

ADVISORY COMMITTEE



About 50,000 internally displaced people have made a makeshift tent camp on the golf course of the Petionville Club, a privately owned golf and tennis club in Port-au-Prince.

UN PHOTO/SOPHIA PARIS

The Human Rights Council Advisory Committee (the Advisory Committee) held its 4th session from 25 to 29 January 2010. It adopted six recommendations for the consideration of the Human Rights Council (the Council) at its March 2010 session on: human rights education and training, right to food, elimination of discrimination against persons affected by leprosy and their family members, human rights of the older person, missing persons, and protection of the human rights of civilians in armed conflict.¹

The Council at its March session held a non-competitive election and re-elected six Advisory Committee members and one new member.²

At the Advisory Committee's 4th session, Committee member Mr Emmanuel Decaux presented a third draft of the 'declaration on human rights education and training' requested by the Council in September 2007.³ One of the over-arching themes of discussion was the distinction between the 'right to education' and the 'right to human rights education'. As a result, the draft declaration was revised to state that human rights education 'is related to the full implementation of the right to education'.⁴ The exact scope of the right to human rights education will be a recurring issue during future discussions.

The Council discussed the draft declaration at its March session. While discussions in the Advisory Committee focused on substance, debates in the Council centred on procedural issues. The Council adopted a resolution establishing an open-ended intergovernmental Working Group to negotiate, finalise, and submit to the Council an updated draft declaration.⁵ The allocation

¹ Advisory Committee reports, studies, and recommendations from its 4th session are available at www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session4/documentation.htm. Other topics briefly discussed during the 4th session included the right to international solidarity; gender and disability mainstreaming in the Advisory Committee's work; and the promotion of a democratic and equitable international order. However little to no progress was made during the session and no recommendations were made to the Council on these topics.

² Ms Zulficar, Mr Sakamoto, Ms Chung, Mr Kartashkin, Mr Bengoa Cabello, and Mr Heinz were re-elected. One new member, Mr Alfred Ntunduguru Karokora of Uganda, was elected.

³ Human Rights Council *Resolution 6/10*, 28 September 2007.

⁴ Previous drafts simply noted that they were 'indissociable' from one-another

⁵ Council *Resolution 13/15*. The resolution also invites Mr Decaux to participate in the Working Group meetings.

of additional resources for the Working Group caused some concern, particularly with the UK, the European Union and Japan.⁶ In this light, agreement for the establishment of a working group was found on the basis that an informal process would precede the Working Group's formal session.⁷ It will be particularly challenging to ensure the participation of stakeholders, including providers of human rights education, in both the formal and informal processes.

Regarding the right to food, the Council had tasked the Advisory Committee to 'undertake a study on discrimination in the context of the right to food'.⁸ At its 4th session, the Advisory Committee agreed that the preliminary report drafted by Mr Jean Ziegler successfully identified good practices and anti-discriminatory strategies in response to the Council's request. Much of the discussion, however, went further and focused on the specific needs of vulnerable groups including refugees, prisoners, and indigenous peoples, and accordingly the Advisory Committee called for a separate study on the rights of peasants, fishermen, and rural women in relation to the right to food. It did not reach agreement on whether to recommend drafting a specific convention on the rights of peasants and instead decided to await direction from the Council. The Council 'acknowledged' the Advisory Committee's work on the right to food. It encouraged the completion of the study on discrimination in the context of the right to food after taking into account views of all stakeholders. At the same time, it followed the Advisory Committee's recommendation to start a new, separate 'preliminary study' on the 'rights of people working in rural areas'. However, it did not provide guidance on the possible drafting of a specific convention in this regard.⁹

In response to the Advisory Committee's decision to evaluate the necessity of a study on the human rights of older persons, a working paper on the issue was submitted to the 4th session and gained the unanimous support of the Advisory Committee. The Advisory Committee agreed that because it conducted the study without an explicit mandate from the Council, it should 'proceed with caution'. Accordingly, the Advisory Committee, as in the case of the right to food, refrained from making specific recommendations, or even recommending a new convention on this topic as suggested in the working paper.¹⁰

⁶ As the funds for the Working Group have to be approved by the 5th Committee of the General Assembly in late 2010, the Working Group session will likely take place in early 2011.

⁷ During informal consultations on the draft resolution, several States expressed their preference for an informal process of negotiations.

⁸ Council Resolution 10/12, 26 March 2009. Other topics briefly discussed during the 4th session included the right to international solidarity; gender and disability mainstreaming in the Advisory Committee's work; and the promotion of a democratic and equitable international order. However little to no progress was made during the session and no recommendations were made to the Council on these topics.

⁹ See paragraph 42-44 of Council Resolution 13/4.

