联 合 国 **E** 



# 经济及社会理事会

Distr. GENERAL

E/CN.4/Sub.2/2004/25 23 June 2004 CHINESE Original: ENGLISH

人权委员会 增进和保护人权小组委员会 第五十六届会议 临时议程项目 4

经济、社会和文化权利

在同赤贫作斗争方面实行现行人权准则和标准 \*\*

特设专家组协调人何塞•本戈亚提交的进度报告 \*

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<sup>\*</sup> 附件仅以提交语文分发。

<sup>\*\*</sup> 大会在第 53/208B 号决议第 8 段决定,如果报告是交给会议事务处,应在该文件的脚注内说明业务的原因。本文件时交,但未按规定说明理由。

# 内容提要

本文件根据增进和保护人权小组委员会第 2002/13 号决议编写,该决议请由何塞•本戈亚先生负责协调的特设专家组就需要拟定关于在同赤贫作斗争方面实行现行人权准则和标准的指导原则一事提交一份联合工作文件。该工作文件将分三个阶段提交:初步阶段文件,提交给小组委员会第五十五届会议(E/CN.4/Sub.2/2003/7)、中间阶段文件(第五十六届会议)以及最后阶段文件(第五十七届会议)。本文件为进度报告,相当于上述过程中的中间阶段。

根据特设专家组以前开展的工作、和小组委员会成员所举行的讨论,包括特设小组三名成员于 2004 年 1 月末在印度浦那所举行的讨论、并根据与各类不同的对应人员所进行的协商,已经就是否有必要起草一项有关人权与赤贫问题文件的问题达成一般性协议。据此,现在似乎应该探讨在这项文件中应纳入哪些内容的问题。浦那会议审议了一些基本的原则、以及涉及编写这项文件的主题与议题,同时还根据协商提议了编写的方法。本报告摘要地阐述这些讨论的情况,同时提出一些结论与建议。

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国际专家会议(印度浦那, 2004年1月26日至30日)

# 导言

- 1. 人权委员会在第 1998/25 号决议中,为了确立有关人权与赤贫问题的任务,请独立专家……就可能制订的关于人权与赤贫宣言草案的主要内容向人权委员会提出建议,以便人权委员会可考虑是否有可能在……小组委员会第五十一届会议上,由小组委员会起草该案文,供委员会审议,并最终由大会通过,……除其他外,要考虑到《公民权利和政治权利国际盟约》、《经济、社会、文化权利国际盟约》、《维也纳宣言和行动纲领》、……《哥本哈根社会发展宣言和行动纲领》、发展议程和特别报告员莱安德罗·德斯波伊先生的最后报告(E/CN.4/Sub.2/1996/13)。
- 2. 委员会在其第 2001/31 号决议中请小组委员会考虑是否有必要根据各有关国际文件,在战胜赤贫方面制定执行现有人权准则和标准的指导方针。据此,小组委员会在第 2001/8 号决议中,请其四名成员 1 编写有关这一问题的联合工作文件,并请他们提交结论与意见,以便帮助推进编写关于赤贫和人权的宣言草案的工作。工作组向小组委员会第五十四届会议提交了一项工作方案(E/CN.4/Sub.2/2002/15)。
- 3. 在该届会议上,小组委员会通过了第 2002/13 号决议,小组委员会在决议中请其五名成员分 <sup>2</sup> 三个阶段编写联合工作文件。初级阶段的工作文件含有拟定指导原则的构想,文件提交给小组委员会第五十五届会议(E/CN.4/Sub.2/2003/17)。在第 2003/13 号决议中,小组委员会批准了文件构想的指导原则。
  - 4. 进度报告是这三阶段过程中的第二阶段。
- 5. 小组委员会的六名成员,<sup>3</sup> 其中包括专家组的三名成员,参加了 2004 年 1 月 26 日至 30 日在印度浦那举行的妇女与司法问题国际专家会议。会议是由亚洲妇女基金赞助、由哈马拉施特拉基金会在浦那主持的,出席会议的有来自印度和亚洲各地的专家、贫困妇女和伴随贫困妇女的人士。会议议程包括一项关于需要在专家组任务范围内制定有关人权与赤贫问题的指导原则的议题。会议审议了人权与贫困问题中的一些具体方面,这些将在以下第三节阐述。有关浦那会议的详细情况载本报告的附件。
- 6. 各位成员在审议需要编写有关人权与赤贫问题指导原则的议题时,认真地考量了小组委员会为其制订的任务授权(见下文第三节 C),以及自 1998 年以来对这一问题所召开的各次会议结果及各种报告。同时特别注意了人权事务高级专员办事处(人权高专办)所组织的三次活动: 1999 年关于人权与赤贫问题的研讨会

(E/CN.4/2000/52/Add.1)、2000 年关于贫困与享受人权问题的特别对话(HR/GVA/POVERTY/SEM/2001/3)、及 2001 年关于人权与赤贫问题的专家研讨会(E/CN.4/2001/54/Add.1 和 Corr.1),包括向上述最后一次研讨会所提交的一系列背景文件。此外,由当时联合国人权中心所召开的 1994 年赤贫和剥夺人权问题研讨会的报告(E/CN.4/1995/101)、以及人权与赤贫问题的特别报告员和独立专家的工作也得到了审查,另外还有经济、社会和文化权利委员会关于贫困问题的说明(E/C.12/2001/10)。人权高专办《以人权角度减少贫困工作的准则草案》被作为人权与贫困方面最新而且最健全的构想得到审议。实际上,这项《准则草案》中所包含的构想是专家组初步阶段工作文件的主要参考材料。

