Economic, social and cultural rights and the right to non-discrimination in the Moroccan proposal for the Sahara region

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Introduction

I have been invited to look into the issue of economic, social and cultural rights (hereafter referred to as ESCR) and the right to non-discrimination in Morocco's autonomy proposal for the Sahara.

Let me make it clear at the outset that we strongly support dialogue between the parties as well as the talks launched in New York in order to reach a peaceful solution that satisfies the parties, hoping that in the meantime the human rights of the populations concerned will be respected.

I shall briefly mention the debate that has been going on since the two major covenants were adopted on the possible hierarchy of human rights.

I appreciate that from a theoretical point of view many support equality. However, in practice ESCR haven't developed and do not enjoy as wide and multifaceted protection as political and social rights.

I shall try to make a few comments and raise a few questions about the scope of article 12 of the Moroccan proposal.

I shall then delve into the concept of discrimination as a violation of human rights, its background and the solutions to remedy it.

I will then reflect on the proposal put forward by the Kingdom of Morocco in Article 4 of the document under review within the framework of this international seminar, and I shall analyse the legal and political scope of discrimination by the State and by society.

In order to do that I shall recall my country's experience in drafting the National Plan Against Discrimination that I co-authored.

And finally, I shall touch upon an issue that is currently raising considerable political and ideological debate, i.e. the issue universalism of human rights as an absolute value versus cultural diversity.

I. The human rights paradigm. Origins[6]

The adoption of the Universal Declaration of Human Rights by the United Nations in 1948 gave birth to a new paradigm, that of equality vis-à-vis the political and biological theories shaped through the notion of race and superiority of some over others, which led to theories of degeneration of race and genetic purity.

Allow me to highlight some characteristics and discussions surrounding the Declaration:

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[6] Thanks to Dalila Polack for her collaboration in the research work as a background to this presentation.

Though drafters were initially tempted by a Covenant, out of realism they eventually went for a Declaration. Following its approval and almost 20 years later the two mandatory and fundamental texts that emanated from the Declaration were adopted, i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Two Covenants were adopted for want of an agreement on one text only.

We must put ourselves in the context of a bipolar world. After the Cold War, Western countries established the compulsory nature of civil and political rights whereas socialist countries were willing to respect economic, social and cultural rights. For capitalist countries civil and political rights were the only rights, economic, social and cultural rights being mere wishes or aspirations.

It is against this background that the two Covenants were drafted. The one on civil and political rights became compulsory, whereas the one on economic, social and cultural rights in Article 2 states that: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Coming back to the actual Universal Declaration and its rhetorical nature, over time international practice confirmed by countless General Assembly resolutions more often than not adopted by consensus, as well as by other international instruments and national or international court rulings, turned it into international customary law. In other words it became compulsory because it became international custom.

Moreover, the first International Conference on Human Rights held in Teheran in 1968 on the occasion of the 20th anniversary of the Universal Declaration proclaimed that the Declaration constituted an obligation for the members of the international community.

As Chipoco says: In the margins of the debate on the legal value of the Declaration, the fact is that its political importance in the international order was and remains fundamental. Just like the Charter (i.e. the Charter of the United Nations) the Declaration was a major starting point for the universalisation and internationalisation of Human Rights.[7]

I. 1. The State as guarantor

The context in which the United Nations was born and its ultimate goal (i.e. maintaining international peace) enables us to understand one of the key features of the organization: the fact that it is still regulated and controlled by the states. The concept of human rights as we know it today is rooted in the mandate assigned by the nations of the world, first of all to the League of Nations and then to the United Nations for them to recognize a set of rights that states are obliged to respect and guarantee, irrespective of existing regimes.

This is the reason why human rights are seen as a delegation of state sovereignty, a self-imposed limitation that started with the creation of the United Nations. Therefore, when we talk about human rights we are thinking of the obligations incumbent upon states that have to guarantee respect for human rights and are therefore the only ones which can violate them.

As Nikken says: The responsibility for effective respect of human rights lies exclusively with the states whose essential functions imply, among others, to prevent and punish all types of crimes.

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[7] Chipoco, Carlos: La protección universal de los DDHH. Un aproximación crítica, *Estudios Básicos de Derechos Humanos*, Tomo 1, IIDH, Costa Rica, 1994, pp.190.

