge are brought into the discussions at an early stage can lead to decisions which are supported by a broader community. In addition, the involvement of stakeholders, including relevant authorities at an early stage can reduce later disagreements and delays.

The Parties therefore agree on the desirability and need to:

- engage with stakeholders and the public at an early point in the process so that their contributions can be taken into account and plans modified accordingly where appropriate, without risking another loss in time; this may require engagement before official procedures are initiated.
- ensure that in time of public consultation phases, sufficient information and time are provided to enable substantial input, and that time is allocated to discuss and to explain resulting decisions.
- support the implementation of decision-making processes that enable and promote the consideration of reasonable alternatives suggested by the public, where these are relevant to the stage of decision-making in question.
- promote opportunities to engage in ways that are convenient and effective for as many as possible in society; this can be achieved by developing a "concept for public participation" for each project, with detailed stakeholder mapping and identifying channels and formats to involve them from an early stage.
- promote the establishment, where necessary, and support the work of (i) strategic multistakeholder working groups to deal with questions of general relevance for grid development, and (ii) project-specific working groups specifically to find solutions on topics of local concern.

### 3.7 Dialogue as a means to enhance relationships and build trust

3.7.1 The Parties recognise that a culture of dialogue, debate and collaboration is necessary to find solutions that are widely acceptable. They therefore seek to:

- promote a culture of dialogue and debate, e.g. by including elements of direct dialogue and deliberation in participation concepts, and improving communication of the solutions found through participation and consultation procedures.
- professionally organise dialogue and, especially in situations of conflict or high potential for conflict, consider the use of independent facilitation to help ensure deliberations are as constructive as possible.

## VIII. Declaration of the Social Movements Assembly of the World Social Forum, Tunisia, 29 March 2013 (excerpts)<sup>8</sup>

People all over the world are suffering the effects of the aggravation of a profound crisis of capitalism, in which its agents (banks, transnational corporations, media conglomerates, international institutions, and governments complicit with neoliberalism) aim at increasing their profits by applying interventionist and neocolonial policies.

War, military occupations, free-trade neoliberal treaties and “austerity measures” are expressed in economic packages that privatise the common good and public services, cut wages and rights, increase unemployment, overload women's care work and destroys nature.

Such policies strike the richer countries of the [global] North harder and are increasing migration, forced displacement, evictions, debt and social inequalities such as in Greece, Cyprus, Portugal, Italy, Ireland and the Spanish state.

They reinforce conservatism and the control over women's bodies and lives. In addition, they seek to impose “green economy” as a solution to the environmental and food crisis, which not only exacerbates the problem, but leads to commodification, privatisation and financialisation of life and nature.

We denounce the intensification of repression to people's rebellions, the assassination of the leadership of social movements, the criminalisation of our struggles and our proposals.

We assert that people must not continue to pay for this systemic crisis (...) This is why we, social movements, struggle:

Against transnational corporations and the financial system (IMF, WB and WTO), which are the main agents of the capitalist system, privatising life, public services and common goods such as water, air, land, seeds and mineral resources, promoting wars and violations of human rights. Transnational corporations reproduce extractionist practices endangering life and nature, grabbing our lands and developing genetically modified seeds and food, taking away the peoples' right to food and destroying biodiversity.

We fight for the cancellation of illegitimate and odious debt which today is a global instrument of domination, repression and economic and financial strangulation of people. We reject free trade agreements that are imposed by States and transnational corporations and we affirm that it is possible to build another kind of globalisation, made from and by the people, based on solidarity and on freedom of movement for all the human beings.

<sup>8</sup> <http://occupywallst.org/tag/global%20solidarity/>

For climate justice and food sovereignty, because we know that global climate change is a product of the capitalist system of production, distribution and consumption. Transnational corporations, international financial institutions and governments serving them do not want to reduce greenhouse gases. We denounce “green economy” and refuse false solutions to the climate crisis such as biofuels, genetically modified organisms and mechanisms of the carbon market like REDD (Reducing Emissions from Deforestation and Forest Degradation), which ensnare impoverished peoples with false promises of progress while privatising and commodifying the forests and territories where these peoples have been living for thousands of years.