¹⁰ The Advisory Committee referred to its mandate, by which it 'may propose (...) research proposals within the scope of the work set

Instead, it 'expressed the hope that the (...) Council will consider entrusting the Advisory Committee with the preparation of a study' on the issue. During the Council's March session, the Republic of Korea expressed its support for this study, which was not surprising given that the paper was prepared by the Korean Committee member Ms Chung Chinsung. The Council merely noted that the Advisory Committee's recommendation 'may be addressed in the context the work of the Council at its future sessions'.¹¹ This essentially means that the paper will not receive any formal endorsement, and that there is unlikely to be any follow up until a State takes up the topic in the Council. It will be interesting to see if the Republic of Korea will take on this task.

Similarly, Japan at the March session of the Council showed its strong support for the work of Japanese Committee Member Mr Shigeki Sakamoto on the draft principles and guidelines on the elimination of discrimination against persons affected by leprosy and their family members.¹² In September 2009, the Council had requested the Advisory Committee to hold further consultations with relevant stakeholders.¹³ At its 4th session, the Advisory Committee expressed appreciation about comments and suggestions received, including from States, NGOs, and the World Health Organization (WHO),¹⁴ and agreed that the majority will be included in the final draft to be submitted to the 15th session.

Another study under consideration was on best practices on the issue of missing persons.¹⁵ The Committee sent a questionnaire to States in September 2009; as of the 4th session responses had been received from only 18 States. Discussion in the Committee largely focused on the scope of the study, definitions of missing persons especially in comparison to victims of enforced disappearances; definitions of armed conflict and 'belligerents'; and the importance of not duplicating work of existing national institutions in this area.

The final recommendation adopted by the Advisory Committee addresses the preparation of a study on the human rights of civilians in armed conflict. The Advisory Committee was tasked with preparing a draft, following the proposal by Egypt for an expert consultation on the topic.¹⁶ Committee Member Ms Mona Zulficar volunteered to join the upcoming expert consultation, a recommendation that was 'welcomed' by the Council at its March session.¹⁷

out by the Council', apparently in defense of its initiative in this area. See paragraph 77 of Council Resolution 5/1, 28 June 2007.

¹¹ Human Rights Council Presidential Statement 13/11.

¹² Council Resolution 8/13, 18 June 2008.

¹³ Human Rights Council Resolution 12/7, 1 October 2009.

¹⁴ The text received from the WHO regarding isolation was subsequently incorporated as a footnote to the draft.

¹⁵ Council Decision 12/117, 1 October 2009. See the OHCHR extranet available at <http://portal.ohchr.org> for responses to the OHCHR questionnaire on this issue, and ISHR's Human Rights Monitor 2009 for further background.

¹⁶ Council Resolution 9/9 and 12/5.

¹⁷ See fn 11 above

During its March session, the Council largely welcomed the work of the Advisory Committee. However, the Russian Federation and the European Union recalled the Advisory Committee's restricted mandate thus indirectly expressing some reservations about its work.¹⁸ In addition to the two specific decisions on human rights education and the right to food, the Council endorsed a Presidential Statement that broadly noted the Advisory Committee's work.¹⁹ The Presidential Statement was adopted by consensus, but India 'disassociated' itself from the text. In a note circulated subsequently, it expressed its 'displeasure at the continuing disregard' by the Advisory Committee for its mandate.²⁰ In particular, India took issue with the Advisory Committee's 'expression of hope' on the human rights of the elderly, claiming that it was beyond the Advisory Committee's mandate to examine the issue without a 'specific request by the Council'.

The Council's practice of simply noting the Advisory Committee's work is problematic. Because of its limited mandate to undertake or continue work at its own initiative, 'noting' the work is insufficient to follow up specific studies or proposed initiatives. These are likely to remain 'orphans' until States takes up the issue in the Council, and the Advisory Committee remains unable to place issues on the Council's agenda. With the exception of the draft declaration on human rights education and training, which enjoys the support of a cross regional platform, all issues are primarily driven by the interests of individual States. Thus, Cuba is taking the lead on the right to food; Japan is taking the lead on persons with leprosy; the Republic of Korea is taking the lead on the rights of the elderly; and Egypt leads on the protection of civilians in armed conflict. Within the Advisory Committee, many of the topics are worked on by nationals of the States interested in a topic, or in the case of the right to food by Mr Jean Ziegler who was previously the Special Rapporteur on food and enjoys a close working relationship with Cuba.

The Advisory Committee is clearly still trying to find its place in the human rights system. Equally the Council seems to be struggling to define how the Advisory Committee could be provide it with specific expert advice. So far States have mostly used it to advance a particular national interest. At the same time, the experience of the draft declaration on human rights education and training is demonstrating how the Advisory Committee can benefit the broader human rights community. This should guide future Council requests to the Advisory Committee. ■

¹⁸ www.ishr.ch/council-news/737-human-rights-council-discusses-report-of-its-advisory-committee.

¹⁹ See fn 11 above.

²⁰ A/HCR/13/G/22, available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=104&t=2.