

THE GENERAL INTEREST AND GLOBAL HUMAN RIGHTS GOVERNANCE

By James Mouangue Kobila

Professor of Public Law

Chairperson of the Cameroon Human Rights Commission

Your Excellences,

Ladies and Gentlemen,

I am introduced as the Chairperson of the Cameroon Human Rights Commission, but noting the presence of many academics and specialist researchers in the room, I should stress that I am also speaking in my capacity as an academic, based at the University of Douala.

A few days after celebrating the Centenary of The Hague Academy of International Law from 24 to 26 May 2023 on the theme "Challenges of International Law", with an inaugural round table devoted to "The Public Interest and International Law", it seems interesting to me to focus on "The Public Interest and the Global Governance of Human Rights" as part of this Forum.

The human rights arena is undoubtedly among the least consensual areas of global governance. Yet the International Covenant on Economic, Social and Cultural Rights provides a solid foundation for cooperation in human rights matters. Article 2, paragraph 1, states that "*Each State Party to the present Covenant undertakes to take steps, individually and*

through international assistance and co-operation [...], to achieve progressively the full realization of the rights recognized". On the eve of the celebration of the Day of the African Child on 16 June, it should also be recalled that the Preamble to the United Nations Convention on the Rights of the Child stresses "*the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries*".

More recently, on 18 April 2023, the UN High Commissioner for Human Rights published his *Report on the Implementation and enhancement of international cooperation in the field of human rights*, to be presented at the 53rd Session of the Human Rights Council, which will be held from 19 June to 14 July 2023.

There will be no debate on defining human rights here, as it is clear that *while human rights are universal, the content of the term is not*. What is considered a human right in Africa and part of Asia is sometimes dismissed elsewhere; what is hailed as a human right in Europe or, more broadly, in the West, is sometimes just as vigorously rejected elsewhere. We are therefore confining ourselves to the universally recognised human rights that constitute the common denominator in this area. But beyond these, the criteria for assessing respect for human rights vary substantially from one context to another.

From this perspective, several authors approach the question of global governance of human rights alongside other subjects through distorting prisms resulting from specific biases. Often, these authors are content to give a scientific colouring to

ideological postures. *What is presented as the general interest is often no more than the interest of a category of States or an ideological camp.*

The subject before us raises a host of questions. Can international cooperation lead to better governance of human rights? Under what conditions? And with what results? Does international cooperation on human rights ultimately require global governance based on a guiding public order? If so, which actors have the legitimacy to play such a role, if any?

Without claiming to provide detailed answers to all these questions, we will find the outlines of some answers by examining the three main trends in the current governance of human rights, including within the United Nations: the prioritisation of rights and the consequent obscuring of duties (I), the limited consideration given to the right to peace, which should be reflected in active conflict prevention (II), and the many biases affecting transnational cooperation on human rights, in this case, the relations between non-state actors and states in this field (III).

I- The prioritisation of rights and the consequent concealment of duties

The Cameroonian people, through the Preamble to the Constitution of 18 January 1996, affirm "*Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto*".

The Constitution of Cameroon, the domestic laws enacted to implement it and the African and universal legal instruments ratified by the State of Cameroon thus guarantee all persons under its jurisdiction the free exercise of their rights "*with due respect for the rights of others and the higher interests of the State*".

There is too often a tendency to forget this segment of the Preamble to this Constitution, which nevertheless recalls Article 27 (2) of the African Charter on Human and Peoples' Rights, which reads as follows: "*The rights and freedoms of each individual shall be exercised with due regard for the rights of others, collective security, morality and the common interest*".

By ignoring these statements, we are neglecting the warning of Gustave le Bon, the French physician, anthropologist, social psychologist and sociologist - a specialist in behavioural disorder and crowd psychology, inter alia - who observed that "*the surest way to destroy the principle of authority is to talk to everyone about their rights and never about their duties*".

In a context of one-upmanship where certain human rights are presented - wrongly - as absolute dogmas and where freedoms border on anarchism in social media and beyond, a context where we tend to forget that freedom is the right to do anything lawful, it is worth remembering an old Latin adage, widely ignored: *ubi jus, ibi onus*. And I translate: *where there is a right, there is also an obligation*.

To illustrate this legal adage, I refer you to one of the indents in the Preamble to the Constitution of Cameroon cited above,

and to Articles 27 to 29 of the African Charter on Human and Peoples' Rights. It follows that failure to respect the international mechanisms of "*collective security, morality and common interest*" is a source of conflict.

II- Limited recognition of the right to peace, which should be reflected in active conflict prevention

The human right to peace, which is the inalienable right to life, dignity and peaceful coexistence of all individuals, groups and peoples, is being trampled underfoot by war criminals and terrorists who have been killing, beheading, amputating, eviscerating, torturing and destroying devastatingly throughout the world since time immemorial, violating all rights.

Quoting from *the United Nations Declaration on the Rights of Peoples to Peace*, approved by the General Assembly in a resolution on 12 November 1984, we can state, without risk of being contradicted, that "*Convinced that life without war serves as, [at the national, regional and universal level], a prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms*" proclaimed by all international and regional human rights instruments, whether binding or not."