We defend the food sovereignty and support sustainable peasant agriculture which is the true solution to the food and climate crises and includes access to land for all who work on it. Because of this, we call for a mass mobilisation to stop the landgrab and support local peasants struggles.

Against violence against women, often conducted in militarily occupied territories, but also violence affecting women who are criminalised for taking part in social struggles. We fight against domestic and sexual violence perpetrated on women because they are considered objects or goods, because the sovereignty of their bodies and minds is not acknowledged. We fight against the traffic of women, girls and boys.

For peace and against war, colonialism, occupations and the militarisation of our lands. We denounce the false discourse of human rights defence and fight against fundamentalism, that often justifies military occupations such as in Haiti, Líbia, Mali and Syria. We defend the right to people’s sovereignty and self-determination such as in Palestine, Western Sahara and Kurdistan. We denounce the installation of foreign military bases to instigate conflicts, to control and ransack natural resources, and to foster dictatorships in several countries.

## **IX. Universal Declaration for the Common Good of Humanity (excerpts)<sup>9</sup>**

### **Article 7 (To promote dignified and non-exploitative labor)**

Processes of production and circulation should ensure workers a dignified, participatory job that is adaptive to family and cultural life, that fosters their skills and ensures them an adequate material existence. All modern forms of slavery, servitude and labor exploitation, especially of children, for the purposes of individual profit or private accumulation of surplus value as well as limitations on labor organizing are inconsistent with the Common Good of Humanity and Good Life (Buen Vivir) and are therefore prohibited.

### **Article 8 (To reconstruct territories)**

Facing “globalization” which has favored a unipolar economy, the concentration of decision-making powers, the hegemony of financial capital and the irrational circulation of goods and services, it is indispensable to reconstruct territories as a base for food, energetic sovereignty and for the main exchanges, to regionalize economies and base them on principles of complementarity and solidarity; and for the peripheral regions, to “disconnect” from the hegemonic economic center, in order to assure commercial, financial and productive autonomy. The constitution of monopolies and oligopolies, whatever their area

<sup>9</sup> <http://www.especieenpeligro.cult.cu/index.php/debates-y-alternativas/articulos/1521-universal-declaration-for-the>

of productive or financial activity is, is inconsistent with the Common Good of Humanity and are therefore prohibited.

**Article 9** (To guarantee access to common goods and universal social protection)

There are certain common goods that are indispensable for the collective life of individuals and peoples and that constitute inalienable rights. These are: food, housing, health, education, and material and immaterial communication. Various forms of citizen control or social property exist for the effective organization of access to these goods. “Universal protection” is a right of all peoples and individuals, a responsibility of public authorities that should be assured by an adequate fiscal policy. The privatization of public services in order to contribute to capital accumulation is inconsistent with the Common Good of Humanity and is therefore prohibited. The following are susceptible for sanctions: speculating on food, housing, health, education, communication as is corruption while exercising these rights.

**Article 10** (To generalize democracy and the construction of the subject)

All peoples and human beings are subjects of their histories and have the right to a collective social and political organization that guarantees this. This organization must ensure harmony with nature and access to the material needs of life through production and circulation systems built on social justice principles. To achieve these goals, collective organization should allow everyone’s participation in the production and reproduction of the life of the planet and human beings, i.e., of the Common Good of Humanity. The organizing principle of this goal is to spread democracy into all social relationships: family, gender, work, political authority, between peoples and nations and in all social, political, economic, cultural and religious institutions. Along with political forms of participatory democracy, participation should be organized in all sectors of common life, economic, social, cultural.

