

COUNCIL MONITOR

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Overview

Most of the morning meeting was taken up by the confidential complaint procedure, accessible to Council members only. The President announced that the Council had decided to discontinue consideration of the situation in the Maldives and had kept pending consideration of the situation in Turkmenistan.

The Council then continued the general debate on Item 9, racism and related intolerance, with hearing a large number of NGO statements. There were several procedural battles, with some States interrupting NGO statements. Several NGO statements were ruled out of order.

The Council also held interactive dialogues with the Independent Expert on Liberia, the Independent Expert on Burundi, and the Independent Expert on Somalia. For the first time the dialogues with country mandates were grouped together rather than being dealt with individually. This led to significantly less time for discussion of each report. Most attention was devoted to the report on Somalia although many NGOs commented on the report on Burundi.

The Council also held a general debate on technical assistance and capacity building, which only attracted few interventions from States and NGOs. Their comments focused on the relevance of special procedures mandates on technical assistance to countries in general, and of the specific mandates discussed at this session in particular.

Racism, racial discrimination, xenophobia and related intolerance

General debate (continued)

The Council continued the general debate under Item 9, racism, racial discrimination, xenophobia and related intolerance. The debate had begun the previous week, when the Council considered the report by the Special Rapporteur on racism, reports of preparatory conferences to the Durban Review Conference,¹ and a report by the High Commissioner for Human Rights on ‘defamation of religions’.²

There were around 30 NGOs inscribed on the list, but many were not present in the room. This is no doubt due to the various changes in the programme – Item 9 was originally scheduled for the morning of 19 September 2008. Unlike State delegations, most NGOs participating in the Council do not have a permanent presence in Geneva and are therefore much more affected by the insufficiently thought through programming. It seems ironic that the absence of many NGOs from the debate was welcomed from the podium, because it allowed proceeding more quickly through the speakers list. After all, the purpose of NGO participation in the Council is to hear what NGOs have to say and enable them to engage effectively in the Council’s work.

The general debate under Item 9 was one of the more difficult ones during the current session. For the most part, it was a procedural wrangling about the permissible scope for statements under Item 9. Several points of order were raised during NGO statements, arguing that the speakers had gone off-topic. Among the more entertaining remarks was that of the delegate of Egypt, who suggested that if a particular NGO representative had nothing else to do than breaching the Council’s rules of procedure, he should ‘get a hobby or grow a moustache’. These numerous challenges to NGO statements led to a questionable ruling by the President, who recalled that the Council was not discussing Item 4,³ and asserted that ‘under Item 9, delegates should refrain from referring to country situations. It is however possible to refer to situations in several countries as examples.’ While the intent of the ruling seems to be to ensure that debate under each agenda item conforms to its intended use, it may have unintended negative effects. First of all, the scope of debate under each agenda item is still often unclear. For example, the Council has previously held debates under other thematic items, during which many States referred exclusively to one country situation. However, when the focus shifted to more powerful States, such debate was prevented. Secondly, thematic debates, to be relevant and meaningful, must draw on real issues and situations and not only deal with abstract concepts or ideas. After all, human rights issues are not placed in a vacuum. The role of NGOs in the Council must be to bring the perspectives of rights holders, including human rights defenders and victims. The ruling therefore potentially undermines effective NGO participation. Finally, it should not be ignored that some States consistently seek to limit the role of NGOs in the Council’s work and restrict the discussion of human rights violations in specific countries.

Apart from the procedural battle on the scope of Item 9, the debate added little new substance. Several NGOs welcomed the holding of the upcoming seminar organised by the Office of the High Commissioner for Human Rights (OHCHR) on the delineation between freedom of expression and incitement to hatred, and a number of NGOs welcomed the move away from the concept of ‘defamation of religions’ towards a more legal approach to incitement to hatred as defined in international law.⁴ Several NGOs drew attention to the upcoming Durban Review Conference to be held in April 2009, and the Women’s International League for Peace and Freedom called for an NGO forum to be held prior to the conference.

¹ See <http://www2.ohchr.org/english/issues/racism/DurbanReview/index.htm>.

² See ISHR’s *Daily Update* of 19 September 2008.

³ Human rights situations that require the Council’s attention.

⁴ Cairo Institute for Human Rights Studies (joint statement with Article 19 and the Egyptian Initiative for Personal Rights).