The state is not on a par with natural persons or groups that are outlaw, whatever the reason for their behaviour. States exist for the common good and have to exercise their authority with due respect for human dignity and the law.[8]

I. 2. State responsibility flowing from the 1966 Covenants

In 1966, the General Assembly of the United Nations adopted the two human rights covenants, i.e. the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights.

Civil and political rights are meant to protect freedom, security and the physical and moral integrity of natural persons, as well as their right to take part in public life. These are immediately enforceable rights that states not only have to respect but also to guarantee. These rights are enforceable before the state and give their holders the means to defend themselves in case of abuse of public power. Civil and political rights have been amply developed via numerous United Nations treaties. There is now a general consensus on the compulsory nature and the enforceability of civil and political rights.

As for economic, social and cultural rights, they refer to living conditions and to access to material and cultural goods with due respect for human dignity. The realization of these rights is not subject to the establishment of rule of law as in the case of civil and political rights. It depends on the establishment of a social order in which distribution of wealth and social justice aren't empty words. Their enforceability is subject to the availability of sufficient material resources.

I would simply say that it is Article 2 of the Covenant ("to the maximum of its available resources") that is invoked by states on a daily basis to justify lack of proper access to economic, social and cultural rights by their populations (in whole or in part).

With the adoption of the two human rights covenants whose compulsory nature is for one of them unchallenged and for the other a matter of considerable argument, the basic principle of international law which establishes the universality, indivisibility and interdependency of human rights and the fact that they are interrelated has disintegrated.

In this context characterized by the existence of a floor of human rights prioritized on the basis of political interests (a phenomenon related to the abovementioned cold war), the Commission on Human Rights, concerned by this situation, decided to set up an Open Ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. This protocol aims at establishing an individual complaint mechanism as well as an investigation procedure.

It is worth mentioning here that the Committee on Economic, Social and Cultural Rights (the treaty monitoring body) is the only Committee of all Covenants and Conventions that doesn't have a complaint mechanism.

The adoption of an optional protocol to the Covenant is important in so far as it will serve to further strengthen respect for economic, social and cultural rights, to reaffirm the universality, indivisibility and the interdependency of human rights, as well as the fact that they are interrelated, it will establish an international remedy to obtain redress in case of violation of the covenant, it will specify state parties' responsibilities under the covenant and promote the development of national jurisprudence.

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[8] Nikken, Pedro: El Concepto de DDHH, *Estudios Básicos de Derechos Humanos,* Tome 1, IIDH, Costa Rica, 1994, pp. 28.

Let me briefly delve into the current debate around the enforceability or non-enforceability of ESCR.

II. Enforceability of economic, social and cultural rights in the Moroccan proposal

At the end of the Second World War, the excesses of fascism and Nazism resulted in states feeling the need to have a supranational body to safeguard peace and ensure strict respect for the human rights of their populations.

This was one of the reasons that led to the creation of the UN in 1945. Knowing what rights all human beings should enjoy without distinction such as sex, race, language, religion, property, political or other opinion was a much-debated issue. A list of the rights that states had to protect had to be determined.

After much debate a list of rights that no state was allowed to violate was established and enshrined in a document entitled Universal Declaration of Human Rights (1948). Among the rights listed in the Declaration were civil, political, economic, social and cultural rights.

From a legal point of view, this Declaration wasn't initially binding on the states that signed it. It was a political and ethical document that expressed the will of states to ensure respect for the rights herein listed from then on.

However, in 1947 while the Universal Declaration of Human Rights was being discussed, it was suggested to draft a multilateral treaty binding on states, on top of the Declaration. This was to be a document whereby signatory states would commit to respect, protect, guarantee and promote listed rights.

The importance of harmonizing the declaration and the treaty was a much-debated issue.

The inclusion of ESCR in the future convention triggered considerable reaction among many states which considered that economic, social and cultural rights could not be protected by judicial means.

They maintained that civil and political rights were immediately applicable whereas economic, social and cultural rights required progressive implementation. The former were the rights granted to individuals in case of illegitimate or unfair action by the state, while the latter had to be promoted by the state through positive measures.

This approach was based on the belief that civil and political rights on the one hand, and economic, social and cultural rights on the other, are of a different nature.

Some authors consider that the arguments of the drafters of the covenants who maintained that obligations were of a different nature believed that civil and political rights only imposed negative obligations (not to do something), specific obligations whose respect did not require economic resources, hence the obligation made to the state to respect them immediately.

Conversely, according to the same people, economic, social and cultural rights would impose vague and costly positive measures that required financial resources and, therefore, states could only implement them progressively over time.

