
HUMAN RIGHTS COUNCIL 15TH SESSION

New special procedures on freedom of association and women's equality



Pilgrims with candles in Lourdes, France.

The Human Rights Council's 15th session, 13 September - 1 October 2010, was expected to be tense, particularly around the renewal of important country mandates (Cambodia, Haiti, Somalia, and the Sudan), and the negotiation of two new thematic special procedures on discrimination against women and freedom of association and assembly. Other controversies arose during the session, as Cuba, without warning, introduced a draft resolution on 'cooperation and dialogue' between the Council and the Office of the High Commissioner for Human Rights (OHCHR). The session was also marked by the impending review of the Council as some States staked out their positions.

Nevertheless, the outcomes of the session were generally commendable and seem to indicate the Council may be starting to more effectively respond to the expectations of human rights defenders.

UPDATE FROM THE HIGH COMMISSIONER

The High Commissioner for Human Rights, Ms Navanethem Pillay, made reprisals and attacks against human rights defenders a main theme of her update to the Council. She drew attention to the targeting of defenders in Iran, Iraq and Somalia, and impunity for attacks on defenders in Azerbaijan, Guatemala, Mexico, the Russian Federation, and Serbia. She highlighted the very challenging contexts for defenders' work in Angola, the Democratic Republic of Congo, the Occupied Palestinian Territories, and Zimbabwe, and expressed concern at restrictive legal frameworks for civil society in Bahrain, Belarus, China, Egypt, Libya, Syria, and Tunisia.

Syria (on behalf of the Arab Group) expressed surprise and disagreement with the High Commissioner for having named Arab countries among those which restrict the functioning of civil society. It stressed the group's commitment to ensuring the promotion of human rights, including civil rights, in conformity with international human rights obligations. However, at the same time it made it clear that the cultural or religious norms of each country should be respected.

The seriousness of the issue of reprisals and attacks against human rights defenders was broadly acknowledged, as was the crucial role played by human rights defenders, journalists, civil society activists, and national human rights institutions.

Several States shared the view expressed by Ms Pillay that there is a need to ensure the safety and protection of defenders and witnesses that cooperate with UN mandated fact-finding missions (Poland, Egypt on behalf of NAM, Pakistan on behalf of the OIC, Belgium on behalf of the EU, Mexico, Republic of Korea, UK, Jordan, Norway, Switzerland, Japan, Moldova, Hungary, Chile, Germany, Lithuania, New Zealand, Austria, Slovenia, Morocco, and the Czech Republic).

The High Commissioner also drew the Council's attention to situations of particular concern, including the expulsion of Roma from France,¹ killing of migrants in Mexico, and an alleged programme of targeted killings of terrorist suspects by the US. She also updated the Council on her Office's recent activities, including the dispatching of a mission to Kyrgyzstan in response to the June 2010 ethnic violence;² the release of the controversial mapping exercise report which records serious violations of human rights and international

1 See the article in this edition on the Committee on the Elimination of Racial Discrimination for its debate on the same issue.

2 See the article in this edition on the Committee on the Elimination of Racial Discrimination for its urgent action on Kyrgyzstan.

humanitarian law committed in the Democratic Republic of Congo from 1993 to 2003;³ and her recent visits to Kenya and Uganda.

UNDERMINING OHCHR'S INDEPENDENCE

Cuba introduced its draft resolution on cooperation between OHCHR and the Council without prior warning, and without regard to the practice among most delegations to alert other stakeholders to planned resolutions before Council sessions. It was perhaps no surprise this came just before the Council was to begin its formal review process and at the same time as the beginning of the General Assembly's 64th session.

The controversial text, which would limit the independence of the High Commissioner in respect to the Council, was abandoned after the President agreed to issue a Presidential Statement reflecting a compromise on the matter. The statement's text was developed by OHCHR and its introduction into the negotiations undercut efforts by those opposed to any Council action on this issue. It invites the High Commissioner to present OHCHR's human rights programme, part of the UN's strategic framework, to the Council, and to pass the views of States and relevant stakeholders to the Committee for Programme and Coordination for its consideration. In doing so it inserts the Council into already established procedures for oversight of the human rights programme through the General Assembly, and gives it a role that may be misused by States that seek to undermine the High Commissioner's independent role.

