

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE OVERVIEW OF DECISIONS ADOPTED HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 2 TO 18 JUNE 2009

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### Overview

On 17 and 18 June 2009, the Human Rights Council (the Council) adopted 13 resolutions. Two proposals were postponed to September 2009 (on extreme poverty and traditional values).

The Council also appointed several new special procedures mandate holders. Despite objections by India on the appointment of one specific mandate holder, the list was adopted. It was unclear if those objections reflected a principled defence of the institution-building package, or an objection to the specific candidate.

### Item 3

#### ***Optional protocol to the Convention on the rights of the Child***

Slovakia, as one of the main co-sponsors of the draft resolution entitled ‘Open-ended Working Group on an optional protocol to the Convention on the rights of the Child’,<sup>1</sup> set out the modalities for the establishment of an open-ended Working Group on an optional protocol to the *Convention on the Rights of the Child*. The Working Group would address the possible establishment of a communications procedure complementary to the existing reporting procedure to enhance the scope of the Convention and the Committee’s work. The resolution set out the option for representatives from the Committee on the Rights of the Child and relevant special procedures to attend

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<sup>1</sup> A/HRC/11/L.3.

the Working Group. The Working Group is to hold its 1<sup>st</sup> session of five days in 2009, and the results of the Working Group will be conveyed to the Council at its 13<sup>th</sup> session in March 2010.

The resolution was adopted without a vote.

### ***Violence against women***

Canada introduced its draft resolution on ‘accelerated efforts to eliminate all forms of violence against women’.<sup>2</sup> It explained that the resolution reaffirms the international framework to protect women against violence. The draft resolution requests OHCHR to organise an expert workshop to discuss measures to overcome challenges States may face in preventing, investigating, prosecuting and punishing perpetrators of violence against women in 2010.

In an explanation of vote before the vote, Egypt stated that its understanding of operative paragraph 11 regarding multiple forms of discrimination is that this is limited to ‘universally agreed forms of discrimination’. It cautioned against the Special Rapporteur’s mandate being used to ‘import’ new definitions of discrimination. During the negotiations of the resolution, Egypt explicitly opposed the work of the Special Rapporteur that addressed violence against women based on their sexual orientation. While not made explicit, it seems that Egypt argues that violence against lesbian, bisexual or transgender women is acceptable or at least not an issue that should be addressed as a human rights violation. Such an argument is clearly untenable under international law.

The resolution was then adopted without a vote.

### ***Trafficking in persons***

The Philippines and Germany, on behalf of 81 co-sponsors, introduced the draft resolution entitled trafficking in persons, especially women and children.<sup>3</sup> Germany advocated for a rights-based approach to trafficking, which had also been one of the suggestions raised by panellists during the full day of discussion on violence against women held earlier in the session. The draft resolution further requested OHCHR to organise a seminar to identify opportunities and challenges in the development of a such a rights-based approach, and to collect the views of stakeholders on the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

The draft resolution was adopted without a vote.

### ***Promotion of the right of peoples to peace***

Cuba presented a draft resolution, intended to recognise States’ obligations to improve the protection of human rights by ensuring peace.<sup>4</sup> It encouraged ‘promoters of war and interventions’ to give special consideration to the resolution and stressed that the resolution was in the interests of governments and civil society alike. It proposes establishing a workshop to better define the exigencies of the right to peace. In declaring the reason for its vote, Germany, on behalf of the EU, stated that while it recognised some of the principles set out in the resolution, especially regarding the link between peace and human rights, the issues set out in the draft were more comprehensively dealt with in alternative fora. Germany also pointed out that the text of the draft resolution refers exclusively to the relationship between States, and worryingly does not address the relationship between a State and its citizens in ensuring the right.

The draft was adopted by 32 votes for, 13 votes against, and 1 abstention.<sup>5</sup>

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<sup>2</sup> A/HRC/L.5.

<sup>3</sup> A/HRC/11/L.6.

<sup>4</sup> A/HRC/11/L.7.

<sup>5</sup> India abstained.

