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Overview

The Human Rights Council (the Council) reconvened in plenary session at its morning meeting to consider the report of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC), Mr Titinga Frédéric Pacéré, presented under agenda Item 10.¹

The Council next turned its attention to the review, rationalisation and improvement of special procedures mandates. It first considered the mandate of the Special Rapporteur on the right to food; a mandate sponsored by Cuba. General discussion centred on the phenomenon of hunger and its multiple causes and manifestations, rather than the review, rationalisation and improvement of the mandate itself.

The Council then considered the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people; a mandate sponsored by Guatemala and Mexico. All States that took the floor supported the renewal of the mandate. The significant contribution of the Special Rapporteur to the recognition and enjoyment of the rights of indigenous peoples was highlighted throughout the discussion.

¹Technical assistance and capacity-building.

Particular praise was given to the delegations of Mexico and Guatemala for their short and focused draft resolution renewing the mandate.

During its afternoon session, the Council considered the mandate of the Independent Expert on the situation of human rights in Burundi. The Minister for national solidarity, human rights and women's rights of Burundi, H.E. Ms Immaculée Nahayo, addressed the Council and gave an overview of the current human rights situation in Burundi. The debate that followed focused on the need for continued international support to Burundi in its efforts to strengthen human rights protection.

At the end of the meeting, President Costea made some general remarks about the process of review, rationalisation and improvement of mandates, which gave rise to a short debate.

Technical assistance and capacity-building (Item 10)

Presentation of the report of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC)

The Independent Expert on the situation of human rights in the DRC, Mr Titinga Frédéric Pacéré, presented his report to the Council.² The Independent Expert's comments elucidated the main points contained in his report, including the pervasiveness of human rights violations in the DRC, the ineffectiveness of legal and judicial institutions, and the prevailing culture of impunity despite the 'relatively peaceful' 2006 elections.

The Independent Expert reported that arbitrary execution, rape, and torture persisted. While noting the 'vital step' toward stability that the 2006 elections represented, Mr Pacéré attributed an upswing in human rights violations in the DRC, including massacres and rape, to confrontations between armed forces³ and the ineffectiveness of the justice system.⁴

The Independent Expert reported that transitional justice had been 'paralysed' by the need to 'meet the interests of all the warring parties', one consequence of which had been the preservation and promotion of alleged war criminals within the army. He also described the state of the DRC's judiciary as 'worrying', reporting that a lack of resources had fostered interference with and corruption in the operation of the courts, leading in turn to a very low level of court usage and the delivery of justice in only 'rare instances'.

The Independent Expert also highlighted the High Commissioner for Human Rights' (the High Commissioner) visit to the DRC and expressed support for the Office of the High Commissioner for Human Rights' (OHCHR) mapping of human rights violations in the DRC.⁵ He cited the reports of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, both of which express concern at human rights violations in the DRC.

² A/HRC/4/7. This report was originally scheduled to be presented at the Council's 4th session, 12 - 30 March 2007. For ISHR's summary of the report, visit <http://www.ishr.ch>.

³ Including the Forces Démocratiques de Libération du Rwanda (FDLR) and mixed brigades. The Independent Expert attributed atrocities against civilians in South Kivu to Rwandan Hutu armed groups.

⁴ The Independent Expert reported that in South Kivu alone 14,200 new rape cases were reported to authorities, one percent of which led to prosecution. He also reported that more than 80% of these complaints remain under investigation, and that many victims are poor and rural women who cannot afford the associated legal costs.

⁵ This mapping project is tasked with drawing up an objective cartography of human rights violations committed between March 1993 and June 2003.

In closing, the Independent Expert called on the DRC to show ‘zero tolerance’ for human rights violations. He recommended that: the judiciary be better resourced; no amnesty be given for crimes against humanity and genocide; support be given to the implementation of the Rome Statute of the International Criminal Court (ICC); appointees to the national judiciary be vetted; a national human rights institution (NHRI), and a mixed criminal chamber system;⁶ be established and that members of State security forces be punished for any human rights violations they have committed.

