

ADVISORY COMMITTEE: TESTING ITS INDEPENDENCE

INTRODUCTION

The Human Rights Council Advisory Committee (the Advisory Committee) held its 2nd (26 to 30 January) and 3rd (3 to 7 August) session of five days each in 2009, and its 4th in early 2010 (25 to 29 January).¹

In its *Resolution 5/1*, the Human Rights Council (the Council) established the Advisory Committee as the successor body of the former Sub-Commission on the promotion and protection of human rights (the Sub-Commission). It is an 18-member expert body that serves as the Council's 'think-tank', destined to provide expertise to the Council 'in the manner and form requested by the Council, focusing mainly on studies and research-based advice.' It is generally understood that the Council intended to give less room for independent initiative to the Advisory Committee than the Sub-Commission used to have. Its mandate is limited to thematic issues and it is explicitly restricted from adopting 'resolutions' and 'decisions'.²

During its second year of operation, the Advisory Committee laid the foundation for its work in the coming years. It started work on the priority areas mandated by the Council and even suggested its own thematic priorities. On a pro-

cedural level, too, the Advisory Committee has done the groundwork for the future, particularly with the adoption of its rules of procedure at the 3rd session.³

THEMATIC DEBATES

Human rights education and training

In September 2007, the Council mandated the Advisory Committee to prepare a 'draft declaration on human rights education and training' (the draft declaration).⁴ It asked the Advisory Committee to consult with various stakeholders including States, the Office of the High Commissioner for Human Rights (OHCHR), and civil society. At its initial session in 2008, the Advisory Committee decided to set up a smaller 'drafting group' to work on the preparation of a draft declaration.⁵ Adopting an inclusive approach to the drafting, the group circulated a questionnaire to all stakeholders, with the intention of identifying key elements of a text.⁶ It is noteworthy that most replies to the questionnaire were received from civil society, and among those, most came

¹ This edition of the *Human Rights Monitor* focuses on the sessions that took place in 2009, and notes important developments that occurred at the 4th session in January 2010. The full analysis of the 4th session will be included in the *Human Rights Monitor Quarterly* to be published in April.

² See Council *Resolution 5/1*, Para. 77.

³ A/HRC/AC/3/2, Annex III.

⁴ A/HRC/RES/6/10, 28 September 2007.

⁵ Drafting group: Mr Decaux, Ms Warzazi, Mr Kartashkin, Mr Fix Fierro, Ms Quisumbing, Mr Seetulsingh. They also held one meeting on 3 August 2009.

⁶ 57 governments, 14 international organisations, 30 NHRIs, 43 NGOs including many non-ECOSOC accredited organisations, and five academic institutions and individuals submitted their views to the Advisory Committee.

from non-governmental organisations (NGOs) not accredited by the Economic and Social Council (ECOSOC).⁷

At the beginning of the 2nd session, only few responses had been received from States and national human rights institutions (NHRIs), and the session saw little participation in the discussions from States and civil society. Over the following months, more responses to the questionnaire were received. In mid July, the 'Platform for Human Rights Education and Training'⁸ organised a seminar in Marrakech, Morocco, to give momentum to the drafting process.⁹ The suggestions and feedback provided during the informal discussions at the seminar successfully advanced the discussions and were highly appreciated by the Advisory Committee.¹⁰ The 3rd session in August 2009 saw much greater engagement of States and civil society in the debate and general support for the initial draft.¹¹ The members of the Advisory Committee agreed that given its large target audience, the declaration should be as clear, concise, and simple as possible. During the 3rd session, the Philippines, speaking on behalf of the 'Platform for Human Rights Education and Training', explained that a future draft declaration would serve to deliver a clear message to the international community about the importance of human rights education and training.