All non-democratic forms of organizing society’s political, economic, social and cultural life are inconsistent with the Common Good of Humanity and the Good Life (Buen Vivir) and are therefore prohibited. Genocides are condemned as irreparable acts of discrimination. Susceptible to sanctions are all discriminations based on gender, race, nation, culture, sexual orientation, physical or mental capacity, religion or ideological affiliation. Along with political forms of participatory democracy, participation should be encouraged in all sectors of common life.

**Article 11** (To build equality between men and women)

Particular importance will be given to relations between men and women, unequal since time immemorial in the various types of societies that have existed during human history. All institutions and all social and cultural systems should recognize, respect and promote the right to a life in plenitude for women in equality with men. Social and economic practices, institutions and cultural or religious systems that defend discrimination or actively discriminate against women are inconsistent with the Common Good of Humanity. All forms of masculine domination, particularly differences in wage income and the non-recognition of family domestic work linked to the reproduction of life, are susceptible to sanctions.

**Article 12** (To prohibit war)

Democratic international relations do not allow the use of war to resolve conflicts. In this day and age, peace is not guaranteed by an arms race. The availability of nuclear, biological, chemical weapons directly jeopardizes the life of Humanity. Arms have become a business.

Their production causes an enormous waste of energy, natural resources and human talents; their use means, aside from the loss of lives, serious environmental destruction.

The manufacture, possession and use of weapons of mass destruction, the accumulation of conventional weapons to guarantee regional hegemony and control of natural resources, hegemonic regional pacts, military solutions to solve internal political problems are inconsistent with the Common Good of Humanity and are therefore prohibited.

**Article 13** (To build the State on the basis of Common Good)

The role of the State, as collective administrator, is to guarantee the Common Good, i.e. the public interest, as compared to individual or private interests. Democratic participation is therefore needed to define the Common Good (constitutions) and how it will be applied. All peoples and communities of the earth, in the plurality of each of their members, organizations and social movements, have the right to political systems of direct or delegated participation with a revocable mandate. Regional governments and international organizations, particularly the United Nations, must be constructed on democratic principles. The same is true for all institutions that represent specific interests or business sectors, such as industrial companies, estates, financial or commercial organisms, political parties, religious institutions or trade unions, NGOs, sports or cultural groups, humanitarian organizations.

All dictatorial or authoritarian forms of exercising political or economic power, where no representative minorities, formal or informal, monopolize decisions without participation, initiative or popular control, are inconsistent with the Common Good of Humanity and are therefore prohibited. Also prohibited are public subsidies for organizations, social movements, political parties or religious institutions that do not respect democratic principles or that practice gender or racial discrimination.

**X. Paris Appeal for a New Democratic International Economic Order,  
International Association of Democratic Lawyers, 25 May 2013  
(excerpts)<sup>10</sup>**

We, democratic lawyers, recognize the United Nations Charter along with the Universal Declaration of Human Rights and the UN Conventions on Human Rights constitute the Constitution of the modern world. These important documents prohibit the threat of and use of force, recognize the sovereign equality of states and the right of self-determination, and guarantee that everyone has the right to a social and international order in which the rights and freedoms in the Universal Declaration of Human Rights can be fully realized.

The United Nations Charter in its Preamble replaced the old vertical logic of power over peoples by horizontally organizing power of the peoples based on the exercise of and respect for self-determination and their exclusive mastery over their own affairs in equality and universality. However, the economic management of the world has been “entrusted” by the Bretton Woods agreements to international financial institutions, but these institutions are based on the old vertical logic of power over the peoples that do not comply with the principal of equality and universality. This has allowed the peoples of the world to be diverted from their mission as States with the economic power of these institutions being used as instruments of domination and policing in their own self-interest and the interest of large economies.

<sup>10</sup> <http://www.iadllaw.org/>

Peoples' power requires not only the first generation of civil and political rights but also the second generation of Economic, Social and Cultural Rights. Peoples' Power cannot be complete without economic power.

