

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 2 AND 10, TECHNICAL COOPERATION AND ADVISORY SERVICES HUMAN RIGHTS COUNCIL, 10<sup>TH</sup> SESSION 25 MARCH 2009

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### Overview

On 25 March 2009, the Human Rights Council (the Council) under Item 2 discussed various reports by the High Commissioner for Human Rights on technical and advisory services provided by her Office to countries, including Afghanistan, Bolivia, Colombia, Cyprus, Guatemala, Nepal and Sierra Leone. It also held an interactive dialogue with the Independent Expert on the human rights situation in Somalia.

Notably, very few countries commented on the reports by the High Commissioner on her country-level work. Some States welcomed the work of OHCHR in providing technical assistance and advisory services.<sup>1</sup> They stated that this was an important aspect of OHCHR's work. Algeria reiterated a call it had made previously that there should be a rule about discussing reports that are not available in time. It also stated that it is difficult to take a position on human rights issues that are political but that the authors of the reports had made efforts to substantiate their positions on human rights issues. Finally, Algeria claimed that the reports on developing countries contained far more recommendations than the report on Cyprus, which it perceived as a developed country. It stated that recommendations should be more balanced in all cases.

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<sup>1</sup> Czech Republic (on behalf of the EU), Spain, Denmark, UK.

OHCHR's work in Nepal received most attention during the debate with all States that spoke welcoming the progress in that country and encouraging Nepal to continue its cooperation with OHCHR.

On 25 March 2009, the the Council held an interactive dialogue with the Independent Expert on the situation of human rights in Somalia, Mr Shamsul Bari, on the occasion of the presentation of his report under Item 10 of its agenda. The report focused on the need for both the international community and the new Somali government to take advantage of the window of opportunity that now exists to combat the serious violations of international human rights law and humanitarian law taking place in Somalia, build institutions, and create lasting peace and security. Mr Bari focused on the potential of the Djibouti Peace Agreement as a positive step in ensuring continued dialogue, as well as justice and reconciliation. He also emphasised the major challenges of his mandate and the frustration he felt in carrying out his mandate when he was not able to visit Somalia.

Item 2, reports on OHCHR technical assistance

### **Afghanistan**

The High Commissioner also submitted a report on the situation of human rights in Afghanistan and on the achievements of technical assistance provided to that country.<sup>2</sup> In the report the High Commissioner expresses concern regarding the deteriorating conditions in the country. Of serious concern is the lack of progress on transitional justice, in particular in terms of accountability for past abuses. The report states that further progress is needed in safeguarding women's rights and addressing impunity. The Deputy High Commissioner expressed serious concern that despite a *de facto* moratorium, the death penalty is used again. She underlined the need to ensure protection of freedom of expression for the media and human rights defenders in the context of the upcoming elections. OHCHR will continue to work as part of the UN Assistance Mission in Afghanistan to support the Afghan Independent Human Rights Commission, Government institutions and civil society. Ms Kyung-wha Kang added that the forthcoming Hague Conference on Afghanistan presents an unique opportunity to reaffirm the centrality of human rights in addressing the challenges of the state-building process.

Afghanistan thanked the High Commissioner for the report and stated that it has made substantial progress in the different areas of human rights, including participation of all citizens, especially women in political, social and economic life, and reform of the legal and judicial system. Afghanistan stated that it is also facing serious challenges, especially from activities of terrorist organisations, which hamper peace, progress and development. Afghanistan assured its commitment to respect and observe human rights by incorporating the main international human rights treaties, covenants and protocols into national legislation. In response to the report Afghanistan stated that the report did not take into account the will and commitment of the Government for the betterment of human rights as a whole. Afghanistan asserted that the death penalty is only executed for acts of heinous crimes and after having the case thoroughly examined by the judicial authorities. The delegation explained that the law, which regulates public media, guarantees to all citizens the right of access to the media without interference by the Government. Moreover, the constitution of Afghanistan guarantees a suitable environment for freedom of expression, freedom to establish and to become member of political parties and social organisations. It claimed that its laws prevent discrimination and violence against women and guarantee equal rights and obligations for all citizens including the rights of minorities. Finally, Afghanistan reiterated its commitment to promote and protect human rights and its willingness to cooperate with the international community and UN organisations.