RENEWAL AND APPOINTMENT OF SPECIAL PROCEDURES MANDATES

The Council adopted without a vote the resolutions to renew for three years the following special procedures mandates:

- Special Rapporteur on the rights of indigenous peoples (*Resolution 15/14*)
- Special Rapporteur on contemporary forms of slavery (*Resolution 15/2*)
- Special Rapporteur on adequate housing (*Resolution 15/8*)
- Special Rapporteur on the promotion and protection of human rights while countering terrorism (*Resolution 15/15*)
- Working Group on arbitrary detention (*Resolution 15/18*)
- Special Rapporteur on the right to health (*Resolution 15/22*)

These resolutions were mostly procedural rather than substantive, with the exception of the resolution on health, which may have facilitated their relatively smooth negotiation. The mandate of the Special Rapporteur on the rights of indigenous peoples, in the plural,⁴ was strengthened. This development is despite efforts

by some States, including the UK, US and Canada, to retain the previous language because they do not recognise collective rights. This position is becoming increasingly embarrassing for countries that claim to be strongly committed to human rights protection.

A common theme during the negotiations was how to acknowledge the special procedures' work and reports. Increasingly, some States refuse to welcome the reports and will at best 'take note of them with appreciation'. While this may seem a minor issue, it reflects a general approach to the special procedures by many States that are uncomfortable with critical and often progressive expert analysis of human rights issues and situations. In this regard, it was unsurprising Pakistan said it in no way endorsed the most recent report of the Special Rapporteur on the right to health, which examined the impact of criminalisation of sexual conduct on enjoyment of the right to health.

The Council endorsed the President's nominee for the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Ernesto Mendez, and the Special Rapporteur on the human rights of internally displaced persons, Mr Chaloka Beyani. This restored the integrity of the appointment process which had been subject to political interference by States in the process at the Council's previous session.⁵

NEW SPECIAL PROCEDURES ON DISCRIMINATION AGAINST WOMEN AND ON FREEDOM OF ASSOCIATION

Among the most significant and positive outcomes at the session were the establishment of two new thematic special procedures.

The new Special Rapporteur on the rights to freedom of peaceful assembly and of association was established at the initiative of a cross-regional group of States led by the US, and including the Czech Republic, the Maldives, Nigeria, Lithuania, Mexico, Indonesia, and Latvia.⁶ This group of core sponsors, which included important members of the African Group and the OIC, played an important role in ensuring the mandate was set up without a vote. China, Cuba, Libya, and Pakistan disassociated themselves from the consensus. During the negotiations China, Egypt, Ethiopia, Pakistan, and the Russian Federation expressed their principled opposition to the creation of the new mandate. Although the text was slightly weakened in last minute negotiations, including by removing the request to the Special Rapporteur to also report to the General Assembly, it remains a strong and comprehensive mandate. The Special Rapporteur is tasked to report on violations of the rights to freedom of association and assembly, and on threats, harassment and reprisals against those exercising these rights.

In a landmark resolution, the Council established a Working Group on discrimination against women.⁷ This follows several years of civil society advocacy to strengthen efforts to eliminate

3 The full report is available at <http://bit.ly/9z10FT>. See the OHCHR press release at <http://bit.ly/a2rOxv>.

4 The mandate was previously named the 'Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people'.

5 For more information, see <http://bit.ly/95AyFS>.

6 *Resolution 15/21*.

7 A/HRC/RES/15/23.

discrimination against women and several debates in the Council, most recently at this session (see below). In an effort to reach consensus, initial plans to create an Independent Expert were shelved at the last minute in favour of the working group.

The resolution calls on States to revoke any legislation that discriminates against women, both in law and in implementation. The Working Group is mandated to report annually to the Council on the continued existence of laws that discriminate against women and good practices in revoking them. The resolution was adopted by consensus despite opposition from several States, including Egypt, Bangladesh, Pakistan, Libya, and Iran. While they argued a new special procedure would duplicate work of existing UN mechanisms and questioned the availability of the financial resources for another special procedure, their opposition seemed more ideological. This was demonstrated by Saudi Arabia's proposed amendment put forward at the time of adoption, which would limit States to respect only the commitments towards women's equality they have signed up to under international law. Since many OIC States in particular have made declarations under CEDAW that limit their obligations where they conflict with Sharia law, this amendment would have greatly hindered the effectiveness of the new mechanism. The amendment was narrowly defeated in a vote, with 22 against, 18 in favour and four abstentions. The original resolution was then adopted without a vote.

The Council will appoint the new mandate holders in March 2011 and OHCHR is seeking candidates by 3 December 2010 (see the Upcoming Opportunities section for more details).