These arguments masked the strong confrontation between the two political and economic models that opposed each other during what was called the cold war. Some were ready to ensure respect for civil and political rights and to consider economic, social and cultural rights as progressive and non-enforceable rights because they distorted market laws. The others were willing to respect economic, social and cultural rights, but not bourgeois rights.

Magdalena Sepulveda spoke along the same line, stating that these arguments were deeply influenced by the conflict that existed at the time of the cold war and that using them again nearly fifty years later and out of context verged on the absurd. The dynamic development of international human rights law proved that this type of argument was quixotic.[9]

Therefore, on February 5, 1952, the General Assembly finally decided to draft two covenants, one on civil and political rights and the other on economic, social and cultural rights.[10]

In the same vein, independent expert Hatem Kotrane declared:

the original idea was to draw up a single covenant, enforceable among States parties, that covered all the rights and freedoms set forth in the Universal Declaration; later on it was decided, for reasons to do with the ideologies of the day, to adopt two separate covenants. At the same time, care was taken to announce the adoption of the two Covenants on the same day in a single resolution (2200 A (XXI)), in solemn confirmation, as it were, of the link that should forever bind them. To make the almost-obvious link still stronger, the preambles and articles 1, 2, 3 and 5 of the two Covenants are virtually identical.[11]

The two international human rights covenants were approved in 1966 and came into force in 1976. They constitute the largest body of law of all international treaties, both in terms of the scope of subject matters covered and their geographic scope, considering the large number of countries that ratified them.

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights list the obligations incumbent upon States parties vis-à-vis the rights enshrined in the Covenant:[12]

The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights.

The obligation to protect requires States to prevent violations of such rights by third parties.

The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.

The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realise the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal

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[9] Sepúlveda, Magdalena; The nature of obligations under the International Covenant on Economic, Social and Cultural Rights, Intersentia, Amberes, 2002, pp. 115-132, quoted by the same author in *La necesidad de adoptar un protocolo facultative al PIDESC*, www.escr-net.org.

[10] Resolution GA/543/VI.

[11] E/CN.4/2002/57,

[12] Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, reproduced in document E/C.12/2000/13, paragraph 6.

mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard.

It is worth recalling here that human rights are universal, indivisible, interdependent and enforceable and, consequently, that economic, social and cultural rights enjoy the same legal status, have the same importance and the same urgency as civil and political rights.

Therefore, economic, social and cultural rights, just like civil and political rights, are part and parcel of human rights and international human rights law.

The Moroccan proposal for an autonomy statute for the Sahara seems to recognize this in its Article 12 where it commits to set up a democratic system that guarantees the competencies of the populations of the autonomous region of the Sahara in the following areas:

•In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
•Region's budget and taxation;
•Infrastructure: water, hydraulic facilities, electricity, public works and transportation;
•In the social sector: housing, education, health, employment, sports, social welfare and social security;
•Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
•Environment.

We ask ourselves the following questions:

Does the proposal to recognize these competencies suffice to guarantee the full enjoyment of ESCR?

Do these measures satisfy the obligation of the state to guarantee ESCR?

If not, it would be a major shortcoming since the enjoyment of economic, social and cultural rights is essential to the effective, equal and non-discriminatory enjoyment of civil and political rights.

Safeguarding the enjoyment of civil and political rights without ensuring the full realization of economic, social and cultural rights implies intolerable discrimination in favour of those sectors that already benefit from unequal distribution of power and that foster social marginalization.

Enforceability stems from a social, political and legal process. The manner and extent in which the state fulfils its obligations with regard to economic, social and cultural rights have to be analyzed by international control bodies, but society should also exert some social control, an important precondition to the exercise of citizenship.

Some consider that economic, social and cultural rights are the rights that identify the economic and social issues that should be covered by states in order to guarantee the existence of fair societies and realize their own objectives.[13]

The question whether international and constitutional instruments protecting human rights are operational and thus directly enforceable by natural persons remains open. This is the reason why

[13] *Estrategia de exigibilidad jurídica de los Derechos Económicos, Sociales y Culturales en Colombia*, Colectivo de Abogados José Alvear Restrepo, Universidad Andina Simón Bolívar, mimeo, 2001.

we agree with those who state that these rights are enforceable through different means: legal, administrative, political and legislative.