Finland considered the improvement of the human rights situation in Afghanistan as a prerequisite for its sustainable development and one of the most crucial challenges faced by the country. It supported the conclusion in the report that while women have made important advances in the areas of education, employment and political partnership they continue to confront discriminatory laws, attitudes and practices. It reiterated that the efforts by OHCHR to support the Afghan Independent Human Rights Commission are crucial. Furthermore, the Government should allocate an adequate budget and ensure that legislation respects its independence. The Czech Republic (on

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<sup>2</sup> A/HRC/10/23.

behalf of the EU) emphasised the importance of technical cooperation for an integrated strategy to ensure Afghanistan's long-term peace and security and the need to strengthen the human rights based approach. It noted with concern the increasing restrictions on the media. It recognised the significant progress achieved on gender equality and condemned continuing forms of discrimination and violence against women and girls, in particular aimed at preventing girls from attending school.

### **Bolivia**

Ms Kyung-wha Kang, Deputy High Commissioner for Human Rights, presented the reports of the United Nations High Commissioner for Human Rights on the activities of her office in Bolivia.

Regarding the report on Bolivia<sup>3</sup>, Ms Kang noted the various monitoring missions of OHCHR and the efforts to provide advisory services and training in human rights to governmental institutions and civil society. OHCHR provided technical comments on the new draft constitution and on other legislative proposals. The Ministry of Justice also received technical assistance on the elaboration of the national human rights action plan. Ms Kang welcomed the enactment into law of the UN *Declaration of the Rights of Indigenous Peoples*. However, Ms Kang underscored that efforts still need to be done in Bolivia in the field of human rights.

Bolivia, as a concerned State, indicated that it has a positive view on the work of the OHCHR presence. It underscored the establishment of a new political constitution, a Magna Carta which includes human rights from various international treaties and pointed out Bolivia's commitment to the rights of indigenous peoples. Bolivia drew attention to the new national action plan for human rights implemented through the national council of human rights. Bolivia welcomed the report of OHCHR on its activities in the country, as it is based on the idea of improving the human rights situation. However, it expressed some reservations about particular paragraphs<sup>4</sup> of the report and requested information about the sources for the conclusion that the Government has threatened to institute proceedings against certain judges for some of their rulings.

Spain noted the importance of OHCHR's role in providing advice on the issue of indigenous peoples in Bolivia. The Indian Council of South America<sup>5</sup> highlighted that some laws are not being implemented to improve the rights of indigenous people. It requested that improvements should be made in the areas of justice.

### **Colombia**

The Deputy High Commissioner presented the report on Colombia.<sup>6</sup> She welcomed the openness of the Government and its good cooperation with the OHCHR office there. The main concerns highlighted by Ms Kang were the ongoing violence perpetrated by illegal armed groups and the continued stigmatisation of human rights defenders.

Colombia welcomed the report and recognised the challenges the country is facing. It noted that Colombia had presented a document containing comments on the report and which should be taken into account to assess the complex situation. Colombia acknowledged that it faces problems in relation to illegal armed groups linked to drug trafficking, but reiterated that 'Colombia has maintained a policy of openness towards the international community and has been consistent in perceiving its policy of living up to international commitments (...)' Colombia referred to the outcome of the universal periodic review (UPR) and reaffirmed that the recommendations and voluntary commitments accepted in the context of the UPR will all serve as a roadmap to make progress in the human rights situations in Colombia.

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<sup>3</sup> A/HRC/10/31/Add.2.

<sup>4</sup> Paragraph 31, 32, 33.

<sup>5</sup> Joint Statement: Indian Council of South America (CISA), International Human Rights Association of American Minorities (IHRAAM).

<sup>6</sup> A/HRC/10/32.

During the debate, the Czech Republic (on behalf of the EU), the UK, Finland, Spain, Denmark, and Algeria took the floor to comment on the report and the situation in Colombia. Whereas the Czech Republic underlined the importance of the EU technical assistance program in Colombia and confirmed that an EU-Colombia dialogue on human rights will take place in April 2009, Finland regretted the issues of impunity and reiterated that strengthening the right of victims should be at the centre of the Government's policies. Among other issues, Algeria regretted that Colombia's report was only available in Spanish as this prevented many States from making a useful contribution.

The Colombian Commission of Jurists and Amnesty International both referred to the situation in Colombia. The Colombian Commission of Jurists pointed out the continuing cases of extrajudicial executions committed by a significant number of military units. It drew attention to guerrilla attacks and sexual violence against the civilian population and noted serious violations against human right defenders and trade unionists as well as increasing stigmatisation of their work by the highest State officials.

The Colombian Commission of Jurists highlighted the failure of the justice and peace law, which after 3 years has not guaranteed the rights of victims to truth and justice. Amnesty International also underlined the problems related to human rights defenders and trade unionists and informed that a 'dozen of human rights defenders and 46 trade unionists were killed alone in 2008'. Amnesty International highlighted that a big gap remains between 'the government's stated commitment and the reality on the ground in Colombia.' It recommended the Government to 'publicly acknowledge at the highest levels the invaluable work carried out by those who defend human rights'. Such an acknowledgment would be effective in discouraging attacks and harassments against human right defenders.