- 7. 编写有关人权与赤贫问题的指导原则草案这项工作的必要性得到了承认 (例如见 E/CN.4/2001/54/Add.1 第 30 段),而专家认为现在已经应该开始考虑可以纳入这项文件的内容这一问题。
- 8. 在浦那会议上,专家们注意到,小组委员会呼吁就可能起草指导准则的必要性问题广泛进行协商,并建议在联合国系统、国际组织、非政府组织、贫困人士和专家的参与下开展初步阶段的协商。专家们请秘书处在准备初步讨论案文的可能内容时向其提供支助,以便利协商过程。专家组认识到,小组委员会所设想的协商过程在今后一年内以及一年以后将会需要消耗大量的时间。

# 一、消除贫困所面临的挑战

9. "贫困是我们时代的一项挑战",第十一届联合国贸易和发展会议的网页作出如此宣称(www.unctadxi.org)。在过去十年里,迫切需要减轻贫困程度并解决贫困造成的祸害问题成为国际议程中的一项优先事项,以及所承诺开展的一系列工作的目标,而千年发展目标更将这一问题推到了顶峰,该项目标旨在长时期地消除赤贫。考虑到生活在贫困中的人数仍然多得不堪正视,这项目标似乎难以想象。正如秘书长所强调指出的:

"大约有 12 亿人在每天不到一美元的生活水平上挣扎。估计有 8.4 亿人遭受饥馑的痛苦,每天有多达 2,400 万人饿死,其中有许多是儿童。挨饿的人更容易患病,同时其工作能力也由此减弱。饥饿并妨碍儿童的学习能力,其后果在童年过后的很长时间内仍然可以感受到。要实现世界各国

所商定的千年发展目标,就必须刻不容缓地行动起来,争取到 2015 年将每天生活水平不到一美元的人数,以及遭受饥饿的人数减少一半。……如果世界不朝千年发展目标的方向前进,如果世界还陷于忍饥挨饿、疾病丛生和贫困潦倒的境地,那世界上就不会有和平"。4

- 10. 已经出现了一些成功的现象。最经常提到的实例是中国和印度,这两国在减少贫困方面的成就帮助减少了全球贫穷方面的数字。但是,世界银行在为取得的进展欢欣鼓舞的同时,也指出应慎防使人误解的数字,它强调指出,尽管在减少贫困方面取得了重大进展,但这一进展很不平衡,而全球性的总的情况掩盖了区域间的巨大差异。世界银行特别指出了在欧洲、中亚和撒哈拉以南非洲地区贫困状况的急剧增长,并表示,即使在记载了减少贫困的地区,例如在亚洲,如果审查一下各种社会指数,<sup>5</sup> 例如健康指数(仅举数例,如:儿童死亡率、产妇死亡率、艾滋病毒/艾滋病等),就会看到由贫困引起的严重问题依然普遍存在。
- 11. 最不发达国家的情况特别令人震惊。贸发会议关于最不发达国家的最新报告讨论了贸易和贫穷问题,6 该报告一再指出,最不发达国家的赤贫状况在 1990 年代有增无减。报告强调指出: "如果这些趋势持续下去,预计在最不发达国家内生活在赤贫中的人数估计将由 2000 年的 3.34 亿增加到 2015 年的 4.71 亿"(英文本第18页)。最不发达国家比其他发展中国家更容易发生内战这一令人不安的事实提醒我们,贫困与冲突之间存在着联系。
- 12. 面对这一状况,人们担心国际承诺只会是一句空话。2004 年,包括国际金融局贸易方面机构在内的一些组织比以前更大声疾呼,批评这种严重不平衡现象,呼吁加紧努力,切实履行各项承诺,以便加速减少贫困的进度。世界银行和其他组织由 2004 年 5 月 25 日至 27 日在中国上海召开的加速减少贫困全球会议显示出希望总结减少贫困经验、成就和挫折,以便提高效率,改进协调的切合实际的意愿。世界银行行长詹姆斯·沃尔芬森在会议闭幕词中呼吁切实地改变现状,将战胜贫穷的斗争与和平的总目标联系起来:

"我相信,今天(贫困)在全球议程上并不占中心地位。我相信今天对贫困问题只是讲了一些空话。几乎所有人对于(千年发展)目标的问题以及对于贫困问题都讲过一些四平八稳的大话。可是看来今天世人考虑的真正的大问题是一些必须立即处理的显而易见的问题,例如恐怖主义、伊拉克、

阿富汗、大西洋两岸联盟的紧张关系、预算赤字、宗教等势力各自为政的问题,与此同时,却不太注意随贫困而来的那些同样不可避免而且同样危险的问题。

"我们必须处理社会平等和社会公正的问题。因为不解决贫困问题,就不会有和平,而在军费上面花去了9千亿美元、在农业津贴上面花去了3千亿美元,在海外发展援助上面却只花了5、6百亿美元,这是我们必须改变的荒唐的现实之一。

"所以我认为我们大家在会议结束之后都要怀着一种迫切的使命感,希望尽力告诫人们,贫困与我们所生活的环境是和平的真正威胁,我们应当优先注重这些问题"。<sup>7</sup>

13. 詹姆斯·沃尔芬森提醒人们注意的原则——平等、负责与赋予力量——正是从人权角度处理减少贫困的方式中的本质内容。阐述人权与贫困问题、并载有侧重实施的诸项原则的文书,可以成为一项所有人都可以利用的宝贵国际机制,它体现了克服贫困斗争中各方的权利和责任,而其宗旨是为了使这项艰巨的目标能跳出纸上谈兵的境地。

