
HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

Four recommendations adopted. Mandate of the Committee in question



Photo: Diego Wylie

The right to food was one of the focuses of the Human Rights Council Advisory Committee's 5th session.

The Human Rights Council Advisory Committee (the Advisory Committee) held its 5th session from 2 to 6 August 2010. Four recommendations were adopted, including the 'Principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members'. These guidelines were noted with appreciation by the Human Rights Council (the Council) at its 15th session,¹ which requested the High Commissioner for Human Rights distribute them as appropriate, and called on the General Assembly to consider ways of further promoting the principles.

The three other recommendations adopted concerned the right to food (assigning the drafting group to finalise the report taking into account comments from Council member States, UN agencies and other relevant stakeholders, and assigning the group to prepare a preliminary study on the rights of people working in rural areas); the right of peoples to peace (creating a drafting group to begin work on a draft declaration); and the enhancement of international cooperation in the field of human rights (creating a drafting group to explore ways and means to enhance international cooperation).² The Advisory Committee also discussed its study on missing persons, which the drafting group has been working on since January 2009 with view to submitting it to the Council at its 16th session in March 2011.

At the start of the session, the Advisory Committee held a minute's silence in memory of former member Mr Miguel Alfonso Martinez. Mr José Antonio Bengoa Cabello was nominated to take up his place on the working group on communications.³

MANDATE OF THE ADVISORY COMMITTEE

The session revealed continuing confusion about the mandate of the Advisory Committee.⁴

Ms Halima Embarek Warzazi said she had received a note from India explaining its belief the Advisory Committee was not mandated to take up any matter on its own initiative, and the reference in its mandate that it 'may propose research proposals within the scope of the work set out by the Council'⁵ only allowed it to make proposals within the framework of a proposal already made to it by the Council.⁶ India has been one of States most vigorously opposed to the role of the Advisory Committee, stemming from its dislike of the work the Committee inherited from the Sub-Commission on descent-based discrimination, and is attempting to limit the Advisory Committee's power even further through the review.

1 A/HRC/15/L.18, <http://bit.ly/cSLAY1>.

2 Advisory Committee reports, studies and recommendations from its 5th session are available at: <http://bit.ly/ahqKIA>.

3 The working group on communications is designated by the Human Rights Council Advisory Committee from among its members for a period of three years (mandate renewable once). It consists of five independent experts. The working group assesses the admissibility and the merits of communications received under the Human Rights Council's complaint procedure.

4 For past discussions see, ISHR, 'Advisory Committee', Human Rights Monitor Quarterly, April 2010, <http://bit.ly/bcMFTH>, and ISHR, 'Advisory Committee: testing its independence', Human Rights Monitor, 2009, <http://bit.ly/d4E2F0>.

5 A/HRC/RES/5/1, para. 77, <http://bit.ly/bje7GE>.

6 A/HRC/13/G/22, <http://bit.ly/9Q4WWb>.

There is, therefore, confusion not only on the part of the Advisory Committee, but also from States about how far the Advisory Committee is mandated to act on its own initiative.

Mr Dheerujlall Seetulsingh said it was his belief the Advisory Committee was mandated to make suggestions to the Council about the scope of its work. However, uncertainties surfaced when the Advisory Committee discussed the review of the Council's work and functioning. As a subsidiary body of the Council, the Advisory Committee will be part of the review. While many members felt they should prepare a submission on the Advisory Committee's work for the review process, others were wary in case the Council should view this beyond the terms of the Advisory Committee's specific mandate.⁷

Ultimately it was agreed the Chairperson of the Advisory Committee will submit written input ahead of the first session of the open-ended intergovernmental working group on the review. The Committee also decided to continue discussions on the review at its next session in January.

THEMATIC DEBATES

Principles and guidelines on elimination of leprosy

The Advisory Committee adopted the draft principles and guidelines on the elimination of discrimination against persons affected by leprosy and their family members, which was requested by the Council in June 2008.⁸ The Council had previously asked the Advisory Committee to consult more widely with stakeholders, which it had done and included the majority of stakeholder's suggestions in the new draft presented at the session.

Japan, which has a long-standing interest in the issue, cautioned against making drastic changes to the draft at this stage, which it felt would require holding stakeholder consultations all over again. It also mentioned specific reservations it had on the text. This caused the Advisory Committee members to accuse Japan of interfering in its work at a point where the drafting group's report had not yet been seen by the members themselves. In the end, almost all textual amendments suggested by members were incorporated into the final document, with States⁹ generally supporting the text.

Declaration on human rights education

During the discussion on the draft declaration on human rights education and training, Morocco took the floor to update the Advisory Committee on progress in the Council. It said the Advisory Committee's draft had been well-received so far, that there was no longer any question about whether

Drafting a new UN declaration on human rights education

On Friday 3 September 2010 the second open-ended informal consultation on the drafting of a 'UN Declaration on Human Rights Education and Training' (the declaration) was held in Geneva.

The Human Rights Council Advisory Committee submitted its draft declaration to the 13th session of the Human Rights Council.¹ The draft was debated by the Council, which established an open-ended Working Group to continue drafting the declaration.² The Working Group will meet in early 2011,³ but in preparation for its meeting, the Platform on Human Rights Education and Training⁴ planned a series of informal meetings to facilitate further discussion. An informal meeting in November is expected to continue this process.

A central point of the discussion was the reluctance by many States⁵ to recognise the right to human rights education as a separate right to the already well-established right to education. Some States also argued that human rights education should be limited to certain human rights issues. Pakistan and others suggested limiting the scope of human rights education to 'universally recognised human rights'. In other Council debates and in the context of the universal periodic review, States have been encouraged to 'promote all universally agreed human rights and fundamental freedoms, and continue to resist attempts to enforce any values or standards beyond the universally agreed ones'. Although Pakistan did not receive much support for this proposal, it will be important to ensure a new declaration does not detract from the universality of all human rights.