Action Canada for Population and Development recalled Council *Resolution 6/30* on ‘integrating the human rights of women and a gender perspective throughout the United Nations system’, where it decided to look at the intersection of multiple forms of discrimination. The NGO pointed out that the Durban Review Process was an ideal opportunity for this, since there was a link between the right to be free from discrimination and sexual and reproductive rights.

Technical assistance and capacity building

The Council held interactive dialogues with the Independent Expert on Liberia, the Independent Expert on Burundi, and the Independent Expert on Somalia. In departure from previous practice the dialogues were grouped together as one debate. This resulted in less time available to delegations to comment on each report and several States were dissatisfied with not having sufficient time to discuss each report and with having to divide their attention among several vastly different situations.⁵ Hopefully this procedure will not be followed in the future. Rather, the Council should consider extending its usual practice of individual interactive dialogues with country mandates to the thematic special procedures as well. States’ comments focused primarily on the report of the Independent Expert on Somalia, while the majority of NGOs spoke about the continued need for the mandate of the Independent Expert on Burundi. Regrettably, two of the mandate holders could not be present due to the significant delay in holding the dialogues. Several States expressed their disappointment at this fact.⁶ If the interactive dialogues are intended to allow mandate holders to clarify their reports for all stakeholders, and to receive guidance on the focus of their future work, it is essential that they are present during the entire dialogue.

The Vice-Minister for human rights of the Democratic Republic of the Congo (DRC) expressed strong opposition to any country mandates that were established under agenda item 9 of the former Commission on Human Rights.⁷ The DRC argued that these mandates were results of selectivity and systematic confrontation between countries of the North and countries of the South.

Somalia

The Independent Expert presented his report on Friday 19 September.⁸ Somalia thanked the new Independent Expert and conveyed appreciation to Uganda, Burundi and Ethiopia for deploying peacekeeping troops in Somalia, and Djibouti for holding peace talks. Somalia appealed to the international community to deliberate in favour of the long-term engagement of comprehensive UN peacekeeping forces to fully restore peace by enforcing the rule of law. Somalia expressed hope that UN peacekeepers will help, among others, establish a quality control authority, train security forces, reform the judicial system with a focus on human rights, and promote a culture of the right to a dignified life. Somalia listed the challenges it faces, namely the harmonisation of the Somali traditional social structure and modern statehood, the sustainable exploitation of natural resources, and the protection of environment. Somalia conveyed its willingness to cooperate further with the Independent Expert.

Most countries welcomed the preliminary report of the Independent Expert on the situation of human rights in Somalia, and stated that they looked forward to the full report to be presented in March 2009. Several States⁹ expressed their support for and urged the implementation of, the Djibouti Peace Agreement.¹⁰ Italy added that it hopes that this agreement, together with strengthened coordination among main federal transitional

⁵ France (on behalf of the EU).

⁶ Egypt (on behalf of the African Group), France (on behalf of the EU), Switzerland.

⁷ The agenda item is similar to the Council’s agenda item 4.

⁸ Please see ISHR’s *Daily Update* for an overview of his presentation, available at www.ishr.ch.

⁹ United Kingdom, New Zealand, Italy, Egypt, Djibouti, France, Kenya.

¹⁰ S/RES/1814(2008).

authorities, will result in a better political atmosphere. Djibouti described the accord as an opportunity not to be missed as has historically been the case. Djibouti also renewed appeals for the effective implementation of the updated UN integrated strategy for peace. Egypt (on behalf of the African Group) conveyed support for the request by the Transitional Federal Government for a UN peacekeeping presence. The United Kingdom (UK) urged that the international community ensure that human rights be integrated into the transitional federal institutional framework. France and Human Rights Watch suggested that the Council pay more attention to Somalia with Human Rights Watch echoing the Independent Expert's call for a special session.

Ethiopia conveyed its disappointment that the report singles out Ethiopian troops for unjustified criticisms, deliberately neglects actors that aggravate the crisis, and proposes ill-conceived recommendations based on an incomplete assessment. Ethiopia welcomed the presence of OHCHR and UNPOS in Somalia, but stressed that their mandates do not involve engaging in roles ascribed to them by the Independent Expert. Yemen criticised the report for neglecting the issue of Somali refugees in Yemen and human trafficking.

