

Viewpoints and recommendations:

UN Human Rights Council, 31st session from 29 February to 24 March 2016

The UN Human Rights Council was established in 2006. In its 31st session, a range of issues and country situations will be discussed. In this document, the Norwegian NGO Forum has selected a few issues, which it argues that Norway and other human rights friendly states should address during discussions. The document deals with two issues extensively – *The 2030 Agenda for Sustainable Development* and *the Refugee Crisis* – while a range of crosscutting concerns are dealt with in shorter sub-sections.

2030 Agenda for Sustainable Development

The 2030 Agenda and its Sustainable Development Goals (SDGs) signals an important and necessary shift in global development cooperation. It represents a comprehensive and integrated approach to all dimensions of sustainable development, a strong focus on human rights and has as a fundamental principle: «leave no one behind». It means that states and other stakeholders should prioritize the poorest and those on the margins of society.

The Norwegian NGO Forum is therefore pleased to see that the SDGs has been chosen as the theme of this year's High Level Panel. Norway, and other states that give priority in their foreign policies to development cooperation, should participate actively in the panel discussions. The discussions should contribute to strengthening and clarifying human rights based approaches to planning, implementation, and follow-up and review on the goals. The discussion should also shed light on the importance of transparent and inclusive accountability mechanisms at national, regional and international levels and how this may be ensured.

A few countries have started to develop national plans of implementation. However, most countries are still on a very early stage. Norway has, as one of 14 countries, volunteered to report to the High Level Political Forum (HLPF) on its implementation efforts already this summer.

This early follow-up and review creates both possibilities and expectations. It gives Norway – as well as the 13 other countries, which will report early – a chance to become a promoter and source of inspiration for ambitious achievements. Norway may serve as a model for other countries, particularly in involving and consulting with civil society and marginalized groups in the follow-up and review process.

Early Norwegian follow-up and review may also provide indirect support to the Norwegian Prime Minister Erna Solberg's work as co-chair of the UN Secretary General's group promoting the SDGs.

Norway taking upon itself this role creates expectations. The Norwegian government should include civil society and other relevant stakeholders in developing national plans and in HLPF monitoring and review in the spirit of partnership as emphasised by the UN Secretary General.¹ The Government should prioritize a human rights based approach in the implementation of the SDGs by reaching out to the poorest and most marginalized groups first both in national and international work.

On this background, we ask Norway (and other states), to make use of the high level discussions to explain how it's planning, implementation and follow-up and review processes are designed and how the principles of participation and transparency will be adhered to.

The Norwegian NGO Forum recommends underlining the following points during the High Level Panel Discussion:

1. Civil society should be included in planning and follow-up and review nationally. It is important to inspire and contribute to pressure on other countries that allows for less space and involvement of civil society. At the same time, Norwegian civil society organizations need clear messages on how Norway aims for them to be included. The follow-up and review deadline is less than 6 months from now;
2. Civil society should be included in follow-up and review globally. Details about the global accountability mechanism for the SDGs are still not determined. However, there exist many lessons learned and principles that could be taken from the already functioning human rights mechanisms. An important principle for a global mechanism should be to provide civil society and other stakeholders with access to information and possibilities to give inputs when national reports are to be scrutinized and evaluated;
3. «Leave No One Behind» as a guiding principle for the SDGs should implicate that all 17 goals and targets should be implemented in a comprehensive way. The principle

¹ A/70/684 Critical milestones towards coherent, efficient and inclusive follow-up and review at the global level http://www.un.org/ga/search/view_doc.asp?symbol=A /70/684&referer=/english/&Lang=E

and the promise that the poorest and most marginalized should be reached first has to be a guideline for all country's efforts to reach the SDGs;

4. The ambition to tackle inequality and to have a special focus on fulfilling the rights of vulnerable, poor and excluded groups gives the international community and states a unique opportunity to create more inclusive and just societies. States should make efforts to eradicate extreme poverty, ensure equal and fair access to basic services, eliminate direct and/or indirect forms of discrimination as well as economic barriers, and ensure progress on human rights for all.

Persons with disabilities

The 2030 Agenda includes no less than 11 references to the rights of persons with disabilities. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) should serve as a guiding document for implementing the 2030 Agenda. In line with the principles of the 2030 Agenda and agreed human rights based principles, the rights of persons with disabilities must be included in planning, implementation, and follow-up and review on the goals.

The NGO Forum underlines that Norway and other states should:

5. Highlight the importance of enhancing consultation and participation of marginalized groups, including persons with disabilities in the monitoring and review process. The principles of non-discrimination, equality and accountability can only be achieved if such participation of persons with disabilities and other marginalized groups is ensured.

