

ARGENTINE OMBUDSMAN OFFICE NATIONAL HUMAN RIGHTS INSTITUTION

Call for inputs: Views and proposals on a draft legally binding instrument on the right to development

Type of the instrument:

- Framework Convention (1.a.): this one is viewed as a valid option intended to simplify the treatment and speedy approval of the instrument.

Content of the instrument:

- It is considered appropriate that the right to development be linked to the 2030 Agenda.
- That connection would constitute its efficient cause and also its purpose for achieving the Millennium Development Goals, without the 2030 temporal limitation. Thus, the right to development would be a vehicle for attaining the SDGs, and, given the fact that the 2030 agenda is an agenda of rights, for ensuring due respect for human rights and the inviolability of human dignity, its core essence.
- As for the elements to be included, it is recommended that the instrument should have just a few components in order to move quickly to gain its approval. Therefore, elements should be clear, concise, yet flexible -considering the different areas in which they will be applied-, and certainly effective. Likewise, they should serve as a sort of positive lever for the achievement of the SDGs. To this end, best practices of developed economies should also be taken into account to fit the definition of 'development' given by the *Real Academia Española* (Spanish Royal Academy): "Evolution of an economy towards improved standards of living".
- States should play a key role as duty-bearers because, after all, future rules and obligations governing people and private business activities will lie with them. Therefore, a simple mechanism is hereby encouraged based on recommendations and observations given by the Group o by the Committee, followed by relevant reports submitted by each State with the effective involvement of NHRIs -in order to ensure full enforcement of human rights as well as the fulfilment of the Agenda-; and having the NGOs intervention too. This process would ensure that the duties of States and companies in fulfilling the Agenda would not be distorted (even though private business activities have been included in Res 70, paragraph 67), and that the plurality of voices and opinions, although limited by some formalities or procedures

for avoiding a system based on anarchy, close the way to a single way of thinking. This is true because we proceed from the premise that pluralism, institutional quality and republicanism constitute the cornerstone of development; in that order, not in the opposite direction.

Institutional arrangements:

- In our view, option 9.b. is the one we consider more appropriate, subject to some exceptions. That is to say, the group of experts should be highly qualified but limited in number in order to be effective and, leaving aside the formal rounds of consultations and studies that they decide to undertake, its work must be carried out in brief time. Moreover, we believe that the mandate to submit reports to the General Assembly does not appear to be appropriate because it would not make the above-mentioned procedure possible. The Office of the High Commissioner or the Human Rights Council seems to be better suited for this task.
- As regards point 10., we are in favour of a General Secretariat, a coordinating body managed by the GANHRI. As a result, this would put the Alliance in a prominent place; and it would also contribute to enhance the institutional quality of the body as well as of its members, the NHRIs, which must be independent from the Administration and impartial. Here, everyone wins: the Group of Experts for having a Secretariat; GANHRI for gaining greater influence within the human rights system and each one of its members for being compelled to exhibit the highest institutional quality that it is possible for them to reach.
- Finally, point 11.: This group should be financially supported by the United Nations because, in our opinion, it should not be unlinked from the Agenda. 2030.

Compliance, monitoring and enforcement arrangements:

From our point of view, 12.a. and b. are highly interesting because they are consistent with the criteria laid down in previous paragraphs. Again, what is important here is that States, NHRIs and NGOs can express their opinions and that the Group or Committee, after following this practice in a frequency to be determined, make observations, if applicable. As for optionality, we consider that it would distort the above principles. On the other hand, since concluding observations would lack *imperium* –even though they will really have *authorities*- we do not see that this clause be included therein.

Final provisions:

- a. The OHCHR is uniquely positioned to form the Group, ensuring equitable representation of all regions.
- b. Likewise, we believe that this Office will be able to assess the critical mass from which it is possible to define the number of ratifications for the agreement to entry into force.
- c. According to our view, in principle, it would be unwise. However, everything will depend on the final text of the Instrument.
- d. Taken into account the mechanism depicted above, it seems to be adequate that a summary procedure be established within the scope of the Office of the High Commissioner for Human Rights to solve disputes.
- e. Yes, this clause should be included because the denunciation of the agreement, regardless of motivation, contributes to facilitate its first ratification.