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REPORT OF SESSION II ON
INTERNATIONAL STANDARDS FOR SOCIAL INTEGRATION

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Ladies and gentlemen,

I have been asked to report on the discussions in Session II on the theme of International Standards for Social Integration. I shall attempt to do so to the best of my ability.

While the concepts of social integration and fundamental social rights are clearly linked, they nevertheless differ in many respects.

The concept of social integration is primarily addressed from a sociological approach, whereas social rights can only be asserted and understood from a legal perspective.

With regard to the point which we are dealing with particularly today, namely international standards for social integration, two questions may arise.

Firstly, what part does international law play in asserting fundamental social rights?

Secondly, to what extent does international law contribute to the social integration process?

These are the two main questions which were considered during the discussions.

In terms of the relationship between social rights and international law, the main concern involves their universality.

Even though there is still debate among some legal writers, it can now be legitimately agreed that a universalist approach is taken to fundamental social rights.

To confirm this, one only has to note that many of them are set out in the 1948 Universal Declaration of Human Rights, as well as in the covenants on economic, social, cultural, civil and political rights, the conventions on the elimination of all forms of racial discrimination, and international instruments dealing with labour issues, etc.

To come back to the Universal Declaration of Human Rights, Article 22, in particular, provides that everyone, as a member of society, has the right to social security.

Article 23 of the same text sets out everyone's right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, to equal pay for equal work, to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection, as well as the right to form and join trade unions for the protection of his interests.

These two provisions confirm the universality of these social rights. However, this universality is immediately called into question when we come to the area of their implementation.

It is then necessary to measure the influence of the international standards at domestic level. Let us take the example of the 1948 Universal Declaration of Human Rights, the instrument with the greatest symbolic impact – without, however, forgetting that many international protocols derived from it can also play a part.

In principle, three main groups of countries can be identified.

The first includes countries like Gabon, Benin, Senegal, Burkina Faso and many other African countries which have incorporated the international declarations in the preambles to their constitutions, whose membership of the constitutional bloc is no longer questioned. Here we are dealing, in particular, with all the social rights set out in the 1948 Universal Declaration of Human Rights and also those enshrined in the 1981 African Charter on Human and Peoples' Rights.

In the specific case of Gabon, these rights are supplemented by those set out in the National Charter of Freedoms, such as the right to decent housing, the right to protection, in particular of mothers and children and a minimum income for the destitute, the right to equal access to employment, the right of people with disabilities to employment, the right to social security and medical care, the right to a healthy and well-preserved natural environment and, also, the right to education and teaching.

By decision of 28 February 1992, the Constitutional Court immediately confirmed the constitutional force of the preamble to the Constitution.

The same pattern also applies in other countries which, in addition to the rights enshrined in their constitutions, have built up a range of social rights, in particular through international conventions. This, of course, does not prevent there being close ties between these two categories of social rights.

Lastly, in some other countries, fundamental rights are set out in special instruments outside the Constitution. This raises the classic problem of their recognition.

Even on this level, however, it has to be said that, in spite of this variety in terms of presentation, there is a degree of consistency: the sacredness of fundamental rights and freedoms, which form the basis for a minimum standard shared by almost all countries. That is what makes them universal.

Nevertheless, a degree of diversity does show through this admirable unity.

This is because, although there is consensus in overall terms and a kind of universality surrounding certain social rights, such as the right to education, to social protection, to health, to work and to housing, to name but a few, there is divergence or at least extreme disparity regarding implementation of these principles by lawmakers.

In some ways, it is more straightforward if not easy to formalise individual freedoms such as freedom of movement, freedom of opinion, respect for private life and freedom of expression. The domestic legislation of democratic states is quite homogenous in this respect. The freedoms are implemented in more or less the same way by the various national lawmakers because, in the final analysis, wherever you go, there is a shared understanding of the freedom to come and go, the right to vote and freedom of expression

The situation concerning what are known as “social” rights is quite different. How can the right to health, the right to work or the right to social protection be formalised?