# 二、浦那会议的讨论:原则、主题和议题; 向前推进

14. 浦那会议上,小组委员会的成员集中关注了他们认为涉及人权与消除贫困问题的诸项原则,以及有关的主题和议题。各位成员并审议了在编写草案案文方面取得进展的途径。本节概要叙述浦那讨论的情况。

# A. 原则

15. 专家组认为,尊重人权是克服贫困与赤贫的一项根本内容,在这方面,专家们并审议了他们认为对讨论起草案文可能性问题具有直接相关意义的诸项原则。在讨论同时并铭记难民高专办的《人权及减少贫穷战略准则》草案,以及在专家组初步工作文件中提出的一些根本性原则(E/CN.4/Sub.2/2003/17)。

#### 尊严

16. 联合国对于赤贫与被排斥在社会之外境遇所持的态度是基于一种观点,正如委员会所重申的那样,联合国认为这种境遇"构成对人的尊严的侵犯",需要各国和国际上紧急行动加以消除。各级消除贫困的工作必须从每一个人的固有的尊严出发,不管这个人是多么贫穷;任何人都必须是消除贫困的行动者,而决不是行动的对象。但是,有时候这种方式对于穷人和非穷人都是一种困难的转折。

#### 以权利为基础的方式

- 17. 各方一致同意,消除贫困所采取的方式必须明确地基于国际人权准则,这些准则是扶持、参与、责任、不歧视和平等的根本(E/CN.4/Sub.2/2003/17,第 31 段、E/CN.12/2001/10,第 9 至 13 段)。这种方式应当具有全面性,其基础是公民、政治、经济、社会和文化权利的普遍性、不可分割性和相互依存性(E/CN.4/Sub.2/2003/17,第 11 至 15 段)。各方认为,以权利为基础的方式应当向各国和其他国家及国际的行动者明确指定其义务与责任要求(同上,第 36 至 39 段,E/CN.12/2001/10,第 14 至 18 段)。
- 18. 在这方面,大家并同意,国际人权标准大致足以从人权角度来处理贫困与赤贫的问题,因此没有必要确立一项不遭受贫困的新的权利,或确立新的准则(HR/GVA/POVERTY/SEM/2001/BP.2,第 8 页)。

#### 参与

- 19. 保证最贫困的人参与消除贫困工作的重要性始终是联合国有关人权与消除贫困工作的一项内容。越来越多的人认识到,要使消除贫困的行动具有效益和持久性,就需要生活在贫困中的人们来参与"……发现其问题所在,设置、实施并评价为解决这些问题所采取的措施(E/CN.12/2001/10,第 12 段)"。各方同意,处境贫困的人参与消除贫困应当是编写原则案文的一项根本内容。
- 20. 促进贫困者与政府官员之间的信任与信心是穷人参与中的一项关键因素。但是,在许多国家,这种信任并不存在。因此,需要努力建立公民与政府之间的信任,其中包括以加强法制和善政来建立信任。

#### 从能力角度出发来理解贫困问题

- 21. 大家同意,从能力角度出发来理解贫困问题是人权框架内最适当的方式。"能力方式将贫困界定为缺乏某些基本自由……。可以同等地将贫困界定为或是缺乏基本自由——从能力角度看待,,或是享有这些自由的权利未能得到落实——从人权角度看待(E/CN.4/Sub.2/2003/17,第 27 段)。"这些能力或权利不仅属于物质的性质,"贫困包括了生活中的许多方面,其中许多涉及到有关人身安全与身心不受侵犯的诸项权利,以及经济和社会安全及福利"(HR/GVA/POVERTY/SEM/2001/BP.2.第 5 页)。
- 22. 能力方式顾及了处于贫困和赤贫境地的人们的特殊脆弱地位。贫困使人易于遭受对其人权的多种侵犯,而且特别影响到妇女或少数群体等社会阶层。(E/CN.4/Sub.2/2003/17,第 34 段、HR/GVA/POVERTY/SEM/2001/BP.2,第 2、5 和 8 页、E/CN.12/2001/10,第 5 和 11 段)。平等和不歧视原则要求解决这些地位脆弱人群的特定情况。

## 向处境贫困者学习,并在其自身努力的基础上进一步发展

23. 从能力角度来理解贫困还使专家能够考虑到处境贫困者为改善其境遇所作的努力,以及消除在其努力中所遇障碍的举措的重要性。

"由于其生活条件的困难,穷人在生存方面往往足智多谋……但是,许多穷人在改善其境遇的自身努力中面临障碍,引起这些障碍的可能是官场腐败、当局将其赶出住房、赶出其耕种粮食的土地、规定上学必须穿制服等等"。<sup>8</sup>

这就着重显示了有必要向非穷人进行有关处境贫困者的教育。

#### B. 主题和议题

24. 浦那会议上认定三项基本主题作为起草文件工作的基础。首先,侵犯人权既是贫困的起因,也是赤贫的结果。生活在赤贫中的人们遭受不安全,妨碍了其发展取得成功。因此,生活在赤贫中的人们有必要得到一定程度的持久安全,以便改善其境遇,并享受人权。其次,赤贫系指经济和物质资源的实际而严重的贫瘠,这

也是对人的尊严和人权的侵犯。第三,为了消除赤贫,从而落实人权,至关重要的是必须建立一项机制,使穷人参与明确认定他们的问题,并计划开展有关项目、实施这些项目和评价这些项目(见 HR/GVA/POVERTY/SEM/2001/BP.1,第 1 页)。