THEMATIC DEBATES

Women's equality and gender integration

The Council's panel discussion on women's equality before the law featured Ms Victoria Popescu, Ms Rashida Manjoo, Ms Lee Waldorf, Ms Maria de los Angeles Corte Rios, Mr Vitit Muntarhorn, and Ms Nyaradzayi Gumbonzvanda. Recurring comments made during debate included that discrimination against women is evident in all regions and within all traditions around the world, and that national laws must be brought into line with international human rights standards.

The panellists highlighted that despite existing normative frameworks at the international, regional and national levels, inequalities between women and men still exist. While all States acknowledge the need for further work to be done to improve women's equality, many States did not support the proposed new mandate, including Pakistan (on behalf of the OIC) and Syria (on behalf of the Arab group). These States voiced the belief that the potential of existing mechanisms should first be fully explored before a new mandate be considered. The panellists sought to placate Islamic States that expressed concern about being targeted by the new mandate because of their legal systems. The panellists stressed that no country will be exempt from scrutiny and that women's inequality in law and practice is prevalent in all countries.

Rights of indigenous peoples

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr James Anaya, presented his third annual report to the Council. Many States welcomed the report's focus on the duties of corporate entities with respect to indigenous peoples' rights.⁸ Mr Anaya expressed his hope that the US and Canada would reverse their opposition to the UN Declaration on the Rights of Indigenous Peoples. The Council also received the report of the Expert Mechanism on the Rights of Indigenous Peoples. Several States welcomed the progress on its study on indigenous peoples and the right to participate in decision-making.⁹

Denmark and Norway said the rescheduling of the debate on indigenous issues had meant that some indigenous people had not been able to participate in the debate. The States called for greater predictability in the scheduling of the Council. This concern was also raised by indigenous groups during the debate.

The Council will hold a half-day panel discussion in September 2011 on the role of language and culture for indigenous peoples.

Racial discrimination

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai, presented his report on defamation of religions. He concluded the most effective way to remedy religious intolerance is to implement policy measures that tackle the root causes of such defamation. He also presented a report on 'Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance', highlighting the need for States to strike a balance between the right to freedom of expression and countering extremist political parties, movements and groups.

States were divided on the issue of defamation of religions, with Western States again rejecting the concept and OIC States claiming it a violation of human rights. Some States criticised the Special Rapporteur for deviating from the report's mandate, or for the level of accuracy or methodology used.¹⁰ The Special Rapporteur, responding directly to these criticisms in his closing remarks, said shortcomings of his methodology only served to emphasise the need for State cooperation with special procedures mandate holders.

Sexual orientation and gender identity

A high-level panel discussion on ending violence and criminal sanctions based on sexual orientation and gender identity took place in parallel to the Council's formal session. UN Secretary-General Ban Ki-moon, High Commissioner for Human Rights Ms Navanethem Pillay, and Nobel Peace Prize winner Archbishop

8 Mexico, US, Norway, Brazil, and the EU.

9 EU, Mexico, China, Guatemala, Chile, Argentina, Australia, and Denmark.

10 Iran, India and Bangladesh.

Desmond Tutu, delivered statements at the event calling for an end to such violations.

During the Council's debate under its agenda Item 8, several States¹¹ also raised concerns that many people around the world continue to face human rights violations because of their sexual orientation and gender identity. They said criminalising people on these grounds violated the principle of non-discrimination.

OTHER ISSUES AND OUTCOMES

The Council adopted without a vote a resolution on 'Human Rights and access to safe drinking water and sanitation' presented by Spain and Germany. Importantly, the resolution recalled General Assembly *Resolution 64/292* of 28 July 2010, which declared the right to safe and clean drinking water and sanitation a human right.¹² It was interesting that some State positions had changed since July, with the Netherlands, Denmark and Slovakia co-sponsoring the Council's resolution, and the US joining consensus after abstaining on the vote in the General Assembly. However, the UK maintained its position opposing a right to sanitation and disassociated itself from the consensus.

The announcement by a US pastor that he planned to burn the Koran sparked dismay among many States, with Pakistan (on behalf of the OIC) introducing a draft resolution condemning the event.¹³ However, the initiative was shelved in favour of a more balanced Presidential 'declaration' condemning religious intolerance. This was a novel approach and could set an interesting precedent for the future.

