

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE 2ND SESSION 26 - 30 JANUARY 2009

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Introduction

Following its initial session in August 2008, the Advisory Committee (the Advisory Committee) convened for five days for its 2nd session from 26 to 30 January 2009. The session followed up to the issues discussed already in the 1st session. Several Committee members reported on the progress made on each agenda item, which fed into further discussions and brainstorming sessions. Additionally, the Committee was also scheduled to discuss some procedural matters, including its the rules of procedures. However, this issue remained pending and will be subject to further discussion in the next session.

The meeting was opened with statements of Mr Bacre Waly Ndiaye, representative of the Office of the High Commissioner for Human Rights (OHCHR) and Mr Martin Uhomoibhi, the President of the Human Rights Council (the Council). Mr Ndiaye emphasised the important role played by the Committee in assisting the Council to perform its mandate, and particularly highlighted the Committee's role in providing research-based and implementation oriented studies and to propose further areas of research to the Council. Similarly, Mr Uhomoibhi pointed out the complementarity and interaction between the two bodies as a 'key to success'.

Since all stakeholders are allowed to participate in the sessions of the Advisory Committee, both Mr Ndiaye and Mr Uhomoibhi specifically called on the Advisory Committee to deepen its interaction with other stakeholders such as States and the civil society, including non-governmental organisations (NGOs), national human rights institutions (NHRIs), academia and relevant professional groups.

Requests addressed to the Committee

Seven requests by the Council were addressed to the Advisory Committee. This included the following issues: human rights education and training; right to food; human rights of women; promotion of a democratic and equitable international manner; missing persons, human rights of persons with disabilities, and elimination of discrimination against persons affected by leprosy and their family members.

Human rights education and training

The Advisory Committee, in its 1st session, decided to dispatch a smaller ‘drafting group’ to work on the preparation of a draft declaration on human rights education and training (draft declaration). The drafting group had initiated the circulation of a questionnaire to identify key elements for such a text.¹ Distributed to all stakeholders,² the questionnaire received only limited replies from governments.³ It is also interesting that most replies of the civil society came from non-ECOSOC accredited NGOs.⁴

Discussions focused mainly on technical issues, such as the methods of reviewing the questionnaire, and the possibility of extending the deadline for submitting the questionnaire. The Advisory Committee decided to extend the deadline until 15 March 2009 to enable more replies from States.⁵ While commending the general quality of the responses, some members of the drafting group⁶ criticised the small amount of replies received from governments. Overall, the debate resulted in very little concrete outcome, and the limited time and unavailability of translated documents contributed to this result.⁷ It was unfortunate that the discussion lacked participation from both States and the civil society. In this regard, Mr Martinez and Mr Seetulsingh criticised the complete absence of UN specialised agencies during the discussion.

With regard to the studies made on human rights education and training, it appears that no country has enshrined a specific ‘right to human rights-education and training’ in its legal system.⁸ To this extent, human rights may be part of school curricula, but they are usually not studied as a self-standing subject.⁹ In relation to elements for a future declaration, the following suggestions were made:

- To pay specific attention to vulnerable groups such as minorities and indigenous groups.¹⁰
- To approach education in a broad way, including informal education¹¹ and to emphasise human rights education as a life-long process.¹²

¹ Paragraph 7 of Human Rights Council *Resolution 6/10*. The questionnaire and all other documents for the Advisory Committee sessions are available at www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.

² The questionnaire was distributed to governments, national human rights institutions, international and regional organisations, and civil society, including NGOs.

³ As of 26 January 2009, the Committee received 31 responses from governments that belonged to all regions.

⁴ A/HRC/AC/2/L.1, The document is available at www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.

⁵ The initial deadline was on 31 December 2008, while the questionnaire was distributed on 4 November 2008.

⁶ Mr Emmanuel Decaux and Ms Purificacion Quisombing.

⁷ The entire session of the Advisory Committee was scheduled for five days. Most documents were only available in English with the exception on the documents on human rights education and training, which were only available in French.

⁸ *Draft Declaration on Human Rights Education and Training: a Summary and Brief Analysis of Government Responses*, p.4 prepared by Hector Fix-Fierro (Summary of Government Responses).

⁹ Human rights education is seen as an aspect of civics or citizenship education.

¹⁰ Mr Decaux.