25. 此外,与会者确定了编写文件草案中需要注意的一些问题。

#### 以全面的观点看待人权

- 26. 浦那会议上提出的资料和分析,以及过去在审议有关人权和赤贫事项准则草案问题中所作的分析均强调指出,要持久地应对消除贫困,就需要让全部人权都得到享受。贫困和赤贫即使没有侵犯到全部人权,也至少侵犯了很多种类的人权。侵犯人权可以致使贫困,而贫困本身又造成了侵犯人权的现象(HR/GVA/POVERTY/SEM/2001/BP.2,第8页)。有些侵权行为是可以一眼认出的(例如,侵犯食物权可以界定为赤贫的一个特点),同时贫困对于享受其他一些权利所产生的较隐蔽的影响却同样可能很严重:
  - "有一种倾向,认为某些权利对穷人比较重要,并将其与其他权利区分开来。其中可能包括享受适当标准的生活、保健、教育和食物权。当然,生活在贫困中的人经常面临这些权利被侵犯的情况。但是,这并不是说,对于穷人有重要意义的就只是这些权利而已。如果不全面地看待问题,将公民权利和政治权利(例如言论自由、参与本国政府的工作、隐私权、家庭生活权、不遭受任意逮捕的权利和不遭受酷刑的权利等等)与经济、社会和文化权利同样加以重视,那么《国际人权法案》对包括穷人在内的所有人所规定的赋予权利工作就不会成功"(HR/GVA/POVERTY/SEM/2001/BP.1,第2页)。
- 27. 在这方面,各方并同意,在解决贫困问题方面必须采取基于人权普遍性的全面方式(E/CN.4/Sub.2/2003/17,第8至11段、委员会第2003/24号决议)。得到公正审判的重要性也得到了强调(HR/GVA/POVERTY/SEM/2001/BP.2,第5页)。但是,尽管在原则上,所有人权在消除贫困的工作中都占有地位,但是在国家层面上的实际工作中,某些权利可能比其他一些权利更需要受到重视(E/CN.4/Sub.2/2003/17,第8至10段)。认定何种权利更需要重视的工作应当由生活在贫困中的人们参与进行,因为这应当依赖其实际经历,以及他们看待生活的方式。

28. 讨论中认识到,贫困常常侵害到最基本的生命权,威胁到人类生理上的生存需要,于是就可以考虑集中注重认为对保护生命权具有关键意义的某些人权:足够食物权、饮水权、获得收容安置权、健康权(例如见 E/CN.4/Sub.2/2002/15 中的论述)。人权委员会在其第五十九届会议上讨论了这一问题,并在其第 2003/24 号决议中鼓励工作组对起草极端贫困与人权问题国际宣言编写研究报告的特设工作组根据所有人权的普遍性、不可分割性、相互依存性和相互关联性的方针,处理人权与赤贫问题。委员会并回顾只有创造条件,是人人可以享受其经济、社会和文化权利以及公民和政治权利,才可实现免于匮缺和恐惧(第 9 段)。

#### 生活在贫困中的是什么人?

29. 对贫困问题采取基于权利的方式和能力的方式导致了对贫困和赤贫的多面性定义,超越了局限于收入意义上的贫困。在向 2001 年的研讨会所提交的秘书处文件中就提出了一些不同的定义(HR/GVA/POVERTY/SEM/2001/2),而经济、社会和文化权利委员会将贫困界定为:"由于持久或长期地缺乏必要的资源、能力、选择、安定和地位,因而无法享受适当的生活水准及其他公民、文化、经济、政治和社会权利的一种人类境况(E/C.12/2001/10,第8段)"。尽管绝大多数贫困和赤贫的情况集中在发展中国家,它也影响到富国,正如委员会说强调指出的:"贫困并不局限于发展中国家和转型社会,这是一种全球现象,所有国家都不同程度的经历着贫困(同上,第五段)"。

#### 生活在赤贫中的是什么人?

30. 人权委员会及其小组委员会在工作的一开始便集中关注赤贫问题。通过在穷人中的工作,发现了生活在赤贫中的人们,这些人更处于社会边际,一般的贫困问题研究工作很少深入他们之中,参与社会的倡议也很少接触到他们。由于他们遭受到一系列的侵犯人权行为,处于难以自拔的境地,必须作出特别的努力,来深入并理解他们。这是特别报告员莱安德罗·德斯波伊先生得出的结论,也是 1994 年关于赤贫问题会议(一次处于赤贫之中的人及在他们中间工作的人相聚的集会)的结论。特别报告员将赤贫界定为"各种不幸相互作用造成积累效果:生活条件恶劣、有碍健康的住房、失业、身体不健康、没有受过教育、处于生活边缘等等,用那些

身在其中的人的话说是贫困的一种真正的'横向恶性循环"(E/CN.4/Sub.2/1996/13,第 177段)。特别报告员并阐述了处境赤贫的人不出现在官方统计数字中的原因,这一问题得到了诸如世界银行和儿童基金等机构的注意。

# 通过处境贫困的人来理解人权与贫困

31. 在试图着手草拟有关贫困和/或赤贫问题的准则过程中,可以由下向上地建立起对贫困生活的必要了解和阐述。也就是说,可以用处境贫困的人的经历,以人权观点来界定穷人的处境。Sigrun Skogly 在她向 2001 年研讨会提交的文件中指出: "《宣言》将目前有关人权的标准框架与穷人的现实生活经历紧密联系起来,从而为现已存在的人权文书起到了明显增加其价值的作用。《宣言》并能够通过其标准的和实际运用的两个方面向从基层到大型国际论坛中从事消除贫困宣传工作的人们提供一项工具"(HR/GVA/POVERTY/SEM/2001/BP.2,第7页)。