## **Cyprus**

The Deputy High Commissioner presented the report on Cyprus.<sup>7</sup> She reported on human rights issues resulting from the division of the island, including freedom of movement, property rights, issues relating to missing persons, discrimination, freedom of religion, right to education, human trafficking, and economic rights.

Cyprus stated that this has been discussed since 1975 but that no significant progress has been made to implement previous resolutions by the former Commission on Human Rights. It stated that Greek Cypriots were still being denied the right of return and suffering violations of their property rights. Cyprus also stated that 'geographic manipulations' are reaching alarming levels with the settlers outnumbering the 'native Turkish Cypriots' by 3 to 1. It highlighted that the only issue on which there has been some positive developments is in relation to missing persons. However, Cyprus stressed that there was still a need to conduct an independent investigation into the actions of the Turkish military in 1974 and the whereabouts of those missing. Cyprus criticised the report for not addressing the key issues and going beyond the mandate in addressing other issues, thus leading to a 'blurred picture' of the situation. It argued that the division of the island was not a root cause of the human rights problems identified but constituted itself a human rights violation.

Greece stated that the Council must remain seized of this matter. It echoed the comments by Cyprus that the report overlooks that the root of the problems is the invasion by Turkey. It stated that the violations of fundamental rights have not yet been adequately addressed and that the occupying power must conduct independent investigations into these violations.

Turkey noted 'remarkable achievements' in relation to missing persons and stated that the report should better reflect the causes of missing persons. It argued that the isolation of Turkish Cypriots constitute flagrant violations of human rights.

Algeria stated that it hoped that one day there would be reunification. Other States did not comment. Subsequently, Cyprus, Greece and Turkey exchanged several rights of reply about the situation each accusing the other of being responsible for human rights violations.

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<sup>7</sup> A/HRC/10/37.

## **Guatemala**

The Deputy High Commissioner, Ms Kyung-wha Kang, presented the report on the activities of OHCHR's office in Guatemala.<sup>8</sup> The report provides an overview of OHCHR's work in Guatemala and comments on the human rights situation in the country, the Government's policies regarding human rights and the follow-up to the recommendations made in the previous report of the High Commissioner. The report highlights in particular steps taken by the Government to enhance the protection of the rights of women, such as the new law against femicide and other forms of violence against women. Since 2007, OHCHR has been analysing legislative initiatives in Guatemala related to the advancement of women's and children's rights and provided technical assistance to the Government on compliance with international human rights standards. The report raises concern regarding the situation of human rights in areas such as the right to life, the fight against impunity, the rule of law, the fight against discrimination and the situation of human rights defenders. The lack of capacity of State institutions to deal with persistent and increasing levels of violence and general insecurity also remains a serious concern. Ms Kyung-wha Kang stated that during her last visit in September 2008 the mandate of the OHCHR office in Guatemala was renewed for another three years.

Guatemala thanked the High Commissioner for the annual report. The Government welcomed the extension of OHCHR's mandate in Guatemala. Guatemala acknowledged the content of the report as it outlines both challenges that remain in the field of human rights as well as progress and efforts made by the Government. It welcomed the recommendations of the High Commissioner which point to issues in the areas of justice, security and the fight against impunity. Guatemala acknowledged that these areas represent challenges and expressed its commitment to face these problems. It stated its wish to see an assessment of the activities of the OHCHR in Guatemala. It asked for a list to be included in the next report that shows all existing problems as well as the specific actions that will be undertaken by OHCHR to tackle each individual problem.

The Czech Republic (on behalf of the European Union) stated that despite some achievements, there are still human rights issues of particular concern in Guatemala, such as violations of the rights to life and security, violence against women and attacks against human rights defenders. Spain welcomed the work of OHCHR in Guatemala and welcomed the advice that is provided to the Government on specific legal provisions such as on legislation against femicide and the protection of minors.

## **Nepal**

### ***Presentation by Deputy High Commissioner***

The Deputy High Commissioner presented the report of the High Commissioner on the human rights situation and the activities of her Office, including technical cooperation, in Nepal.<sup>9</sup> She congratulated the Government on successful steps taken on the transition to peace and democracy, including the creation of the constituent assembly. The High Commissioner witnessed these developments personally with her successful visit to Nepal the previous week, which included a genuine exchange of views with Government and other actors on tackling impunity, and providing truth and reparation for victims. She also addressed longstanding issues including discrimination against women, indigenous persons and other vulnerable groups, especially in relation to the protection of economic, social and cultural rights and the strengthening of national mechanisms to protect these rights. The Deputy High Commissioner finally informed the Council that the High Commissioner had offered to extend the work of OHCHR in Nepal for a further three years, as its mandate ended in June 2009.