Statement of the concerned country

In reply, the DRC read out a statement from its Minister for Human Rights. Addressing its ‘state of transition’ the DRC reported that its electoral process was ‘practically completed’, as seen by the appointment of the Prime Minister and the establishment of the bureau of the senate. It also stated that ‘incidents’ surrounding its electoral process should be ‘put down to the learning process’ of a democracy emerging from authoritarian rule. Discussing its ‘fight against impunity’, the DRC cited draft laws on its national police, the criminalisation of torture, and the protection of children, and the enactment of a law on sexual violence. In closing, the DRC committed itself to ending impunity, in spite of its limited resources. It also pressed that while visits to the DRC could be beneficial, it has not benefited from the technical cooperation mandate created by the Commission on Human Rights.⁷

Interactive Dialogue

State comments, while citing the continued prevalence of human rights violations in the DRC,⁸ were directed at the Independent Expert’s recommendation that a mixed criminal chamber be established,⁹ and OHCHR’s mapping project.¹⁰ Portugal, speaking on behalf of the European Union (EU), and Canada asked for more information on the mixed criminal chambers proposal. Belgium inquired how people that provided testimony of human rights violations to the mapping project, including human rights defenders, would be protected. The Republic of Korea pledged financial support to the mapping project. Human Rights Watch (HRW) asked the Independent Expert what the first steps toward improving DRC’s judiciary would be. The National Advisory Commission for Human Rights of France¹¹ committed its support to the establishment of a NHRI in DRC.

Responding to the questions on mixed criminal chambers, the Independent Expert stated that mixed chambers, complemented by a mixed prosecutors office and a Supreme Court chamber of appeal, would address crimes not covered by the jurisdiction of the ICC.¹² The Independent Expert also stated that the mapping project, in charting human rights violations, would assist in combating impunity.

Algeria criticised the Independent Expert for not addressing the role played by the African Union in restoring peace in the DRC. It also called on the Independent Expert to provide concrete rather than general recommendations given that his mandate was one of technical assistance and cooperation.¹³ In reply, the Independent Expert pressed that his report does identify ‘targeted areas which require technical assistance’.

⁶ Composed of a mixture of local and international judges.

⁷ Commission on Human Rights *Resolution 2004/84*.

⁸ Canada, Human Rights Watch (HRW).

⁹ Portugal (on behalf of the EU), Canada.

¹⁰ Belgium, Republic of Korea.

¹¹ Commission Nationale Consultative des Droits de l’Homme.

¹² The ICC has competence to address crimes committed in the DRC after 2 July 2002.

¹³ This remark goes to the nature of the mandate of the Independent Expert of the situation of human rights in the DRC, as created by the Commission on Human Rights. The mandate was created under Item 19 of the Commission on Human Rights, ‘advisory services and technical cooperation in the field of human rights’, rather than Item 9, ‘question of the violation of human rights and fundamental freedoms in any part of the world’. The distinction between the two is significant in political terms.

In reply to State comments, the Independent Expert offered a correction to a mistake made by the DRC in regard to the number of visits he had made to the country. He reported that on two occasions he had been prevented from visiting on account of the ‘security situation’.

Review, rationalisation and improvement of mandates

Special Rapporteur on the right to food

The President of the Council, H.E. Ambassador Doru Romulus Costea of Romania, gave Cuba the floor to introduce the mandate of the Special Rapporteur on the right to food. It provided a brief history of the mandate and stated that it had been holding informal consultations on extending the mandate for a further three years. Cuba strongly stated that the renewal of the mandate on the right to food was ‘not open to legitimate questioning’, and that it was tabling the resolution for adoption without a vote. Cuba continued that it would focus the rest of its remarks on paying a tribute to the work of Professor Jean Ziegler, the Special Rapporteur on the right to food. Cuba praised the Special Rapporteur’s work, calling him a ‘champion’ working against hunger and towards food security. Cuba mentioned that it had requested him to present a comprehensive report to the Council in 2008 to give a systematic overview of his contribution to the realisation of the right to food and to facilitate the continuity of the mandate given that a new mandate holder would be appointed the following year.

Statement of the Special Rapporteur on the right to food

Mr Ziegler addressed the Council to provide some input into the discussions concerning the extension of the mandate. He addressed a few key themes.

