

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE 3RD SESSION 3 TO 7 AUGUST 2009

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Introduction

The Human Rights Council Advisory Committee (the Advisory Committee) convened for five days for its 3rd session from 3 to 7 August 2009. The session followed up on many issues discussed in the first two sessions. Highlights included the adoption of a set of guidelines on the elimination of discrimination against persons affected with leprosy and their family members as well as the discussion on the draft declaration on human rights education and training. The Advisory Committee was able to adopt its rules of procedure after delaying this at the last session in January this year. The discussion of new priorities including the promotion of the right of people to peace and the rights of elderly persons drew the attention of States and stirred debate about the mandate of the Advisory Committee. This session also saw increased involvement in certain discussions by both States and NGOs.

During the opening statements, Mr Bacre Waly Ndiaye, the representative of the Office of the High Commissioner for Human Rights, outlined the various topics that would be discussed during this session. He was followed by Alex Van Meeuwen, the President of the Human Rights Council (the Council), who highlighted some of the achievements of the 11th and 12th sessions of the Council.¹ After the opening statements, the Advisory Committee

¹ Among other things, he said that the Council had adopted 47 texts mostly by consensus, appointed special procedures mandate-holders to fill vacant posts, established new mandates such as the Independent Expert in the field of cultural rights and the Council will have reviewed the human rights records of about half the UN member States by the end of the year.

proceeded with the election of its officers. Ms Halima Embarek Warzazi was elected as the Chairperson and three vice-chairs were elected with one from the Asian group, one from the European group and one from the Latin American group within the Advisory Committee.²

Thematic debates

The Advisory Committee discussed several requests made by the Council. These included the following issues: human rights education and training, the right to food, missing persons, and the elimination of discrimination against persons affected by leprosy and their family members. The new priorities selected as topics of interest by the Advisory Committee included the promotion of the right to peace and the human rights of elderly people.

Human Rights Education and Training

In September 2007, the Human Rights Council mandated the Advisory Committee to prepare a 'draft declaration on human rights education and training.'³ The Council asked the Advisory Committee to consult with various stakeholders including States, the Office of the High Commission for Human Rights (OHCHR) and civil society. The Advisory Committee set up a drafting group to work on the draft declaration.⁴ The drafting group received very few responses from Governments to a questionnaire sent to all interested stakeholders seeking input on the draft declaration that it had circulated before the 2nd session.⁵ The 2nd session also saw little participation in discussions from both States and civil society.

This session, however, resulted in far more concrete work and saw a very positive response from both States as well as civil society. Mr Emmanuel Decaux, who is leading the drafting of the declaration, noted that this was a very ambitious project that has gained momentum since the last Advisory Committee session. He explained that more States had completed the questionnaires and he felt that the March 2010 deadline for the submission of a draft to the Council was reasonable given the task at hand.

The members of the Advisory Committee had a productive discussion and offered suggestions to the drafting group on various issues related to the draft declaration. They agreed that given its large target audience, the declaration should be as clear, concise and simple as possible. There was an interesting discussion about the various ways by which human rights education could both be implemented and monitored internationally and the Advisory Committee noted that governments should play a central role in this. Additionally, Mr Wolfgang Heinz said that civil society could play a larger role in monitoring issues and that this should be recognised in the draft declaration as it would give civil society more room to play this role.

The Advisory Committee acknowledged the importance of input by civil society, international organisations and States to the drafting of the declaration. In fact, several NGO's and States voiced support for the draft and gave suggestions that would improve it.⁶ Notably, Amnesty International stressed the importance of including a concrete definition of human rights education in the declaration. The drafting group was receptive to this and took the suggestion into consideration. States agreed that the draft declaration was a crucial aspect of the right to

² Chairperson from Morocco; Vice-Chairpersons: Mr Jose Antonio Bengoa Cabello from Chile, Mr Purificacion V Quisumbing from the Philippines, and Mr Jean Ziegler from Switzerland; Rapporteur: Mr Latif Huseynov from Azerbaijan.

³ A/HRC/AC/3/CRP.4

⁴ Drafting group: Mr Decaux, Ms Warzazi, Mr Kartashkin, Mr Fix Fierro, Ms Quisumbing, Mr Seetulsingh; also held one meeting on 3 August 2009.