### ***Comments by Nepal***

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<sup>8</sup> A/HRC/10/31/Add1

<sup>9</sup> A/HRC/10/53

Speaking as a concerned State, Nepal expressed appreciation for the report and explained that it had already sent its comments in writing. It noted that this was the first report of its kind since the election and formation of the new Government. The Government had created democratic institutions, showed ‘exemplary cooperation’ with OHCHR and special procedures, and it hoped that the High Commissioner’s recent visit gave her the opportunity to see the efforts being made.

Concerning domestic priorities, the delegate explained that the writing of the Constitution was critical and would include the widest participation. Listing all relevant elements of the interim Constitution pertaining to human rights protection, he stated that they would seek to inscribe the same elements in the new Constitution. The delegate also declared that the powers of the National Human Rights Commission of Nepal had been augmented, and that a rights-based approach to national development was being undertaken. Massive debt relief to small farmers and a powerful independent land reform commission were examples that would impact on the realisation of economic, social and cultural rights. It also claimed that, as the first State in the region to ratify *ILO Convention No. 169*, Nepal stands fully committed to protecting the rights of indigenous peoples. Concerning the process of transitional justice, the Council was informed of the pending creation of a truth and reconciliation commission, a new commission to investigate disappearances and a new ordinance to criminalise the offence.

Nepal concluded that it was committed to ending impunity in a just and democratic society, with increased assistance from the international community.

### ***Interactive dialogue and right of reply***

The majority of States that spoke under Item 10 addressed the High Commissioner’s report on Nepal, and all (the Czech Republic (on behalf of the EU), Canada, Switzerland, Finland, Ireland and Denmark) called for the extension of OHCHR’s mandate in the country. The United Kingdom, Ireland and Switzerland welcomed the commitment of the newly elected Government to promote human rights, establish the rule of law and tackle impunity, while Switzerland also noted that significant work needed to be done in these areas and also in ethnic integration and control of the armed forces. Denmark also noted that the challenges that lay ahead were as ‘daunting’ as those that had gone before. The United Kingdom welcomed the creation of the National Human Rights Council as a unique and essential part of a system of protection. Switzerland recognised the importance of supporting the work of the National Human Rights Commission of Nepal as a transitional justice mechanism. Ireland, echoing the views of OHCHR, specifically referred to the need to put in place a national mechanism to protect human rights defenders in the course of their work. Finland agreed with the High Commissioner’s identification of the need to protect and promote economic, social and cultural rights and urged that the voice of women and youth be heard during the transition.

In relation to the extension of OHCHR’s mandate, Denmark, the United Kingdom and Canada recognised its important role in ending impunity and preventing future violations. Canada stated that it was essential that OHCHR complete its work at the local level, whereas Switzerland and Canada referred to the ‘positive signal’ that Nepal would show to the international community if it were to extend the mandate. Exercising its right of reply, Nepal stated that it appreciated the close attention given to the ongoing process. It was aware that OHCHR’s mandate in Nepal ended in June, and this had been discussed when the High Commissioner visited. The Government explained had explained to her at the time that a decision would be made before June.

### **Sierra Leone**

The Deputy High Commissioner introduced the report.<sup>10</sup> She noted that the report covers both the human rights situation in the country and the work of the peacekeeping mission there. The Deputy High Commissioner highlighted some positive developments but stated that a number of critical challenges remain, including lack of progress on transitional justice, the prevalence of traditional practices, and lack of access to services.

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<sup>10</sup> A/HRC/10/52.

Sierra Leone did not comment on the report. Only the Czech Republic (on behalf of the EU) commented and raised the critical issues of sexual and gender based violence, the need for capacity building of the justice sector and the national human rights institution. It asked about the main challenges for OHCHR in Sierra Leone and how its mandate could be strengthened.

## Item 10, Technical assistance and advisory services

### **Independent Expert on the human rights situation in Somalia**

#### ***Report of the Independent Expert***

In his presentation, the Independent Expert, Mr Shamsul Bari, gave an overview of his written report<sup>11</sup> as well as a passionate call for international assistance. Calling the situation in Somalia the ‘worst humanitarian crisis in the world’ and the ‘most forgotten humanitarian crisis’ he explained that two entire generations have had no formal education, that the military is unable to provide basic services and protection, and that the war rages all the time. He also expressed great frustration and disappointment in his inability to visit Somalia due to the volatile situation to carry out his duties as mandate holder. Mr Bari explained that as he was unable to visit Somalia, he gathered his information from refugees. Nevertheless, he added, there was light at the end of the tunnel and he stressed that the withdrawal of Ethiopian troops, the Djibouti Peace Agreement, and the newly elected government meant that there was an opportunity for real change to take place.