Overall, the Advisory Committee acknowledged the importance of input by civil society, international organisations, and States to the drafting of the declaration. While many States were eager to congratulate the Advisory Committee for formulating an excellent draft declaration on an important issue, Pakistan reminded the members that human rights education and training was simply a component of the right to education. Pakistan argued that the basic right to education must remain the main objective and that the declaration should not create a new legal framework. It was not clear what substantive concerns Pakistan had with the draft. It did not previously voice any concerns about the drafting of a declaration, including at the Council's 6th session when the request was made to the Advisory Committee.¹²

Amnesty International stressed the importance of including a concrete definition of human rights education in the declaration. States agreed

that the right to human rights education was a crucial aspect of the right to education and that it would serve to strengthen international initiatives for human rights education and training.¹³ There was a lengthy discussion about the various ways in which human rights education could be implemented and monitored internationally. Additionally, Mr Wolfgang Heinz said that civil society could play a larger role in monitoring progress on human rights education, and suggested that should be recognised in the draft declaration.

The Advisory Committee has also requested meetings with the Special Rapporteur on the right to education, and with the relevant members of the treaty bodies. To this effect, it suggested that a representative from the drafting group take part in the Inter-Committee Meeting (ICM) of treaty bodies, but without specifying what results would be expected from such consultation.¹⁴ It seems that there were no formal discussions of the draft declaration by the 10th ICM in December 2009.

The second draft and its introduction

Based on discussions during the 3rd session and comments received, the drafting group revised its draft declaration in time for translation for the 4th session in January 2010.¹⁵ This second draft is much better structured than the first one. It clearly highlights the principal responsibility of States to guarantee the right to human rights education, a call made by several stakeholders at the 3rd session.

The second draft of the declaration is annexed to the report of the drafting group, which contains an explanatory note providing context to the draft declaration. While this is a useful introduction to the drafting process and the history of the idea of a declaration on human rights education and training, it seems that some essential elements contained in this introduction would be better placed in the actual draft declaration. This is particularly the case of the listing of the various international instruments that form the legal framework for the draft declaration, as they are currently not specifically mentioned in the preamble.

The introduction may also provide valuable insights into the future role that the Advisory

⁷ See the 'Final table with replies received' as of 28 July 2009, available on the OHCHR extranet.

⁸ The Platform for human rights education and training is currently composed of Costa Rica, Italy, Morocco, Slovenia, Philippines, Senegal, and Switzerland and is an informal, cross-regional gathering of States which aims at strengthening human rights education and training and has been spearheading efforts at moving the project of a declaration forward.

⁹ See presentations available on the OHCHR extranet.

¹⁰ A/HRC/AC/2/L.8.

¹¹ Representatives of the Philippines, Algeria, Pakistan, Nigeria, the Russian Federation, and the United States took the floor during the discussion. Also speaking in the discussion were representatives of the following NHRIs and NGOs: International Coordination Committee, Amnesty International, SOKA Gakkai International, International Organization for the Right to Education and Freedom of Education and Human Rights Education Associates, in a joint statement, Tupaj Amaru, Indian Council of South America, and the World Association for Schools as an Instrument of Peace.

¹² A/HRC/RES/6/10.

¹³ In his presentation of the draft declaration, Mr Decaux made general comments about the positive contributions it would have for international initiatives on human rights education and training. Many of the States that spoke, including the United States, Nigeria, the Russian Federation, Algeria, and the Philippines responded positively to this.

¹⁴ See the decision of the Advisory Committee A/HRC/AC/3/L.2 available on the OHCHR extranet, in which the Advisory Committee 'urges the Office of the High Commissioner to facilitate formal consultations on the project being developed with the human rights treaty bodies, in particular and within available financial resources, during the meeting of treaty bodies to be held in December 2009'. Check www2.ohchr.org/english/bodies/icm-mc/index.htm for further information on the ICM.

¹⁵ The first draft was only available in French, as there was no official translation.

