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The Effectiveness of International Human Rights Conventions

By
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How effective are international human rights conventions ? What are the means of defence from lawyers, magistrates, civil society and individuals ?

The training programme organized during three days by the Lebanese Foundation for Permanent Civil Peace (LFPCP), the Human Right Institute at the Beirut Bar and the Konrad Adenauer Foundation « fills a gap in knowledge and praxis », according to Magistrate Bernard Chouéri, Ministry of Justice official.

More than 40 lawyers participated in this program in which striking cases of injustice and suffering were presented. Most of the cases happened in prisons and involved offenders and children; matters which require mobilisation, engagement and defence.

Debates and interventions focus on three points :

1. nature, universality and compulsory character of International Human right convention,

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2. available defences and means of implementation at the national and international level,

3. measures to prevent an effectiveness surplus.

1. Nature, universality and imperative of International Conventions : the source of human rights is «the human dignity » (Elizabeth Zakaria Sioufi). Principles have a universal value for at least three reasons :

- the human race has the same biological activity
- the full range of fundamental values stipulating that all religions and great philosophies are unanimous (a person is an absolute value in itself, free, universal brotherhood)
- the fact that we all share this planet

It implies universal principles but also the variety of concrete developments according to cultures and to the nature of political regimes.

Even now, extension of « proxy wars », transnational terrorism and close correlation between international peace and democracy are strengthening the universality of principles.

Ideological and dogmatic standpoints of human rights can be source of controversies. However in case of injustice, there is always unanimity beyond the positive law. Henceforth, « human rights are dependent on principles recognised in a democratic regime » (*Nidal al-Jurdi*). In striking cases, including Egypt, there was a remedy before courts of international law against the withdrawal of

nationality and exil (*Wehbe Ayyache*). The imperative nature of international conventions is highlighted in the Preamble of the Lebanese Constitution amended in 1990. At an international level, this imperative nature is an integral part of the body of constitutional rules and principles as there is no need for a subsidiary legal instrument when the principle is obviously clear (*Maysam Nouéri*).

2. Available defences and means of implementation at the national and international level: it means “deploy efforts at judiciary and social level” (*Rita Karam*) through the State, civil society, mainly the Ordre des avocats and also individuals. The Central Authority has the duty to elaborate subsidiary legislation and support to ratified Conventions given that such Conventions do not include the implementation of the principles and its sanctions (*Elizabeth Zakaria Sioufi*). It doesn't prevent the case-law.

It can be stated that number of projects are still pending in Parliament. Concerning the law society, it constantly pursues developments. Lebanon still had not ratified protocol enabling an individual appeal (*Khulud al-Khatib*).

However, various measures to get recourse are possible (*Myriam Younès*). Should be exhausted internal resources before any extension. The work will concentrate on the Convention against torture, in particular the Istanbul Protocol and the Convention on the Rights of the Child. The main mean of punishment is the conditioning of international aid on the effective implementation of Conventions by States.

In addition, a lebanese failure is observed in the presentation of periodic reporting. For 15 years, the report on the Convention against Torture has not been released (*Khulud al-Khatib*). And this in spite of a report published about “planned torture” happening in Lebanon (*Suzanne Jabbour*). Some international bodies seek to establish a cooperative relationship not based on conviction (*Suzanne Jabbour*).

We raise the problem of the logistical norms and the role of parliament in the control of law effectiveness (*Elizabeth Zakaria Sioufi*). We also expose details about the creation of the Arab Court of human rights, adopted by the Arab league in 2014 with headquarters in Bahrein, provided that at least 7 States adhere. Furthermore, we explain the role of the human rights Council in Geneva composed of 47 members States with confidence that “an individual became a legal person and we have remedies as individuals but with limits and after national means exhausted on the basis of 3 principles: respect for human rights, projection and execution” (*Nidal al-Jurdi*).

The situation surrounding prisons, must fall within the field of the Ministry of Justice and not the Ministry of the Interior, taking up a large proportion of debates. Number of countries renounced to the “jail” appellation to adopt “place of penalty execution”. In this context we need to develop technical investigations without resorting to torture. In case of allegation that involve terrorism activity, an investigator asks: “Should I appease this person accused in order to get his confession ?”