Monitoring of the implementation of the SDGs will depend on disaggregation of data by income, sex, age, ethnicity, disability, geographic location and other characteristics.

6. The commitment of leaving no-one behind must become an overarching principle and be made an explicit requirement across the entire indicator set and guide the ongoing work of the UN Statistical Commission's Inter Agency Expert Group on SDG indicators.

The Refugee Crisis

The Norwegian NGO Forum sees finding effective ways to address the current refugee crisis in Europe and elsewhere – in compliance with international law – to be of paramount importance. The way European and other countries, in particular rich countries, contribute to solving the refugee crisis have large consequences for individual refugees, but also for the

wider capacity of the international community to respect and protect internationally guaranteed rights of people forced to flee.

An important starting point for any discussion on ways to solve the refugee crisis is to realize that the world's system for protecting refugees is broken. It is obvious, from Australia to South Sudan's vast camps, from Istanbul's streets to the EU's fortified walls that the system of international protection does not function.

About 19.5 million people have been forced to flee their home country and seek refuge in another country. Many more are internally displaced in their own country.

International refugee and human rights law, place a duty on Governments to help refugees. However, most rich countries are still treating refugees as somebody else's problem. Hiding behind closed borders and fears of being "flooded", they have conveniently allowed poorer, mainly Middle Eastern, African and South Asian countries, to host an incredible 86% of all refugees.

A few rich countries have kept their borders open. However, the burden on these countries may be too heavy due to the failure of sharing responsibilities to protect refugees between European countries as well as between rich countries in other parts of the world.

By ignoring most appeals for humanitarian aid, they have left UN agencies so broke they cannot even feed many refugees properly.

On this background, the Norwegian NGO Forum appeals to Norway and other states to express the following viewpoints in debates on refugee protection. States should:

1. Uphold and strengthen the international system for protection of refugees that was established after the World War II, including the 1951 Refugee Convention and UN agencies like the UNHCR. Some of the cornerstones of this system is currently undermined by many states and need vigorously to be defended, such as:
 - a. The principles of international solidarity and responsibility sharing;
 - b. Creation of credible legal alternatives to dangerous irregular movements, including:
 - i. large-scale resettlement opportunities;
 - ii. humanitarian admission programs;
 - iii. greater access to family reunion options;
 - iv. student and employment visas for refugees;
 - v. other forms of legal admission to Europe;

- c. The right to seek and receive asylum. Many countries have imposed or are about to impose undue restrictions on this right by impeding access to their territory, establishing strict visa requirements for asylum seekers, referring asylum seekers to so-called safe third countries or first countries, etc.
 - i. The right to seek asylum should not be seen as a theoretical concept, but as a requirement to facilitate easy and effective access to a fair and efficient refugee status determination procedure;
- 2. Focus on promoting and building a coordinated European response, including through the implementation of fully-functional hotspots, a European relocation scheme and by opening-up more legal entry channels (family reunification programs, support to European countries in need to further develop the capacity of their asylum and integration systems, etc.);
- 3. Reiterate their commitment to the protection of refugees from repressive regimes outside of the current area of crisis, both through the effective processing of asylum claims at the national level and continued support for local offices of the UNHCR;
- 4. Increase support for humanitarian aid in Syria, Iraq and other areas of conflict, as well as in neighbouring countries;
- 5. Establish permanent resettlement and relocation mechanisms that ensure equitable responsibility-sharing in future crises;
- 6. Establish a global standing fund for refugees that will not only ensure predictable and readily available funding for humanitarian appeals, but also provide financial and economic support to countries hosting large number of refugees;
- 7. States should strengthening protection of the fundamental rights of refugees in all host countries, ensuring access to education, healthcare and an adequate standard of living.

Crosscutting Issues

In what follows, the NGO Forum points to issues or concerns, which Norway and other human rights friendly states should raise during debates in the Human Rights Council when relevant.

Peaceful Protests

In many states, governments do not respect the right to peaceful protest. An important aspect of freedom of assembly and association is the right of citizens to gather publicly to

peacefully protest government policies. As interpreted by the UN Special Rapporteur on Freedom of Peaceful Assembly and Association, Mr. Maina Kiai,

“The right to freedom of peaceful assembly is the right to gather publicly or privately and collectively express, promote, pursue and defend common interests. This right includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose. (...) Simply put, these rights protect peoples’ ability to come together and work for the common good.” (<http://freeassembly.net/about/freedoms/>)

Many states, including Azerbaijan, Bahrain, Kazakhstan, Russia, and Turkey have put in place legislation, bureaucratic procedures and/or police measures that in law and/or in practice violate this right. In numerous situations, security police attack peaceful protesters, sometimes leading to peaceful protests becoming violent.