II. 1 Progressive rights that may under no circumstances be regressive

When drafting its public policies, here through the Moroccan Government's proposal that is a contribution to the much-needed pursuit of dialogue launched in New York so as to reach a mutually satisfactory solution for the parties in conflict, the state is bound to strive to ensure full enjoyment of ESCR. It cannot therefore adopt measures that ignore or violate guaranteed rights. In other words, it has to accept the fact that adopting policies that would limit the enjoyment of certain ESCR by the population is prohibited.

II. 2 Obligations of international institutions

In macroeconomic transactions and in the implementation of structural adjustment measures, intergovernmental financial institutions (World Bank, Interamerican Development Bank, IMF, WTO), the World Trade Organization and the so-called Group of Eight must avoid violating economic, social and cultural rights, particularly so in poor countries of Africa and South America, for instance.

In keeping with the mandate of the Charter of the United Nations and its constituent instruments, intergovernmental organizations have to make sure their policies and activities respect economic, social and cultural rights, in other words that they do not foster violations that stem from regressive policies or impair their realization.

A broad range of instruments were produced that tend to show that the justiciability of economic, social and cultural rights is subject to a set of factors that complicate legal enforceability as well as political enforceability. It is therefore important that governments act as referees in the processes meant to ensure enforceability, on the basis of the principles of indivisibility and interdependency of human rights.

It is worth recalling that as indicated in the Proclamation of Teheran adopted 43 years ago: the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.[14]

III. The principle of non-discrimination

Recalling Argentinean lawyer and Supreme Court Judge Dr Raul Zaffaroni, we can say that in order to fully interpret article one of the Universal Declaration of Human Rights, we need to take into account the post-war context. At the time the UN stated:

Article 1:
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

In this post-modern era, in order to fully comprehend this concept that now seems obvious, we need to remember that it was adopted in the aftermath of two tragic world wars. Declaring back in 1948 that all human beings are born free and equal meant responding to Darwinian principles

[14] Diplomatic Conference organized on the occasion of the 20th Anniversary of the Universal Declaration of Human Rights, Teheran, 1968.

mainly defended by Spencer who at the time insisted on the superiority of certain races over others.

On that basis, the recognition of human rights by the world meant the creation of a new paradigm of equality against discrimination.

The requirement to ensure equality between all human beings, just like the prohibition of any kind of distinction or discrimination, particularly racial discrimination, the most frequently quoted principle in the Universal Declaration (14 mentions), will be a key concern in subsequent international treaties.

The first human rights convention adopted by the United Nations a day before the adoption of the Universal Declaration, expressly aims at penalizing the crime of genocide - the ultimate form of discrimination - essentially implying the commission of an act aimed at eliminating, in whole or part, a national, ethnic, racial or religious group.

Thereafter, the prohibition of discrimination (racial among other) was strongly reiterated. This is a basic principle of the Convention relating to the status of refugees, which proclaims the right to seek refuge for whoever has well-founded fear of persecution on account of his race, and which prohibits deporting a refugee whose life or security is at risk on account of his race.

The Convention relating to the Status of Stateless Persons (1954) also prohibits discrimination, whereas the 1961 Convention on the Reduction of Statelessness prevents deprivation of nationality on racial, ethnic or political grounds.

In the two major covenants, those that include together with the international universal declaration what we call the Charter of Human Rights, i.e. the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, racial non-discrimination is a founding and iterative concept.

In 1963 the General Assembly adopted the Declaration on the Elimination of All Forms of Racial Discrimination, and then two year later the Convention on the Elimination of All Forms of Racial Discrimination. The Convention lists a number of racist behaviors that have to be penalized in domestic legislation.

In 2001, the Commission on Human Rights established a mandate to study discrimination against indigenous populations. It contains one of the most creative mechanisms ever set up by the United Nations, i.e. the Permanent Forum on Indigenous Issues.

Decades of fight against racism led to the Durban Conference which itself led to the Declaration and Programme of Action whose interest will be measured in terms of the real change they will foster in the life of victims of racism and discrimination which will truly be meaningful if their lofty goals allow to improve the life of victims.

No one can say today that there isn't a legal framework and sufficient rules to eradicate racism and racial discrimination, or any other kind of discrimination. United Nations treaties give victims of racial discrimination various mechanisms that allow them to be heard. The one that directly concerns them is the Committee on the Elimination of Racial Discrimination to which states have to present periodic reports on the implementation of the Convention.