- To formulate a non-exhaustive definition of human rights education that could accommodate the changing trend and development of human rights and include the roles and responsibilities of the government.¹³
- The establishment of a monitoring system.¹⁴
- Formulation of national plan for UN members, recalling existing treaties, promoting awareness and recognition of all cultures, giving attention to gender dimension, addition of the term ‘learning’ in the title of the prospective declaration, and fostering the memory of universal human rights events.¹⁵
- To keep the declaration short, which would facilitate the finding of a consensus¹⁶

In view of the above, Mr Vladimir Karthashkin recommended the Committee to take its time and not to be tied with any deadline. He emphasised that it will be crucial to identify all elements first, before moving on to the formulation of declaration. For this purpose, he suggested that the Committee should try again to consult with other UN bodies including the treaty bodies and special procedures. These suggestions are reflected in the recommendations adopted and forwarded to the Council for consideration at its 10th session.¹⁷

Right to food¹⁸

At its 1st session, the Advisory Committee also created a drafting group on the right to food. Mr Ziegler was mandated to draft a preliminary report on the right to food and the current food crisis. The drafting group seemed very committed to its work and met several times between the sessions.¹⁹

The discussions on the right to food were among the most interesting in terms of substance and procedure. They demonstrated that, despite its limited mandate, the Advisory Committee could develop a fair amount of innovation, possibly also due to the impulse of some particularly active members. Both in the plenary and in the drafting group the debate was held in an active, and at times tense environment. It benefited from the active participation of representatives of the United Nations High Commissioner for Refugees (UNHCR) and of the Brazilian delegation in Geneva.

Among the most controversial issues were the definition of ‘hunger refugees’ and whether it would be appropriate to use this concept. An intense discussion developed between members of the Advisory Committee and the UNHCR, primarily fuelled by Mr Ziegler and Mr Benghoa. They stressed the need to ‘create new standards’ and ‘fill gaps in international human rights protection’. UNHCR, for its part, attempted to add a more legal perspective, and urged the members of the Advisory Committee to refrain from using the word ‘hunger refugees’ to avoid undermining the plain meaning of ‘refugee’. The representative refuted claims that UNHCR is still facing the problem of hunger in its camps, and stressed that the situation had improved. Instead, she highlighted that there is a persisting lack of economic self-reliance on the part of refugees, based on a lack of employment opportunities. She also clarified that, contrary to the opinion of the Advisory Committee, the concerned ‘hunger’ refugees could be granted protection under the 1951 Convention on the Status of Refugees.

¹¹ Statement of Mr Decaux in his presentation and Joint Statement of Soka Gakkai International, International Organization for the Development of Freedom of Education (OIDEL), and Pax Romana (Joint Statement).

¹² Summary of Government Responses.

¹³ Joint Statement, see fn 11.

¹⁴ Austria (see Summary of Government Responses) and Joint Statement.

¹⁵ Summary of Government Responses.

¹⁶ Mr Seetulsingh.

¹⁷ A/HRC/AC/2/L.1Rev.1.

¹⁸ A request from the Human Rights Council in its resolution 7/14 in March 2008 asked the Committee to ‘consider potential recommendations for approval by the Council on possible further measures to enhance the realization of the right to food’.

¹⁹ The drafting group met two times (once according to the schedule and another time outside time planned).

The issue of the scope of State obligations in relation to the right to food in third countries was also raised, as was the prohibition of the conversion of staple food into bio-fuels. Unsurprisingly, Brazil was vehemently opposed to such prohibition.²⁰

The final recommendation by the Advisory Committee retains many of the controversial points.²¹ However, some of the more difficult areas were toned down or refined following the dialogue. For instance, the Advisory Committee recommend to the Council that the latter ‘entrust the Advisory Committee with the task of preparing a study on “the Food Crisis, the Right to Food and the New Concept of ‘Hunger Refugees’”’. While the original text had included the concept of hunger refugees without qualification, the final recommendation calls the concept ‘new’ and has added quotation marks, thereby implying the limited support of the concept. The prohibition of the conversion of staple foods into bio-fuels is maintained, which indicates the influence of the former Special Rapporteur on food.²² States’ responsibility in relation to the right to food was also reinforced. Finally, based on States’ obligation to respect, protect and fulfil the right to food, the Advisory Committee asked the Council to appeal to member States to substantially increase their financial contributions. This would enable UNHCR and the World Food Programme (WFP) to effectively discharge their mandates during the current crisis. Finally, the Advisory Committee also called for the consideration of an international convention on the rights of peasants.