There are many parameters which lead to substantial differences in implementation between countries.

If we take the case of only one of them, namely a nation’s wealth, it can be seen that some rights, for instance the right to health, the right to education and the right to social protection, are not implemented in the same way depending on whether the country concerned is rich or poor.

What might be seen as a step backwards in some countries could be regarded as an advance in others. What is more, the situation may vary within a single state depending on its current economic situation.

Given these disparities, how can constitutional courts determine the point at which lawmakers violate or, on the contrary, reinforce particular fundamental social rights? Therein lies the main difficulty of the task facing them.

While maintaining diversity, constitutional courts should seek to ensure the unity of harmonious integration.

Moreover, perceptions of social rights vary greatly depending on a nation’s founding philosophy or shared principles.

In these circumstances, it is easier to understand the difficulties involved in identifying a body of shared rules for all states concerning social rights, which accordingly

explains why there can only be very heterogeneous constitutional case-law regarding these rights.

Nevertheless, international law does provide a common foundation on which to build realities, which, although different, do involve a degree of convergence. It has the merit of helping to establish a body of shared fundamental social and civil and political rights, which courts have a duty to strengthen through their decisions, while adapting to the situations in their own states.

International sources are therefore a tool for social integration in the broadest sense of a democratic world where fundamental rights and freedoms are respected.

Of course, individual states have all built their own models of social integration, but social integration can also be addressed at local and also at regional level.

It is from this perspective that we should see, on the one hand, the decision by the Arab countries to set up a Court on Fundamental Rights and, on the other, the corresponding proposal which has just been made by the President of the Constitutional Court of the Republic of Korea concerning Asia.

Reference should also be made to judicial mechanisms already in operation, such as the European Court of Human Rights, the African Court of Justice and the Inter-American Court of Human Rights.

Where they already exist, regional human rights courts have unified member states' case-law around a common approach to fundamental rights.

However, the establishment of regional human rights courts is not enough in its own to ensure effective protection.

The establishment of discussion forums in which individual countries could share with others their experience of social integration and the protection of human rights also contributes to this process of universality. This is especially true because such forums have the advantage of promoting objectivity, while also establishing standards or practices which may be applied routinely regardless of political or cultural differences.

In this connection, is it not the case that Article 1 of the 1948 Universal Declaration of Human Rights reminds us of a duty which is the very essence of social rights, namely that human beings "should act towards one another in a spirit of brotherhood"?

The discussions about the theme were wide-ranging and constructive and confirmed the universal nature of fundamental rights in their diversity.

In this respect, the main aspects of the discussions can be summed up as follows:

1) The diversity of situations leads to a degree of relativity between countries and between continents.

2) Constitutional law may draw on international law. In practice, this is more a matter of a kind of reciprocal influence, which helps explain what has been called the

internationalisation of constitutional law and the constitutionalisation of international law, even though, in some countries, international law does not fall within the jurisdiction of constitutional courts.

3) There is a need for international co-operation of the kind that already exists in some regions, but which should be reinforced with more binding machinery, in particular with a system of peer monitoring and observation.

4) The legitimacy of constitutional courts. It has to be said that they do not have the power to define the authorities' policies or lay down rules on fundamental freedoms and rights. Instead, their role is to check the compliance of legislation with constitutions and protect the rights enshrined in them.

This involves the age-old debate about governments' legitimate fears of courts, which does not, however, preclude the accepted idea of constitutional courts, which, in addition to their censuring function, are increasingly playing a positive role in terms of issuing guidance and in some cases instructions.

Constitutional courts may therefore be dynamic while remaining restrained within the bounds of their traditional powers.

5) Lastly, there is a need to step up dialogue between courts to further facilitate the resolution of disputes concerning fundamental rights and social integration.

[Ladies and gentlemen,]

I cannot be sure that I have been totally accurate in reproducing our thoughts and discussions. I hope you will make allowances for that.

Thank you for your kind attention.