The conclusion from the experience of decolonization necessitated the adoption of the United Nations Resolution of 1971 proclaiming peoples' sovereignty over their natural resources. However, it became clear that even with such resolutions peoples remain dependent because of the so-called "laws" of the market with its domination by industrial and financial monopolies, continue undermine the Human Rights Covenants and raise public debt.

We have been denouncing for decades not only the injustice and illegitimacy of the public debt of developing countries but also its illegality and nullity.

Today the inequality bequeathed by colonialism and maintained by the post colonialism remains unbearable, the public debt is now a heavy burden on the economies of the majority of states and leads them to inflict austerity policies on their people to the detriment of the necessary satisfaction of their most basic economic, social and cultural rights as proclaimed by the United Nations Covenant in 1966. These policies violate the social development goals defined by Articles 55 *et seq.*, of the United Nations Charter and confirmed by U.N. General Assembly Resolution of 4 December 1986 on the Right to Development.

The result is a fundamental economic political and societal crisis on a scale constituting a crisis of civilization, posing the most serious dangers to humanity.

However, this situation is not an accident of fate. It is the result of the management of the world's economy, based on the savagery of economic liberalism and the resulting dictatorship of financial markets. The world's economy is governed by a system which exploits the world's resources, not as a function of their value to humanity but of their value as profit for finance capital.

Even the so-called "local conflicts" are in fact conflicts between the powers that compete for resources and markets, in which the arms trade plays a particularly burdensome role. Massive violations of human rights that appear as purely internal are most often the work of dictatorships established by the neo-colonizer guaranteeing them economic mastery and security of access to resources and markets.

The future of Humanity is at stake as long as the political power of the peoples is not completed by their economic power. This completion will permit placing the organization of world economic management under international universal and egalitarian law of the United Nations Charter and replacing non-egalitarian International financial institutions by people's instruments of cooperation allowing the planet's resources to be directed to the exclusive satisfaction of peoples' and the environments respective and common needs.

We believe that the world's lawyers should serve the people in the front line of this struggle, which calls on them to use and improve their professional skills in the service of peoples to achieve the common goal of Peoples' Power. We have therefore decided to establish a permanent consultative working group to define those steps which should be taken immediately to counter effectively the malfunctioning of the current order and towards establishing a new democratic international economic order.

## **XI. Appel de Blois, Liberté pour l'histoire, 2008 (full text)<sup>11</sup>**

Concerned about the retrospective moralization of history and intellectual censure, we call for the mobilization of European historians and for the wisdom of politicians.

History must not be a slave to contemporary politics nor can it be written on the command of competing memories. In a free state, no political authority has the right to define historical truth and to restrain the freedom of the historian with the threat of penal sanctions.

We call on historians to marshal their forces within each of their countries and to create structures similar to our own, and, for the time being, to individually sign the present appeal, to put a stop to this movement toward laws aimed at controlling history memory.

We ask government authorities to recognize that, while they are responsible for the maintenance of the collective memory, they must not establish, by law and for the past, an official truth whose legal application can carry serious consequences for the profession of history and for intellectual liberty in general. In a democracy, liberty for history is liberty for all.

## **XII. Declaration on Digital Freedom, Adopted by the PEN International Congress Gyeongju, South Korea, September 2012 (full text)<sup>12</sup>**

PEN International promotes literature and freedom of expression and is governed by the PEN Charter and the principles it embodies unhampered transmission of thought within each nation and between all nations.

PEN recognizes the promise of digital media as a means of fulfilling the fundamental right of free expression. At the same time, poets, playwrights, essayists, novelists, writers, bloggers, and journalists are suffering violations of their right to freedom of expression for using digital media. Citizens in many countries have faced severe restrictions in their access to and use of digital media, while governments have exploited digital technologies to suppress freedom of expression and to surveil individuals. The private sector and technology companies in particular have at times facilitated government censorship and surveillance. PEN therefore declares the following:

1. All persons have the right to express themselves freely through digital media without fear of reprisal or persecution.