⁵ The questionnaire was distributed to governments, national human rights institutions, international and regional organisations, and civil society, including NGO's.

⁶ Representatives of the Philippines, Algeria, Pakistan, Nigeria, Russian Federation and the United States took the floor during the discussion. Also speaking in the discussion were representatives of the following national human rights institutions and NGO's: 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.

education and that it would serve to strengthen international initiatives for human rights education and training.⁷ In addition to the contributions made by States during the Advisory Committee session, their support was seen through a seminar on human rights education and training held in Marrakech, Morocco on 16 and 17 July 2009. This was organised by the ‘Platform for Human Rights Education and Training’ and was attended by both the chairperson and the rapporteur of the drafting group.⁸ The suggestions and feedback during the informal discussions at the seminar were a great success and were highly appreciated by the Advisory Committee.⁹ During the 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.¹⁰

The Advisory Committee has also requested that a representative from the drafting group take part in the Inter Committee meeting of treaty bodies in December 2009 to allow further consultations to occur.

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 framework. It is not clear what substantive concerns Pakistan has with the draft and it did not previously voice any concerns about the drafting of declaration, including at the Council’s 9th session when the request was made to the Advisory Committee.

The drafting group is expected to present a draft version of the declaration in English at the Advisory Committee’s 4th session in January 2010.¹¹

Right to Food

At its 2nd session, the Advisory Committee responded to 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.’¹² The Advisory Committee adopted a set of recommendations at the 2nd session that it presented to the Council in 2008. At this session, the Advisory Committee responded to a new request by the Council for ‘a study on discrimination in the context of the right to food, including identification of good practices of anti-discrimination policies and strategies.’¹³ Mr Jean Ziegler presented two working papers on this topic: one entitled ‘The Tragedy of Noma’ and the second one on ‘Peasant Farmers and the Right to Food: a History of Discrimination and Exploitation.’¹⁴

It quickly became evident that Mr Ziegler’s papers did not directly address the requests made by the Council for identification of best practises, strategies and a programme of action in the context of the right to food. The members of the Advisory Committee agreed that the papers served to provide useful background information; however, but did not address the specific requests made by the Council. Mr Bengoa acknowledged that there are numerous complex issues within this topic and that a framework that would address the specific requests of the

⁷ 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 response.

⁸ Platform for Human Rights Education and Training, representing the delegations of Costa Rica, Italy, Morocco, the Philippines, Slovenia and Switzerland.

⁹ A/HRC/AC/2/L.8.

¹⁰ Erlinda F Basilio (Philippines) speaking on behalf of the cross regional Platform for Human Rights Education and Training, representing Costa Rica, Italy, Morocco, the Philippines, Slovenia and Switzerland.

¹¹ There was a general disapproval by the Committee members with the lack of a proper English translation for the draft as the original was prepared in French.

¹² *Resolution 7/14*.

¹³ Council asked the Advisory Committee to report on this at the 13th session.

¹⁴ A/HRC/AC/3/CRP.3 and A/HRC/AC/3/CRP.5.

Council was needed. A working group of the Advisory Committee put forward a framework focused on three main themes to be addressed: discrimination in the context of the right to food, good practises, and anti-discriminatory policies and best practises.¹⁵

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. However, Brazil intervened in the debate to dispute the statistics quoted by Mr Ziegler regarding the number of peasant deaths in Brazil. Brazil also emphasised that the rights of farmers is central to its human rights issues and the improvement of their situation a key priority

In the end, the Advisory Committee assigned the task of preparing a study on ‘discrimination in the context of the right to food’ to the existing drafting group and asked it to present a preliminary report at its 4th session.¹⁶

Missing Persons

The Council requested the Advisory Committee to ‘prepare a study on the best practises in the matter of missing persons’ for the Council’s 12th session’.¹⁷ At the 2nd session, the Advisory Committee discussed various things including the definition of missing persons and the goal, content, and form of the study. The chairperson noted that an insufficient amount of time was allocated for the submission of this study.