Although the recommendation on the right to food was adopted by consensus, it seemed that not all members were in complete agreement. This again highlighted the somewhat questionable way the decisions of the Advisory Committee are adopted.²³

Missing Persons

Council *Resolution 7/28* entrusted the Advisory Committee with identifying best practices in this field. Accordingly, the Advisory Committee continued its discussions facilitated by Mr Hüseyinov.²⁴ However, mirroring the discussion during the previous session, the question of the definition of missing persons and the goal, content and form of the study dominated the debate. Particularly the distinction between missing persons and victims of enforced disappearances, and the more principled question of the utility of such a distinction, divided the Committee. Some members were concerned about the lack of clarity of their mandate on this issue, and about the insufficient time available for producing a study. The Committee, in its recommendations, asked the Council to task a separate drafting group with preparing a study on best practices in relation to missing persons in situations of armed conflict.²⁵

Human rights of persons with disabilities

Although the Chair emphasised the importance of the agenda on the human rights of persons with disabilities for the Committee, the issue did not trigger much debate. Mr Mudho asked OHCHR to prepare documents on the topic so that the Advisory Committee could discuss it further at the next session. No recommendation was made on this matter.

²⁰ Brazil had previously opposed this when the then Special Rapporteur on food made similar suggestions to the Human Rights Council. It is also a large producer of bio fuels.

²¹ A/HRC/AC/L.2/Rev.2, with minor amendments introduced to the distributed version Rev.1.

²² Mr Ziegler had, as Special Rapporteur, already demanded a five-year moratorium on biofuels.

²³ Mr Katashkin said he was not fully satisfied with the document, while Mr Chen Shiqiu voiced his reservation regarding the concept of ‘hunger refugees’ and feared that it might cause legal repercussion in the future. During the first session the Chair of the Committee, Mr Martinez, had already rushed through the adoption of some decisions to the displeasure of his colleagues. See ISHR’s analytical overview of the 1st session of the Advisory Committee available at www.ishr.ch/publications.

²⁴ At the Committee first session, Mr Hüseyinov was asked to attend the HRC panel discussion on the question of missing persons of September 2008. He couldn’t attend the debate but launched the discussion at the plenary summarizing it.

²⁵ Suggested members of the drafting group are Mr Burney, Ms Chung, Mr Heinz, Mr Hüseyinov, Mr and Mr Mudho.

Elimination of discrimination against persons affected with leprosy and their family members

Discussion on this topic was very brief and received little response from all parties, including the Committee members. During the presentation of his working paper, Mr Shigeki Sakamoto elaborated on persisting discrimination against people suffering from leprosy in many sectors.²⁶ Mr Sakamoto also highlighted the links between the need to eliminate discrimination against persons suffering from leprosy with the rights of persons with disabilities. Reflecting this, a set of draft principles and guidelines will be developed by Mr Sakamoto and will be submitted to the 3rd session of the Advisory Committee.

Human rights of women

As an outcome from the 1st session, the Advisory Committee requested the Council to mandate it with carrying out a study on ‘draft guidelines on methods to operationalize gender mainstreaming at all levels (...) in the implementation of its mandate’. Despite the fact that the Council had not followed up this request at its 9th session, the drafting group produced a comprehensive paper which was submitted to discussion to the plenary. The debate at the plenary was very lively. It also showed the members readiness to play a role in this matter. Some members²⁷ reiterated their wish to elaborate with concrete guidelines to increase women’s participation within the UN system and to push for an effective implementation of gender mainstreaming in the UN. Ms Zulficar suggested to adopt a more ‘forceful approach to implementation’ and called for ‘affirmative action’ to incorporate a gender perspective in all UN processes, mechanisms, policies, programmes and procedures. Mr Martinez suggested collaborating with the Committee on the Elimination of Discrimination against Women on this issue. Given the overall consensus on the guidelines, the Committee adopted a recommendation asking the Council to ‘consider authorizing the Committee to prepare draft guidelines on methods to enhance implementation of gender mainstreaming including action-oriented mechanisms in the Council and all other organs within the UN system.’

Promotion of a democratic and equitable international order

The discussion on this issue was limited and not much substantive progress was made. Some members²⁸ emphasised the importance of the issues but also the lack of supportive background documents for discussion. The lack of time was raised again by Mr Shiqiu. The rationale for the Council to put this item on the Advisory Committee’s agenda was questioned, as some members seemed to see this as politically motivated. The Advisory Committee made no recommendations but agreed that more information and documentation was needed.