Committee envisages for itself. For instance, by suggesting that the Advisory Committee continue ‘reflection, consultation and awareness raising on the issue of human rights education’, beyond the process of elaborating the declaration. This indicates that the Advisory Committee has continued interest in addressing and advising on human rights education and training beyond the specific mandate of drafting a declaration. In general, the role of the Advisory Committee in consulting with a broad range of stakeholders might well be one of the most valuable aspects of its work. By functioning in a more informal way than the Council, the Advisory Committee offers a real possibility that positive contributions by all stakeholders are taken on board. Arguably, contributions to the work of the Advisory Committee face fewer obstacles than in the Council. In the case of the draft declaration, interested stakeholders were able to interact freely with the Advisory Committee without distinctions between, for instance, NGOs with and without consultative status with ECOSOC. Proposals brought to the Advisory Committee are, therefore, more likely to be considered on their merits rather than on whether they are politically acceptable to States.

The introduction to the declaration contains a definition of human rights education and training. Over the years, both the General Assembly and the Human Rights Council have used a variety of definitions of the term ‘human rights education’. The lack of an agreed definition was further complicated by differing translations into the six UN languages. The drafting group has now done useful groundwork in clarifying the different terms and their conceptual implications, which will allow the Council to take decisions on the definition of human rights education.¹⁶

In substantive terms the draft declaration, which is contained in an annex to the document that will be presented to the Council, is the culmination of many years of work by States, UN institutions, and civil society in the area of human rights education, and can be considered an important step forward in codifying these efforts. In its first part, it provides basic definitions.¹⁷ It also recognises the right to human rights education as a fundamental human right and outlines principles on which human rights education must be based. Although it is certainly

welcome and useful to lay down such principles, there remains room for improvement. For instance, the draft declaration recognises that human rights education must be based on the principle of non-discrimination, but it does not list the internationally prohibited grounds of discrimination. While the first draft of the declaration included a listing of some prohibited grounds of discrimination, it did not follow international law exactly as the listing was incomplete. Following the suggestion of NGOs to complement the list to be in line with the full list of prohibited grounds of discrimination, the drafting group chose to remove the list altogether and opt for a general formulation excluding ‘any discrimination’. This is a questionable decision, given that the commonly agreed list of prohibited grounds of discrimination has been defined in several international human rights treaties and resolutions, and has been reaffirmed by expert bodies.¹⁸

In the second part, the draft declaration clearly sets out the existing State obligations to provide human rights education, and stresses that it is the principal responsibility of States to promote, protect and fulfil this right. However, the draft declaration also acknowledges the role of other actors, including civil society, in ensuring adequate human rights education. It does so in particular by recalling the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on human rights defenders), which states that ‘individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights’.¹⁹ While the draft declaration explicitly recognises the role of human rights educators as human rights defenders, and acknowledges that their situation needs particular attention by States, the current formulation could be strengthened.²⁰ It calls on States to ‘take particular care to guarantee the academic freedoms and protect the human rights of those responsible for human rights education and training, as human rights defenders, whether in the formal, informal or non-formal sector.’ The formulation would benefit from more clarity and stronger wording, which could have been taken directly from the Declaration on human rights defenders. It confers on States the

¹⁶ See A/HRC/AC/4/3, Para. 19.

¹⁷ Para. 1 of the draft reads ‘Human rights education and training is defined by all activities of education, training, information, and learning aimed at fostering a universal culture of human rights’ (informal translation of the French original).

¹⁸ Most recently and extensively by the Committee on Economic, Social and Cultural rights in its General Comment 20 on non-discrimination, available at www2.ohchr.org/english/bodies/cescr/comments.htm.

¹⁹ The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* was adopted by the General Assembly in 1998 by consensus and is contained in A/RES/53/144. It is commonly referred to as the Declaration on human rights defenders.