- a. Individuals who use digital media enjoy full freedom of expression protections under international laws and standards
- b. Governments must not prosecute individuals or exact reprisals upon individuals who convey information, opinions, or ideas through digital media.
- c. Governments must actively protect freedom of expression on digital media by enacting and enforcing effective laws and standards.

2. All persons have the right to seek and receive information through digital media.

- a. Governments should not censor, restrict, or control the content of digital media, including content from domestic and international sources.

<sup>11</sup> [http://www.lph-asso.fr/index.php?option=com\\_content&view=article&id=47&Itemid=14&lang=en](http://www.lph-asso.fr/index.php?option=com_content&view=article&id=47&Itemid=14&lang=en)

<sup>12</sup> <http://www.pen-international.org/pen-declaration-on-digital-freedom/>



- b. In exceptional circumstances, any limitations on the content of digital media must adhere to international laws and standards that govern the limits of freedom of expression, such as incitement to violence.
- c. Governments should not block access to or restrict the use of digital media, even during periods of unrest or crisis. Controlling access to digital media, especially on a broad scale, inherently violates the right to freedom of expression.
- d. Governments should foster and promote full access to digital media for all persons.

3. All persons have the right to be free from government surveillance of digital media.

- a. Surveillance, whether or not known by the specific intended target, chills speech by establishing the potential for persecution and the fear of reprisals. When known, surveillance fosters a climate of self-censorship that further harms free expression.
- b. As a general rule, governments should not seek to access digital communications between or among private individuals, nor should they monitor individual use of digital media, track the movements of individuals through digital media, alter the expression of individuals, or generally surveil individuals.
- c. When governments do conduct surveillance in exceptional circumstances and in connection with legitimate law enforcement or national security investigations—any surveillance of individuals and monitoring of communications via digital media must meet international due process laws and standards that apply to lawful searches, such as obtaining a warrant by a court order.
- d. Full freedom of expression entails a right to privacy; all existing international laws and standards of privacy apply to digital media, and new laws and standards and protections may be required.
- e. Government gathering and retention of data and other information generated by digital media, including data mining, should meet international laws and standards of privacy, such as requirements that the data retention be time-limited, proportionate, and provide effective notice to persons affected.

4. The private sector, and technology companies, in particular, are bound by the right to freedom of expression and human rights.

- a. The principles stated in this declaration equally apply to the private sector.
- b. Companies must respect human rights, including the right to freedom of expression, and must uphold these rights even when national laws and regulations do not protect them.
- c. Technology companies have a duty to determine how their products, services, and policies impact human rights in the countries in which they intend to operate. If violations are likely, or violations may be inextricably linked to the use of products or services, the companies should modify or withdraw their proposed plans in order to respect human rights.
- d. Technology companies should incorporate freedom of expression principles into core operations, such as product designs with built-in privacy protections.
- e. If their operations are found to have violated the right to freedom of expression, technology companies should provide restitution to those whose rights were violated, even when governments do not provide remedies.

### **XIII. Final Report of the Sub-Commission's Special Rapporteur on Treaties with Indigenous Peoples, Miguel Alfonso Martinez, 1999 (excerpts)<sup>13</sup>**

306. Earlier in the present report (para. 261) the Special Rapporteur noted the generalized opinion that, in the light of the situation endured by indigenous peoples today, the existing mechanisms, either administrative or judicial, within non-indigenous spheres of government have been incapable of solving their difficult predicament. This forces him to advance a number of recommendations on this subject.

307. He first recommends the establishment within States with a sizeable indigenous population of an entirely new, special jurisdiction to deal exclusively with indigenous issues, independent of existing governmental (central or otherwise) structures, although financed by public funds, that will gradually replace the existing bureaucratic/administrative government branches now in charge of those issues.