Many States⁶ expressed hope for a more streamlined and action-oriented document. Complicated language used in parts of the draft allowed these States to argue for the deletion of entire paragraphs in the declaration in the name of 'streamlining'. This has resulted in a weakening of the draft declaration. For example, the Russian Federation suggested removing the already weak reference to the essential role of human rights defenders. Several States suggested the deletion of an entire section pertaining to the implementation and international monitoring of the declaration.

The Moroccan Permanent Mission in Geneva is receiving written input on the draft declaration, and coordinating the informal meetings on behalf of the Platform. Interested stakeholders may send suggestions to hret@mission-maroc.ch.

⁷ Mr Chen Shiqiu.

⁸ A/HRC/RES/8/13, para. 5, <http://bit.ly/9dVhiT>.

⁹ Those present were Brazil, Indonesia, Japan, Mexico, and the Philippines.

¹ See the Advisory Committee's page dedicated to the draft declaration at <http://bit.ly/cbc8ay>. The draft declaration is available at <http://bit.ly/9t0U2F>.

² A/HRC/RES/13/15.

³ It is currently scheduled to meet from 10 to 14 January 2011.

⁴ Costa Rica, Italy, Morocco, Philippines, Senegal, Slovenia, and Switzerland.

⁵ Including Canada, China, Pakistan, the Russian Federation, UK, and USA.

⁶ Including Canada, the Russian Federation, UK, and the USA.

a declaration was needed, and that the primary concern was simply one of the length of the current draft.

Right to food

The Advisory Committee also held a discussion on the many stakeholder comments received on its study on the right to food. Ms Mona Zulficar presented the study and said all comments, including those not accepted, would be included in the final report in the interests of transparency. She spoke out strongly against the complicity of the World Bank and World Trade Organization (WTO), as well as European Union (EU) States and the USA, in violating the right to food. She stated the drafting group believed the Advisory Committee should 'stand up' to organisations such as the WTO, and denounce their policies.

Belgium, on behalf of the EU, said the current version of the study does not meet the terms of the mandate given. In particular it noted the use of the term 'hunger refugees', which is not used in the Convention Relating to the Status of Refugees. Mr Jean Ziegler said the Advisory Committee was seeking to create this new norm as part of the Council's mandate to make recommendations for the further development of international human rights law.¹⁰

The drafting group also recommended the development of a new legal instrument on the right to food. Some members of the Advisory Committee felt this would be to overstep the given mandate, but Ms Zulficar said they were mandated to 'consider potential recommendations...on possible further measures to enhance the realisation of the right to food' and a new legal instrument would fit this requirement.¹¹

Missing persons

The drafting group on the study on missing persons reported to the Advisory Committee on comments it had received. Mr Latif Hüseyinov said the drafting group had been cautious in interpreting its mandate. He pointed out that, although there is no explicit reference to armed conflict in the part of the document mandating the Advisory Committee's study,¹² the spirit of the document and the many references to armed conflict throughout clearly requires the study be limited to missing persons in armed conflict. The report will be adopted at the January session of the Advisory Committee for consideration by the Council at its 16th session.

Declaration on right of peoples to peace

The Advisory Committee began work on the draft declaration on the right of peoples to peace. Mr Vladimir Kartashkin noted

the Council had held informal consultations with States, and was critical that Advisory Committee members had not been invited to the meeting. He requested that, in the future, the Council ensures the Advisory Committee is involved in such complex issues from the very beginning. He was dissatisfied that the Council only seems to seek the Advisory Committee's guidance on issues that are 'too politicised or complex' to be handled by the Council. Mr Wolfgang Stefan Heinz requested all interested parties, including NGOs, send information and comments, which he will compile.

International cooperation

On the mandated study on international cooperation, the Advisory Committee assigned a drafting group, which decided to develop a questionnaire as a first step towards answering the question 'What measures have been taken to enhance international cooperation?' Egypt, as main sponsor of the resolution, was eager to guide the work of the Advisory Committee on this subject, stating it wanted to first know what international cooperation means in the field of human rights, in order that gaps could then be identified and filled.

The session was criticised by members as being too short to allow them to make substantial advances in the many areas it is studying at the Council's request. In particular, members objected to recommendations needing to be prepared by the third day of the five day meeting, to allow time for them to be translated. It was surprising issues such as these had not been resolved earlier in the Advisory Committee's existence. Its work at this session also suffered from weak leadership from its Chairperson, which often resulted in prolonged and confused debates on procedural issues. However, despite this, the debates on substantive issues raised many important points and can generally be viewed as fruitful. The Advisory Committee was also generally responsive to the comments made by NGOs. Where it did not agree with them, it acknowledged their points and explained its reasons for disagreeing.

However, the continuing lack of clarity regarding the Advisory Committee's mandate is taking up a great deal of working time and hampering it from operating more effectively. The review of the Council is an opportunity to clarify this and strengthen the Advisory Committee. ■

¹⁰ A/RES/60/251, para. 5(c), <http://bit.ly/cliOS8>.

¹¹ A/HRC/RES/7/14, para. 34, <http://bit.ly/c8TQzP>. The paragraph also requests the Committee to 'bear in mind the priority importance of promoting the implementation of existing standards'.

¹² 'Summary of the panel discussion on the question of missing persons prepared by the Office of the United Nations High Commissioner for Human Rights', A/HRC/10/10, 7 January 2009, <http://bit.ly/9x1Teu>.