The answer being :” What happen if he doesn't confess guilt ? And if he confesses with use of torture, what is his acknowledgement credibility ?” (*Suzanne Jabbour*). We also expose case-law relating to refusals to extradite foreigners if they risk being tortured in their own country (*Adib Zakhour*). Concerning the law effectiveness and entrenching quality standards, we present as a model the former Interior Minister's circulaire, Ahmad Fatfat, about the implementation by the Ministry of the receipt regarding the freedom of association (circulaire n° 10/AM/2006, *Journal officiel*, n°26 du 25/5/2006). It should also be noted the role of the “Cour de Cassation” in Lebanon. It unanimously considered that the tribunal of juvenile offenders is exclusively entitled to their protection, without

consideration of eventual interferences between the civil legislation and personal community status, most often children become “dividing lines” (Fawzi Khamis).

3. What can we do with a view of an effectiveness surplus ? It has emerged from the program number of concrete perspectives:

1. *Follow-up*: Organizing a follow-up session with participants that constitute a group of actors, probably in April- May 2016. This session will be focused on each participants contribution to ensure effectiveness of Conventions and what they have identified as instances of good practice because “after the session begin works” (Batonnier Georges Jreige).

2. *Signature and ratification*: Putting pressure on the official authorities in view to get signature and ratification of Conventions, particularly on the Parliamant where number of projects are still pending and on governments for publication of decrees, however believing that what is often lacking is our passion more than our formal text.

3. *Roadmap*: Link any recommendation to a road map which determines the procedure and progression (Suzanne Jabbour).

4. *Prisons*: Work for the adoption of the plan's complaint processing policy.

5. *Culture of equality*: Human rights are dependent on the mainstream culture, especially concerning the “legal socialization” and social-family relationships in Lebanon, based on power relations rather than standards. However we must avoid the drift of subjectivism to an excessive emphasis of law at the expense of social link and family protection, given that the law in essence create a relationship.

6. *Remedies*: It has also been observed the role of the offenders' judge which does on its own initiative, that of offenders service of the Ministry of Justice, that of development centers of the Social Ministry, code 17/14 on Facebook on this latter: No violence against children in Lebanon.

Ministry receives each year around 54 000 complaints because people “begin are starting to talk about it” (Rita Karam). Furthermore, the National Council for Children cooperate with 57 centres in Lebanon. This is about “not only to inform but also having a stronger voice” (Suzanne Jabbour).

7. *Mass Medias*: Often, mass medias intervene less for inform, mobilize and sensitize than by sensational interest and in a violation of secrecy (*Rita Karam*). All this leads to a moral requirement.

8. *Good practices*: It will be necessary to identify good practices and diffusing them, also by working toward the computerisation of national jurisprudence.

Session is open with the participation of Magistrate Bernard Chouéri, representative of the Ministry of Justice; Batônnier of Beirut, Georges Jreige; Director of the human rights Institute of Beirut Bar, Elizabeth Zakaria Sioufi; two representatives of Konrad Adenauer Foundation, Hana Nasser and André Sleiman; programme Coordinator, Rabih Kays; and the member of Constitutional Council, Antoine Messarra. The Konrad Adenauer Foundation supports programs of State of rights'consolidation in 120 countries (*Hana Nasser*).

Presentations showed that human rights cannot be reduced to mechanisms but require a commitment: “ That one who does not defend a cause has nothing. I put my faith on people for which nobody bets on ! I'm not supporting twenty causes and I fail but only one !” (*Suzanne Jabbour*). This cause concerns people “who live by chance and die without ceremonial” (*Batônnier Georges Jreige*), and lawyers, magistrates and anyone considering also that “a decree of Magistrate nomination does not make the Magistrate” (*Bernard Choueri*).

The session has been closed by the executive director of Ministry of Justice, Maysam al-Noueri, who exposes the role of the Ministry in the implementation of international Conventions, especially across the legislative department and consultation, prison visits by Magistrate, reintegration of former prisoners and creation of a forensics and psychiatric centre in Tripoli which will be soon inaugurated, with a specific requirement of legal medicine. She underlines:” The Ministry answers to all explications demand from international organism. By passion, we success and reach the goal and, by default of cooperation, we are looking for cooperation!”. Experiences in human rights defense show that these rights require “a democratic vitality which often defect, that explain effectiveness of european system and even african system, and the executive deficiency of the arab system “ (*Nidal al-Jurdi*).