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Overview

The Human Rights Council (the Council) continued its general debate with the new High Commissioner for Human Rights, Ms Navanetham Pillay. The focus of the debate was on the relationship between the Council and the Office of the High Commissioner for Human Rights (OHCHR), OHCHR's country offices, and the Durban Review Conference. Notably, some States, including Colombia, Sri Lanka and the Sudan, highlighted their good human rights record and efforts to improve apparently in an attempt to make a positive impression on the High Commissioner.

The Council also heard reports from and held interactive dialogues with the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on indigenous peoples, and the Independent Expert on toxic waste.

General debate with the High Commissioner

Several States like the previous day **welcomed Ms Pillay** as the new High Commissioner and as a woman from Africa in that role.¹ Some speakers commented on the characteristics they believe to be particularly important with both Norway and Australia underlining the need for the High Commissioner to be a strong, independent, and impartial voice and Iceland looking forward to her strong leadership, outspokenness, and independence. Turkey welcomed her commitment to open and frank interaction with the Council. Again, several States took the opportunity to comment on the relationship between the OHCHR and the Council. Algeria recognised that an agreement still had to be found on the impact of the establishment of the Council

¹ Qatar, Algeria, Tunisia.

on its relationship with OHCHR, given that the Council has a higher standing in the UN hierarchy than the Commission on Human Rights did. It underlined that such an agreement should reflect this enhanced status and the independence of OHCHR. Thailand argued in favour of enhanced consultations between the Council and OHCHR. Qatar and Venezuela suggested that the independence of both institutions should be strengthened, while a number of other States simply underlined the importance of the independence of OHCHR.²

While many NGOs also welcomed Ms Pillay, they tended to focus their statements on specific challenges to the international human rights system and the full enjoyment of human rights everywhere, including discrimination against lesbian, gay, bisexual, and transgender persons,³ the situation of women, terrorism,⁴ freedom of expression, and racism and the Durban Review Conference;⁵

In relation to **OHCHR's country offices**, New Zealand highlighted that the Pacific regional office is going 'from strength to strength' and Australia welcomed the increased engagement of OHCHR in the region. Austria underlined the importance of OHCHR's regional and country offices. In this regard, Uganda announced that a Memorandum of Understanding would soon be signed with OHCHR. Human Rights Watch encouraged the High Commissioner to strengthen the presence in Somalia.

Algeria reiterated the suggestion by Egypt (on behalf of the African Group) that the High Commissioner appoint an executive director for preparing the Durban Review Conference. Turkey, on the other hand, highlighted the important role of the High Commissioner in the preparations. Morocco expressed the hope that the High Commissioner would be able to bring diverging views closer together and find consensus. Uganda urged all stakeholders to support the Durban Review Conference.

Interestingly, a few States used the occasion to **highlight their own human rights record** apparently in an attempt to make a positive impression on the High Commissioner. Notably, Colombia went to great efforts to demonstrate its commitment and efforts by highlighting its support for the OHCHR's office in the country, its improved cooperation with special procedures, and its wide-ranging and inclusive consultations with 'willing' NGOs in preparation for the universal periodic review (UPR). Sri Lanka, while acknowledging that its human rights situation still needed improvement, claimed that its record on a number of issues is better than most other countries'. It also asserted that it looks forward to positive support from the High Commissioner in response to its long-standing request for assistance. Nepal highlighted its political transformation since 2006, while the Sudan put forward that it is making efforts to implement the 2005 peace agreements.

In a likely response to the statement made the previous day by the Russian Federation, Georgia argued that the Council should not be 'abused for political statements'. It noted that a case to resolve issues related to the conflict between the two countries is pending before the International Court of Justice. Notably, Human Rights Watch called for an independent investigation by OHCHR into this situation. It is relatively rare that the Council considers situations that arise shortly before or during its sessions in a systematic way. It will be interesting to see if the recent developments in South Ossetia will be raised again later this session.

Organisational and procedural matters

The President used the opportunity to elaborate on the scope of the general debate on the UPR under Item 6. He explained that this item had been added to the programme of work following broad consultations.

² Czech Republic, Ireland, Norway, Iceland, Belgium.

