

Respect for the Rule of Law and the right to a fair trial: the absolute necessity for Human security

Bonheur Minzoto

“In a world divided by differences of nationality, race, colour, religion and wealth [the Rule of Law] is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion.”
Tom Bingham, *The Rule of Law*, 2010.

Introduction

Human security, which the Universal Declaration of Human Rights refers more flexibly to “fundamental freedoms”, includes freedom both from fear (of physical, sexual or psychological abuse, violence, persecution, or death) and from want (of gainful employment, food, and health). Human security then deals with *the capacity to identify threats, to avoid them when possible, and to mitigate their effects when they do occur*¹, through fair administration of justice which is one of the cornerstones of a democratic society abiding by the “Rule of Law”. The core of the existing principle is that “*all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts*”². Accordingly, the Rule of Law, the right to a fair trial and human security deem to be closely linked. To support this statement, it is important to understand the implications of the Rule of Law (A) as well as the right to a fair trial (B) and conversely, the risks

arising from their lack or absence in terms of Human security (C).

A) The Rule of Law

“The Rule of Law is a fundamental pillar on which the protection of human rights rests”.

The Rule of Law is a fundamental pillar on which the protection of human rights rests. It encompasses a number of principles, including accessibility of and equality before the law; access to justice; law over discretion; protection of fundamental human rights; dispute resolution mechanisms and fair adjudication of disputes. It means, in the first place, the existence of publicly known and nondiscriminatory laws which lay down citizens’ rights and establish institutions safeguarding the legal system, including courts, prosecutors and police. These institutions are themselves bound by human rights guarantees, as laid down in universal and regional treaties for the protection of human rights, such as the Universal Declaration of Human Rights which reaffirms the principle of equality

¹ Shahrbanou Tadjbakhsh, *Human Security: Concepts and Implications with an Application to Post-Intervention Challenges in Afghanistan*, Les Études du CERI, N° 117-118, 2005, p. 5.

² T. Bingham, *The Rule of Law*, Penguin UK, 2011, pp. 8, 37.

and Non-discrimination for all, the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, etc.

The famous Professor of English Law at Oxford University, A. V. Dicey, wrote extensively on the concept of the Rule of law, underscoring that such concept entails "that no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land"³. He further observed that:

"when we speak of the 'rule of law' as a characteristic of our country, not only that with us no man is above the law, but (which is a different thing) that here, every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals"⁴.

It is thus evident that the execution of state power must be based on laws that were made according to the international standard, and with the aim of safeguarding freedom, justice, and legal certainty. It follows that human rights and fundamental freedoms, the Rule of Law and democratic institutions are the foundations of peace and security, above all, of human security.

"Establishing Rule of Law institutions is vital to ensuring immediate security and the necessary stability for peacebuilding to take root".

In 1993, the UN World Conference on Human Rights in Vienna reaffirmed the inseparable link between the principle of the Rule of Law and the protection and promotion of human rights. It recognized that the absence of the Rule of Law is one of the major obstacles to the implementation of human rights. Moreover, this generally accepted conception of the Rule of Law as an indispensable staple of the national or international system echoes the remarks made by Professor Hilding Eek, when he stressed that "*our [...] society could not have peace, order and security without the Rule of Law*"⁵. It goes without saying that the Rule of Law provides the foundation for the just management of relations between and among people, thus fostering diversity. Also, it ensures the accountability of rulers and control by law over them. Establishing Rule of Law institutions is vital to ensuring immediate security and the necessary stability for peacebuilding to take root⁶. But to be "truly effective", the Rule of Law would require "routine and obligatory recourse to the Court"⁷.

B) The Right to Fair Trial

"Respect for the accused's rights of defense is the surest way to check whether or not, in the face of injustice caused by the commission of crimes,

³ A. V. Dicey, *An Introduction to the Study of the Law of the Constitution* (1885: 9th ed. Macmillan, 1945), p. 188.

⁴ *Ibid.*, p. 193.

⁵ Hilding Eek, "International Law in Retrospect and Prospect: Some Observations from the Swedish Point of View" (1959) 29 *Yearbook of the*

Association of Attenders and Alumni of the Hague Academy of International Law 237, p. 240.

⁶ United Nations, *The Rule of Law and Peace and Security*, available at: <https://www.un.org/ruleoflaw/rule-oflaw-and-peace-and-security/>, [accessed March 19, 2019].

⁷ Bingham, *The Rule of Law*, above note 2, p. 128.

the State, through its enforcement bodies, answers with justice”.

The Human Rights Committee, in its General Comment No 32, pointed out that the right [...] to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the Rule of Law⁸. The International Criminal Court emphasized the value of such a right by judging that *“where fair trial becomes impossible because of breaches of the fundamental rights of the suspect or the accused by his/her accusers, it would be a contradiction in terms to put the person on trial. Justice could not be done. A fair trial is the only means to do justice. If no fair trial can be held, the object of the judicial process is frustrated and the process must be stopped”*⁹. It follows, therefore, that respect for the accused’s rights of defense is the surest way to check whether or not, in the face of injustice caused by the commission of crimes, the State, through its enforcement bodies, answers with justice.