States should respect the right to peaceful protest and recognize active citizens as a resource for positive change. They should realize that states develop and improve when active citizens have possibilities to evaluate, challenge and protest peacefully against policies and/or legislation.

Freedom of Religion or Belief

Norway and other states should support the findings in the report of the UN Special Rapporteur on Freedom of Religion or Belief, Mr. Heiner Bielefeldt, dealing with the synergies between and the mutual reinforcement of freedom of religion or belief and freedom of opinion and expression (A/HRC/31/18, available at: http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf).

This is especially relevant when combating intolerance, stereotyping, discrimination and incitement to violence based on religion or belief. The NGO Forum underlines the importance of countries following up on his recommendations, particularly on the issues of:

1. Repealing *blasphemy laws* as these may contribute to intolerance, stigmatization, discrimination and incitement to violence. In addition, these laws tend to hinder an open and free public discourse and intergroup communication that is necessary in order to combat intolerance and incitement to violence based on religion;
2. *Legislation aimed at preventing incitement to acts of hatred* needs to be precisely defined and follow the strict criteria in article 18(3), 19(3) and 20(2) in the International Covenant on Civil and Political Rights (ICCPR) and follow the guidelines in General Comment 34 and the Rabat Plan of Action.

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Torture and other cruel, inhuman or degrading treatment or punishment remains – 70 years after the establishment of the UN, 50 years after the adoption of the International Covenant on Civil and Political Rights, and 32 years after the adoption of the UN Convention against Torture – widespread. According to Amnesty International, more than 122 states tortured or otherwise ill-treated people during 2015.

In international law, torture is prohibited in all circumstances. There exists no legal justification for torture. Norway and other states should strongly appeal that states:

1. Enact effective legislation, prohibiting torture in all circumstances;
2. Put in place action plans to combat torture, including establishing specialised investigative units independent of police and security forces;
3. Ratify the Optional Protocol to the 1984 UN Convention against Torture;
4. Co-operate fully with the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
5. Ensure that applications for international protection by asylum seekers are not refused examination on its merits solely based on the applicants travel via a third country where he was not persecuted – if the refusal involves a risk that the applicant may be returned to torture or inhuman treatment by that third country.

Human Rights Defenders

The Norwegian NGO Forum supports Norway's plan to focus on human rights defenders in the field of economic, social and cultural rights in proposing a resolution to be adopted at the 31st Session of the UN Human Rights Council.

The text of the resolution, and interventions on human rights defenders, should:

1. Build on and refer to previous resolutions in the UN Human Rights Council and the UN General Assembly on human rights defenders, without repeating or rephrasing their contents. It should be written in easily understandable language;
2. Refer to the indivisibility of human rights. In striving for the realization of economic, social and cultural rights, human rights defenders depend on respect for fundamental freedoms, such as the freedoms of association, assembly and expression;
3. Describe how the work of human rights defenders benefit development and in reaching the sustainable development goals (SDGs);

4. Include references to human rights defenders working in remote areas, on vulnerable groups and against corruption;
5. Underline the need for states to respect the rights of human rights defenders themselves as well as to protect them from third party violence, threats, etc. One important step to protect them from third party violence is the operationalization and implementation of the UN Guiding Principles for Business and Human Rights;
6. Underline the need for states to protect and support the work of human rights defenders who focus on business-related impacts on human rights in third countries, in accordance with existing international standards;
7. Underline the need for states to provide protection, including temporary protection measures, to human rights defenders and their families at risk;
8. Invite the UN Committee on Economic, Social and Cultural Rights to adopt a General Comment on the right of individuals, groups and organs of society to defend and promote the rights included in the International Covenant on Economic and Social Rights.

Business and Human Rights

Human rights organizations documents large number of cases of serious human rights violations committed by transnational corporations and other business enterprises. Violations include depletion and destruction of natural resources and crops, oppression of agricultural workers and harassment and criminalization of human rights defenders.

Access to justice for the victims is often difficult; remedy mechanisms being non-existent or ineffective. The cross-border nature of the activities of transnational corporations, and their ability to operate in between jurisdictions to escape accountability, makes access to remedy unobtainable for many victims of human rights abuses.

Nevertheless, the UN has developed clear framework – the UN Guiding Principles on Business and Human Rights – making business enterprises responsible for respecting human rights. As with many other UN sponsored frameworks, implementation remains a challenge. Both states and business enterprises should make strong efforts to implement the *UN Protect, Respect, and Remedy Framework*, endorsed by the Human Rights Council on 16 June 2011 (“the UN Guiding Principles on Business and Human Rights”).