#### 与处境贫困者建立对话所面临的挑战

32. 上文中提到了在深入最贫困者中所面临的困难。以尊重这些最贫困者尊严的方式与他们接触是十分艰巨的任务。通过为筹备 1994 年的研讨会而与处境贫困者密切协作的人员的经验,以及他们与秘书长和人权事务高级专员之间的会面,和其他一些经验,使有关各方得以进一步理解可以取得的成就。要使贫困者成功地参与编写新文件的工作需要所有各方作出很大努力,但这却能够提高文件的质量。

#### 战胜贫困的人权措施

- 33. 为从人权角度来消除贫困而开展的工作强调指明了国家和国际各级可以采取的特定措施。已经通过要求现有的国际机制进一步注重与贫困有关的问题而强调了利用这些机制的重要性。此外,已经针对大众参与、国家、公共和私人行动者、以及跨国公司和发挥的作用而建议的相关的机制。同时还强调指出了所有行动者之间进行多边合作的必要性(见 E/CN.4/Sub.2/2003/17,第 35 至 39 段、E/CN.4/2001/54/Add.1,第 24 至 27 段、HR/GVA/POVERTY/SEM/2001/BP.2,第 9 至 10 页)。
- 34. 已经认定其他一些问题与人权和消除贫困具有特殊关系。改善妇女的地位和境况,并防止和消除对妇女的暴力被认为对于消除贫困具有关键作用。确定不同

的弱势群体以及歧视对于贫困的影响也认为具有根本意义。世界范围的贫困现象在每一地区又有自己的特点,认识到这一点之后,又建议了对贫困现象展开区域研究。

# C. 向前推进

35. 浦那会议上,根据小组委员会指定任务的各个方面,以及以前关于这一问题的许多会议与讨论所得出的结果,认真审议了如何使编写有关人权与赤贫的文书工作取得进展这一问题。

#### 任 务

- 36. 出席浦那会议的专家组成员指出,小组委员会的任务很广泛又很详尽,需要相应地作出周全的回应。正如本文件的导言所述,小组委员会在其第 2003/13 号决议中请各位专家就是否有必要在战胜赤贫方面制定执行现行人权准则和标准的指导原则,以便制定一个与现行条约不重复的特殊文书,根据委员会授予的职权范围,将赤贫具体地当作——对人类政权和所有人权,包括公民权利和政治权利以及经济、社会和文化权利的侵犯。 9 小组委员会并请专家组根据国际法学、条约、盟约和其他有关文书具体考虑世界各地区的贫困情况,以便消除赤贫和社会排斥,并审查世界银行、世界贸易组织、国际货币基金组织和其他国际机构的政策,以战胜赤贫。
- 37. 小组委员会并鼓励专家采取一种操作性方法,其根据是权利的合法性和有必要明确规定国家的义务和目标,规定所有国家在消除世界各地的赤贫方面都须承担集体责任等逐项原则。小组委员会并请专家组采取一个能加强团结一致和社会融合机制的做法,让最贫困的人民有能力行使他们所有的权利。在该决议中,小组委员会并鼓励在有关各方和人口团体的参与下制定一套指标已监测赤贫情况,其需要及其变化。

# <u>方</u>法

38. 小组委员会请各国政府提供资料和支助以便进行协作,并请非政府组织、秘书处其区域和国际组织进行合作并提供资料。小组委员会决议中两次提到的处境贫困者的参与(小组委员会强调指出"各国必须促进最贫困者参与所在社会的决策",

并提到独立专家关于将处于赤贫的人合为他们工作的人汇聚在一起的建议),这也许对小组的工作方法具有参考意义。

## 相关的背景文件

39. 浦那会议上,一些看来汇集了讨论中所提出的各种不同途径的文件被认定 为编写有关草案的基本参考文件(见上文)。

### 准则草案的具体形式应该是怎样的?

- 40. 从一开始,小组委员会成员就决定,有关人权与赤贫文书的目标应当是帮助与贫困作斗争的人们有更强的地位;这些人首先包括生活在贫困和赤贫中的人本身、其次包括与他们工作的人、第三还包括为消除贫困开展工作的组织。因此,会议认为这项文件应当反映处境贫困和赤贫的人们的人权情况。穷人应当能够在文件中看到自己的存在,而非穷人应当能通过文件来理解穷人并将其学习。
- 41. 浦那会议认为,文书草案的第一部分应当包括具有明确道德和法律性质的声明,要求消除贫困。这第一部分应当旨在帮助处境贫困的人,以及为消除贫困而工作的所有人。这部分并应当强调各国政府、国际组织和私人行动者在消除贫困和赤贫中所负有的责任与义务(见 HR/GVA/POVERTY/SEM/2001/4,第 4 段; HR/GVA/POVERTY/SEM/2001/BP.1,第 4 至 5 页)。文件的语言应当反映这一目标。
- 42. 会议设想了第二部分,其中包括一些行动原则,对象是各方决策人,以及联合国和涉及发展、贸易、社会和经济政策及环境问题的其他政府间或非政府组织(同上)。会议还将审议如何将这两种目标结合到一项文件中,以便最恰当地应对两项目标的要求。

#### 协商过程

43. 在浦那会议上,小组决定,要能够开展小组委员会提出的任务,必须就可能编写的文件中可以包括的各项内容展开大量的协商。这一进程将包括来自多种方面行动者的投入,其中包括处境贫困者及与他们工作的人。将通过联合国系统及其

他国际组织举行协商,届时将会涉及基层组织、非政府组织、联合国人权机构和特别报告员以及学术团体。

44. 在浦那会议刚开过之后的一段时间里,专家组的协调员在秘书处的帮助下与联合国机构与非政府组织代表进行协商,请求他们对专家组开展这项任务所采取的方式提出意见,对是否有必要编写有关人权与赤贫问题的文书提出意见,并对这项文书的性质提出意见。总的看,受到协商的人认为编写一项文件对于加强克服贫困的斗争是有必要的。在专家组的请求下,秘书处帮助协调员编写了初步的讨论要点,以便为编写有关人权和贫困及/或赤贫问题的可能文书作准备(见会议室文件一和二)。

