

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – ITEM 2 REPORTS OF THE SECRETARY GENERAL/HIGH COMMISSIONER AND REPORT OF THE JOINT INSPECTION UNIT HUMAN RIGHTS COUNCIL, 12TH SESSION 18 SEPTEMBER 2009

Overview	1
Presentation of reports.....	1
General debate on reports under Item 2.....	2
Comments on report of the Joint Inspection Unit	2
Comments on reports of the High Commissioner/ Secretary General	3
Further information.....	4

Overview

The close of the morning meeting and much of the afternoon meeting of the Human Rights Council (the Council) on 18 September was dedicated to the presentation of reports by the High Commissioner and Secretary General on human rights and transitional justice, the right to truth, the links between counter terrorism measures and their impact on the protection of economic, social and cultural rights, the right to development, application of the death penalty, unilateral coercive measures, next steps for the World Programme for Human Rights Education, and integrating women's rights throughout the UN system.

Ms. Mona Rishmawi of the Office of the High Commissioner for Human Rights (OHCHR) also presented the report of the Joint Inspection Unit (JIU) on follow-up to the management review of OHCHR, despite the presence of Mr Roman Morey from the Unit at the meeting, which focused on the outstanding recommendations and ongoing efforts to address the geographical imbalance in the staff of OHCHR. Despite efforts by Sweden (on behalf of the EU) to stress that oversight of the administrative functioning of OHCHR belonged on the agenda of the Firth Committee of the General Assembly, the vast majority of States used their time under the general debate to address the JIU report, some as a means to attack OHCHR, at the expense of discussing the many useful reports by the High Commissioner on substantive human rights issues. NGOs and NHRIs, on the other hand, focused on human rights, including transitional justice in Timor Leste and the death penalty in Japan.

Presentation of reports

The reports by the High Commissioner and the Secretary-General were presented by Ms. Mona Rishmawi on behalf of the High Commissioner. She began by illustrating the analytical study on **human rights and**

transitional justice.¹ This report demonstrates how OHCHR and the UN human rights presence have supported transitional justice programs, particularly by helping to design and implement the ‘four pillars’ of transitional justice, defined as truth seeking and fact-finding processes, prosecution initiatives, reparations programmes and institutional reform. Ms. Rishmawi then presented the study on the **right to truth**², outlining two areas of particular importance: ‘practices relating to archives and records concerning gross violations or human rights and programmes on the protection of witnesses and other persons involved in trials connected with such violations.’ This was followed by a presentation of the High Commissioner’s report analyzing the link between **counter terrorism strategies and the promotion and protection of economic, social and cultural rights**³, with special attention being drawn to the impact of counter terrorism on the enjoyment of these rights.

The Council was then informed that the High Commissioner’s report on the **right to development**⁴ primarily describes relevant activities of OHCHR, particularly those supporting the intergovernmental open-ended Working Group on the right to development and the high-level task force. The report of the Secretary General on **human rights and unilateral coercive measures**⁵, was presented as intending to get the views of Member States on the implications and negative effects of such measures on their populations. The States included in this report include Belarus, Costa Rica, Iraq, Spain and Ukraine. The report on the second phase of the **World Programme for Human Rights Education**⁶ followed, which includes views from different States and non-State actors on target sectors and thematic areas for this second phase. The High Commissioner’s report on the **death penalty**⁷, covers between, statistics and relevant information on the trend toward abolition from June 2008 to July 2009. The last report introduced, prepared by the Secretary-General and the High Commissioner, concerned “**integrating the human rights of women throughout the United Nations system,**”⁸ this report highlights challenges and obstacles in pursuing this objective and includes concrete recommendations on how to overcome them.

The presentation concluded with mention of the report of the **Joint Inspection Unit (JIU)**⁹ that serves as the second follow-up to the JIU’s initial report and recommendations of 2003, and calls on OHCHR to continue to redress the imbalance of geographic distribution of staff in the Office. .