²⁰ Para. 25 of the draft declaration reads: ‘Particular care must be taken to guarantee the academic freedoms and protect the human rights of those responsible for human rights education and training, as human rights defenders, whether in the formal, informal or non-formal sector.’

responsibility of ‘adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice’.²¹

Further, it is noteworthy that the draft recognises the responsibility of private actors in ensuring adequate attention to human rights education. On the one hand, Article 17 urges States to ensure the human rights education of private personnel exercising public authority, which could apply, for instance, to employees of private security companies. On the other hand, Article 21 confers a responsibility on private education providers to integrate human rights education components into their work.

Finally, the third part of the draft declaration deals with the implementation of human rights education and follow-up to the declaration at the international level. It suggests the setting up of an ‘international observatory’ to facilitate the implementation of the declaration. It remains to be seen what this new body would do or how it would be constituted.

The drafters have also put considerable thought into situating the draft declaration within the existing international system. The draft advocates the ‘mainstreaming’ of human rights education and training into the work of existing mechanisms, including the treaty bodies and the universal periodic review (UPR). This is particularly important given the ever-growing number of human rights instruments. Specifically, it encourages all treaty bodies to adopt general comments on the right to human rights education if they have not yet done so, and to highlight human rights education and training in their ‘list of issues’. In relation to the UPR, the draft suggests not only the inclusion of specific information on human rights education and training in the UPR process – both in the information provided and recommendations made – but also the inclusion of experts in the UPR process to assess progress in the implementation of the right to human rights education and training. This testifies to an increasingly bold stance of the Advisory Committee, as it not only suggests the way forward for implementing the right to human rights education in an effective

manner, but also suggests an interesting element that could be used to improve the UPR process as a whole. It is a welcome proposal to increase the cohesion and complementarity of the many parts of the UN system.

Surprisingly, the draft declaration currently does not include a specific reference to the special procedures.²² This seems to be an omission that should be corrected in the final draft.

Right to food

At its 2nd session in January 2009, the Advisory Committee took up the Council’s request to ‘consider potential recommendations for approval by the Council on possible further measures to enhance the realization of the right to food bearing in mind the priority importance of promoting the implementation of existing standards.’²³ Based on the input of a drafting group, the Advisory Committee adopted a set of recommendations at the 2nd session.²⁴ It retains many of the points that were controversial during the informal discussions during the 2nd session, including for instance a recommendation to prohibit the conversion of staple foods into bio-fuels, which indicates the influence of Mr Jean Ziegler, who had prepared the initial draft for the drafting group, and is the former Special Rapporteur on the right to food.²⁵ Although the recommendations on the right to food were adopted by consensus, it seems that not all members were in complete agreement with its content.²⁶ The controversial nature of some of the concepts, including that of ‘hunger refugees’, might partly explain the little discussion that took place in the Human Rights Council when the set of recommendations was presented in March 2009. The Council simply ‘acknowledged’ the work of the Advisory Committee in this area in its annual resolution on the right to food.²⁷ It also requested the Advisory Committee to continue work on the right to food by undertaking ‘a study on discrimination in the context of the right to food, including identification of good practices of anti-discriminatory policies and strategies, and to report thereon to the Council at its thirteenth session.’ Although the Advisory Committee did not explicitly commission them, Mr Jean Ziegler presented two working papers on the topic of discrimination in the context of the

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Art. 2 of the Declaration on human rights defenders.

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It simply suggests that ‘international monitoring of the full implementation of human rights education and training needs (...) the implementation of a true mainstreaming process by the competent bodies and mechanisms.’

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Council Resolution 7/14.

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The members of the drafting group are Mr Ziegler (Western Europe and Others Group), Mr Bengoa (Group of Latin American and Caribbean States), Ms Zulfiqar (African Group), Ms Chung Chinsung (Asian Group), and Mr Huseynov (Eastern European Group).

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

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See *Analytical Overview of the 2nd session of the Advisory Committee*, available at www.ishr.ch/publications.

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.

