

## **For a new framework of dialogue with the Council for Human Rights:**

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### **General framework: human rights institutions in the United Nations system**

The study of the contribution of the United Nations, and specifically the mechanisms which depend on the recently constituted Council for Human Rights looking into the safeguarding of human rights -both individual and collective- is a paradoxical issue.

On the one hand, the UN deserves bitter criticism for unquestioningly following the position of some of the states in the so-called Western Countries group, evidently clashing with international regulations. Furthermore, the inability of the UN to criticise the flagrant human rights violations under the responsibility of these states has questioned its credibility, transparency and independence. The incapacity of UN bodies to defend the most basic rights of Iraqi, Afghan, Palestinian, Chechen, Saharan, ... peoples and the violation of individual rights of their citizens are so evident that it is not worth elaborating on. It is sufficient evidence to show that the system is rotten.

On the other hand, this is the only system we have. Those of us who, in some way or other, speak in favour of nations without states, could stay outside and highlight the previous criticism. However, we would be too naïve if we thought that, from our insignificance, we could change all this system designed and ruled over by the states. Perhaps this is the first lesson the system teaches one: the fact that the United Nations answers only to the interests of the states and is usually opposed to those of the peoples. In fact, the United Nations should be called the United States, but somebody took that name previously. It is true that this structure is designed by the states to perpetuate their common interests. It is also true, though, that it underlines their weak points, illustrating their shortcomings. The states also have a clash of interests depending on the position that each one adopts in this chaotic "international community". Therefore, I do not consider it appropriate -although it is highly tempting- to reject the whole system so far built surrounding the UN and condemn it as absolutely useless and inefficient. There are many aspects that should be improved, but in our experience it is worthwhile approaching this system, learning to use it and make the most of its mechanisms and the above mentioned confrontation of state interests, in order to slip in our claims and our messages.

We could elaborate on the hows and whys of the reforms confronted lately in the human rights system of the UN, and particularly in the Council for Human Rights, but we would always reach the same conclusion: the fact that the states in a specific region are interested in not being criticised for human rights violations and pointing that criticism at states of other hemispheres. In this way, they reproduce the role of the era of colonisation in which the states of the first world are the prosecutors and the ill-termed third world is the prosecuted, in this case regarding human rights. In other words, they try to find the way to use the system not to be punished and to punish others. If the system fails to accomplish this function and former punished begin to be punishers, then the Group of Western Countries will have no problem in discrediting the system and rejecting its usefulness and competence. This latter reason is precisely the one underlying the cancellation of the Commission of Human Rights. This body was presumably too politicised, as it started heavily criticise the unilateral policies of the United States of America in the Middle East and their responsibility in the violation of basic rights of the detainees in Guantanamo. So, they designed a new body, the Council on Human Rights but it has started its tasks with the direct opposition and active boycotting of the United States, not present as a member in the discussions.

Not to go further, we could simply say that the Council on Human Rights looks to become a technical body that overcomes the alleged politicisation of its predecessor, the Commission. But who says that the debate on human rights it is not a way to do politics? are we facing a technical-humanitarian discussion or are we speaking about concrete political responsibilities? During the last session, in September, Sri Lanka stated that the antiterrorist measures that it implements against the Tamil people are not different than those designed and implemented by Spain... I am not sure if they are the best of travelling companions for Spain in regards to the enjoyment of the human rights, but it is a way to understand how these questions are interpreted.

In conclusion, the necessary renewal of the system of Human Rights has highlighted the need for equality and good balance among the states. It has brought on interesting discussions, such as the design of the Universal Periodical Review. This is an instrument that seeks to analyze the situation on human rights of all the countries all over the world equally, without taking into account the political interests of some Countries about it. This system will start operating next year, in three sessions every year analyzing all the countries in groups of 16. In the last session of the Council, the both election of the first states that will be subjected to analysis and the game start. Even the rules to provide

information to the rapporteurs and the way they will conduct this is not completely decided, it seems to be a good tool to avoid the "double standards" under which the Commission has operated until now, condemning some states -the ones that had more difficulties to overcome the problems that they face- and turning a blind eye in the case of others -those that have all the means and only need political will to confront their human rights violations-.

### **The Basque experience in particular**

Our experience of participation in the Commission on Human Rights and, later, in its successor, the Council on Human Rights of the United Nations has always been based on three ideas:

1.- To ensure the presence of the Basque Country at this level and, through this, to achieve recognition as representatives of a nation without representation. This element is important perhaps from a symbolic point of view, as other peoples do: Saharan, Kurdish, Tamils, representatives of indigenous peoples...

2.- To take advantage of the opportunity for some non governmental organisations with consultative status to take part directly in the plenary. We work with some organisations in solidarity that, "this time for me, the next for you", give us an opportunity to take the floor and address all the participants with problems that we face at that moment, in Euskal Herria or in other territories. It has a direct impact upon the sessions.