# 三、结论建议

#### A. 结 论

- 45. 浦那会议之后,根据与处境贫困者和各对应人员的协商,专家组认为,关于实施现有人权准则与标准的可能的文书对于克服贫困的斗争具有宝贵意义。专家组认为,这一文书可以提供一项有关适用于所有人的法律标准的切实参考,从而起到加强处境贫困者及与他们一起工作的人力量的作用。这项文件应当反映一种全面的方式,以及生活在贫困和赤贫中的人们的人权情况。
- 46. 专家们认识到,要在编写可能的草案方面取得进展,就需要与各种对应人员广泛协商,以便更仔细地研究并解决一些悬而未决的问题。
- 47. 委员会和小组委员会在其有关人权和赤贫问题的决议中打开了协商进程之门,因为这些决议请专家们与各国政府、非政府组织,及企业和国际组织合作,以便介绍并支持这一进程。参与原则的实施符合减少贫困的人权角度,并符合在哥本哈根举行的社会发展问题世界首脑会议以及在维也纳举行的人权问题世界会议最后文件所坚决支持的那种方法。专家们认为,需要进行大量的协商,以便讨论在可能的指导原则中可以纳入的内容,并调整对这一问题的处理方式。因此,专家们认为,具有关键意义的是要建立并维持与处境贫困者的对话,以及与跟处境贫困者一起工作的个人、机构或组织、参与消除贫困、发展及/或人权、基层组织及非政府组织、加之联合国人权机构和特别工作程序及学术机关的对话。

#### B. 建 议

- 48. 现提出下列建议,供小组委员会审议:
  - (a) 与区域和国际政府间组织、非政府组织、基层组织、学术机构和其他相关对应人员进行广泛协商,以便考虑有关人权和贫困及/或赤贫问题的文书可能包含的内容;应当为帮助有效地吸收生活在贫困中和赤贫中的人参加这一进程而作出特别努力;
  - (b) 根据各种协商的结果,并为了达成协商一致意见,澄清如何处理悬而未决问题的方式,这些问题是,文件的性质、贫困的定义、区分贫困与赤贫的问题、所有人权的不可分割性以及某些权利在消除贫困或减少贫困方面所占有的优先地位、以及认真审议按各项权利逐条考虑的办法:
  - (c) 向小组委员会第五十七届会议提交一项最后报告,根据初步文件中所提出的构想,并根据对悬而未决问题的解决情况以及根据与对应人员的广泛协商,提出结论与建议,说明是否有必要制订一些指导原则,来指导如何来实施现有人权准则与标准,以便战胜赤贫。

注

- 1 保罗·塞尔吉奥·皮涅罗、横田洋三、哈吉·吉塞和何塞·本戈亚。
- 2 安托阿尼拉·尤利亚·莫托科、安托阿尼拉·尤利亚·莫托科、横田洋三、哈吉·吉塞和何塞·本戈亚为协调员,埃马纽埃尔·德科和保罗·塞尔吉奥·皮涅罗为候补协调员。
- 3 拉莱娜·阿库图阿里索、安托阿尼拉·尤利亚·莫托科、勒伊拉·泽鲁居伊、何塞·本戈亚、索利·贾汉吉尔·索拉布吉和横田洋三。
- 4 秘书长关于国际消除贫困日的声明, 2003年, 新闻稿 SG/SM/8935-OBV/384, 2003年10月10日。
  - 5 见 www.worldbank.org/poeverty
- 6 贸发会议,2004年最不发达国家报告:将国际贸易与减少贫困相联系,联合国出版物,出售品编号 E.04.II.D.27
  - 7 见 www.worldbank.org/wbi/reducingpoverty/docs/ConfDocs/JDWShanghaiClosing.pdf。

- 8 尊重穷人的人权,并不需要直接向其提供物质,而只需通过认真审视在社会中影响到他们的其他因素,或者各项条例中的变化,就可以为此做很多工作。无庸置疑,尽管这些人所掌握的物质资源极少,但在许多情况下还是有必要出资投资。兴建学校并提供基本的保建设施需要经费开支。但是,经验表明,生活在贫困中的人们发现自己处在违反人权的错综复杂的现实之中,如果不直接纠正这种侵权现象,那么即使兴建了医院和学校,穷人仍然无法利用这些新的设施。'滴流效应'模式不起效用。"HR/GVA/POVERTY/SEM/2001/BP.2,第6页。
- 9 小组委员会在其第 2001/8 号决议中请专家组"提出结论和建议,以便促进编写一项关于赤贫和人权的宣言草案及其他国际和区域倡议"。

#### Annex

# WOMEN, THE JUSTICE SYSTEM AND POVERTY: THE INTERNATIONAL EXPERTS MEETING (PUNE, INDIA, 26-30 January 2004)

1. The International Experts Meeting on Women and Justice was held in Pune, India from 26 to 30 January 2004. The meeting was sponsored by the Asian Women's Fund and hosted by the Nav Maharashtra Community Foundation in Pune.<sup>a</sup> Six members of the Sub-Commission on the Protection and Promotion of Human Rights - Ms. Lalania Rakotoarisoa, Ms. Iulia-Antoanella Motoc, Ms. Leila Zerrougui, Mr. José Bengoa, Mr. Soli Jehangir Sorabjee and Mr. Yozo Yokota - took part. The agenda of the meeting enabled Sub-Commission members from Africa, Asia, Europe and Latin America to consider closely, along with experts from India and Asia and women living in poverty and those accompanying them, several aspects of the human rights of women and poverty and extreme poverty<sup>b</sup>. The agenda covered the draft guidelines on women and justice, presentations and discussions on women and poverty, and the need to develop guiding principles on human rights and extreme poverty within the framework of the ad hoc group's mandate.