The Special Rapporteur began by listing several statistics to emphasise the worsening situation of hunger in the world. He stated that 854 million people, or one out of six, are continuously undernourished. Moreover, he quoted the United Nations Food and Agriculture Organisation (FAO) assertion that the current world agricultural production is enough to feed 12 billion people every day. He referred to those dying from hunger as ‘people who are being murdered as we speak’.

Mr Ziegler underscored the role of the neo-liberal economic system in the violation of the right to food. He referred to the inconsistent, even contradictory, positions taken by States in United Nations (UN) bodies in this regard. In particular, he gave the example of signatories of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* voting for policies which led to the violation of the right to food in the World Trade Organisation (WTO). Furthermore, Mr Ziegler pointed out the power of trans-national corporations, and argued that a way to hold non-State actors accountable to international human rights law must be found.¹⁴

Mr Ziegler addressed the issue of bio-fuels, arguing that agricultural land being transformed into land for the production of bio-fuels was pushing up grain prices and resulting in the eviction of farmers, making it difficult for people to access food. He referred in particular to the situations in Brazil, the United States of America (USA), Mexico and the EU.¹⁵ He also drew attention to the plight of ‘hunger refugees’. Those fleeing from hunger do not fall under the definition of a refugee, as outlined in the 1951 *Convention relating*

¹⁴ According to Professor Ziegler, last year, the 500 largest TNCs controlled more than 52% of the world’s GDP.

¹⁵ 18 million hectares of agricultural land, above all in Brazil and the US, are being transformed into land for production of bio-fuels. Corn prices in Mexico rose from 40% to 190% in increases. The European Union (EU) has proposed that 10% of the fuels for cars in Europe will be covered by agro-fuels.

to the Status of Refugees.¹⁶ He stated that there were no treaties protecting hunger refugees, nor does the UN High Commissioner for Refugees (UNHCR) have any means of dealing with this issue. Accordingly, Mr Ziegler proposed to have temporary hosting facilities extended to hunger refugees, particularly those seeking refuge in Europe.

Finally, the Special Rapporteur stressed the importance of an optional protocol to the *ICESCR*, arguing that this would help victims of hunger to directly appeal to States.¹⁷ He expressed concern that work was not moving forward on this.

Interactive Dialogue

The interactive dialogue saw lively discussion on several substantive issues, and broad support across regional groups for the renewal of the mandate on the right to food.¹⁸ All States that took the floor supported the right to food, and acknowledged the seriousness of the issues surrounding the violation of this right.

Some States were of the view that the renewal of the mandate was beyond discussion,¹⁹ or that Mr Ziegler's statement, vividly depicting hunger and threats to food security globally through available statistics, was sufficient evidence for renewing the mandate.²⁰ Egypt (on behalf of the African group) went so far as to say that 'the statistics alone vindicated the extension of the mandate'. However, aside from expressing the wish to renew the mandate on the right to food, very few proposals on the actual review, rationalisation or improvement of the mandate on the right to food were put forward. Apart from Bolivia's statement that it was necessary to 'strengthen' the mandate,²¹ virtually no proposals on how this was to be achieved were advanced. Portugal (on behalf of the EU) tried to make headway in this direction by asking Mr Ziegler how he evaluated his own mandate, and asked for him to elaborate on challenges faced and possible improvements that he could suggest to make his mandate more 'effective and action oriented'.

Many States acknowledged the cross-cutting nature of the right to food,²² and its inter-linkages with other rights such as the right to life,²³ the right to an adequate standard of living,²⁴ the right to health²⁵ and the right to development.²⁶ The International Indian Treaty Council raised an interesting point regarding the relationship of the right to food with the right to cultural knowledge, customs and ancestral lands. The importance of economic, social and cultural rights was also touched upon more generally by a few speakers,²⁷ with Belgium asking the Special Rapporteur if he could elaborate on their justiciability. Bangladesh stated

¹⁶ Refugees as defined in the 1951 Convention are persons who have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.' Available at <http://www.ohchr.org/english/law/refugees.htm>.

¹⁷ The optional protocol to *ICESCR* would allow individuals to submit communications to the Committee on Economic, Social and Cultural Rights regarding violations of the rights contained in *ICESCR*. For more information about the process for the development of the optional protocol, please see <http://www.ohchr.org/english/issues/escr/intro.htm>

¹⁸ Egypt (on behalf of the African Group), Portugal (on behalf of the EU), Brazil, Switzerland, Nicaragua, Russian Federation, Bolivia, Senegal, Pakistan, Nigeria, Uruguay, Bangladesh, India, China, Venezuela (cosponsor of resolution), Tunisia, Belgium, Ecuador.