Other issues

Following up to previous recommendations of the Advisory Committee, Ms Zulficar and Mr Martinez briefed the Committee on their mandates in following the work of the Forum on Minority Issues and the work of the Expert Mechanism of Indigenous People respectively.²⁹ Similar presentations were made by Mr Bengoa and Ms Quisumbing in relation to the work of the Social Forum. The Committee decided that the same four members should continue to follow the work of these respective bodies.³⁰

²⁶ A/HRC/AC/2/CRP.5, full text of the document may be obtained from www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.

²⁷ Mr Decaux, Ms Chung

²⁸ Mr Decaux, Mr Chen Shiqiu.

²⁹ Advisory Committee Recommendation 1/11.

³⁰ A/HRC/AC/2/L.3. Full text of the document may be obtained from www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.

In its *Resolution 9/9*, the Council raised the issue of protection of civilians in armed conflict and asked the Advisory Committee to address this issue in its work.³¹ It also decided to come back to this issue at its 11th session in June 2009 with a view of requesting a study by the Advisory Committee. In this context, the Committee recommends that the Council mandate the Committee in designating some of its members to participate in the expert consultations on the topic.³²

Rules of Procedure

Following inconclusive debate during the 1st session, a drafting group was appointed to work between sessions and present a set of draft rules of procedure to the 2nd session. However, the Advisory Committee postponed the adoption of its rules of procedure to the next session in August 2009.

During the discussion, only few amendments to the 'draft rules of procedure of the Human Rights Council Advisory Committee' were discussed. While the general consensus among members of the Committee seemed to tend towards flexible rules of procedure, the debate revolved around the following areas: extending the number of working days of the Committee,³³ the election of the Chair by secret ballot and whether or not the solemn declaration was necessary. The representative of the Indigenous Council of South America requested that the Advisory Committee add a permanent agenda item on indigenous issues. Rules relating to NGO participation were not discussed. The Advisory Committee's predecessor, the Sub-Commission on the Promotion and Protection of Human Rights, established a practice of allowing non-ECOSOC accredited NGOs to participate in some of its working groups.

NGO participation

NGO participation was a significant concern of the Advisory Committee. While Committee member commended NGOs for their useful contributions towards the various questionnaires sent out between sessions, they regretted that NGO participation remained limited during most discussions. This passive attitude was also apparent during the informal meeting between NGOs and the Committee.³⁴ Issues raised included inquiries to consider further study on women issues, proposal to include education on human rights treaties in the school curricula of each country, and the possibility of including a specific agenda item on indigenous people. Several members of the Advisory Committee reiterated the importance of the participation of NGOs. However, this was somewhat called into question when the Chair prevented an NGO from making general remarks about the work of the Advisory Committee during the closing of the session.³⁵

Concluding comments

The 2nd session of the Advisory Committee resulted in little concrete outcome. This may be due to the fact that the Committee was not well prepared for some items on the agenda, as it barely touched on certain issues and left others pending.

³¹ Paragraph .7 of, Human Rights Council *Resolution 9/9*. Document may be obtained from www2.ohchr.org/english/bodies/hrcouncil.

³² A/HRC/AC/2/L.6 Rev1

³³ Mr Kartashkin suggested the following amendment of the Rule 19: 'not less than 10 working days' instead of 'for a maximum of 10 working days per year'.

³⁴ On 28 January 2009, the Committee arranged a one-hour informal meeting with NGOs. Only few NGOs were present at the meeting.

³⁵ Mr Martinez interrupted a statement by the Arab Commission for Human Rights on the independence of the experts. The representative pointed out that Council *Resolution 5/1* specifies that 'individuals holding decision-making positions in Government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded.' Mr Martinez was representing Cuba in the institution-building working group elaborating the mandate of the Advisory Committee. See ISHR's reports on the institution-building phase, available at www.ishr.ch/publications.

There were notable disparities in the quality of the discussion on the different topics. Most attention was given to the right to food and to human rights education and training, while the Advisory Committee put less effort into discussing other topics. Perhaps it would be more effective to focus on only a few issues at each session, and aim at achieving more progress on those.

Improving the effectiveness of the Advisory Committee's work will also require changes in the Council's consideration of the work of its sub-body. At its 9th session, the Council decided to postpone action on the proposals of the Advisory Committee to the 10th session, thereby hindering efficient work between the sessions. Unless the Council gives substantive consideration to the work of the Advisory Committee at each of its sessions, there is little value in the bi-annual meetings of the Advisory Committee.

Finally, the more detailed consideration by the Advisory Committee of its rules of procedure in the August 2009 session will be a key moment in shaping the future work of this new body.

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