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COUNCIL UPDATE – ITEM 3 – SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS HUMAN RIGHTS COUNCIL, 10TH SESSION 9 MARCH 2009

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Overview

On 12 March 2009, the Human Rights Council (the Council) held an interactive dialogue with the Special Rapporteur on the situation of human rights defenders, Ms Margaret Sekaggya, on the occasion of the presentation of her annual report and reports of the missions to Togo and Guatemala.¹ The annual report submitted was the first one submitted to the Council by Ms Sekaggya on the situation of human rights defenders and the eighth submitted by the mandate holder on human rights defenders since its establishment in 2000.

The report gives an account of the new Rapporteur's activities and draws attention to the 493 communications sent under the mandate in the past year. The thematic focus of the report is placed on enhancing the protection of human rights defenders through the universal periodic review (UPR). Ms Sekaggya's recommendations concentrate on ways in which the UPR can be improved in order to trigger a genuine dialogue and strengthen cooperation among States, civil society and human rights defenders.

The interactive dialogue was cooperative with most states commending Ms Sekaggya on her work. Some states took issue with her approach, and in particular with the detailed nature of her recommendations focusing on some controversial institutional aspects of the UPR process. These State felt that the UPR process was too young for such an analysis to be useful.

Interactive Dialogue

In her presentation, Ms Sekaggya gave an overview of her annual report as well as of the mandate's visits to Guatemala and Togo. In her oral presentation before the Council, Ms Sekaggya toned down the criticisms of the UPR process. Her written report was more openly critical of the weaknesses of the UPR process and clear in its call for change, in particular in relation to the input of NGOs into the process. While the report also listed States that had failed to respond to requests for visits, the Special Rapporteur in her presentation did not mention these again.

As the two concerned States, Guatemala and Togo were the first to speak. Both responded favourably to the reports and gave updates on legislative changes and policy developments undertaken since the visit. Guatemala

¹ A/HRC/10/12 (annual report), Add.2 (Togo), Add.3 (Guatemala the country visit to Guatemala was conducted by Ms Sekaggya's predecessor, Ms Hina Jilani).

acknowledged that attacks on human rights defenders still take place, admitted to facing challenges on the ground, expressed its appreciation for all international assistance, and assured the Council that there was a great political will in the State to address the problem.

Most other States voiced their support and appreciation for Ms Sekaggaya's practical and focused approach and innovative working methods. In relation to the Special Rapporteur's working methods, the Czech Republic (on behalf of the EU) expressed its appreciation of the Special Rapporteur's joint visits with other special procedures or with regional mechanism.

Unsurprisingly, much of the interactive dialogue focused on the **universal periodic review (UPR)**. Many States agreed that the UPR process should be better used to provide protection for human rights defenders, and suggested the sharing of best practices, and the inclusion of human rights defenders at all stages of the process.² Serbia, having already gone through the UPR process, offered to share its experiences in this regard.

Of note was Brazil's agreement on the utility of the UPR in general for a dialogue between governments and human rights defenders before, during and after the review, and its declared willingness to include information on the implementation of the Declaration on human rights defenders in future reviews. The US, a State that has so far not participated actively in the UPR, also welcomed the 'excellent suggestions' by the Special Rapporteur for improving the process, and stressed the importance of including individual defenders in the preparations for the review. The Republic of Korea and Forum Asia asked the Special Rapporteur to elaborate on the role of regional mechanisms in supporting a more effective participation.

A few States disagreed with the approach taken by the Special Rapporteur.³ Bangladesh was quite critical, saying that it was 'not happy' because the evaluation of the UPR was 'premature'. Reacting to a recommendation by the Special Rapporteur that the UPR process should be expanded to allow for the oral participation of NGOs in the Working Group, it declared that the role of NGOs in the UPR process is already well defined and that there is no need to re-open the debate on this. Furthermore, Bangladesh insisted, the UPR process is proceeding well. Algeria also found her assessment of the UPR to be premature and suggested that the UPR should only be assessed by the General Assembly in the context of the review of the Council in 2011. This is a notable statement, and it will be interesting to see what role Algeria foresees for the Council in its own review. The Russian Federation was more blunt, stating that the analysis of the UPR had little to do with the Special Rapporteur's mandate. It reiterated its well-known concern that the label of human rights defender is being misused by persons merely claiming to be human rights defenders.⁴ Venezuela regretted that the 'report generalises criticism by regions'.