At this session, the Advisory Committee made little progress on this topic. Mr Wolfgang Heinz, who is the chair of the drafting group, reiterated the need for more time to prepare the study and apologised for not having a report ready for this session.¹⁸ He said he had been preparing three short working papers on (i) missing persons in armed conflict, (ii) on a specific country and their experience of missing persons, and (ii) on recommendations formulated over the last few years by international organisations. Mr Husynov, the rapporteur, gave a detailed account of what he believed would be key elements of the report. He stressed that the study should focus on all of the elements of the issue including States’ efforts to prevent persons from going missing. He also suggested that States should address impunity by complying with international human rights law when they are dealing with missing persons. Mr Husynov emphasised the need to consult with various stakeholders including the International Committee of the Red Cross in the drafting of the report. The Advisory Committee agreed that the drafting group would submit the results of its work to the 4th session in January 2010.¹⁹ It expects to submit the finalised report to the Council at its 14th session.

Elimination of discrimination against persons affected by leprosy and their family member

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.’²⁰ Japan introduced this new topic and initiated this process at the Council and Advisory Committee member Mr Shigeki Sakamoto of Japan subsequently volunteered to work on this topic.²¹ At the Advisory Committee’s 2nd session in

¹⁵ Presented by Mr Bengoa to the Advisory Committee.

¹⁶ Mr Ziegler said the drafting group had agreed to submit the paper to the Secretariat by December, so they could prepare it for the January meeting. In its 4th session in January, 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.

¹⁷ Pursuant to Council *Resolution 7/28* and Council *Decision 9/101* (24 September 2008); This was followed by a request by the Council for the Advisory Committee to prepare a study on the best practices based on the report to be prepared by the OHCHR on 22 September 2008. (A/HRC/9/L.5.)

¹⁸ Drafting group: Mr Burney, Ms Chung, Mr Heinz, Mr Huseynov, Mr Martinez, and Mr Mudho

¹⁹ Drafting group: Mr Miguel Alfonso Martinez, Mr Ansar Burney, Mr Chinsung Chung, Mr Wolfgang Heinz, Mr Latif Huseynov and Mr Bernard Mudho.

²⁰ Para. 4, Council *Resolution 8/13*.

²¹ Advisory Committee *Recommendation 1/5*, A/HRC/AC/2008/L.11.

January 2009, Mr Sakamoto presented the initial draft of his working paper and there was only a brief discussion with little response from Committee members.

During this session though, the Advisory Committee made significant progress and the discussion of this topic was a highlight. Considering that the Council requested the report by September 2009, Mr Sakamoto introduced a complete draft report to the Advisory Committee for its consideration.²² 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.’²³ Mr Sakamoto explained that the report addresses the human rights violations suffered by people affected by leprosy. The members of the Advisory Committee noted that persons affected by leprosy and their families suffer from political, legal, economic, and social discrimination and that there is a general lack of legislative, judicial, administrative, and educative measures that prohibit discrimination toward people affected by leprosy and their family members.²⁴ There was considerable debate about the idea of segregation and the conditions of detention of persons affected by leprosy. The members of the Advisory Committee congratulated Mr Sakamoto for a thorough report and joined him in expressing their concern with the ‘deep-rooted stigma’ against persons affected by leprosy.²⁵ Japan, having a vested interest in the draft, was the only State to welcome the draft report.

The Advisory Committee concluded its discussion of this draft with a recommendation to the Council asking that it request to various UN bodies, special agencies and programmes, Member States, and all relevant actors in society to give ‘due consideration’ to the principles and guidelines put forth in the report.²⁶ The Advisory Committee agreed that the report would allow for improvements in policy formation and implementation for persons affected by leprosy and their family members.

New Priorities: The Promotion of the Rights of Peoples to Peace and the Human Rights of Elderly People

Although the Advisory Committee’s mandate is clearly restricted to providing advice at the Council’s request, it is trying to take some initiative and present its own priority topics for further study. At this session it decided to consider a study on the promotion of the right of peoples to peace. Mr Martinez was designated to prepare an initial working paper on the need for a study. 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.’²⁷ 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.

The Advisory Committee also decided to 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.’²⁸ The Advisory Committee felt the need to consider the human rights of elderly people in a separate and integrated manner within the UN human rights mechanisms. In the past, the rights of the elderly have just been dealt with as a smaller component of the larger social

²² A/HRC/AC/3/CRP.2.

²³ Page 2, A/HRC/AC/3/CRP.2.

²⁴ Page 2, A/HRC/AC/3/L.8.