¹⁹ Cuba, Nicaragua.

²⁰ Egypt (on behalf of the African Group), Bangladesh, China.

²¹ Bolivia.

²² Belgium.

²³ Belgium, Switzerland.

²⁴ Portugal (EU).

²⁵ Ecuador.

²⁶ China.

²⁷ Nicaragua, Belgium.

that ‘civil and political rights are a luxury’, when basic human rights such as the right to food are being violated.

The Special Rapporteur’s comments on the use of arable agricultural land for bio-fuel production²⁸ provoked disagreement from Brazil, which stated that its bio-fuel program could play an important role in enhancing the agricultural sector of developing countries. Mr Ziegler replied to this by saying that the use of land for bio-fuels was to the detriment of agriculture.

The hunger and malnutrition of women²⁹ and children³⁰ were also highlighted. The joint statement of the NHRIs of Germany, France and Morocco drew attention to reasons for the differential effect of hunger on women, including obstacles to land ownership and inheritance for women. Additionally, the NHRIs asked the Special Rapporteur to explain how he would integrate a gender perspective into his future work.

The link between hunger and the lack of access to food, and poverty, was highlighted in many statements.³¹ States also drew attention to the link between neo-liberal economic policies and international trade, the unequal distribution of wealth and the violation of the right to food.³² In particular, Bolivia expressed concern about the use of agricultural subsidies³³ which rendered local small-scale farmers unable to compete, and the creation of dependency through food aid. While many States expressed the need to reconsider global economic policies, some were of the view that the right to food had to be guaranteed by individual governments.³⁴ India stated that the issue of the right to food should be restricted to the scope of the Council’s activities and should not stray into matters, such as the scope of international economic agencies, which did not fall under its purview.

Several countries discussed the relationship between food security and the threat of climate change and global warming resulting in desertification.³⁵ Belgium asked the Special Rapporteur whether he had any ideas on how this theme could be incorporated into his mandate in the future.

Nigeria raised the issue of displacement of peoples from arable land in conflict situations, which interfered with their right to food and stressed the need to resolve political issues leading to conflicts to address the violation of this right.

Concluding comments by the Special Rapporteur on the right to food

Mr Ziegler concluded by responding to many of the statements made during the dialogue. He responded to Portugal’s (on behalf of the EU) question regarding progress made by referring to the cases of India, Brazil, Guatemala, China, and Cuba and their success in particular areas of promoting the right to food. He stated that the greatest achievement was the growing public recognition of the right to food, internationally and nationally. He expressed his acute concern at the current negotiations between EU and African, Caribbean and Pacific (ACP) countries on the Lomé Convention, which he said would spell disaster for developing countries and defeat the right to food. He expressed his support for the suggestion from the NHRIs of Germany, France and Morocco to create a new mandate on the right to water. He also added that, due to time constraints, he would respond in writing to Belgium’s questions on climate change, the justiciability of economic, social, and cultural rights, and the urgent communications he had received.

²⁸ Mouvement Contre Le Racisme et Pour L’Amitie Entre Les Peuples (MRAP), LIDLIP.

²⁹ Nicaragua, Pakistan (OIC), National Human Rights Institutions of Germany, France and Morocco.

³⁰ Portugal (EU), Nicaragua, Pakistan (OIC), Switzerland, Tunisia.

³¹ Brazil, Nicaragua, Ecuador, International League for the Rights and Liberation of Peoples (LIDLIP), Nigeria.

³² Nicaragua, Senegal, Pakistan, China, LIDLIP, MRAP.

³³ Bolivia.

³⁴ Switzerland, Portugal (EU).

³⁵ Nigeria, Belgium.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

President Costea gave the floor to Guatemala (co-sponsoring the resolution with Mexico) to introduce the mandate of the Special Rapporteur on indigenous people. Guatemala provided an overview of the history and focus of the mandate, namely its thematic concerns, country visits, and communications procedures.