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, presented a draft convention on private military and security companies and recommended the Council develop it further. Despite opposition from the US and EU, a resolution sponsored by South Africa, setting up an inter-governmental working group to draft a binding legal instrument on the 'regulation, monitoring and oversight on the impact of private military and security companies, on the enjoyment of human rights', was adopted.¹⁴

During the debate on follow-up to the Vienna Declaration and Programme of Action (Item 8) the Russian Federation spoke of the resolution adopted in September 2009 on traditional values and human rights amidst 'prejudice and doubts',¹⁵ in which

the Council decided to hold a seminar in October to discuss the issue.¹⁶

COUNTRY SITUATIONS

Report on Burundi postponed again

The presentation of the report of the Independent Expert on Burundi was postponed again at the 15th session. The previous holder of the mandate, Mr Akich Okola, had been extended an exceptional invitation¹⁷ to report to the Council's 14th session in June 2010, but due to personal reasons he had not been able to attend. The new mandate holder, Mr Fatsah Ouguergouz, had therefore been scheduled to present the report at the 15th session. Burundi objected that it had not received the report, but agreed that it could be considered at the 16th session.

Minimal progress on Cambodia

The interactive dialogue with the Special Rapporteur on Cambodia, Mr Surya Prasad Subedi, saw strong support from South East Asian States in particular, for the efforts being made by the Government of Cambodia. They welcomed the Special Rapporteur's constructive approach, and Mr Subedi said that during his two missions to the country he had enjoyed a good level of cooperation from the Government.

Many of the same criticisms raised during the interactive dialogue held at the Council with the Special Rapporteur a year ago were aired again. These included land rights, freedom of expression and the weak judiciary, as well as the continued existence of legislation criminalising defamation and 'disinformation'.¹⁸ Last year the Special Rapporteur had spoken of his intention to offer advice to Cambodia on the latter issue, as the country worked to establish a new penal code. At this session he reported the Government had been receptive to his suggestions. Although there were few indications of improvements, the situation did not appear to be worsening. The Council also renewed the mandate of the Special Rapporteur for another year.¹⁹

Momentum lost on the Goldstone report

The situation in the occupied Palestinian territories was the subject of two interactive dialogues, the first with the fact-finding mission into the Gaza flotilla incident,²⁰ and the second with the Committee of independent experts mandated to follow up on

11 Belgium (on behalf of the EU), and Slovenia (on behalf of Argentina, Brazil, Colombia, Finland, France, Ireland, Mexico, Norway, Romania, the US, and Uruguay).

12 ISHR: 'GA pre-empted Council and recognises the human right to water and sanitation', available at <http://bit.ly/dmDH5r>.

13 A/HRC/15/L.1.

14 A/HRC/RES/15/27. Adopted by 32 votes in favour, 12 against and three abstentions.

15 See ISHR's Human Rights Monitor, 2009, The Human Rights Council in 2009: between inertia and another reform, p. 17, available at <http://bit.ly/c9bdPc>.

16 For an overview of the seminar, see <http://bit.ly/9xgmRH>.

17 The resolution creating the mandate asks the mandate holder to report to the Council only once a national human rights institution has been established. However as Mr Okola had completed a country visit in May 2010, and as Burundi had also held elections in June 2010, it was considered appropriate that Mr Okola should report to the Council on developments since his last report in September 2008.

18 For more information, see: ISHR. 'Council interactive dialogue with Special Rapporteur on Cambodia', <http://bit.ly/cTOIzh>.

19 A/HRC/RES/15/20, <http://bit.ly/dj3a8L>.

20 A/HRC/15/21, <http://bit.ly/d7ksW0>.

the Goldstone report.²¹ Both sessions were predictably polarised, with both the US and Israel criticising the final reports as biased. The report from the fact-finding mission was referred to the General Assembly, after a majority vote by the Council supported a resolution on follow-up.²²

However, in the case of the report of the Committee of independent experts, despite the Committee reporting serious concerns that international standards of impartiality had not been met by the Israeli investigations, the Council chose not to refer the report to the General Assembly to consider further action. Instead, it chose to extend the mandate of the Committee of independent experts to continue to monitor progress of the investigations.²³ This is effectively to designate the Committee the appropriate body to continue to assess any investigations, and it will report to the Council again in March 2011. There seems to be no political will to ensure international justice for the crimes committed, through a referral to the International Criminal Court.

