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Promotion of the right of peoples to peace

Written statement* submitted by the Canadian HIV/AIDS Legal Network, a non-governmental organization in special consultative status

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

[16 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Top 10 concerns with draft report on traditional values

Methodology

There are no footnotes and few references throughout the draft study. Theories and matters of personal opinion are presented as statements of fact or law. No evidentiary basis is provided to support many of the views expressed, while substantial international sources such as reports and analyses of UN Special Procedures, treaty bodies and the OHCHR experts' seminar are overlooked.

Asserts that “traditional values” are positive, fails to take into account harmful traditional values

While the report acknowledges that “traditions” can be harmful, the report erroneously assumes that “values”, and hence “traditional values”, are inherently positive (Section II.B para. 22-23: “The concept of ‘values’ has an especially positive connotation”).

This overlooks the existence of negative values such as racism, sexism and xenophobia, as well as the reality that harmful traditional practices are frequently legitimised by the harmful traditional values on which they are founded. Building on the work of independent experts, including the former Special Rapporteur on harmful traditional practices, the OHCHR has emphasized:

“Every social grouping in the world has specific traditional cultural practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group, such as women. Despite their harmful nature and their violation of international human rights laws, such practices persist because they are not questioned and take on an aura of morality in the eyes of those practising them.”

Assumes a uniform approach to traditional values, fails to recognise that there are a plurality of views and interpretations of tradition within societies

As the report of the OHCHR Experts' Seminar (A/HRC/16/37) underlines, “traditional values” are often defined and asserted by those in authority to subordinate minorities or those who do not conform:

“Communities had divergent traditions that reflected different values within themselves, by reflecting the views of the majority and/or power-holders on the one hand, and those of the more marginalized, including minorities, on the other” (OHCHR report, para 67).

The Experts' Seminar also concludes that: “There was a danger in making something as undefined and constantly evolving as ‘traditional values’ the standard for human rights”, and that while positive values exist in all cultures, “there was a need to support communities to examine, contest, negotiate and reconcile their values with human rights”. (OHCHR report, para. 70)

Undermines universality by suggesting that human rights protection is conditional upon “responsible” behaviour

The draft report suggests that human rights arise from the dignity and freedom of the individual “and his or her responsible behaviour in respect of society and other people” (para. 31) and that promotion of and respect for human rights “must accord ... with responsible behaviour in respect of the State, society and other people.” (para. 40)

In international law, it is the responsibility of the State to promote and protect human rights. Promotion and protection of the human rights of the individual are in no way conditional upon that person's "responsible behaviour".

The danger of such an approach to "responsibility" can be illustrated by cases where the concept has been invoked to justify systemic abuses of human rights:

"In patriarchal and patrilineal societies maintaining the honour of the family is [seen as] a woman's responsibility. In these societies, the concept of women as commodities and not as human beings endowed with dignity and rights equal to those of men is deeply embedded. Women are seen as the property of men and they have to be obedient and passive, not assertive and active". (Special Rapporteur on Violence against Women on "honour" crimes, 2002)

Suggests that dignity can be abrogated, rather than being inherent in the human person

Section III.A reconsiders whether dignity is inherent to the human being: "Breaking society's laws not only detracts from a person's dignity and self-respect, but may also lead to deprivation of liberty" (para. 33). Dignity is inherent to the human person and thus it is important that the Advisory Committee's report focus on the language from the preamble of the UDHR that affirms "the inherent dignity and worth of the human person".

Uncritically asserts the virtues of "the family", while ignoring the diversity of family forms, and giving no consideration to potential human rights abuses within families and communities

Section IV of the draft report refers consistently to "the" family, including its "genetic" and "biological" bases (para 50), thus failing to acknowledge the diversity of family forms. Even the HRC resolution 16/3 refers only in OP3 to the role of "family" in general, rather than to a single family form.

While making multiple assumptions about the positive and moral influence of "the family" on the child, the draft report also fails to acknowledge families as potential sites of human rights abuses and violations. For example, the Special Rapporteur on violence against women dedicated an entire report to cultural practices within the family that are violent towards women (E/CN.4/2002/83), including female genital mutilation, honour killings, the pledging of girls for economic and cultural appeasement, witch hunting, incest, forced/child marriage, rape, widow rites, female infanticide, and caste-based discrimination and violence.

Similarly, the report of the High Commissioner for Human Rights on Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity, states at paras 66-67:

"While families and communities are often an important source of support, discriminatory attitudes within families and communities can also inhibit the ability of LGBT people to enjoy the full range of human rights. Such discrimination manifests itself in various ways, including through individuals being excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to relinquish children, punished for activist work and subjected to attacks on personal reputation. In many cases, lesbians, bisexual women and transgender people are especially at risk owing to entrenched gender inequalities that restrict autonomy in decision-making about sexuality, reproduction and family life. Family or community members often enforce gender norms and punish transgressions."

Includes an entire section on religion, which is neither required nor mandated by HRC resolution 16/3

It is unclear how section V. of the draft report, titled “law, religion and universal human values” fits within the mandate provided by HRC resolution 16/3.

Undermines responsibility to protect

The draft report repeatedly advocates a deferential approach to the fulfilment by States of their international human rights obligations, asserting that “the different approach of States and other civilisations to the way they perceive some norms of current international law must be respected”, “any attempts to impose or force this process are completely futile”, “we should rather adopt a solicitous attitude towards the positions of different States and civilisations”, “any attempt to force these processes is certainly doomed to failure and cannot produce any positive results” (para. 62), “State sovereignty and the scope of national jurisdiction face serious restrictions when a State voluntarily takes on certain international obligations” (para 63).

This approach suggests that the adoption and fulfilment of human rights obligations is wholly dependent upon the good will of the State, and overlooks the role of the international human rights framework in ensuring that the inherent dignity and worth of all human beings is respected, and the responsibility of the international community not to overlook systemic and egregious human rights abuses.

Subordinates international human rights law to traditional values

The draft report refers to the “primacy of traditional values” (para. 65) and asserts that “all international human rights agreements, whether universal or regional, must be based on, and not contradict, the traditional values of humankind. If this is not the case, they cannot be considered valid.”(para. 75)

Rather than requiring that traditional values conform with international human rights law, the report asserts that international human rights law must conform with traditional values, undermining the human rights framework and overlooking States’ positive obligation to work towards the elimination of harmful traditional or cultural beliefs, values, stereotypes or practices that are inconsistent with human rights (see, for example, CEDAW, article 5; VDPA, para. 38; Declaration on the Elimination of Violence against Women).

Fails to systematically integrate a gender perspective, or apply an equality and non-discrimination analysis, as required by HRC resolution 6/30

HRC resolution 6/30 on gender integration requests the Advisory Committee to “systematically integrate a gender perspective into the implementation of their mandate including when examining the intersection of multiple forms of discrimination against women and to include in their reports information on and qualitative analysis of human rights of women and girls” (OP 18). This is particularly important in the context of a report on “traditional values”, which have often been invoked to restrict the human rights of women. To give effect to this commitment, the draft report will therefore need to systematically integrate a gender perspective, and apply a non-discrimination and equality analysis to all sections of the report.

Conclusion

The concerns identified are substantial, and run throughout the draft report. They cannot be easily accommodated through minor modifications, but will require significant redrafting. In our submission, the answer to the question of “how” certain values enhance understanding of human rights can best be found in human rights education. The focus must

be on implementation of existing standards. States are already free to promote existing human rights norms within their own cultural contexts in ways that resonate with the populace, but it is crucial to safeguard the human rights framework and ensure that in promoting human rights in diverse contexts there is no erosion of international norms and standards.