At the African regional level, the African Charter on Human and Peoples' Rights (ACHPR), which was adopted in 1981 and came into force on 28 October 1986, refers to the right to peace from a collective perspective. Article 23, paragraph 1 of the ACHPR

states that "*all peoples shall have the right to national and international peace and security*". This enshrinement of the right to peace calls for the adoption of measures, both nationally and internationally, to prevent conflicts and to preserve, maintain and consolidate peace.

Peace is certainly an expression of the African soul and culture. The lushness of our landscapes, the musicality of our rivers and woodlands, and our aesthetic emotions as much as our mechanisms for settling disputes are a constant appeal to conviviality and elevation towards universal harmony.

In 2001, the UN Commission on Human Rights, now the Human Rights Council, adopted a specific resolution on the "*right of peoples to peace*".

Against this background, Boutros Boutros-Ghali of Egypt, the former Secretary General of the UN put forward his famous 1992 Agenda for Peace, based on a three-pronged approach to international solidarity.

Unfortunately, this agenda was not well taken up by some of the major powers, who are permanent members of the United Nations Security Council. As a result, on the African continent as elsewhere in the world, people continue to pay the heavy price of wars from elsewhere, against a backdrop of exacerbated cultural differences (ethnic, linguistic, religious, etc.) that are inherent in all human societies, and numerous biases that compromise the general interest of international societies.

III- Transnational cooperation biases in human rights matters

We will start by examining the case of Non-Governmental Organisations (NGOs) before looking at that of Civil Society Organisations (CSOs).

A- The NGO case

Non-Governmental Organisations (NGOs), which are usually national associations operating in several countries or associations whose members come from several countries, are not very different from domestic Civil Society Organisations. In his book *Les cartes de la France à l'heure de la mondialisation*, Hubert Védrine, the former French Minister of Foreign Affairs, classifies the 30,000 or so NGOs he has identified worldwide into several categories. He writes that "you find everything there, the best and the rest: generosity, dedication, networks, militancy, interests, lobbies, beliefs and a lot of real power in disguise" (p. 20); so that, without a clear view of this landscape, we are very often mistaking bladders for lanterns, especially as the 'hierarchies of power' and the 'global balance of power' are reflected in it: As he explains, "[i]t is, therefore, the civil societies and NGOs from the rich countries, with the most media coverage, the means to communicate, and thus the power to impose their interpretation of an event, that will wield the most influence in the world: Americans, not Niger, Bolivia or Bangladesh! It's not the NGOs in Nigeria that will speak out in Northern Ireland or demonstrate in Seattle" (ibid.)

Whatever the case, NGOs are often the vectors of specific biases that distort understanding and sometimes permanently sabotage the noble cause of human rights throughout the world.

- 1- *The preposterous idea that the State is the sole holder of human rights obligations* since the State is the sole signatory to treaties means that the State is the culprit and solely responsible for the failure on the part of a country to respect human rights. This overlooks the horizontal dimension of human rights.
- 2- The erroneous idea that the rulings of regional and universal non-judicial human rights mechanisms are nonetheless binding.
- 3- *The erroneous idea that human rights standards are absolute dogmas* that apply uniformly in all countries and do not admit of any derogation or exception, or that the State must apply them otherwise it will be treated as a rogue State, in defiance of the "national margin of appreciation of national authorities", This is in total disregard of the "national margin of appreciation of national authorities" enshrined in the case law of the European Court of Human Rights, and in complete disregard of the fact that even the West's conception of human rights is not uniform, and that when it comes to respect for privacy, in the United States freedom takes precedence over dignity, while in Europe the opposite is true.

4- *Lack of respect for proportionality*: statistically, non-state actors are responsible for the majority of human rights violations. However, the majority of reports by the best-known international NGOs are devoted to alleged breaches of human rights by States.

B- The special case of CSOs

Civil Society Organisations (CSOs) campaign for human rights using their methods, but their action is often trapped by five factors.

1- *The bias towards seeking funding*, which leads them either to exaggerate the reality to hope for the desired funding, or to speak the language and work on the priority themes of the donors and not on those they consider relevant or on those of the country where they are active. This is how some CSOs, far from operating out of conviction or in the interests of the communities they claim to protect, become relays or parrots who simply repeat the rhetoric dictated by the donors.

2- *By obtaining visas for their members or their relatives*, or third parties for a fee, and presenting them as persons persecuted by governments.

3- *The bias of incompetence* sometimes leads them to fight absurd battles.

4- *Political bias* leads some CSOs to betray the integrity of human rights defenders by joining political party platforms or making political demands.

5- *The bias of conscious manipulation*, often consists of passing off legitimate acts of penal repression by the State as acts of persecution of a category of citizens.

Recommendations

Since it is nevertheless indisputable that Human Rights are a founding principle of modern societies, the following four recommendations can be made:

- 1- Mainstreaming the rights-based approach.
- 2- Mainstreaming human rights education in school curricula, to provide a major lever for better governance of human rights.

As Frédéric MAYOR, the former Director-General of UNESCO, put it so well, "It is in people's minds that war is born, and it is in people's minds that the values of peace must be cultivated". Let us be the architects of peace!

- 3- The establishment of funding mechanisms for human rights projects that place particular emphasis on economic, social and cultural rights.
- 4- The establishment of an interactive framework to encourage the sharing of experiences and best practices between NHRIs in the South.