In her brief responses, Ms Sekaggya defended her approach to her mandate and the focus on the UPR, saying that it was not too early to look at the UPR. She explained that looking at best practices now is important because it might be too late to improve the process later on. She compared the UPR process to a machine, which needs to be checked and repaired from time to time. The statement by Uganda was noteworthy as well, since it strongly backed Ms Sekaggya (who is an Ugandan national) by saying that her analysis of the role of defenders in the UPR process was entirely consistent with her mandate.

Several **thematic issues** were raised, both in relation to the UPR process and generally relating to the mandate of the Special Rapporteur. Ireland enquired if the UPR was effective in enabling defenders to engage fully in a **discussion on new human rights issues**, and in this context asked how States under review could ensure that national consultations fully involve marginalised groups.⁵ Norway asked if the Special Rapporteur intended to focus on **defenders working on specific rights**, such as human rights defenders dealing with issues of racism. In

² Germany, Argentina, Czech Republic (on behalf of the European Union), Chile, Sweden, Venezuela, New Zealand, Norway, Brazil, Thailand, Canada, the United States, Australia, Serbia, Ireland, Republic of Korea,

³ Bangladesh, Algeria, Russian Federation, Venezuela.

⁴ See for instance ISHR's *Daily Update* of 12 March 2008, available at www.ishr.ch.

⁵ Article 7 of the Declaration on human rights defenders states that: 'everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.'

the same vein, Chile highlighted that there should be no discrimination against defenders working to promote human rights in relation to sexual orientation and gender identity. Germany asked for more information on the Special Rapporteur's plans to devise an '**early-warning mechanism** for the protection of defenders' as mentioned in her report. In this context, it doubted that such a mechanism could be effective with the participation of States, since the threats to defenders mostly originate in the State itself.

The second broad area of focus where situations in **various specific countries**. A number of States expressed concern about the targeting of human rights defenders in various countries, including Kenya, Colombia, and Tunisia and about the refusal of Sri Lanka and the Democratic Republic of the Congo (DRC) to respond favourably to repeated requests for visits.⁶ Venezuela asked if the Special Rapporteur had made any requests to visit industrialised States and the United Kingdom asked for updates on plans for visiting Zimbabwe and Iran. Amnesty International also asked about her plans to visit the Middle East.

A few situations received particular attention. In relation to **Sri Lanka**, the Czech Republic (on behalf of the EU) enquired how the Council should address the issue of restrictive laws on the registration of NGOs. Sweden questioned why the Special Rapporteur had not followed the example of other special procedures of requesting a visit to the State. Sri Lanka itself rejected these statements as 'irresponsible' claiming that '[its] terrorists are funded by tax payers of advanced countries'. The recent killing of two human rights defenders in **Kenya** was commented on by the Czech Republic (on behalf of the EU), who asked for an independent investigation into the case. Several States and NGOs commented on the situation in Colombia, and in particular on the killing of the husband of a human rights defender who had participated in the UPR in Geneva.⁷ **Colombia** also reacted to the mention by the Special Rapporteur and many States in the interactive dialogue. It announced that it had invited the Special Rapporteur to conduct a visit.

Several States also reacted substantively to Ms Sekaggya's mention of themselves in the report.⁸ They generally agreed with Ms Sekaggaya's recommendations in relation to the UPR process, but disagreed with her characterisation of the situation for human rights defenders in their own country. In the case of **Zambia**, it was noteworthy that this response took the form of a substantive comment. The report merely mentioned that issues related to the freedom of expression of defenders were mentioned in the review of Zambia. However, the State, while being slightly unhappy with the mention, gave a second substantive response to the comments made during the UPR. It seems positive and an indication of a willingness to dialogue that Zambia engaged with the report of the Special Rapporteur on a substantive level, rather than dismissing it off-hand.

In her answers, Ms Sekaggya announced that she is pleased with Colombia's acceptance of her request and that she will visit the State this year, as well as the Democratic Republic of the Congo, Armenia, and Honduras. Responding to a question by the UK whether she will visit Iran given the State has issued a standing invitation, she acknowledged that many States have issued standing invitations, but expressed concern about those States that have so far not responded to requests.

⁶ Czech Republic (on behalf of the European Union), Sweden, the United Kingdom,

⁷ UK, Colombian Commission of Jurists.

⁸ Argentina, Zambia, Armenia, Uzbekistan, Malaysia, Colombia, Morocco.

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