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A/HRC/RES/10/12.

right to food to the 3rd Advisory Committee session in August 2009.²⁸

While the members of the Advisory Committee agreed that Mr Ziegler's papers served to provide useful background information, it quickly became evident that some of them felt that the papers did not directly address the requests made by the Council, namely to identify best practices, strategies, and a programme of action to avoid discrimination in the context of the right to food. Mr Bengoa suggested concentrating first on a framework to structure the study requested by the Council. He presented three main themes to be addressed: discrimination in the context of the right to food, good practices, and anti-discriminatory policies and best practices.²⁹ There was very little participation from both NGOs and States in the discussion. The Chair of the Advisory Committee, Ms Warzazi, stressed the importance of State and NGO participation and regretted their limited involvement. Despite that, the Advisory Committee assigned the task of preparing a study on 'discrimination in the context of the right to food' to the original drafting group on the right to food and asked it to present a 'preliminary report' at its 4th session.³⁰ At this stage, it is unclear whether and how the Advisory Committee will seek input from stakeholders on this topic.

Missing persons

The Council requested the Advisory Committee to 'prepare a study on best practises in the matter of missing persons' by the 12th session of the Council.³¹ This initiative was led by Azerbaijan, which has expressed a consistent interest in this issue in the Council. At its 2nd session, the Advisory Committee discussed various aspects of the issue, including the definition of missing persons and the objective, content, and form of the study. The Chairperson noted, however, that an insufficient amount of time was allocated for the preparation of this study. At its 3rd session, the Advisory Committee made little progress on this topic. Mr Wolfgang Heinz, who was elected as chair of the drafting group, reiterated the need for more time to prepare the study.³² He had prepared three short working papers on missing persons in armed conflict, on a specific country and its experience with missing persons, and a compilation of recommendations formulated

over the last few years by international organisations. At its 12th session the Council followed the recommendation of the Advisory Committee that the drafting group should continue its work on the study and submit a report to the 14th session of the Council in June 2010.³³

Discrimination against persons with leprosy

In June 2008, the Council requested the Advisory Committee to 'formulate a draft set of *principles and guidelines* for the elimination of discrimination against persons affected by leprosy and their family members.'³⁴ Japan, after several years of highlighting this topic in the Council, suggested the introduction of this topic on the agenda of the Advisory Committee. Unsurprisingly, Advisory Committee member Mr Shigeki Sakamoto of Japan subsequently volunteered to work on this topic.³⁵ At the Advisory Committee's 2nd session in January 2009, Mr Sakamoto presented the initial draft of his working paper and there was only a brief discussion with little response from Advisory Committee members.

During the 3rd session, the Advisory Committee made significant progress and the discussion of this topic was a highlight of the session. Considering that the Council requested the report by September 2009, Mr Sakamoto introduced a complete draft set of principles and guidelines for the Advisory Committee's consideration.³⁶ In his report, he notes that the 'international community as a whole is responsible for establishing a society in which persons affected by leprosy have their human dignity restored, and do not suffer any inhumane treatment.'³⁷ Mr Sakamoto explained that the report addresses the human rights violations suffered by people with leprosy and members of their families. The speedy progress on the principles and guidelines benefited from the various ideas and suggestions that were gathered at a conference held by OHCHR in January 2009. Various NGOs, UN bodies, specialised agencies and programmes, scientists, medical experts, and representatives of persons with leprosy and their family members attended this conference.

However, during the discussion of Mr Sakamoto's draft at the 3rd session of the Advisory Com-

28 'The Tragedy of Noma' (A/HRC/AC/3/CRP.3) and 'Peasant Farmers and the Right to Food: a History of Discrimination and Exploitation.' (A/HRC/AC/3/CRP.5).

29 Presented by Mr Bengoa to the Advisory Committee.

30 The drafting group had been established at the 1st session, see above. Mr Ziegler said the drafting group had agreed to submit the paper to OHCHR by December 2009, in time for the January 2010 session. At its 4th session in January 2010, the Advisory Committee would only be able to amend the document, and not request new research because the report had to be submitted to the Council in March 2010.