### **Effects of foreign debt on the enjoyment of human rights**

Cuba introduced its draft resolution on ‘the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights’.<sup>6</sup> It explained that the resolution was aimed at the Council resuming a substantive analysis of the issue that had been addressed by the former Commission on Human Rights. The resolution requests the Independent Expert on foreign debt to continue to further develop the elements for a conceptual framework on the relationship between foreign debt and human rights.

Germany, in an explanation of vote before the vote on behalf of all the EU members of the Council, explained that it did not believe that the issue of foreign debt should be a focus of the Council, which instead should focus on States’ implementation of human rights obligations. The issue of foreign debt should instead be discussed in appropriate fora. It underlined that the resource constraints of the Council should be taken seriously and that it was therefore not a priority for the Independent Expert to hold regional consultations as suggested by the draft resolution. Germany called for a vote.

The resolution was then adopted by 31 votes in favour, 13 against and two abstentions.<sup>7</sup>

### **The right to education**

Portugal presented the draft resolution entitled ‘the right to education: follow-up to Human Rights Council resolution 8/4’ on behalf of the co-sponsors.<sup>8</sup> The draft in particular focuses on the right to education of persons in detention, and urges all States to take a number of steps towards ensuring this right. Among other things, it calls on States to pay particular attention to the situation of children in detention or living in prisons. The draft resolution was adopted without a vote.

### **Guidelines for the Alternative Care of Children**

Brazil introduced the draft resolution<sup>9</sup> by highlighting the development of the guidelines through a drawn-out, comprehensive consultation process, involving State actors and civil society bodies alike. The text sets out recommended policy and practice with the view to enhancing implementation on the *Convention on the Rights of the Child* and other relevant human rights instruments. In its comments prior to the vote, Germany, on behalf of the EU, stated that it was pleased with the renewed emphasis on enhancing parental care and the need to prevent family separation wherever possible. China wished to remind States that the guidelines are non-binding and hoped for a consensus on this basis. Canada echoed this statement, declaring that it had not had time to investigate all methods of implementing the guidelines and was therefore not ready to adopt them at present. It also suggested that the guidelines might be too broad, dealing with issues such as immigration. It therefore regretted that the guidelines were not more focused.

There was no request for a vote and the draft was adopted by consensus.

Several observers commented on the resolution in their general comments. Finland regretted that the guidelines do not provide stronger guidance to States on alternative care. The US said it strongly supports the guidelines, but does not consider them as obligatory.

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<sup>6</sup> A/HRC/11/L.9.

<sup>7</sup> Chile and Mexico abstained.

<sup>8</sup> A/HRC/11/L.12.

<sup>9</sup> A/HRC/11/L.13.

### ***Extreme poverty***

Action on draft resolution A/HRC/11/L.14 regarding human rights and extreme poverty, which had been introduced by France, was postponed to the next Council session in September 2009. France stressed that, despite many attempts, it had not been possible to reach consensus as to how to move this resolution forward. It stated that it would remain engaged in the process of developing guidelines to combat extreme poverty everywhere in the world.

### ***Maternal mortality***

Colombia introduced its draft resolution on maternal mortality.<sup>10</sup> It emphasised the need for increased efforts to realise the Millennium Development Goal on maternal health and that the resolution is not aimed at duplicating or undermining existing efforts. The resolution is the first Council initiative on preventable maternal mortality, and highlights that maternal mortality is a ‘human rights, development and health issue’. Colombia explained that the draft resolution builds on the joint statement by 85 countries in March 2009 and the panel on maternal mortality held in June 2008. The resolution requests OHCHR to conduct a thematic study on the issue and present a report in June 2010.

Chile and Egypt made general comments before the adoption of the resolution without a vote. Chile expressed its support for the resolution which it believed addressed a ‘vital issue’. It underlined that pregnancy is not a disease and should not be a burden and risk to be assumed only by women. It went further than the consensus reached on the resolution stressing that maternal mortality is a ‘fundamental human rights issue’ that presents challenges to the enjoyment of the right to life, health, education, equality, dignity, and the right to decide the number and spacing of children.

Egypt reiterated its understanding of ‘multiple forms of discrimination’ as not including non-universally agreed norms or ‘new concepts’, implicitly referring to the issue of sexual orientation which it strongly opposes.