308. This special jurisdiction, in his view, should have four distinct specialized branches (permanent and with adequate professional staffing):

- (i) an advisory conflict-resolution body to which all disputes, including those relating to treaty implementation, arising between indigenous peoples and non-indigenous individuals, entities and institutions (including government institutions) should be mandatorily submitted, and which should be empowered to encourage and conduct negotiations between the interested parties and to issue the recommendations considered pertinent to resolve the controversy;
- (ii) a body to draft, through negotiations with the indigenous peoples concerned: (a) new juridical bilateral, consensual, legal instruments with the indigenous peoples interested and (b) new legislation and other proposals to be submitted to the proper legislative and administrative government branches in order gradually to create a new institutionalized legal order applicable to all indigenous issues and that accords with the needs of indigenous peoples;
- (iii) a judicial collegiate body, to which all cases that after a reasonable period of time have not been resolved through the recommendations of the advisory body, should be mandatorily submitted. Such a body should be empowered to adjudicate these cases and should be capable of making its final decisions enforceable by making use of the coercive power of the State;
- (iv) an administrative branch in charge of all logistical aspects of indigenous/non-indigenous relations.

309. The Special Rapporteur is fully aware of many of the obstacles that such an innovative, far-reaching approach might encounter. To mention only one, it is not difficult to appreciate the many vested interests that might be affected by the redundancy of the structures now existing to deal with indigenous issues in many countries. Only strong political determination, particularly on the part of the leadership of the non-indigenous sector of the society, can make this approach viable. One other essential element is also clear: the effective participation of indigenous peoples - preferably on a basis of equality with non-indigenous people - in all four of the recommended branches is absolutely central to the "philosophy" presiding over the Special Rapporteur's overall approach to this question.

<sup>13</sup> <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/696c51cf6f20b8bc802567c4003793ec>

310. It is obvious that the above is a mere sketch of the new institutionality recommended. Much lies ahead in terms of filling in its quite visible lacunae. While the Special Rapporteur does not lack ideas on how to fill some of the gaps, he has considered it wise to allow for the required fine-tuning to be done at a later stage, around a negotiating table, by the interested parties themselves in the different countries. The way in which such a negotiation process is organized and conducted may well be the true litmus test eventually of the merits of his recommendation and of the viability of the structure proposed in a given socio-political context.

311. In advancing the recommendations set forth above, the Special Rapporteur has benefited from the highly interesting ideas on the same subject formulated in the final report (1996) of the Royal Commission on Aboriginal Peoples established by the Government of Canada. (71)

312. While it is generally held that contentious issues arising from treaties or constructive arrangements involving indigenous peoples should be discussed in the domestic realm, the international dimension of the treaty nevertheless warrants proper consideration.

313. A crucial question relates to the desirability of an international adjudication mechanism to handle claims or complaints from indigenous peoples, in particular those arising from treaties and constructive arrangements with an international status.

314. The Special Rapporteur is quite familiar with the reticence expressed time and again, by States towards the question of taking these issues back to open discussion and decision-making by international forums. In fact, he might even agree with them that for certain issues (for example, disputes not related to treaty implementation and observance) it would be more productive to keep their review and decision exclusively within domestic jurisdiction until this is completely exhausted.

315. However, he is of the opinion that one should not dismiss outright the notion of possible benefits to be reaped from the establishment of an international body (for example, the proposed permanent forum of indigenous peoples) that, under certain circumstances, might be empowered - with the previous blanket acquiescence, or acquiescence on an ad hoc basis, of the State concerned - to take charge of final decision in a dispute between the indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions.

316. At any rate, the Special Rapporteur recommends that a United Nations-sponsored workshop be convened, at the earliest possible date and within the framework of the International Decade of the World's Indigenous People, to open an educated discussion on the possible merits and demerits of the establishment of such an international body.