Effective implementation of this framework by both States and business enterprises is essential to ensure respect for human rights in the business context.

The NGO Forum asks Norway and other human rights friendly states to recommend that all UN Member States:

1. Ensure that their legislation creates conditions that are conducive to the respect for human rights by business enterprises and do not create barriers to effective accountability and remedy for business-related human rights abuses. They should evaluate relevant new legislation with regard to any impact on human rights;
2. Provide for state-based non-judicial grievance mechanisms that meet the effectiveness criteria listed in Principle 31 of the UN Guiding Principles on Business and Human Rights and facilitate the implementation of their outcomes. They should encourage that non-state based non-judicial grievance mechanisms also meet these effectiveness criteria;
3. Consider allowing their domestic courts to exercise jurisdiction over civil claims related to business-related human rights abuses against subsidiaries, wherever based, of business enterprises domiciled within their jurisdiction, if such claims are closely connected with civil claims against the latter enterprises;
4. Consider to allow their domestic courts to exercise jurisdiction over civil claims related to business-related human rights abuses against business enterprises even if they are not domiciled within their jurisdiction. Further conditions should be that there does not exist any other effective forum guaranteeing a fair trial and that there is a sufficiently close connection to the member state concerned;
5. Should protect and support the work of human rights defenders who focus on business-related impacts on human rights in third countries, in accordance with existing international standards.

On 26 June 2014, the Human Rights Council adopted a resolution calling for an open-ended intergovernmental working group on transnational corporations and other business enterprises.² The process of the working group has created an opportunity to fill current gaps, including greater means of prevention, protection, investigation and remedy of corporate abuses, as well as better ensuring effective access to justice for affected people. The working group will present its first report during the 31st session of the Human Rights Council.

The Norwegian NGO Forum recommends that Norway and other human rights friendly states:

6. Participates in the session where the working group presents its first report;
7. Continue to underline the importance of states producing and implementing national action plans on business and human rights.

Undermining Democracy

² <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>

Many states that conduct regular elections, systematically violates other essential requirements for a fully-fledged democracy:

- The judiciary is under political influence and appointments to important judicial posts are guided by political allegiances rather than professional competence;
- Political opposition is restricted, and its access to media limited;
- The Parliament is playing a minor role, being totally dominated by the Government;
- Legislation is adopted without debate or consultations with civil society and the wider public;
- Politicians gain from large scale corruption;
- Media are controlled by political friends of the government or directly by the government in order to ensure favourably reporting on government policies and actions;
- Media critical of the government are punished in economic ways, or by excluding them from access to information, by subjecting them to outright bans on dubious legal grounds, ultimately aimed at preventing journalists in carrying out research and publishing articles, etc.;
- Access to critical websites are blocked by national tele-providers on the orders of authorities and activities of civil society on social media are subject to police monitoring and can result in fines and imprisonment;
- Civil society is under pressure not to criticize the government;
- Watchdog organizations face legal actions, including liquidation, and foreign funded organizations are delegitimized;
- Various forms of pressure and appointment policies undermine the independence of academic institutions.

These and other similar measures may themselves constitute or lead to violations of human rights, including violations of fundamental freedoms and political rights. Governments even in EU Member States, such as Hungary and Poland, are putting in place such measures.

On this background, Norway and other human rights friendly states should underline that:

1. In order to develop democratic rule, states should have strategies to counter the above mentioned threats to a well-functioning democracy;
2. International organizations should develop strategies and mechanisms to address situations of systematic undermining of democratic rule;
3. The EU, the UN, other international institutions and democratic states must address these systematic attempts to undermine democratic rule forcefully.

The Norwegian NGO Forum

The Norwegian NGO Forum for Human Rights is a network of 41 Norwegian organizations active on human rights issues. Members are listed here: http://www.nhc.no/no/vart_arbeid/ngo-forum/Organisasjoner+tilknyttet+NGO-forum+for+menneskerettigheter.9UFRDUXF.ips

The Forum makes efforts to influence Norwegian authorities – and authorities in other states – to prioritize a principled and comprehensive approach towards strengthening human rights within the framework of international organizations and at the national level.

The NGO Forum is active on Norway's Universal Periodic Review Process, and publishes alternative reports to treaty bodies. It arranges meetings and hearings on human rights issues in Norway or internationally. It provides input to discussions in the UN Human Rights Council and other international human rights forums.

The Norwegian Helsinki Committee serves as the Secretariat of the NGO Forum. Statements, letters and reports are available at http://www.nhc.no/no/vart_arbeid/ngo-forum/