#### ***Interactive Dialogue***

The interactive dialogue on the human rights situation in Somalia was constructive. All States engaging in the dialogue were in agreement on the gravity of the situation in Somalia and on the need for international action and support. Only a handful of States expressed diverging points of view. For the most part, that disagreement was in regards to the type of intervention needed, the appropriateness of setting up an international investigative body for human rights violations in Somalia,<sup>12</sup> and the usefulness of the Council holding a special session on the human rights situation in Somalia.<sup>13</sup> The other issues that were underscored included the presence of the UN in Somalia and the importance of having officers on the ground,<sup>14</sup> the need to guarantee the safety of humanitarian workers and UN personnel,<sup>15</sup> and concerns over sexual violence and violence against women.<sup>16</sup> It was notable that the level of agreement on the situation in Somalia was high, as was Somalia’s receptiveness to all comments and recommendations. Only Ethiopia<sup>17</sup> and the *Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine*<sup>18</sup> expressed dissatisfaction with the mandate.

#### ***Responses***

In his responses, Mr Bari expressed thanks to those who supported his mandate and regret that he had not been as useful as he wanted to be. He suggested that even if it remains impossible for him to visit Somalia, it would be

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<sup>11</sup> A/HRC/10/85.

<sup>12</sup> Yemen (both in national capacity and on behalf of the Arab Group), Human Rights Watch, Czech Republic (on behalf of the European Union).

<sup>13</sup> Bangladesh, Bahrain, Czech Republic (on behalf of the European Union), Djibouti

<sup>14</sup> Egypt (on behalf of the African Group), Algeria.

<sup>15</sup> Italy, Canada.

<sup>16</sup> Czech Republic (on behalf of the European Union), Sweden, Human Rights Watch.

<sup>17</sup> The Ethiopian delegation criticized the independent expert for his reliance on documentation prepared by NGOs such as Human Rights Watch which they called ‘inaccurate’.

<sup>18</sup> CRED expressed concern over the feasibility of the Mandate and did not see the relevance of many of Mr Bari’s recommendations.

useful for him to talk to Somali authorities and that if his mandate is to be renewed, he would want it to be based on the guarantee of that opportunity. Mr Bari also expressed disappointment that he had been unable to work with the Special Representative of the Secretary-General on Somalia. He explained that their work was complementary and that they had to work in tandem. He also stressed the importance of giving special attention to the transitional justice mechanism. Based on his interactions with Somali parliamentarians in Djibouti, he recommended setting up a system whereby people in Somalia and outside experts can come together to discuss issues when there is a conflict, for example, reconciling customary law, Shari'a law, and international human rights law. He added that parliamentarians are eager to do this and that it would contribute to institution building and human rights values. Finally, he repeated his recommendation that a special session be held on Somalia and suggested that the human rights situation be looked at under that various thematic mandate holders.

### **Debate on Item 10**

Following Mr Bari's responses, there was a general debate on Item 10 which covered not only the situation in Somalia but also the need for special mandates, intervention, and assistance, in the Democratic Republic of Congo (DRC), Sri Lanka, and Iraq. Brazil spoke generally on the role and perceptions of special procedures, explaining that although Item 10 is often perceived negatively, special procedures are important for the promotion and protection of human rights and that their role should be seen positively. Brazil further proposed that States move away from the 'exercise of finger-pointing and bashing' and use Item 10 to create a positive agenda. Despite Brazil's call for cooperation, there seemed to be little agreement beyond that on the situation in Somalia.

The Czech Republic (on behalf of the EU) and Human Rights Watch expressed their concern about the situation in the DRC and the need to establish a special rapporteur on the DRC.<sup>19</sup> The DRC itself disagreed saying that such a mandate can only be with the cooperation of the concerned State and that it is a tool better suited to large-scale violations of human rights. 'This is not the case in the DRC', it declared. The US and UN Watch expressed concern more generally about the closing of OHCHR field offices and the elimination of special procedures on countries. The US also expressed regret that Sri Lanka continues to decline an OHCHR presence. In response, Sri Lanka, declared that it sees no need for the additional presence of international monitors and that 'it is unfortunate that the world continues to show a lack of sensitiveness regarding the situation in Sri Lanka'. The NGO North-South 21, called for a special mandate on Iraq and Iraq itself expressed concern about the need to continue the provision of UN assistance.

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