³ ILGA-Europe in a joint statement.

⁴ International Commission of Jurists, European Union of Public Relations,

⁵ Human Rights Watch, Nord-Sud XXI, UN Watch.

However, he did not mention the opposition to this by several States.⁶ The President said that the general debate had been included in accordance with his view that the Council can debate all issues. Nevertheless, he noted that it would be ‘proper to recall that implementation of the outcome is explicitly referred to in the institution-building text in relation to the second cycle’.⁷ This seems to imply that follow-up will only be discussed four years after the first review. He urged participants not to speak about follow-up in a specific manner and not to refer to specific countries.

Judging from Egypt’s statement (on behalf of the African Group) it became clear that the opposition, at least from some States, is directly related to an unwillingness to see any follow-up to the UPR. Egypt stated that it would not oppose the general debate with the understanding that the debate would not be used in violation of *Resolution 5/1* and for follow-up to the review. In response, the President assured Egypt that the debate would not be turned into a second review. However, he did not seem to accept the argument that there could be no discussion of follow-up, as long as the guidelines he had elaborated earlier were respected. The President also acknowledged that States that had been reviewed were free to update the Council on relevant developments. It is likely that the general debate may give rise to tensions again as NGOs may wish to comment on the implementation of the UPR outcomes. This could well prompt aggressive responses from States as seen during the Council’s adoption of the UPR outcomes in June 2008.

In this context, Egypt (on behalf of the African Group) also reiterated its view that the interactive dialogue with the Special Rapporteur on the Sudan should make no reference to follow-up to the special session on Darfur. It argued that the follow-up is now part of the mandate of the Special Rapporteur.

Interaction with special procedures

Under Item 3 ‘promotion and protection of all human rights’, the Council heard reports from and held interactive dialogues with the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on indigenous peoples, and the Independent Expert on toxic waste.

Children and armed conflict

Ms Radhika Coomaraswamy, the Special Representative of the Security-General for children and armed conflict, presented her report to the Council.⁸ Ms Coomaraswamy declared that armed conflict generally has increased in intensity, resulting in a growing sense of despair and an immeasurable toll on life. She listed the achievements in the protection of children in armed conflict, namely the release of children in Côte d’Ivoire and Liberia, the upcoming release of children in the Sudan and the Central African Republic, and the trial of Thomas Lubanga Dyilo before the International Criminal Court.

Ms Coomaraswamy stated that there are 16 States that defy the Security Council and have been added to the annexes of the Secretary-General’s report.⁹ She expressed concern about the ‘terrorist problem’ facing many States, which has led to the mobilisation of children and even their recruitment for suicide bombings.¹⁰ She

⁶ See ISHR’s *Council Alert* on the 9th session, available at www.ishr.ch.

⁷ The President did not refer to a specific paragraph in the institution-building text. Paragraphs 33 to 38 of *Resolution 5/1* refer to follow-up to the review. Paragraph 34, to which the President seems to refer to, specifies that ‘the subsequent review should focus, *inter alia*, on the implementation of the preceding outcome’ (emphasis added). It therefore neither limits the subsequent review to the follow-up, nor does it limit follow-up to the subsequent review. Paragraph 35, still under the heading of ‘follow-up to the review’ specifies that ‘the Council should have a standing item on its agenda devoted to the universal periodic review’. This seems to imply that the standing item on the Council’s agenda could be used, *inter alia*, for follow-up.

⁸ A/HRC/9/3.

⁹ A/62/609/S/2007/757. The list includes Afghanistan, Burundi, Central African Republic, Democratic Republic of the Congo, Myanmar, Nepal, Somalia, South Sudan, Darfur, Chad, Colombia, Philippines, Sri Lanka, Uganda.

¹⁰ Noted from her visits to Iraq, Israel, the occupied Palestinian territories, and Afghanistan.

spoke of sexual violence, making particular reference to the sexual violence against boys, a practice that has become prominent in Afghanistan. Other concerns included military detention of children without an adequate judicial process, human trafficking, the drug trade, the arms struggle, mineral exploitation, conditions in camps for internally displaced persons, the recruitment of children in these camps, and impunity. She urged the Council to deal with the accountability of non-State actors.