31 Council Decision 9/101.

32 Drafting group: Mr Burney, Ms Chung, Mr Heinz, Mr Huseynov, Mr Martinez, and Mr Mudho.

33 Council Decision 12/117.

34 Para. 4, Council Resolution 8/13.

35 Advisory Committee Recommendation 1/5, A/HRC/AC/2008/L.11.

36 A/HRC/AC/3/CRP.2.

37 Page 2, A/HRC/AC/3/CRP.2.

mittee in August 2009, there was considerable divergence of opinion about the idea of isolation of persons with leprosy and the conditions of detention of persons with leprosy.³⁸ The discussion primarily developed among members of the Advisory Committee, with little interest from States and other stakeholders. No NGOs participated in the debate. Japan, having an obvious interest in the draft, was the only State to welcome the draft principles and guidelines. Despite the disagreements among members of the Advisory Committee on this specific issue, it nevertheless recommended that the Council request various UN bodies, special agencies and programmes, member States, and all relevant actors in society to give 'due consideration' to the principles and guidelines.³⁹ However, the Council did not agree with this suggestion. While the Council welcomed the draft principles and guidelines at its 12th session in September 2009, it asked the Advisory Committee to consult further with interested stakeholders.⁴⁰ The Council's reluctance to endorse the principles and guidelines in their current form indicated that the issue needed more consideration.

While NGOs had not participated in the debate during the 3rd session, they did comment on the draft principles and guidelines after more outreach had been done. NGOs and UN specialised agencies raised principled questions about the draft principles and guidelines and in particular rejected the paragraph on isolation of persons with leprosy.⁴¹ Some of the most pronounced opposition came from two separate offices of the World Health Organisation (WHO), which rejected the notion of 'isolation' of persons with leprosy.⁴² The International Disability Alliance suggested that it would be more appropriate to use the term 'persons with leprosy' instead of 'persons affected by leprosy' as similar terminology had been agreed in the *Convention on the Rights of Persons with Disabilities* (CRPD). The same organisation, drawing from its expertise on CRPD, also suggested to use principles from the CRPD, particularly with regard to the issue of 'reasonable accommodation' when combating discrimination against persons with leprosy. In this light, it would seem that the Council's decision to take more time for the drafting of the principles and guidelines was a wise move, allowing for broader and more thorough consultations among relevant stakeholders.

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Para. 2 of the draft principles and guidelines holds that '(...) Any isolation either before, during or after treatment should be temporary and should be conducted in the context of public health considerations.'

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Page 2, A/HRC/AC/3/L.8.

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Stakeholders were invited to submit views on the draft principles and guidelines to OHCHR by December 2009.

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See views received on the draft principles and guidelines, available on the OHCHR extranet.

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The WHO said that 'isolation can never be justified in the case of leprosy' and that 'the isolation of leprosy patients has never been considered as a useful public health measure'. The WHO clarifies that 'leprosy patient's infectiousness becomes negligible after starting multidrug therapy.'

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Council Resolution 11/4.

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A/HRC/AC/3/L.8.

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A/HRC/AC/3/L.8.

NEW PRIORITIES

The right of peoples to peace

Although the Advisory Committee's mandate is clearly restricted to providing advice at the Council's request, it is exploring ways to take limited initiative and present its own priority topics for further study. At its 11th session, the Council adopted a resolution on the 'right to peace' presented by Cuba, in which it 'invites (...) relevant United Nations human rights mechanisms (...) to continue to pay attention to the importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights'.⁴³ Based on this, the Advisory Committee designated Mr Miguel Alfonso Martinez, incidentally a Cuban national, to prepare 'an initial working paper on the need to initiate a study' on clarifying the right to peace. In its decision, the Advisory Committee noted that there is a need to 'further clarify the content and scope of this right; propose measures to raise awareness of the importance of realising this right; and suggest concrete actions to mobilise States, intergovernmental and non-governmental organisations in the promotion of the rights of peoples to peace'.⁴⁴ It was agreed that this new initiative would allow the Advisory Committee to make a contribution from a human rights perspective to the debate on peace and security. It was decided that the study would be submitted for the Advisory Committee's consideration no later than its 5th session in August 2010.