3.- Last, to explore and learn how this system works: to improve our knowledge of the instruments, mechanisms and procedures. Conventional ones -that operate under the consent of the state- or extraconventional ones -that work directly, without the necessity of the ratification or the consent of the state to do its work-. Is in this sphere of action that we have achieved interesting results: declarations, condemnations, urgent appeals to the states, recommendations... that have an direct impact on the states, as they are produced by the official bodies of the United Nations. We can say that we have achieved success at that level and our work has had been fruitful.

The Basque question and its presentation in front of these bodies, entails a bidirectional work:

- In one direction, in relation to the situation of political conflict with an important component of violent action, issues such as torture, freedom of expression, the independence of the judiciary, the implementation of antiterrorist measures in contradiction with the enjoyment of human rights... is denounced in front of these instruments and mechanisms. They are linked to individual rights.
- In the other direction, the violation of collective rights and especially, the denial of the recognition of the rights of the Basque Country, obliges us to develop a work around these claims. It is more improvised, less regulated, as these claims -as we will see later- do not have an easy adaptation to the system of the United Nations.

Let us briefly analyze these parameters of action in our concrete experience

- **Individual Rights: civil and political rights:**

A high quantity of human rights abuses -civil and political- has been brought before the offices of various mechanisms of the system of human rights at the United Nations. It has brought some of them round to study better the situation and take action.

Related to the issue of the torture, a really important effect was achieved with the action of the Committee on Human Rights and the Committee Against Torture -CAT that has known about both individual cases and general situations, in their periodic review of Spain in accordance with the Covenant Against Torture. But the visit carried out by the Rapporteur on Torture, Theo van Boven, in October 2003, was definitely the one that changed the visualization of this phenomenon and its importance in front of the international community. As the Rapporteur himself later explained, the reason for his visit was the accumulation of information around torture in the Basque Country and the denial of that evident fact by the Spanish authorities. The Rapporteur had included cases of hundreds of Basque citizens arrested under the regime of incommunicado detention in its annual reports, submitted to the Commission. Now, in the report that summarized the information collected during his visit, he pointed out important recommendations such as the need for recognition from the Spanish authorities that this phenomenon occurs more than sporadically, the withdrawal of the special law that allows incommunicado secret detention, or the obligation on the part of the justice system to investigate and redress the victims of torture. He mentioned the situation of the Basque prisoners dispersed throughout prisons in the Spanish territory, asking for their repatriation. The reaction of

the Spanish authorities to these conclusions was to accuse the Rapporteur of lack of impartiality and independence and to state that he "had been misled by terrorist sources". This attitude speaks for itself: rather than face the conclusions in a proactive manner, they preferred to insult the Rapporteur and denigrate the system, as it was not helpful for them.

Following the path of the Rapporteur on Torture, the Rapporteur on Freedom of Expression had a lot of information about the violation of political rights such as freedom of association, freedom of expression and in special, closure of media: newspapers Egin or Egunkaria, the radio station Egin Irratia, or the monthly magazine Ardi Beltza. The Rapporteur, Ambeyi Ligabo, requested for a visit to Spain. In his report E/CN.4/2004/62 of the 12th of December 2003 he denounces that "the Government of Spain, on 4 August 2003, sent the Special Rapporteur a comprehensive reply to his request, without inviting him to visit the country". Spain denies the entrance in its territory to the Rapporteur on freedom of expression. No more explanations are needed.

In this regard, the Rapporteur for Human rights in the fight against terrorism, Mr. Martin Scheinin has asked the government for a visit to Spain that is expected to take place next spring and that can be a new milestone with regard to the rights of Basque citizens in this concrete sphere. The Rapporteur is not only reporting on the impact of antiterrorist measures on the enjoyment of human rights, but he is also examining the causes of violence in a concrete context and the possibility of implementing proactive measures -of a political, social, cultural economical nature- to go to the root of the problem and overcome it. Without any doubt, the significance and effect of this visit is suggestive.

### - **Collective Rights**

As previously stated, this framework presents more difficulties, as collective rights are less developed in the United Nations and we have had serious problems to insert our claims in this system.

We can say that the right of self determination of the peoples is not present at the mechanisms and procedures of human rights as a juridical concept. It could generate an interesting debate if we were to go into whether self determination is in fact a right or just a political claim. In the Basque context the political positions that oppose the recognition of that right always have proclaimed that is it not such a right, but a political request, and

therefore, out of the sphere of enjoyment of human rights. Does the United Nations agree with this assessment? I do not think so, but of course, they have not put too much interest to see it the other way round. At one level, we could say that the lack of initiative of the United Nations to design procedures for an effective enjoyment of the right to self determination is painful. This right, recognised in the first article of the Universal Pact on Civil and Political Rights and the first article of the the Universal Pact of Economic, Social and Cultural rights, is not developed in mechanisms or procedures to be implemented or, in the other sense, to denounce its denial. The Commission on Human Rights and the Council that now substitutes it do not habilitate such an instrument; no doubt, because of the problem this poses for states. Again, there is a clash of interests: on one side the interests of the states that defend their territorial integrity tooth and nail and on the other side the interests of the peoples and nations without recognition that demand the democratic right to exercise their self determination. All the references to procedures or mechanisms to this right that we may find are circumstantial, anecdotal, tangential, designed to deal with other principal topics. That is the case of the debates of the Working Group on the Indigenous Populations, or the case of the Working Group and [Special Rapporteur on use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination](#). The Working Group on Transnational Corporations approached the issue, but they did not develop it.