Ms Coomaraswamy introduced her intention to work closely with Special Advisors to the Secretary-General¹¹ and present a report to the General Assembly in January 2009. She concluded that children are especially vulnerable and deserve enhanced protection, and that violators of their rights should be held accountable.

States welcomed the positive developments identified in Ms Coomaraswamy's report, and some delegations outlined domestic measures their Governments had implemented to prevent the recruitment of children to the armed forces.¹² Some of the more significant proposals discussed included: improving coordination throughout the international system between mechanisms working on children's rights;¹³ mainstreaming children's rights in the work of the Council;¹⁴ harnessing the UPR mechanism to discuss the issue, and to monitor the fulfilment of recommendations made by the Committee on the Rights of the Child;¹⁵ encouraging States to ratify the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*;¹⁶ devising a Council resolution dealing specifically with the protection of children in armed conflicts;¹⁷ strengthening the human rights monitoring capacity of peacekeeping operations, in cooperation with the OHCHR;¹⁸ and improving cooperation with the UN Peacebuilding Commission.¹⁹

Norway identified what it considered a 'troubling dichotomy' – the advancement of international norms regarding children's rights, and the concomitant pattern of continued violations against children. States raised a variety of other ongoing concerns, including: the challenges faced in ensuring that non-State actors abide by international standards regarding children during armed conflict,²⁰ impunity,²¹ and the prevalence of sexual- and gender-based violence.²² A robust discussion elaborated on further steps that could be taken to improve the situation of children in armed conflicts. Most notable among these were the following: combating the small arms trade,²³ reintegrating children into communities,²⁴ making systematic use of UN Security Council

¹¹ Mr Francis Deng, the Special Advisor on the prevention of genocide and Edward C. Luck, the Special Advisor on the responsibility to protect.

¹² Philippines, Nepal, Sri Lanka, Colombia, Myanmar.

¹³ Indonesia. In this regard Costa Rica referred specifically to the important work of the International Criminal Court.

¹⁴ Sweden, Norway, Pakistan on behalf of the OIC, Azerbaijan.

¹⁵ Chile, Sweden, Japan, Luxembourg, France on behalf of the EU. Canada and Switzerland also expressed interest in this idea, and asked for further details. Ms Coomaraswamy elaborated further that the issue of children in armed conflict should become a category to be specifically monitored and reported on with regard to the UPR. For this to be achieved, she added, the OHCHR would need to appoint a 'focal point' on this issue.

¹⁶ Chile, Japan, Egypt, Russia, Luxembourg, Vietnam.

¹⁷ France (on behalf of the EU), Switzerland, Indonesia. Ms Coomaraswamy later commented that a specific Council resolution on the issue was a welcome idea, and would not be duplicative of efforts being made in other parts of the UN system, which tended to focus more on peace and security aspects, rather than human rights. The Council thus had a clear and discrete role to play on the issue.

¹⁸ Republic of Korea.

¹⁹ Republic of Korea.

²⁰ Philippines, Bangladesh, Egypt. Ms Coomaraswamy later responded that States could confront this challenge by facilitating dialogues on the protection of children between non-state actors, UN agencies, and other relevant stakeholders.

²¹ Philippines, Iceland.

²² Luxembourg, Iceland, Nigeria. The United Kingdom referred specifically in this regard to the Democratic Republic of Congo and Burundi.

²³ Nigeria. Ms Coomaraswamy later reiterated that there was indeed a clear link between the engagement of children in armed conflict and the proliferation of small arms, and that more needed to be done to control the supply of small arms.

²⁴ Japan, Azerbaijan.

resolution 1612 on children in armed conflict,²⁵ according equal importance to each of the six categories of violations specified in the UN Secretary-General's report on children and armed conflict,²⁶ addressing the role of corporate actors, particularly those that deal with the weapons trade,²⁷ and mainstreaming the issue of treatment of children into the work of UN peacekeeping missions.²⁸ Norway called for an annual Council discussion on the specific theme of children in armed conflict, while the Republic of Korea suggested that more could be done to develop regional approaches to combat the recruitment of children, given the increasingly cross-border nature of the phenomenon.