Human rights of elderly people

The Advisory Committee also decided during the year that it would focus on the human rights of elderly people. It noted that the 'number of elderly people is rapidly increasing, and human rights of elderly people are at risk of violation in various economic, institutional, community and family settings'.⁴⁵ The Advisory Committee identified the need to consider the human rights of elderly people in a focused and integrated manner within the UN human rights system. In the past, the rights of the elderly have been dealt with only as a component of the larger social development agenda. The Advisory Commit-

tee designated Ms Chung to prepare an ‘initial working paper’ determining the need to study the human rights of elderly people and making practical recommendations on the promotion and protection of these rights. Ms Chung was due expected to submit her working paper to the Advisory Committee at its 4th session in January 2010.

The consideration of new priorities by the Advisory Committee raised some concerns among States and stirred debate about the mandate of the Advisory Committee. Pakistan, in a strongly worded and rather hostile statement, noted that while it had in principle advocated for the creation of the Advisory Committee, it believed that the body should not exceed its limited mandate. The Advisory Committee acknowledged these concerns but emphasised that it did not intend to ‘threaten’ the work of the Council in any way.

PROCEDURAL DEBATES

Rules of procedure and methods of work

At its 2nd session in January, the Advisory Committee briefly discussed its draft rules of procedure and working methods, but postponed their adoption until the 3rd session in August 2009. Much of the latter session was spent reviewing and making amendments to the draft rules. Overall, it was obvious that the Advisory Committee favoured a set of rules and procedures that allowed for a great deal of flexibility in its work.⁴⁶

Although the Chair repeatedly stressed the importance of NGO participation during the session, there was no discussion of the rules relating to NGO participation. The Advisory Committee’s predecessor, the Sub-Commission on the Promotion and Protection of Human Rights, had established a practice of allowing non-ECOSOC accredited NGOs to participate in some of its working groups. The adopted rules of procedure of the Advisory Committee, however, use similar language in relation to the participation of NGOs as Council *Resolution 5/1*, basing it on

ECOSOC *Resolution 1996/31* and established Commission on Human Rights practices. This seems to indicate that at least for sessions of the Advisory Committee itself, there is no room for non-ECOSOC accredited organisations to take part. Since the Advisory Committee, in contrast to the Sub-Commission, may not establish subsidiary working groups, the space that used to exist for non-ECOSOC NGOs seems to be lost for the time being.

Officers

Halima Embarek Warzazi from Morocco was elected as the Chairperson and three vice-chairs were elected with one from the Asian region, one from the Western European and others region and one from the Latin American region within the Advisory Committee. Mr Jose Antonio Bengoa Cabello from Chile, Mr Purificacion V Quisumbing from the Philippines, Mr Jean Ziegler from Switzerland, and Mr Latif Huseynov from Azerbaijan were elected as Vice-Chairpersons. Mr Huseynov is also serving as the Advisory Committee’s rapporteur. They will all serve terms of one year.

NGO and State participation

The adopted rules of procedure note that both States and NGOs can participate in the work of the Advisory Committee. During the 3rd session, Ms Warzazi often stressed that she considered State and NGO participation as being very important. She maintained that she was not impressed with the level of participation by both States and NGOs and called it a ‘great pity’ that there was not a higher level of involvement. Only in the discussion on human rights education and training was there extensive participation by NGOs and States in the discussion during which statements of support and suggestions for improvements of the draft were made.⁴⁷ Other issues did not receive as much attention from NGOs or States. In fact, the adoption of the draft principles and guidelines on the elimination and discrimination against persons affected by leprosy and their family members saw no participation from NGOs. This is even more worrying given the strong reservations expressed

⁴⁶ A/HRC/AC/3/2, Annex III; adopted by the Advisory Committee without a vote.