Burundi

Mr Akich Okola, the Independent Expert on the situation of human rights in Burundi, presented his report.¹¹ He thanked the Government for the invitations to visit the country he had received, and commended the significant progress Burundi has achieved. However, he underscored that without the international community's engagement in the country, 'there is no doubt whatsoever (that) the civil war in Burundi would still be raging, and certainly the human rights situation would be a lot worse'. The Independent Expert described a situation that seems to have worsened significantly in the last year. In particular, he said the relation between the Government and civil society has deteriorated, there has been an increase in armed attacks, the progress in transitional justice has been slow, no progress has been made in tackling impunity for two major massacres, and that sexual violence continues unabated throughout Burundi. Finally, he called on the Government to speedily set up an independent national human rights commission to avoid a protection gap.

Burundi, as the concerned country, welcomed the report by the Independent Expert. It seemed to not fully share the Independent Expert's concerns about the general situation, and pointed out that the Government was doing everything in its power to ensure the effective functioning of its institutions. It congratulated the Independent Expert for having 'terminated' his mission since, in the view of the Government, only poverty remained as a cause for human rights violations. Despite this criticism, Burundi supported the extension of the mandate of the Independent Expert 'until the independent national human rights commission is in place', asking that the mandate holder master at least one of the official languages of Burundi, to facilitate cooperation.

Attention of States and NGOs in the ensuing interactive dialogue was split between the mandates on Somalia, Liberia and Burundi. The report of the Independent Expert therefore did not get as much focused attention as it could have, a shortcoming that was also negatively commented upon by several delegations.¹² All delegations that took the floor welcomed the report of Independent Expert, and the extension of his mandate. Egypt (on behalf of the African Group), which is usually firmly opposed to country specific special procedures, said it would be 'guided by the wishes [of the Government] for the future course of action'. The DRC, while opposed to country mandates, stated that based on Burundi's request it would support the continuation of the mandate. In the same vein, Kenya recalled that the mandate had been extended at the request of the Government.

¹¹ A/HRC/9/14. Oral statements made at the Council can be found on the OHCHR extranet, <http://portal.ohchr.org>.

¹² France (on behalf of the EU), Switzerland, Belgium.

States and NGOs paid particular attention to the crucial role the national human rights commission will have to play.¹³ Belgium enquired what the Independent Expert sees as conditions for its speedy establishment in conformity with the Paris Principles.¹⁴ In his replies, Mr Okola stressed that there needs to be a consensus among all political parties, recognising the value of an independent human rights commission. Only such a consensus could guarantee that there is no political interference with its work. Responding to a question by Canada as to how his recommendations could be integrated in the security sector reform, the Independent Expert agreed with the utility of such an approach. However, he pointed out that while the international community has spent large amounts on the consolidation of peace in Burundi, all such efforts would be in vain if the rampant poverty is not effectively reduced.

Several NGOs confirmed the Independent Expert's assessment of the precarious human rights situation in Burundi, and welcomed the Council's willingness to renew the mandate.¹⁵ The Cairo Institute for Human Rights Studies pointed out that the existence of an Independent Expert for Burundi has positive consequences for the entire region, just as the negative impact of the abolishment of the special procedures mandate on the DRC were felt in the region.

Liberia

The Independent Expert on Liberia presented her report on Friday 19 September.¹⁶ All of the States that spoke recognised that while significant progress has been achieved in Liberia with regard to the human rights situation, many challenges still persist.¹⁷ The debate took place against the backdrop of a resolution tabled by France (on behalf of the EU), which does not renew the mandate of the Independent Expert, and instead asks OHCHR to pursue its technical assistance activities in consultation with the authorities of Liberia. Egypt (on behalf of the African Group) and Nigeria noted that Liberia needs the support of the international community in relation to building its capacity. Nigeria called on the international community to increase its support. In this regard, Amnesty International underlined the importance of the mandate of the Independent Expert for continued support to the Government's efforts. Concerns were expressed about a new law that would reaffirm the death penalty for several crimes,¹⁸ slow progress in establishing an independent national human rights institution, and the lack of action to address impunity and ensure justice.

Egypt (on behalf of the African Group) commended Liberia's 'unwavering commitment to improving the human rights situation'. Interestingly, Zambia referred specifically to the Independent Expert's report which noted that the Government should demonstrate its willingness to meet its international human rights obligations. Zambia then asked if the Independent Expert believed that there is a lack of political will and commitment on the part of the Government to deal with human rights challenges.