On specific domestic issues, Sri Lanka stressed violations of international law perpetrated by the Liberation Tigers of Tamil Eelam (LTTE), and reported that it was doing its utmost to ensure the release of any children recruited by the LTTE. The Sudan stressed the progress it had made on this issue domestically, and refuted allegations that the Government was involved in the recruitment of children into the armed forces. The Russian Federation and Georgia engaged in a predictable tit-for-tat exchange regarding the recent conflict between the two States, each lamenting the large number of South Ossetian children that had become displaced. Georgia also highlighted the importance of States adhering to their responsibility to protect, in line with the UN Charter.

NGO interventions focused on the plight of children affected by armed conflict in Afghanistan,²⁹ Colombia,³⁰ Palestine,³¹ and Jammu Kashmir.³²

Indigenous peoples

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr James Anaya, after replacing Mr Rodolfo Stavenhagen as the Special Rapporteur on 26 March 2008, presented his first report to the Council.³³ Mr Anaya emphasised that human rights of indigenous people were no different to the basic human rights of all human beings. The report focuses on an analysis of the *United Nations Declaration on the Rights of Indigenous Peoples* and the application of relevant international human rights instruments to the situation of indigenous peoples. The Special Rapporteur stressed that his role in promoting the Declaration is also to ensure that indigenous peoples' voices are effectively heard. He emphasised that much remains to be done in the area of rights and fundamental freedoms of indigenous peoples.

The Special Rapporteur also reported on his two missions this year to Brazil and Ecuador. In this regard, he expressed his sincere gratitude to the Government of Ecuador for its cooperation. He highlighted that, if adopted, the Constitution of Ecuador would be one of the 'most advanced in the region and the world' in relation to indigenous rights.

Ecuador as a concerned country stressed that it was experiencing a period of change, particularly with regard to embracing its multiculturalism. Ecuador claimed that it is doing its utmost to confront the challenges it

²⁵ Pakistan (on behalf of the OIC), Switzerland.

²⁶ *Document S/2005/72*. Switzerland made this point, while Iceland and Costa Rica stressed that the various types of violence against children went beyond the six categories specified in the report.

²⁷ Pakistan (on behalf of the OIC).

²⁸ Pakistan (on behalf of the OIC).

²⁹ Afghanistan Independent Human Rights Commission.

³⁰ Colombian Commission of Jurists.

³¹ Defence for Children International.

³² International Islamic Federation of Student Organisations, International Human Rights Association of American Minorities, World Muslim Congress.

³³ A/HRC/9/9.

faces in this sphere. Brazil expressed its gratitude to the Special Rapporteur for his visit, and extended an open invitation to him for a follow-up visit.

New Zealand and Mexico also expressed their support for the Special Rapporteur. New Zealand suggested that the Special Rapporteur might wish to consider what further work could be done in the area of preserving and reviving indigenous languages. France, on behalf of the European Union, emphasised the importance of strengthening partnerships between indigenous peoples, States and civil society.

Toxic waste

The Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr Okechukwu Ibeanu, presented his report to the Council.³⁴

The Special Rapporteur spoke of his attendance at the 9th Conference of Parties to the Basel Convention on the transboundary movement of hazardous waste hosted in Bali. The conference focused on the links between waste management and human health in the context of the Millennium Development Goals. He raised the paradox of the use of chemicals in food production, which improve preservation while having continuing and long-term effects on human health and the environment.

The Special Rapporteur also presented the report on his mission to Tanzania in January 2008. The report focuses on the social and environmental impact of toxic waste produced by the mining industry in the country. He also gave an update on a mission to Cote D'Ivoire in August 2008 where he had investigated the human rights dimensions of the *Probo Koala* case. Both Tanzania and Cote d'Ivoire as concerned countries replied to the Special Rapporteur. Tanzania thanked the Special Rapporteur for his visit, and said it was considering his recommendations. Cote d'Ivoire suggested that the mandate of the Special Rapporteur be given more resources.

Finally, the Special Rapporteur sought the renewal and strengthening of the mandate, which is up for review at this session.

³⁴ A/HRC/9/22, A/HRC/9/22/Add.1 (Communications to and from governments), A/HRC/9/22/Add.2 (mission to Tanzania).

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