The Committee allows individuals or groups of people that are victims of violations of the rights enshrined in the Covenant to submit individual complaints. Citizens are also entitled to submit individual complaints after recognizing the competence of the Committee.

III. 1 The concept of discrimination

Article 1 of the International Convention on the Elimination of all Forms of Discrimination defines discrimination as follows:

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

As you will have noticed the Convention still used the term 'race', which is no longer the case today since human genome sequencing confirmed that there is only one human race. We should therefore speak of ethnic groups and ban the concept of races that caused so many mistakes and deaths.

The National Plan Against Discrimination[15] currently implemented in my country, Argentina, defines discrimination as follows:

i) Creating or propagating stereotypes on a human group, based on real or perceived characteristics;
ii) Harassing, abusing, attacking or segregating any member of a human group for the simple reason that he/she belongs to this group;
iii) Establishing any kind of legal, economic or work related distinction against the members of a human group in order to prevent the recognition or the realization of their human rights.

In analyzing discriminatory conducts it is important to take into account the fact that discriminatory social practices can't be explained by any of the characteristics of the victims of the said practice, but by the mere undertakings of those who discriminate. The misconduct isn't the work of the one who is the victim of discrimination but rather the work of the state or the society that discriminates.

In this respect, Article 4 of the Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region raises a number of comments.

The Government of Morocco is putting forward a solution that would involve assuming the following responsibility:

Article 4: Through this initiative, the Government of Morocco guarantees to all Sahrawis (...), that they will hold a privileged position and play a leading role in the bodies and institutions of the region, without discrimination or exclusion.

In proposals such as the one contained in article 4, or by ratifying international conventions, states agree to take on obligations that stem from the recognition of fundamental rights, such as the right to non-discrimination.

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[15] Villalpando, W and others, La discriminación en Argentina, EUDEBA, p. 16 and following, 2006. Brought into force by Presidential decree n°1086/2005.

The Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region is a text that may be enriched through the negotiating process on the basis of the amendments put forward by the other party to the conflict.

It is our hope that the negotiating process will produce a strong document that will end this conflict that has been going on for too long. Guaranteeing non-discrimination will require adopting proactive political, social and educational measures, particularly so in societies such as the one we are dealing with here that have been through a war and are suffering from the painful consequences of hatred, rancor and the divisions they imply. It has to be recalled that it is essential to adopt policies that will allow for the eradication of discrimination, a conduct that constitutes a violation of the international legal order, undermines the very principle of equality and is a violation of human rights.

III. 2 The International Durban Conference

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance took place in Durban, South Africa, from August 31st to September 8th 2001.

The Durban Declaration and Program of Action is divided into five parts:

Part I: Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance. It inter alia deals with:

Slavery
Poverty and economic disparities
Armed conflicts
Structures inherited from the colonial era
Discrimination and racism that persist in penal systems and in the application of the law.

Part II: Victims of racism, racial discrimination, xenophobia and related intolerance

Africans and people of African descent
Indigenous populations
Migrants
Refugees
Other victims: minors, Roma, landless people, travelers, the handicapped, migrants victims of international mafias engaged in trafficking of people.

Part III: Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels

Legislative, judiciary and administrative, inter alia, measures;
Prevention, statistical information, investigations and studies;
Education and awareness raising;
Information, communication and use of the media, especially new technologies.

Part IV: Provision of effective remedies, recourse, redress and compensatory and other measures at the national, regional and international levels

Part V: Strategies to achieve full and effective equality, including international cooperation and enhancement of the United Nations and other international mechanisms in combating racism, racial discrimination, xenophobia and related intolerance

III. 3 Discrimination related cross-cutting issues

Discrimination related cross-cutting issues are issues that, in our mind, touch upon all aspects of discrimination and affect all levels of society, particularly the political power that is the base for discrimination.

a) Racism

To come back to the abovementioned Argentinean National Plan Against Discrimination, we maintain that racism is a fundamentally social and contemporary phenomenon, like a set of ideologies, of preconceived ideas, stereotypes and prejudices that tend to subdivide the human species into sub-groups which possess common characteristics, supposedly due to genetic heritage implying that they may (or automatically) adopt peculiar behaviors detrimental to others.16

There are two forms of racist ideology:

1) Evolutionary racism that stigmatizes its victims sees them as inferiors, just like in the case of colonialism and Morgan, Taylor or Spencer's evolutionary speech.

2) Degenerative racism that sees its victims as a danger for the species, for multiple reasons based on pseudo-scientific arguments, victims that are said to degenerate and that should be eliminated in order to safeguard the superiority of the human race. This is how the Nazis justified the holocaust.