⁴⁷ States that made statements: Algeria, Nigeria, Pakistan, the Philippines (also on behalf of Costa Rica, Italy, Morocco, Slovenia, and Switzerland), the Russian Federation, the US. NGOs that made statements: Amnesty International, Association mondiale pour l’école instrument de paix, Indian Council for South America, Indian Movement Tupaj Amaru, Soka Gakkai International (also on behalf of Human Rights Education Associates).

subsequently by NGOs on the principles and guidelines. It therefore seems that low level of participation in the discussions was due more to a lack of knowledge about the discussions taking place than to a lack of interest.

CONCLUSION

The quality of discussions in the Advisory Committee varied vastly between sessions and between the topics discussed. The draft declaration on human rights education and training gained a lot of traction during the year after a slow start in January 2009, and is now ready for consideration by the Council in March. Other topics have figured less prominently on the agendas of NGOs and States and are therefore less advanced. A third group of issues, such as the issue of gender mainstreaming and discrimination against persons with leprosy have moved swiftly within the Advisory Committee but were subsequently slowed down by the Council.

The scope of the Advisory Committee's mandate will likely continue to affect its own work and be discussed within the Council. When the Advisory Committee was established in 2007, the Council decided that it would have no 'right of initiative'.⁴⁸ Many NGOs and some Advisory Committee members themselves have criticised the decision to restrict the Advisory Committee's mandate. Particularly the 3rd session of the Advisory Committee sparked renewed debate about the extent to which it should present new topics for the Council's consideration. So far, there has not been any specific opposition to the new topics taken up by the Advisory Committee, apart from general reminders of its limited mandate. Possibly the next test for this will be the reaction of the Council to the initiative on the rights of the elderly, which was not specifically mandated by the Council. The Advisory Committee is likely to carefully avoid raising too much opposition with its proposals, as many of its current members were members of the Sub-Commission when it raised the wrath of the members of the then Commission on Human Rights with the adoption of the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'.

In terms of working methods, the Advisory Committee has used an innovative approach. With the questionnaire on the draft declaration on human rights education and training it has also tested a positive and inclusive methodology, which has allowed for the continued involvement of interested stakeholders.

Although there is openness by the Advisory Committee to participation by NGOs and States, there has been limited involvement in discussions by these stakeholders. This may be a result of the Advisory Committee being a relatively new body or due to its inability to adopt resolutions on themes and country situations. As the experience of the questionnaire on the draft declaration on human rights education and training has shown, however, NGOs are often quicker and more thorough in responding to questions of interest to them than States. This means that the open and inclusive model used on the elaboration of the draft declaration should be used as a positive practice, and replicated in the future.

A comparison of the different initiatives underway in the Advisory Committee also shows that the potential of the Advisory Committee to add value to the work of the Council and to be a useful tool for human rights defenders depends on a variety of factors. This includes the issue at stake, the will of States or coalitions of States to advance 'their' issues, and the individual experts assigned to work on a particular topic between sessions. Some issues have been on the Advisory Committee's agenda for some time but have not seen any significant development, such as the 'promotion of a democratic and equitable international order' and the issue of human rights and international solidarity. Other topics, such as the draft declaration on human rights education and training, have benefited from the sustained attention of experts and the input of all stakeholders and are now ready for political endorsement by the Council. It seems that the relatively high level of political support at the outset, as well as the cross-regional State interest in the topic has enabled the Advisory Committee to progress.

⁴⁸ Council Resolution 5/1 specifies that 'the Advisory Committee shall not adopt resolutions or decisions' (Para. 77) and that 'the Advisory Committee shall not establish subsidiary bodies unless the Council authorizes it to do so' (Para. 81).