²⁵ Page 2, A/HRC/AC/3/L.8; In addition to the work of Mr Sakamoto and the Advisory Committee, the success of this set of principles and guidelines can be credited to the various ideas and suggestions that were gathered at a conference held by OHCHR in January 2009. This conference was attended by various NGO’s, UN bodies, specialised agencies and programmes, scientists, medical experts and representatives of persons affected by leprosy and their family members.²⁵

²⁶ Page 2, A/HRC/AC/3/L.8.

²⁷ A/HRC/AC/3/L.8.

²⁸ A/HRC/AC/3/L.8.

development agenda. The Committee designated Ms Chung to prepare an initial working paper determining the need to study the human rights of elderly people and also to make practical recommendations on the promotion and protection of these rights Ms Chung will submit her working paper to the Advisory Committee at its 4th session.

The consideration of new priorities by the Advisory Committee raised some concerns and stirred debate about the mandate of the Advisory Committee. Pakistan, on the last day of the session, in a strongly worded and rather hostile statement, noted that while it had previously advocated for the formation of the Advisory Committee, it believed that the body should not exceed its mandate. The Advisory Committee acknowledged these concerns but emphasised that it did not threaten the work of the Human Rights Council in any way.

Rules of Procedure and Methods of Work

At its 2nd session, the Advisory Committee established a drafting group to elaborate the rules of procedure and methods of work.²⁹ At this session, the Committee spent a great deal of time reviewing and making amendments to the draft rules.³⁰ The articles were discussed and adopted one by one.³¹ There was debate about various items including an interesting discussion about the duration of long term studies. In the preliminary drafting of the rules of procedure, the drafting group had decided that the duration of long term studies would be restricted to three years; however, to allow for further flexibility in its research work, the Advisory Committee agreed that this restriction was not necessary. Overall, in its discussions, 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. Although the Chair repeatedly stressed NGO participation during the session, there was no discussion of the rules relating to NGO participation. After much deliberation, the Advisory Committee was able to adopt a set of rules and procedures and methods of work.³²

NGO and State Participation

The adopted rules of procedure note that both States and NGOs can participate in the work of the Committee. During the 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. Despite the view of the Chair though, there was extensive participation by NGOs and States in the discussion on human rights education and training in which statements of support and suggestions for improvements of the draft were made.³³ Other issues, though, did not receive 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.

Conclusion

The Advisory Committee had a productive 3rd session in which it was able to adopt a draft set of principles and guidelines on the elimination and discrimination against persons affected by leprosy and their family members. The Advisory Committee was also able to adopt its rules of procedure. Similar to the 2nd session, there was a disparity with the quality of the discussion on different topics. There was extensive discussion about the draft

²⁹ The open-ended drafting group: Mr Burney, Mr Fix Fierro, Mr Heinz, Mr Huseynov, Mr Martinez, and Ms Zulficar.

³⁰ The Committee discussed the rules of procedure and methods of work on four different occasions during the session: at its 2nd meeting (August 3rd), 4th meeting (August 4th), 6th meeting (August 6th) and 7th meeting (August 6th).

³¹ A/HRC/AC/3/L.7.

³² Adopted by the Advisory Committee without a vote.

³³ States that made statements: Algeria, Nigeria, Pakistan, Philippines (also on behalf of Costa Rica, Italy, Morocco, Slovenia, and Switzerland), Russian Federation, United States of America; NGO's that made statements: Amnesty International, Association mondiale pour l'ecole instrument de paix, Indian Council for South America, Indian Movement Tupaj Amaru, Soka Gakkai International (also on behalf of Human Rights Education Associates).

declaration on human rights education and training as well as on the two adopted documents. The discussion on missing persons and right to food, on the other hand, was not as extensive.

The question of the Advisory Committee's mandate will likely continue to be an issue in future sessions and within the Council. This session sparked debate about the extent to which the Advisory Committee should define new priorities for the Council's consideration.

Although there is openness by the Advisory Committee to extensive participation by NGOs and States, there has been limited involvement in discussions by them. This may be a result of the Advisory Committee being a relatively new body or due to the Advisory Committee's not being able to adopt resolutions. Nevertheless, the independent experts on the Advisory Committee are working together on several important documents which will likely have an effect on the Council.

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