#### Draft guidelines on women and justice

Draft guidelines on women and justice reflecting the concerns of women about their access to justice and treatment within the justice system were discussed based on contributions made by NGOs and individuals at three previous meetings. The guidelines thus dealt with a wide range of issues including; the principal of equal access to justice, influences affecting justice, women as victims/survivors of violence (rape, trafficking, domestic violence, honour killings, harmful family law, foreign women workers, protective custody of women, women as practices), accused, conditions of detention, and implementation and follow-up. Throughout the draft, the impact of poverty on the access of women to justice and the denial of justice to women as a cause of poverty were of central concern. The discussions highlighted the many concrete steps that must be taken to ensure equal and effective access by women, including women living in poverty, to justice. It was also clear that access to justice and equal protection of the law for women could be a major contribution to eliminating poverty and extreme poverty. The final version of the guidelines will be widely distributed, including to the Sub-Commission and other relevant United Nations bodiesc.

#### Women and poverty

3. The meeting discussed the issue of women and poverty on the basis of a number of papers analysing different aspects of women and poverty, the efforts of women to overcome poverty in developed, transitional and developing countries, and those living in extreme poverty and the need to develop partnerships with themd. In connection with this item, a project initiated by

the Pune Municipal Corporation (see below) that provides support to women in slum areas in fighting poverty, was described, as was a project of an association of architects (Shelter Associates) that assists the poor in gaining access to housing. Further, a number of local NGOs described their activities in the area of women and the fight against poverty. Subsequently, a visit to one project supported by the Municipality and to a housing project sponsored by Shelter Associates took place.

- 4. The information provided during the meeting made it clear that social and cultural practices had had a marked impact on the poverty of women. In many situations women were less educated and in fact many were still illiterate. Girls drop out of school earlier or simply did not go to school because the schools were located far from their places of residence. Girls who do attend school are thought to be at risk. Early marriage and concubinage are considered to be solutions for protecting girls against possible abuse and attacks on their virginity. In terms of employment, companies employed young women under unfavourable conditions, e.g. work schedules included restricted time for rest room visits. Women's contribution to national political life was low and this made responding to the needs of poor women more difficult.
- 5. Women remained segregated in low-paying, low-status jobs and often did not enjoy the same level of health and nutrition as men. Yet most of the poverty alleviation programmes focused on a household as unit of assessment, which meant that no special programmes for poor women were established. Although there had been attempts to remove impediments to women's opportunity to work and own property, the disadvantaged status of women had not been adequately addressed. Those disadvantages were intrinsically woven into the structure and fabric of the society, where more positive measures were needed. Gender segregation started in the home and school and has perpetuated throughout a women's life. Violence against women was also directly related to poverty. Violence against women took a variety of forms dowry-related offences, domestic violence, etc. Finally, domestic violence was a fact, but it was often a taboo subject unless a woman was prepared to accept an impending divorce.
- 6. Women also suffered the double burden of both paid and unpaid labour (as principal caregiver at home and domestic work). The latter was considered unproductive work and not recognized in the labour market. Therefore, women had less time for training or for overtime at the workplace and missed out on advancement opportunities. That double burden must be recognized and benefits given to support women in discharging both types of work.
- 7. Women living in extreme poverty and exclusion often lacked legal identity documents and thus were not even recognized by the law since their very existence was not recorded. People living in poverty experienced many forms of discrimination and had multiple and bad encounters with the law. Their distrust of law enforcement and government agencies meant they would not

easily turn to them for assistance. The legacy of extreme poverty perpetuated denial of human dignity. Poverty reduced a person's dignity and subjected her to insecurities, which resulted in the absence or denial of fundamental human rights. Sometimes mothers resorted to extreme measures like begging to earn sufficient amounts for school fees. In cities, it was important to study the pull factors that drew the poor to the cities in search of work, but instead they ended up living in slums or on the streets.

#### Acting against poverty; the women's perspective

- 8. Overcoming women's subordinate status inside and outside the home was largely dependent on her ability to generate income and own property. Whenever women had access to finances, either through the micro credit programmes or other forms of enhancement of their financial capacities, violence against them was found to have reduced and they were even accorded a degree of respect and immunity from abuse. However, it was noted that employment guarantee schemes, while creating employment opportunities for women, could also result in allowing men to neglect their responsibilities.
- 9. Governments in several countries had developed plans to combat poverty whereby the benefits of programmes was required to accrue more and more to the poor. Women were worst affected by poverty, yet they coped with it the best and therefore they required maximum support. Most poverty alleviation programmes were gender neutral but with increasing awareness and international attention, women's policies and programmes were being introduced by both NGOs and Governments.
- 10. Governments had adopted national polices to promote women which granted priority to economic development and the fight against feminization of poverty. Different programmes looked at specific marginalized groups which were most vulnerable: urban poor were given support by providing low-cost housing, education, training and other facilities; reserved seats in local political bodies and decision-making bodies encouraged women's empowerment; the private sector also helped, e.g. with primary education and health. But most effective change was brought about by women's collectives. Self-help groups had proved necessary in creating more effective programmes. The success of those programmes required that trust be built up between the people and government authorities, which was often not the case. Access to justice was essential. A programme in one country of free legal aid that had proved effective was described.
- 11. It was emphasized that programmes aimed at poverty alleviation must involve the extremely poor as participants to ensure that the programmes were relevant to them. Those programmes should be seen as partnerships in capacity-building, understanding one's rights, taking on responsibilities, etc. It was also important to provide ongoing training. The European Court of Justice had issued some good decisions on the issue of poverty and the affirmative action permitted to address it.