In a general comment after the voting process, Amnesty International welcomed the decision, stressing that ‘it is very important that this Council is highlighting and contributing to addressing the human rights dimension of this tragedy’.

## **Item 4**

### ***Human rights of migrants in detention centres***

Egypt introduced draft resolution A/HRC/11/L.4 on human rights of migrants in detention centres. The text is an attempt to highlight the dire situation of migrants in detention centres, which are often deprived of their freedom for longer periods of time. Egypt claimed that the text is merely a procedural text that requires the holding of a panel on the issue. The draft resolution was adopted after an oral revision by consensus.

In a general comment after the conclusion of the voting process, Amnesty International welcomed as ‘timely’ the prospect of a panel on the situation of migrants.

### ***Situation of human rights in the Sudan***

Egypt, on behalf of the African Group with the exception of Uganda, introduced A/HRC/11/L.17 on the situation of human rights in the Sudan. It introduced the text by explaining that the resolution positively notes the recent efforts of Sudan to protect human rights and calls for a continuation of these efforts. Moreover, the resolution calls for technical assistance to strengthen existing achievements. It does, however, not renew and therefore terminate the mandate of the Special Rapporteur on the situation of human rights in the Sudan. Egypt explained that despite

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<sup>10</sup> A/HRC/11/L.16/Rev.1.

a constructive spirit in the negotiations on the text no consensus could be reached on the resolution. In a last attempt to reach consensus Egypt introduced amendments to the text asking OHCHR to report back to the Council on the further development of the situation. These amendments tried according to Egypt to continuously inform the Council of the situation in Sudan, which is according to critics of the resolution the main sticking point.

The President formally announced that Uganda did not cosponsor the text. Germany, on behalf of the European Union, introduced additional amendments, which in particular established a new mandate for an Independent Expert on the human rights situation in Sudan. Even though the mandate for an Independent Expert could mean a downgrading of the current mandate of a Special Rapporteur, Germany stated that it would be unacceptable to discontinue the work of the current mandate completely. It argued that the situation in the Sudan still needs the attention of the Council. Brazil and Zambia supported this view, whereas the Russian Federation and the Sudan rejected the proposed amendments by arguing that the amendments of Egypt sufficiently address these concerns. Egypt rejected the EU's amendments in their entirety and called for a vote on the amendments. The amendments were adopted by a small margin.<sup>11</sup>

Following the adoption of the amendments, and in order to be able to call for a vote on the entire text, Egypt withdrew from the list of co-sponsors of the draft resolution and called for a vote. With a slightly larger margin, the amended draft providing for the creation of a new Independent Expert on the situation of human rights in the Sudan was adopted.<sup>12</sup>

Accordingly, no action was taken in relation to draft resolution A/HRC/11/L.18 introduced by Czech Republic (on behalf of the EU), which had also dealt with the situation of human rights in the Sudan.

In a general comment after the conclusion of the voting process, the US welcomed the monitoring mandate of the newly created Independent Expert. Amnesty International welcomed 'the vigorous discussion of Sudan', although it considered the mandate of the Independent Expert insufficient, and called it 'a sad reflection of the state of this Council that many members appear to have placed political considerations above concern for protecting the rights of the civilian population in Sudan'

## **Item 5**

### ***Enhancement of the system of special procedures***

The Council adopted without a vote a resolution presented by Cuba on the system of special procedures.<sup>13</sup> Originally called 'enhancement of the system of special procedures', the draft resolution was been renamed into 'system of special procedures'. It reaffirms the *Code of Conduct for special procedures mandate holders* and calls on mandate holders to respect the mandate given to them by the Council. During the negotiations the draft resolution was seen by many as an attempt at undermining the independence of the system of special procedures. Cuba incorporated several key amendments requested during the negotiations, thus enabling agreement despite explanatory statements by some States expressing reservations.

Canada, after expressing its view that this resolution was 'deeply regrettable and inappropriate attempt to stifle and intimidate the system of special procedures', disassociated itself from consensus on the resolution. In a general comment after the voting process, Amnesty International expressed its disappointment at the adoption of the resolution, calling it 'another reflection of the efforts by some States to utilize the Code of Conduct as the basis to intimidate the Special Procedures and to limit the independence of individual Procedures and the system as whole'.

