STRENGTHENING THE RULE OF LAW: THE RIGHT TO AN EFFECTIVE REMEDY FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS

Olivier de Frouville
Professor at University Paris II (Panthéon-Assas)
Chair-Rapporteur of the UN Working Group on Enforced or Involuntary Disappearances

1°) The project of a World Court of Human Rights

- I fully support the proposal for the creation of World Court of Human Rights.
- The proposal is not only realistic and feasible, it is a necessary step to take in order to preserve and enhance the existing treaty bodies system.
- What could be done to promote this initiative? The creation of a world coalition of “friends of the World Court of Human rights” composed of all interested stakeholders (States, NGOs, experts, academics and others) could be decided on the occasion of the Vienna+20 conference. The goals of the coalition would be first to promote this initiative and second to actively contribute to the drafting of the treaty, after having determined the best tactic to achieve the best result.

2°) Enhancing the protection of victims through urgent appeal/action procedures by special procedures

- With time, an impressive system of immediate reaction to allegations of violations of human rights has developed. All special procedures have “urgent appeal” procedures through which they react to allegations received and coming from “credible sources”.
- Most of the time, these urgent appeals take the form of “joint urgent appeals” as several mandates are generally concerned by the same situation. For instance somebody who has been arrested illegally is at risk of being subjected to an enforced disappearance, torture and summary execution.
- We have to acknowledge that great progresses have been made in achieving Immanuel Kant’s vision of cosmopolitan society, in which “a violation of rights in one part of the world is felt everywhere”. But there is still room for improvement.
- There is still no real capacity to react during nights and week-ends. Perpetrators do not have rest on week-ends. We should seriously examine the ways and means to conceive a 7/7, 24h/24h system of reaction to violations. The most arduous problem being not to organize such a reaction capacity at the international level, but to find proper ways to have access to the domestic organs or persons being in the position to

---

1 This paper reflects my personal opinions and not the opinions of the Working Group as a collective body.
take effective measures of prevention and protection (when they are not perpetrators, civil servants do have rest on week-ends).

- We should have a thorough reflection on how to best use new technologies as tools of protection. Recent events have shown the potential impact of immediate communication of information on violations of human rights. Of course, there may be concerns on the credibility and authenticity of the information posted. Could we imagine to have a social network dedicated to early warnings and urgent appeals in the field of human rights, accessible by identified credible sources on the field, who would have the possibility to post, on a continuous basis, their allegations or testimonies?

3°) The protection of Human Rights Defenders

- We also have to acknowledge the great progresses made in terms of protection of human rights defenders since the 1993 World Conference and since the adoption of the 1995 Declaration on the protection of human rights defenders.

- Those last years, there has been a worrying trend of States taking repressive measures and adopting laws designed to deter and limit the capacity of human rights defenders to undertake their activities. The HRC adopted a landmark resolution addressing this issue in March 2013, which was followed up at the 23rd session in a number of other resolutions and initiatives. The HRC should take actions in future resolutions to target specific country situations and specific laws which are contrary to international standards, including the Declaration for the protection of Human Rights defenders.

- There has been a recent practice of reactions by the Chair of the HRC to react against threats or measures of intimidation against human rights defenders who cooperate with the UN system. New measures should be contemplated to build on this positive practice. For instance, the HRC President could be mandate, with the assistance of a group of ambassadors, to immediately contact the relevant missions in Geneva when receiving allegations that a human rights defender is being threatened, intimidated or subjected to reprisals because of its activities in relation with UN system.

4°) Enhancing the efficiency of protection by ensuring that the institutional “system” for the protection of human rights really works as a system

- We very often speak of the universal “system” for the protection of human rights, but there are still progresses to make so that all the bodies composing that system really work together in a systematic way, thus enhancing the efficiency and effectiveness of their actions.

- The Office of the High Commissioner and the High Commissioner herself has a special role to play in terms of coordination and strategic/tactical planning of activities.

- Specific measures should be taken so as to enhance coordination in terms of devising country strategies/tactics. For instance, there is currently no systematic coordination in terms of visits. Some states have 5, 10, 20 requests for visits pending. But no priority is set and decided as to who should go first among the special procedures. As a consequence, states are free to decide on priorities for themselves which is often a problem.

- Specific measures should be taken so as to improve the coordination between the Office and independent experts bodies, particularly relating to countries and activities on the field. Information from human rights field presences to special
procedures should be systematically transmitted. Information and exchanges about the High Commissioner’s planned country activities should be fully and entirely made available to independent experts. There should also be a reflection about how to enhance communication through press releases, as the High Commissioner and the special procedures tend to communicate to the press on identical topics or situations, sometimes with similar messages, which brings confusion and diminish the impact of those interventions.

5°) The challenge of the right to access to information as a condition for an effective remedy

- A condition for the effective respect and realization of human rights is free expression and freedom to communicate and impart ideas and information. In particular, access to information on the procedures for the protection of human rights available at the international level is a condition for victims to enjoy an effective remedy.
- A major channel of access to information today is the internet. Millions of people are searching for information on their rights and on the procedures to enforce their rights on the Web. Providing access to information on rights and procedures available to all peoples of the world should be a priority for the United Nations. Unfortunately, the OHCHR has never been up to this challenge and its website is still defective in many ways. This situation constitutes a serious obstacle to access to information, and thus to an effective remedy for victims of human rights. **Measures should be taken so as to make the website of the OHCHR a useful and user-friendly resource of information on rights and procedures.**
- Another dimension of the right to access to information is the right to receive information in a language that one understands. In Geneva, there seems to be a difficulty to understand that everybody in the world is not necessarily part of this cosmopolitan elite, for which English has become a common language. If victims all over the world are to be provided with an effective remedy, it is still of major importance that the website and all relevant documents be translated at least in the six official languages of the UN.

6°) International Criminal Justice and Human Rights: challenges and opportunities

- International Criminal Justice is a major opportunity in terms of enhancing the effectiveness of human rights.
- Still we have to examine carefully how and under what conditions international criminal justice and human rights can be mutually reinforcing.
- In the last years, a number of “commissions of inquiry” have been created by the Human Rights Council to investigate not only human rights violations but also potential international crimes perpetrated in different countries. This has led to a change of perception not only by states but also by victims of onsite visits by special procedures. Commissions of inquiry are more and more collecting evidences with the view to transmit it to international or domestic tribunals, in case of subsequent prosecutions. But special procedures mandate holders generally neither have sufficient staff nor proper methodology to proceed to such kind of criminal investigations. And no witness protection program exists, so as to protect those who, believing that special procedures visits may lead to prosecutions, are delivering criminal evidences at great risks for their lives.
- The question is thus: don’t we have to reflect upon the similarities but also the differences between “human rights investigations” and “international criminal
justice investigations”? Should we apply the same standards and the same procedures?