When stigmatizing racism, Michel Foucault expressed himself along those lines in "Society Must Be Defended", evoking what he was to call the standardization society, a non-democratic power that makes live and lets die. He said:

One of the most massive transformations of political law in the 19th century involved, I won't exactly say substituting, but complementing that old sovereign right – to make die or let live – with another new right, which is not to erase the first, but which is going to penetrate it, go through it, modify it, which will be a right, or rather a reverse power: the power to "make" live and "let" die. (...) Race, racism, under the condition that killing is acceptable in a standardization society (...) by killing I don't merely mean straightforward murder, but anything that resembles indirect murder: exposing to murder, multiplying for some the risk of death or, quite simply, political death, deportation, rejection, etc.[17]

b) Poverty and social exclusion

It is important here to take a closer look at the situation of poverty and indigence the population is in, at income distribution, employment and labour, social security and public utilities, as well as respect or lack of respect for the environment.

Socioeconomic poverty has a direct bearing on discriminatory practices, in at least four respects:

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[16] Villalpando, W and others, op cit, p. 46.

[17] Foucault M., Society Must Be Defended, FCE, Buenos Aires, 2000, pp. 218-231.

1) It fosters traditional forms of discrimination present in society. Being a woman is not the same as being a woman and poor, being handicapped is not the same as being handicapped and poor, being a migrant is not the same as being a migrant and poor.

2) It enhances the relationship between racism and poverty. One notices that "traditional" racism motivated by biological considerations still fuels class prejudice.

3) It turn the poor into targets of particular discrimination, pursued, punished and imprisoned to prevent them from getting closer to large urban centres.

4) It penalizes poverty. Prisons are usually full of mainly young and unemployed people. The lack of adequate social reintegration plans favors recidivism.

c) State and society

States usually discriminate in two ways: repression and symbolic discrimination.

Repressive discrimination is carried out by security agencies that resort to what they call legitimate violence. It symbolically materializes through certain state institutions such as educational, legal, political and cultural institutions.

Discrimination is a multi-faceted phenomenon. Through its legal and operational structures, the state can thus sharpen inequalities or promote social equity.

IV. Does cultural diversity undermine universalism of human rights?

One of the most outstanding and important traits of human rights is the recognition of the fact that any human being, by virtue of his/her humanity, holds fundamental rights that the state cannot legitimately take away from them.

These rights are not subject to state recognition, no more than they are granted by the state; they are independent of nationality or culture. These are universal rights, global rights that each human being on earth holds.

Universality of human rights means they cannot be considered a mere matter of opinion or ideology. The very principle of universality of human rights implies that because they are inherent to the human condition, all human beings hold them, and political, social or cultural differences cannot be invoked to justify their violation.

This principle was very much debated from the drafting of the Universal Declaration. One of the abstentions in the resolution through which the Declaration was approved was precisely based on the fact that it contained standards incompatible with sacred texts and the reality of some non-Western peoples (the logic of cultural relativism). In any case, over time the idea that the Declaration is a universal text kept taking root in peoples' mind.

The conflict between universalism and relativism

In order to better understand the origin of the debate, allow me to say that the vast conflict between universalism and relativism is closely related to other tensions: between hegemony and subordination or, put differently, between the empire and its colony.

This issue takes on far greater salience when you think of colonization and decolonization. The tension between universalism of human rights and cultural relativism is related to self-affirmation of social and cultural minorities, but also to the entry on the global scene of these communities administered and dominated by various empires.

Globalization considered as a process of expansion and discovery of otherness led to sharper awareness of differences between cultural identities, thanks to mass media, the Internet and social networks, through their entry in political imagination or intensification of migratory flows; some cultures can react violently to this 'world culture' hence causing new types of regional conflicts.

Therefore, in modern societies political visibility in the area of cultural affirmation and the right to be different recently progressed.

Many criticisms of universalism are motivated by the use for political purposes of the discourse on the defense of democracy and human rights by some countries in order to justify military invasions that are actually based on economic considerations.

However, respect for cultural diversity cannot justify flagrant and massive violations of public liberties and physical integrity.

What is certain is that since the creation of the United Nations and the adoption of related international instruments, the paradigm of universality has been steadily gaining ground and strength.

The last three Secretaries General of the United Nations, at least, stated as much.