From a practical point of view, Behatokia has tried to work on two mechanisms: the Working Group on Indigenous Populations and the Working Group on Minorities. In the first one we participated at the beginning of the debates, 9 years ago, but even if that debate enriched us we realised that it was not suitable to introduce our demands. Interesting proposals have been discussed there, for example, around the right to self determination that was demanded by the associations of indigenous peoples. However, these associations have later denounced the weakness and short input of this Working Group and that other interests have succeeded in its conclusions, not those of the indigenous peoples.

Even less convincing was our participation in the sessions of the Working Group on Minorities, as the recognition for collective rights here is even weaker. We submitted information around language rights in collaboration with the Council of Associations for the defence of the Basque language Kontseilua. Its impact was minimum, even if it was interesting to see that the discussion on minorities does not really respond to the situation of the nations without state, not at least the Basque situation. In fact, in our Country we are a majority. Recently, in a much more positive way, this Association has participated in

the Committee on Economic, Social and Cultural Rights in the evaluation of the implementation of these rights by the French state. The definitive report will be made public in the next months.

Another instrument that appeared in the structure of the High Commissioner: the office to elaborate a report on the Arbitrary Deprivation of Nationality. In its resolution 2005/45, the Commission on Human Rights requested the Secretary-General "to collect information on this question from all relevant sources and to make it available to the Commission". This function corresponds now to the Council. Here we saw an opportunity to introduce an issue that has a high impact in the Basque case: the existence of a conflict of nationalities: two of them -the French and Spanish nationalities- imposed to many citizens, and, conversely, the non-existence of recognition of the Basque nationality.

Consequently, the task we developed from Behatokia was to facilitate a meeting between the responsible of that office and the president of the Institution of City Councillors of the Basque Country, Loren Arkotxa, to discuss the problem. Since the very first moment we were conscious that the objective of this mechanism was to deal with the situation of minorities that hold a nationality that the state where they live does not recognise nor provide them with the nationality of that state, asking for some conditions that are difficult to achieve. The objective of this mechanism was to avoid statelessness in contexts of states succession, such as those after the collapse of the Soviet Union which meant the creation of new states in Eastern Europe, or the effect of the change of territorial limits that affect populations like the Palestinians under the rule of Israel. The contents of the work of this office are "aspects of citizenship relating to electoral rights, the possibility of working in the public service or holding public positions, the possibility of enjoying certain social benefits and certain economic benefits". Their connection with issues of minorities is clear.

We were conscious that the interpretation in the situation of the Basque Country exceeded the task of this office: the denial of Basque nationality for not being recognised -even though it is demanded- and the imposition of others -the French and Spanish ones-. Therefore, when Udalbiltza produced the Basque Identity Card EHNA, it was helped by a statement directed to the High Commissioner of Human Rights, denouncing the impossibility to exert Basque nationality. If nowadays around 50.000 Identity Cards have been issued, Udalbiltza had 7000 forms to be submitted to the Office of the High Commissioner reclaiming the right to exert the Basque Nationality. These documents were handed in to that office. With this action, we combined an "advertising action" (or publicity

stunt) -the submission of the forms asking for the recognition of Basque Nationality- and a technical message, in the direction of the information that that office was compiling, even if it meant breaching the narrow limits within which it works. We are waiting for the reaction of the office and, of course, the Spanish embassy.

We are conscious that this kind of "propaganda actions" will not be enough to solve the serious problems that we bring to the Council. Nevertheless, through this action we tried to show that still there is one problem that the system of the United Nations has to overcome: the way to deal with the nations without state. It creates an uncomfortable situation for that system, as it is not prepared to offer a method to answer to the right that is at the basis of the most conflicts currently ongoing in the world. This kind of little actions and others that the representatives of many peoples and non governmental associations develop, could oblige the Council to move and face a debate on the right restated in the Universal Pacts on Human Rights, to interpret them in a positive way and develop a new procedure to ensure the implementation of the right to self determination within the United Nations. We know perfectly that this discourse annoys most of the states, which are closed to the recognition the existence of nations that pre-existed them. However, we need this kind of initiatives to create contradictions inside the system and help the discussion.

Perhaps we will achieve nothing with this initiative if it is isolated. Nevertheless, it is a way to put on the table a discussion that is a current issue and affects hundreds of peoples all over the world and thousands upon thousands of citizens. It is a task for everybody to create a debate on the decentralisation of decision-taking and the redistribution of democracy, that in the future, will force the Universal Institutions, whatever name they adopt, to face how to deal with the effective exercise of the right to self determination.