General debate on reports under Item 2

Comments on report of the Joint Inspection Unit

The general debate under Item 2 was heavily focused on the JIU report, and most States expressed a strong desire for a balanced geographical distribution of the staff at OHCHR.¹⁰ Egypt (NAM) pointed out that 56% of the staff belonged to one group, with some countries not being represented at all. Cuba added that OHCHR staff is primarily composed of members of the Western European and Others Group (WEOG), leaving several countries under or completely unrepresented, a fact that was repeated by several of the delegations present,¹¹ marking a general discontent of the geographical distribution of OHCHR staff among States.

¹ A/HRC/12/18

² A/HRC/12/19

³ A/HRC/12/22

⁴ A/HRC/12/29

⁵ A/HRC/12/30

⁶ A/HRC/12/36

⁷ A/HRC/12/45

⁸ A/HRC/12/46

⁹ A/64/94 or JIU/REP/2009/2

¹⁰ Nigeria (on behalf of the African Group), Pakistan (on behalf of Organization of the Islamic Conference), Tunisia (on behalf of the Arab Group), Egypt (on behalf of Non-Aligned Movement), India, Sweden, Norway, India, Russia, Indonesia, China, Sri Lanka, Algeria, Azerbaijan, Peru, and Dominican Republic.

¹¹ Egypt (on behalf of NAM), Tunisia (on behalf of the Arab Group). Pakistan (on behalf of OIC), Norway, China, and Azerbaijan.

Sri Lanka and India were the most critical of the JIU report. Sri Lanka stated that the report concentrated on ‘the problems of the influential few, at the expense of the more pressing concerns of the rest of the world.’ It asserted that the report seemed to ‘justify what might be termed a self-perpetuating cartel, in addressing concerns as to the mobility and career development of those in service.’ This was taken a step further when the State expressed concern over any recommendations that had been made in the report being superseded by ‘partisan considerations.’ It was clear from Sri Lanka’s position that the State has little confidence in the JIU and ended by stating its hopes for the next report to present more factual statistics and concrete steps in achieving progress on previous recommendations.

India disagreed with the report’s findings when criticizing the claim in paragraph 27 that the Council should recognize the efforts made by the High Commissioner to improve the ‘geographical diversity’ of the OHCHR. It pointed out that it had been six years since the 2003 JIU report recommending a balance in OHCHR staff, and three since this recommendation was reiterated in the 2006 report, yet no balance had been achieved. India did note its satisfaction in the staffs’ gender balance, but requested the JIU provide further information on the equitable geographic representation of the women staff. In conclusion India expressed its ‘gross dissatisfaction at the tardiness of the progress that is manifest in the continuing reluctance of the OHCHR to...set specific targets and deadlines.’¹² Tunisia made several suggestions for improving the situation during its statement and asserted that the High Commissioner should present an annual report on underrepresented States and notify underrepresented diplomatic missions of vacancies in an effort to improve the balance.

In contrast to the above, Sweden, on behalf of the European Union (EU), affirmed that the Fifth Committee of the General Assembly (GA), and not the Council, was the appropriate forum to ‘address any cross-cutting issues of human resources policy, including geographical balance, in the UN Secretariat.’, The United Kingdom of Great Britain and Northern Ireland (UK), aligned itself with the position of the EU, but its statement was bolder in stressing that in accordance with Chapter IV of the UN Charter and as affirmed by the GA, ‘the General Assembly is the only competent body to address issues of administration, budget and human resources.’ The UK went on to argue that based on these facts it was highly inappropriate for the Council to oversee the OHCHR on the issues being addressed, as it had no legal basis to do so.

Nigeria (on behalf of the African Group) and Tunisia (on behalf of the Arab Group) complained that the JIU report of 2007 had never been submitted to the Council, and both stated that all JIU reports should be submitted to the Council so that feedback could be given on them. Returning to the staff imbalance, the need to put into effect resolution 10/5,¹³ on capping employment of people from overrepresented countries and regions,¹⁴ was mentioned repeatedly. Several States requested that ads for vacancies at OHCHR should be made available to diplomats and missions in Geneva, particularly those that are underrepresented.