317. One last point on the subject: with the growing international concern about all human rights and related developments, one element appears very clear in the mind of the Special Rapporteur: the more effective and developed the national mechanisms for conflict resolution on indigenous issues are, the less need there will be for establishing an international body for that purpose. The opposite is also true: the non-existence, malfunctioning, anti-indigenous discriminatory approach or ineffectiveness of those national institutions will provide more valid arguments for international options. This may be one of the strongest arguments possible for the establishment (or strengthening) of proper, effective internal channels for the implementation/observance of indigenous rights and conflict resolution of indigenous-related issues.

318. Another recommendation which it seems timely to address to State institutions empowered to deal with indigenous issues is that, in the decision-making process on issues of interest to indigenous peoples, they should apply and construct (or continue to do so) the provisions of national legislation and international standards and instruments in the most

favourable way for indigenous peoples, particularly, in cases relating to treaty rights. In all cases of treaty/agreement/constructive arrangement relationships, the interpretation of the indigenous party of the provisions of those instruments should be accorded equal value with non-indigenous interpretation of the same provisions.

319. The Special Rapporteur also recommends the fullest possible implementation in good faith of the provisions of treaties/agreements between indigenous peoples and States, where they exist, from the perspective of seeking both justice and reconciliation. In the event that the very existence (or present-day validity) of a treaty becomes a matter of dispute, a formal recognition of that instrument as a legal point of reference in the State's relations with the peoples concerned would contribute greatly to a process of confidence-building that may bring substantial benefits. In this context, the completion of the ratification process of draft treaties/agreements already fully negotiated with indigenous people is strongly recommended by the Special Rapporteur.

320. In the case of obligations established in bilateral or multilateral treaties concluded by States - to which indigenous peoples are third parties - that may affect those peoples, the Special Rapporteur recommends that the State parties to such instruments seek the free and educated acquiescence of the indigenous parties before attempting to enforce those obligations.

#### **XIV. The realization of economic, social and cultural rights, Final report submitted by Mr. Danilo Türk, Special Rapporteur, E/CN.4/Sub.2/1992/16, 3 July 1992 (excerpts)<sup>14</sup>**

177. Decades of pleas for increasing levels of participation in the development process, principles about which are included, for instance, in the 1986 Declaration on the Right to Development, have clearly yet to bear fruit.

178. According to one commentator: "Though the World Bank claims that 'it seeks to meet the needs of the poorest people', at no stage in what it refers to as 'the project cycle', however, does it actually take time to ask the poor themselves how they perceive their needs; neither does it canvass their views on how they feel these needs might best be met. Indeed, from the identification of a possible Bank project right through to its ex post evaluation, the poor are entirely left out of the decision-making process - almost as if they did not exist".

179. Even the Bank itself has recognized this inadequacy, admitting in 1988 that: "the principles guiding beneficiary participation in Bank-financed projects have been quite abstract and of limited operational impact. Beneficiaries were not assigned a role in the decision-making process, nor was their technological knowledge sought prior to designing project components". Though non-governmental organization participation in World Bank projects has increased in the past three years, by far the greatest share of this "participation" was in project implementation, with substantially smaller emphasis being placed on design, advice, monitoring and evaluation.

180. The declining capacities of the State and the resolute inability of the market or private sector, coupled with measures of adjustment, and an overall global economic decline have led to the evolution of new citizen movements, new coalitions and new political processes, all but ignored in the literature of the international financial agencies

<sup>14</sup> <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1992.16.En>  
Opendocument

and by much of the United Nations system. Within these new movements is where real participation occurs, where much of real development takes place and where the legitimate needs of people are increasingly being demanded.

181. Much debate has taken place recently about the obvious relationship between development, democracy and human rights, implying, of course, the issue of citizen participation in all political processes associated with development. One United Nations agency has provided support in the following terms: “An essential part of any political process to benefit the poor is a high degree of participation. Encouraging the autonomy of citizens is, indeed, an end in itself. And participation is a means to ensure the efficient provision and more equitable distribution of goods and services. If people are involved in decision-making, policies and projects tend to be more realistic, more pragmatic and more sustainable.”

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