New initiative on Somalia

The standalone panel debate on Somalia was a new initiative by the Council, aimed at discussing ways to enhance the effectiveness of UN efforts to support human rights promotion and protection in the country.²⁴ Efforts to ensure the panel included representatives from civil society were successful, with the Chairman of Somali Peace Line and a member of the National Union for Somali Journalists joining the panellists.²⁵ It is hoped the inclusion of civil society representatives on this panel, as has been the case on many thematic panels in the past, will avoid the need to advocate for such representation in the future. Nevertheless, it was regrettable only two NGOs were able to take part in the debate from the floor due to time constraints.

There was interest in how effective this format could be as a means for the Council to develop responses to human rights situations. While States identified many of the problems Somalia faces, the debate did not develop a coherent strategy for improving the situation in the country. There was disagreement about key strategies, such as the Independent Expert's recommendation to create a commission of inquiry, which some States felt would be divisive²⁶ or ineffective.²⁷ As is the nature of debates at the Council, the combination of pre-prepared statements and time constraints prevented States and panellists from discussing areas of disagreement in a constructive manner. In addition, requests for specific

assistance, such as the call for more troops to be allocated to AMISOM, or funds to be allocated for the increase of salaries to the troops, failed to produce specific pledges from States.

However, there was consensus the mandate of the Independent Expert should be renewed, and on 1 October, the Council adopted by consensus the resolution to extend the mandate for another year.²⁸

Renewal of the mandate of the Independent Expert on the situation of human rights in the Sudan

The Council had originally scheduled the presentation of the report of the Independent Expert on the Sudan, Mr Mohamed Chande Othman, for the 14th session in June 2010, but Mr Othman had been unable to attend due to illness.²⁹ As a result, the Council exceptionally extended the mandate until the 15th session. The debate at this session revealed the divide between States as to whether the mandate of the Independent Expert should be renewed. Mr Othman felt it would be premature for the Council to disengage itself at this point, particularly given the upcoming referendum on independence for Southern Sudan, a position that had support from Western States.

However, there was strong opposition to renewal of the mandate from OIC States³⁰ and from the Sudan itself, which emphasised that it had improved its human rights situation and was committed to implementing all recommendations received (a statement weakened by the fact that the Sudan has implemented only five of the 45 recommendations made by the Special Rapporteur). However, in an example of the Council managing to rise above politics and as a result of key positive votes from Gabon, the Maldives, Uganda, and Zambia, the mandate was renewed for one more year.³¹

Weak response to mass rapes in the DRC

In response to the mass rapes committed in the Democratic Republic of Congo (DRC) between 30 July and 2 August, there had been talk of holding a special sitting of the Council to address the issue. However, due to the inability of the Minister for Justice and Human Rights of the DRC to attend, this special sitting had to be cancelled. Instead an informal meeting with high-level UN officials was called.³² The meeting was boycotted by the Government of the DRC, and attended by very few African States, although many other States were present. While effort to respond to the events is welcome, the sequence of events at the Council and failure to address the matter within the official framework of the Council's agenda, epitomise the inability or unwillingness of the Council to give serious situations of human rights violations the attention they warrant. ■

21 The Goldstone report calls for independent and impartial investigations by Israeli and Palestinian authorities into violations by their troops during the Gaza conflict. For more information see, ISHR 2010, 'Follow-up on Goldstone report: Secretary-General passes baton to Human Rights Council', 15 October 2010, <http://bit.ly/9ZryNv>.

22 A/HRC/RES/15/1, <http://bit.ly/9DiZZ2>.

23 A/HRC/RES/15/6, <http://bit.ly/clI1E7>.

24 The debate was held pursuant to Council resolution HRC/DEC/14/119 introduced at the initiative of the African Group.

25 For more information, see: 'Concept Note on the stand-alone interactive dialogue on assistance to Somalia in the field of human rights', <http://bit.ly/cBB1pf>.

26 Egypt.

27 Somalia.

28 A/HRC/RES/15/28, <http://bit.ly/9aUnZt>.

29 ISHR, 'The Council Discusses Human Rights in the Sudan', 23 September 2010, <http://bit.ly/8ZaGvs>.

30 China, Iran, Iraq, the Democratic People's Republic of Korea, Pakistan (on behalf of the OIC), Qatar, and Syria (on behalf of the Arab Group).

31 A/HRC/RES/15/27, <http://bit.ly/9sATcW>.

32 For ISHR's summary of the meeting, please see <http://bit.ly/9JHb3n>.