In 1991, Javier Pérez de Cuellar proclaimed at the University of Salamanca that respect for human rights had to be strengthened. To do so states must agree to the international community interfering in case of brutal and systematic violations.

His successor, Boutros Boutros-Ghali, aware of looming discussions, declared in 1993 at the opening of the Vienna Conference that human rights "viewed at the universal level, bring us face-to-face with the most challenging dialectic conflict ever: between "identity" and "otherness", between the "myself" and "others". They teach us in a direct, straightforward manner that we are at the same time identical and different." He then went on to say that human rights "constitute the common language of humanity. Adopting this language allows all peoples to understand others and to be the authors of their own history. Human rights, by definition, are the ultimate norm of all politics."

Speaking at the University of Teheran on December 10th, 1997, Kofi Annan said that "Today, in every part of the world, men, women and children of all faiths and tongues, of every colour and creed, will gather to embrace our common human rights. They will do so in the knowledge that human rights are the foundation of human existence and coexistence; that human rights are universal, indivisible and interdependent (...). It is the universality of human rights that gives them their strength and endows them with the power to cross any border, climb any wall, defy any force."

The Vienna World Conference stated that the universal nature of human rights is "beyond question", but this difficult consensus was found by adding that "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

In the practice of the United Nations, the universal nature of these rights is beyond question: almost all the resolutions adopted by the Commission on Human Rights, now the Human Rights Council, mention it. It can also be found in regional texts such as the European Convention on Human Rights (Preamble), the American Convention on Human Rights (Preamble) and the African Charter on Human and Peoples' Rights (Preamble and Article 60), which do not in any way contradict the Universal Declaration.

We cannot ignore the fact that, as stated by Nikken: Some recently tried to question the universality of human rights, particularly some fundamentalist or single party groups which presented them as an instrument of political or cultural penetration of Western values. It obviously remains possible to manipulate any concept whatsoever for political purposes, but there is one undeniable fact: the fight against tyrannies has always been, still is and will remain universal.[18]

In short, in our view, cultural diversity must go hand in hand with universalism, with due respect for cultural, social and religious differences within the limits of the undiluted defence of public liberties and the physical integrity of mankind.

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Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara region

Human rights in the Moroccan autonomy initiative for the Sahara region

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Preliminary observations

On April 11th 2007, Morocco presented the United Nations with an Initiative to negotiate an Autonomy Statute for the Sahara Region within the framework of the Kingdom of Morocco. This proposal aims at turning the Sahara into an autonomous region endowed with regional self-governance structures and competencies for the management of the region's affairs and the promotion of the human rights of its inhabitants.

By making this proposal, Morocco aims at finding a final consensual solution to a conflict that has been hijacking the integration of the Maghreb Region, poisoning the region's internal relations and above all exposing it to instability and insecurity. Settling this conflict will also mean the end of the humanitarian ordeal of thousands of Saharans forced into exile in the Tindouf camps, in Algeria, for the past 35 years.

Morocco's proposal is presented as a compromise political solution which, should it succeed, would achieve the twin objectives of preserving Morocco's sovereignty over the Sahara and providing the region's inhabitants with the means to manage local affairs through democratically elected bodies.

Morocco stresses the fact that its proposal is in no way cast in stone. This initiative is not final, it is not a "take it or leave it" offer. It is meant to be negotiated under the aegis of the United Nations. In other words, the other parties to the conflict will be able to make contributions to enrich it and fine-tune it.

In the meantime and until it is accepted as a basis for negotiating a peaceful and consensual solution to this dispute, the Security Council already gave a positive assessment of the Initiative by calling it "serious and credible".

Through this legal and political evaluation, the United Nations and the Security Council conferred the Initiative international legitimacy and legality, the Security Council being the highest UN decision-making body responsible for settling a dispute which is threatening peace and security in the Maghreb region.

I for one believe that this is a structural and not a random appreciation. It settles the question of the legality of the Moroccan proposal and confirms that it is in keeping with international law and fulfils the right to self-determination. It enshrines negotiation as a means of dispute settlement and autonomy as a framework for consensual fulfilment of the principle of self-determination.

Besides, it is a reflection of the spirit in which the Security Council is approaching the Sahara issue after several years in an impasse following the failure of previous proposals and plans. The Security Council indeed deemed the Moroccan proposal "serious and credible":

With respect to the legal and political context, vis-à-vis the continuation of status quo whose economic, humanitarian and security cost is a burden to the countries of the region;