France (on behalf of the EU) called on Liberia to extend a standing invitation to all special procedures.

General debate

¹³ France (on behalf of the EU), Belgium, Norway, Amnesty International, International Federation for Human Rights Leagues (FIDH), Cairo Institute for Human Rights Studies.

¹⁴ The Paris Principles were adopted by the United Nations General Assembly as an Annex to Resolution 48/134. They define the role and functions of national human rights institutions (NHRIs) in the promotion and protection of human rights. Available at: www.un.org/Depts/dhl/res/resa48.htm.

¹⁵ FIDH (endorsed by the Iteka League), World Organization Against Torture (joint statement with FIACAT and ACAT Burundi), Cairo Institute for Human Rights Studies (endorsed by the East and Horn of Africa Human Rights Defenders Network), Human Rights Watch.

¹⁶ A/HRC/9/15. Please see ISHR's *Daily Update* for an overview of her presentation, available at www.ishr.ch.

¹⁷ Egypt (on behalf of the African Group), France (on behalf of the EU), Canada, Nigeria, Zambia.

¹⁸ France (on behalf of the EU), Amnesty International.

The general debate on technical and assistance and capacity-building only drew comments from few States and only two NGOs.

Several speakers used the opportunity to comment on the relevance of country specific special procedures mandates on technical assistance. France (on behalf of the EU) and Sweden noted that these mandates have showed what can be achieved through technical assistance and capacity building. Sweden stated that those States that have in the past benefited from discontinued country mandates should continue to benefit from thematic mandates. This call seems directed in particular at Liberia and the Democratic Republic of the Congo (DRC) where the relevant country mandates have been, or will be, discontinued. Sweden acknowledged that it is reasonable that country mandates are phased out when there is no longer an urgent need. It pointed to the case of Liberia as an example of significant progress achieved with the support of the Independent Expert. Human Rights Watch also recognised that an objective assessment of the human right situation in a country concluding that it has improved could lead to the discontinuation of a country mandate. However, at the same time the Council should address deteriorating human rights situations by establishing country mandates, it argued, and pointed to Iraq, Afghanistan and the DRC as examples. Human Rights Watch also argued that Iran, Turkmenistan and Sri Lanka merited the attention of the Council.

Some speakers also commented on the specific mandates discussed at this session. Ghana argued that the Council must continue to monitor the situations in Burundi, Somalia and Liberia. It noted an overall deterioration in the situation in **Burundi** and urged the Government to implement the recommendations of the Independent Expert, investigate human rights violations and bring perpetrators to justice, and establish a national human rights institution. Human Rights Watch expressed concern about continuing sexual and gender based violence, and insecurity. It noted that the Independent Expert could play an important role in relation to the elections scheduled for 2010. Sweden hoped that the mandate of the Independent Expert would be extended. Ghana called on the UN to continue to support the capacity building needs of the Government of **Liberia** and civil society noting the serious challenges that the Government continues to face. In relation to the mandate on **Haiti**, Canada and France (on behalf of the EU) welcomed the expected extension of the mandate.¹⁹ Canada noted that the Government should increase its efforts to protect human rights. France (on behalf of the EU) and Sweden were encouraged by the extension of the mandate on **Cambodia**.

Brazil commented extensively on technical assistance in relation to implementation of recommendations from the universal periodic review (UPR). It argued that the Council needed to do more to develop its cooperation programmes for States that lack capacity to implement these recommendations. Sri Lanka argued that the main purpose of the Council and OHCHR should be to build the capacity of States upon their request. It also thanked its 'friends' for their 'practical and moral support' during the UPR. Finally, Sri Lanka expressed appreciation for the support it has already received and hoped to work with the capacity building unit of OHCHR in the future. In more general comments, France (on behalf of the EU) underlined the importance of OHCHR technical assistance programmes and field activities. It broadly supported the opening of regional and other offices.

The Arab Commission for Human Rights regretted that the webcast²⁰ is only available in English or in the original language of the statements made. It explained that this is an obstacle to the effective engagement of human rights defenders and NGOs in many parts of the world. It suggested adding the other official language channels, particularly since interpretation was already available.

¹⁹ Presidential statement, HRC/9/L.9.

²⁰ <http://www.un.org/webcast/unhrc/index.asp>.

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