Comments on reports of the High Commissioner/ Secretary General

Uruguay (on behalf of MERCOSUR), Colombia (on behalf of GRULAC), Argentina, Peru, Dominican Republic, Morocco and Timor Leste stressed the importance of the **right to truth** in assisting victims to establish the facts and circumstances of human rights violations. Uruguay detailed national and regional efforts of MERCOSUR States in establishing an institutional memory of previous atrocities. On this basis, MERCOSUR fully supported the High Commissioner’s conclusions on **national archives**, and Uruguay informed that they were looking at the possibility of a future Working Group on the right to truth to contribute further to the issue and to promote best practice in this regard, including through taking account of the right to truth in national legislation. Argentina, however, felt that the report could have benefitted from looking at the individual experiences of countries in using

¹² Egypt (on behalf of NAM), Tunisia (on behalf of the Arab Group), Russia, Pakistan, Bangladesh, Cuba and Peru, expressed a similar dissatisfaction, although the latter three were not as harsh in their position.

¹³ A/HRC/10/29, Res. 10/5, Para. 4

¹⁴ Note: In Res. 10/5, Para. 4 it states that the High Commissioner should consider applying a zero-growth cap in conjunction with other measures also recommended to correct the imbalance.

archives, including in Argentina's case in order to prosecute perpetrators. Colombia also called for the need for guidelines to assist States in preserving archives and making them accessible, and ensuring the protection of witnesses in archives. Argentina explained that it would present a new draft resolution on the right to truth in a future Council session.

Slovenia, speaking on behalf of the Platform for Human Rights Education, informed the Council of its intention to submit a resolution on **human rights education** encouraging all States to submit initiatives underway. It sought an extension of human rights education beyond schools and into law enforcement, the civil service and educators. Colombia also welcomed the report on human rights and education, and commended the other member States of Platform¹⁵ for their efforts.

Sweden, on behalf of the European Union (EU), endorsed ongoing discussions of **transitional justice** mechanisms in Somalia and the Democratic Republic of Congo. Switzerland stated that the human rights dimension needs to be upheld in these and other peace negotiations, and that mediators should have relevant expertise or call on the UN to assist in providing it. They also asserted that there can never be amnesties for crimes under international law. The Africa Network of National Human Rights Institutions also thanked OHCHR for its work on transitional justice, its important role in African countries in contributing to the creation of truth and reconciliation commissions, and in particular its work under Security Council *Resolution 1606* towards the creation of such commission in Burundi. The Network also drew attention to the important work of national institutions in advising on and lobbying for the creation of truth commissions.

Sweden (on behalf of the EU) thanked OHCHR for its report on the status of the **death penalty** and claimed that it remained difficult to compile such a report as information was difficult to attain. Amnesty welcomed this report and linked it to death row in Japan, commenting on poor conditions and refusal of the government to permit access to prisoners. It called on Japan as a member of the Council to review all mental illness cases and to place a moratorium on all executions with a view to abolishing the death penalty. Sweden also looked forward to a future report of the High Commissioner on the integration of **women's rights** throughout the UN system, which it felt had made significant advances through the Council.

Mexico welcomed the report on **counter terrorism**, stating that measures should be adequate, proportionate and should not affect minorities or migrants. Switzerland called for the creation of an expert body under the 1257 Committee of the Security Council,¹⁶ that would assess the de-listing of persons or organisations on the UN's terrorist list using prescribed criteria, as the impact of listing overtime raised serious human rights concerns. Israel spoke of the role played by its own judiciary, where 'time and again' the legal system has offered opportunities for redress for alleged human rights violations, and where the courts measure the impact of counter terrorism measures balanced with human rights concerns. Human Rights First also welcomed the report, and asserted that all efforts to counter terrorism must be in accordance with international human rights law, the failure to do so making it more difficult to counter terrorism. It stated that much needed to be done in the United States to remove the 'stain of the Bush administration', but that the new administration was making progress.

Further information

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

- Follow ISHR on Twitter: [@ishr_geneva](https://twitter.com/ishr_geneva).
- 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.

¹⁵ Morocco, Switzerland, Italy, Philippines, Slovenia.

¹⁶ Mandated by Security Council *Resolution 1267*

- 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 12th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/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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