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<sup>11</sup> 20 votes in favour, 19 against and 8 abstentions.

<sup>12</sup> 20 States voted for the text, 18 against the text and 9 States abstained.

<sup>13</sup> A/HRC/11/L.8.

## **Item 6**

### ***Reports of the UPR Working Group***

Mexico introduced draft resolution A/HRC/11/L.2 on the issuance of reports of the Working Group on the universal periodic review (UPR) in all official languages of the United Nations. It explained that the text is a procedural draft and that the initiative was taken as there were severe problems at the 4<sup>th</sup> and 5<sup>th</sup> UPR session. 13 reports adopted at the 4<sup>th</sup> session were not issued as official documents in the six official UN languages prior to their consideration and adoption of the Council. The resolution aims to prevent a repetition of the issue at the 12<sup>th</sup> session of the Council. Mexico emphasised that the availability of the reports in all languages is elementary for the functioning of the UPR mechanism. Finally, Mexico reminded States to stick to the page limit when under review. The President of the Council announced that 37 States joined the original co-sponsors

The draft resolution was adopted by consensus with some minor amendments, which were earlier introduced by Mexico.

## **Item 8**

### ***Traditional values***

The Russian Federation presented its work on a draft resolution entitled ‘promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind’.<sup>14</sup> The informal consultations around this draft had been quite controversial, and it was therefore not surprising when the Russian Federation announced that it would defer consideration of this draft until the September 2009 session, to pursue dialogue on the issue.

## **Item 9**

### ***Intergovernmental Working Group on the effective implementation of the DDPA***

Nigeria, on behalf of the African Group, introduced draft resolution A/HRC/11/L.15 on the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action. The text extends the mandate of the Intergovernmental Working Group for a period of three years. Nigeria emphasised that amendments to the text were hard to accept for the African Group but they were incorporated for the aim of consensus. The resolution was adopted by consensus.

However Canada, Italy, and the Netherlands expressed their dissatisfaction with the text and disassociated themselves from the consensus. The main reason was the reference in the text to the Durban Review Conference, which was not attended by these States. Canada rejected in particular the reference in the outcome document to ‘politicised elements’, in particular those in relation to the Middle East.

## **Appointment of special procedures**

President Uhomoibhi introduced his proposed list of 5 special procedures mandate holders to be appointed. India was ‘concerned’ about the candidate for the Working Group on people of African descent, Mr Sicilianos, who is also currently a member of the Committee on the Elimination of Racial Discrimination (CERD). India claimed that despite the candidates expressed commitment to step down from his treaty body post at the end of August 2009, his appointment would violated the terms of the institution-building text (*Resolution 5/1*), which prohibits cumulating several human rights mandates. India also argued that since Mr Sicilianos had been a member of CERD for eight years, he was not eligible for another term as special procedures mandate holder. This argument, where the term limit of twice three years for special procedures mandate holders is cumulated with the previous

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<sup>14</sup> A/HRC/11/L.1.

terms seemed to be new, and its not consistent with the way the Council has handled the appointment of members of the Human Rights Council Advisory Committee.

It is unclear if India's objections were made in principled defence of the integrity of the institution-building text, or if they reflect a substantive disagreement with Mr Sicilianos' views. During the review of India by CERD in February 2007, for which Mr Sicilianos was the country rapporteur, there were at times heated exchanges between the delegation and the expert on the classification of caste based discrimination as racial discrimination.<sup>15</sup>

Despite these concerns, the Council approved the list proposed by President Uhomoibhi.

### Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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<sup>15</sup> See ISHR's report on the examination of India by CERD, available at <http://tr.im/vTkV>.

## **COUNCIL MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer  
**Michael Ineichen**, Human Rights Officer  
**Gareth Sweeney**, Deputy Manager  
**Katrine Thomasen**, Manager International Programme

## **CONTRIBUTORS**

**Rachel Breen**, intern  
**Joelle Dek**, Intern  
**Dmitry Foryy**, Intern  
**Mabel Kirabo**, Intern  
**Ladina Knapp**, Intern  
**Clara Martino**, Intern  
**Isabella Ries**, Intern  
**Peter Tubman**, Intern

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