- 12. The need to develop working definition of poverty and to distinguish between poverty and extreme poverty was underlined, extreme poverty being understood as a situation of deprivation of human rights, including dignity, reflected through contemporary forms of slavery and vice versa. There are legal, social and economic considerations involved in the definitions of poverty: women divorced and without support or shelter and with children are literally on the street and are seen begging with their children; women widowed by terrorism were without any support. There was also a need to define poverty in a legal framework.
- 13. There was no uniform standard of poverty and want. Different women experienced different degrees of poverty. Some might suffer from abject poverty and want while others might suffer from different connotation of poverty——cultural, political and economic. There were levels of poverty and each level had different requirements for combating it. The issue of poverty could not be addressed in isolation since many factors influenced poverty and the empowerment of women. Many related topics, like land reform, education, etc. needed to be addressed to alleviate poverty and develop opportunities for the poor. It was important to study the impact of culture on poverty and in particular women and poverty. It was recognized that women living in poverty and those working with them had a deep understanding of poverty, its causes, and what steps and methods were necessary to eliminate it. The knowledge and experience of women living in poverty were essential in designing anti-poverty programmes that took into consideration the specific characteristics of each situation.

#### Study visits

14. The study visits showed how women's groups that began as savings association could raise the social status of women, enable them to conduct business with local government and extend their activities to income generation, cultural activities, and health and neighbourhood improvement. The visit to the housing development project showed that early consultation with the potential owners of the apartments enabled them to be designed to better respond to the needs of the future users and make better use of the limited resources in land and money available. This contrasted with other apartments visited which were not designed in consultation with the future users. The following is a summary of one project visited.

#### **Urban anti-poverty initiative**

15. The Pune (India) Urban Community Development (UCD) programme is a government initiative targeting selected communities to alleviate poverty. The programme supports the establishment of women (only)-centred neighbourhood groups (NHG) in all targeted urban slums, each consisting of 50 members. Since the members come from the same community, the programme fosters close links, attachments and intimate knowledge about each family. In

general, identification and recommendations for any government grants need to be confirmed by the president of a local NHG. One fifth of slum dwellers in the city of Pune are covered under this scheme.

- 16. The women meet every week. Various training programmes and vocational training courses in different disciplines are provided under this programme. Products manufactured in these groups may be placed with the UCD central marketing outlet. The NHG is empowered to solve their local problems without actually approaching local authorities. Women in the communities start saving money within the groups. They also help each other by lending each other money, in particular in times of crisis/emergency, thus changing their roles from mere recipients to donors or support givers.
- 17. During a visit to one slum area, the Sub-Commission members met with over 100 women of the Neighbourhood Group. Several women related their experiences as a result of the project as follows. They said that they were now working and earning income through different activities. Sometimes women came together and, in groups of two or three, undertook income-generating activities like operating a canteen (generating at least Rs 50 each day per woman), a patchwork quilting group (the groups buy cloth remnants from nearby tailors; each piece, taking 15 days to complete, could sell for up to Rs 500), spice packaging, bag-making, etc. Sometimes these small groups would take orders from retailers (e.g. making jewellery pouches).
- 18. The women started savings groups and appointed treasurers amongst themselves. They opened saving accounts in the bank. The women collectively opposed the consumption of illicit liquor by their spouses. The women now know each family and help each other. Previously, they did not even know the names of the other residents. The women were able to negotiate with the authorities themselves instead of going through intermediaries to obtain electricity connection, etc. and they knew their rights. They now had the courage to leave their homes because they were literate and could read the bus numbers and road names, etc. They helped convince men in other families to allow other women to join their group because it would generate income for the families. They did not have to wait for their husbands to return with the daily wage, but could buy and prepare food from the money they had either earned or saved. On the whole, the women felt that the programme had empowered them and although there were many other challenges, they were happier.

#### Notes

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- a The Asian Women's Fund, which organized and provided the financial support for the meeting, was established in 1995 with the support of the Government of Japan to extend atonement and support to those who suffered as "wartime comfort women" during the Second World War and to address contemporary issues which affront the dignity and rights of women. The Nav Maharashtra Community Foundation provides assistance to those working with urban and rural poverty in the state of Maharashtra.
- b The participants in the meeting were; Dr. Nirmala Pandit, Managing Trustee of the Nav Maharashtra Community Foundation; Mr. Persida V. Reuda-Acosta, Chief Public Attorney (Public Defender) of the Philippines; Ms. Burnad Fathima Natesan, Women Training Centre, Tamil Nadu, India; Ms. Mangala Daithankar, Nav Maharashtra Community Foundation; Ms. Zarizana Abdul Aziz, Attorney, Penang, Malaysia; Ms. Marie-Claire Droz, Asian Representative of ATD Fourth World, Bangkok Thailand; Mr. Ashok Kalamkar, Joint Municipal Commissioner, Pune Municipal Corporation; Ms. Pratima Joshi, Shelter Associates, Pune; Ms. Mizuho Matsuda, Asian Women's Fund (Tokyo). In addition, Thomas McCarthy a consultant (Switzerland) took part.
- c For more information on the draft guidelines on women and justice, contact the Asian Women's Fund, 2-7-6 Kudan Minami, Chiyodaku, Tokyo 102-0074 Japan, tel: 813-3514-4071 Fax 813-3514-4072 e-mail matsuda@awf.or.jp
- d These papers may be requested from the Asian Women's Fund.

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