As it can appear, the right to a fair trial is a core element of the Rule of Law and the only way to prevent miscarriages of justice and is an essential part of a just and safe society. Furthermore, a strong judicial system helps to keep crime rates and corruption low, thus contributing to freedom from fear. As such, it upholds a series of individual rights ensuring the proper administration of justice from the moment of suspicion to the execution of the

sentence. The African Commission on Human and People’s Rights recalled that in the determination of any criminal charge against a person, or of a person’s rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.¹⁰ Actually, it is not just about protecting suspects and defendants. It also makes societies safer and stronger. Indeed, when free and fair trial are guaranteed in a country, this gives trust in the Judiciary and avoid civil vengeance as well community conflict that can lead to loss of lives and properties.

C) The interconnectedness between the rule of law, the right to fair trial and human security

“Human rights violations and abuses and the absence of the Rule of Law lead to unstable and less prosperous societies”.

The above paragraphs demonstrate the importance of a fair trial and the Rule of Law to ensure Human security. Since, and conversely, human rights violations and abuses and the absence of the Rule of Law lead to unstable and less prosperous societies. They create a world where terrorism flourishes and where the safety of all individuals is at greater risk. Where human rights are not adequately protected, it creates a cycle of insecurity, instability, and poverty.

⁸ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html> [accessed 22 March 2019]

⁹ International Criminal Court, *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor V. Thomas Lubanga Dyilo*, Judgment on

the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, ICC-01/04-01/06 (OA4), 2006, par. 37.

¹⁰ African Commission on Human and Peoples’ Rights, “Principles and guidelines on the right to a fair trial and legal assistance in Africa” (2003), DOC/OS(XXX)247, para A.

In fact, without legality, the powers of the authorities would be far too broad, even unlimited. So we can see how much freedoms, human rights, would be compromised. Without legal certainty, no one could determine the consequences of his actions. As for abuse of power, only those who benefit from it can wish for it. Without fair trials, victims can have no confidence that justice will be done. Without fair trials, trust in government and the rule of law collapses. Furthermore, practices related to discrimination and intolerance both threaten the security of individuals and may give rise to wider-scale conflict and violence.

The situation across the Democratic Republic of Congo can dramatically attest to this. It is one of the poorest countries in the world. It has also suffered from decades of conflict. The Congo wars, which ended in 2003, cost 5 million lives and drew in 8 other countries. Violence and insecurity continue to displace over 4.5 million people from their homes.¹¹ Furthermore, the situation of human rights defenders and other pro-democracy activists has been in jeopardy and the right to freedom of expression and manifestation has been nightmarish. Altogether, the situation of human rights across the country is deeply troubling. What's worse, the incapacity of the justice system to convey, promote, guarantee and protect the values of equity and justice remains a source of anarchy and

an open door inviting the return of social unrest¹². In such a situation, it is especially important to re-establish the rule of law and the right to fair trial in order to enhance Human security through legal security, the administration of justice and good governance, and to (re)build social compact between citizens and the State. These are the means by which citizens will regain confidence and trust in the state and its authorities.

Conclusion

“Human security cannot be realized without the Rule of Law and fair trial”.

It emerges from the above development that Human security cannot be realized without the Rule of Law and fair trial. The principles of Rule of Law and fair trial contribute to one's security in personal life as it guarantees that nobody is persecuted and arrested arbitrarily, that everyone is entitled to a fair court hearing and an independent and impartial judge.¹³ What is more, strong justice and corrections institutions, together with accountable police and law enforcement agencies, which fully respect human rights, are critical for restoring peace and security. They allow for perpetrators of crimes to be brought to justice, encourage the peaceful resolution of disputes and restore trust and social cohesion based on equal rights. Establishing

¹¹ <https://www.gov.uk/world/organisations/dfid-drc> (Accessed February 2, 2020).

¹² Kifwabala Tekilazaya, Defi Fataki wa Luhindi et Marcel Wetsh'okonda Koso, République démocratique du Congo : le secteur de la justice et l'Etat de droit, Open Society Foundations, 2013, p. ix.

¹³ European Training and Research Centre for Human Rights and Democracy (ETC), “Rule of Law and Fair trial”, p. 143. Available at: http://www.etc-graz.at/typo3/fileadmin/user_upload/ETC-Hauptseite/manual/versionen/modules_eng/206-Fair%20Trial%20and%20Rule/206Fair%20Trial%20and%20Rule.pdf [accessed 26 March 2019]

such conditions is equally important to peace and security.

As one can notice, it's a no brainer, to ensure human security, respect for the Rule of Law and the right to a fair trial, more than conceivable and desirable, is mandatory. States must hence fulfil in good faith their obligations under international law to ensure a sound rule of law framework for the promotion and protection of human rights.