Guatemala drew attention to paragraph 56 of the institution-building text (Council *Resolution 5/1*), and stated that the process of the review, rationalisation and improvement of mandates should focus on the relevant scope and content of the mandates. In this regard Guatemala noted some relevant elements, including specific issues relating to indigenous peoples, implementation of national legislation, cultural rights and education, customary law and international standards, poverty, the vulnerability of women and children during armed conflict, and the relevance of development projects.

Guatemala drew attention to the relevance of the mandate in terms of promoting greater awareness of the importance of protecting and promoting the rights of indigenous peoples, namely their customary laws, languages, and cultures in court proceedings and in public policies. It also stressed the universal nature of the mandate covering the situation of indigenous peoples in all countries of the world.

Regarding the future of the mandate, Guatemala highlighted that it should cover best practices, give effect to recommendations of the Special Rapporteur, and continue implementation of legal and constitutional reforms that had not yet been achieved. The main challenge, according to Guatemala, was to close the gap between policy and implementation. It emphasised the situation of vulnerable groups such as women and children, and the need to develop clear protection measures. It also pressed that the future held many possibilities for cooperation, dialogue, and capacity building of States. Guatemala ended by calling on the Council to renew the mandate of the Special Rapporteur and to fulfil its commitment to millions of indigenous people around the world.

Statement by the Special Rapporteur on indigenous people

The Special Rapporteur on indigenous people, Mr Rodolfo Stavenhagen, stated that his wide mandate covered a range of economic, social and cultural as well as civil and political rights of indigenous peoples. In carrying out his mandate, he had paid particular attention to gaps in implementation of existing norms, and to new challenges. He stressed that he had sought to promote dialogue with States, indigenous peoples, and other parties to address concrete cases of violations, had sent numerous communications, and undertaken both official and un-official visits.

The Special Rapporteur highlighted that coordinated action with other human rights mechanisms to avoid duplication and effective use of existing resources were essential components of his mandate. He also emphasised his interactions with the Permanent Forum on Indigenous Issues and participation in the annual sessions of the former Working Group on Indigenous Populations. He stated that the new body to replace the Working Group should maintain periodic exchanges of information with the Special Rapporteur in addition to ensuring the direct participation of indigenous peoples. Mr Stavenhagen went on to highlight his cooperation with regional bodies and other organs of the UN system.

The Special Rapporteur also mentioned that due to the cross-cutting nature of his mandate, there were numerous possibilities for cooperation with other special procedures of the Council. He had undertaken joint communications and missions. This, according to him, highlighted the relevance of a 'plurality of thematic approaches' in addressing complex issues.

Mr Stavenhagen raised the issue of the recent adoption of the *Declaration on the Rights of Indigenous Peoples* (the Declaration),³⁶ which he stated was an ‘expression of the growing consensus’ on the importance of the rights contained therein. He stated that the Declaration gave the mandate of the Special Rapporteur a ‘new moral and political’ force while simultaneously providing guidance for future activities. He also stressed that the renewal of the mandate should be within the framework of the principles and rights affirmed in the Declaration.

He ended by saying that while the mandate could certainly be improved, depending on human and financial resources, its relevance was unarguable. It had become a fundamental reference point for the promotion and protection of indigenous rights, and must therefore be renewed.

Interactive dialogue

All States and NGOs that took the floor supported the continuation of the mandate of the Special Rapporteur.³⁷ Comments focused on the mandate, on national measures taken by States in the area of the mandate as well as on the general process of the review, rationalisation and improvement of mandates.

Many States registered significant improvement in the recognition of the rights of indigenous peoples along with a general empowerment of indigenous peoples since the creation of the mandate of the Special Rapporteur.³⁸ The constructive dialogue the mandate holder had had with governments was welcomed by a number of States.³⁹ Some States noted with appreciation the interaction of the Special Rapporteur with the Permanent Forum on Indigenous Issues.⁴⁰ A number of States acknowledged the support indigenous people themselves had given to the mandate.⁴¹ Some States highlighted the cross-cutting nature of the issues addressed by the Special Rapporteur.⁴² The International Service for Human Rights (ISHR) said that Mr Stavenhagen had been helpful in identifying and reporting both on issues of general concern, and on the situation of particular groups.⁴³

Some States underscored their commitment to the mandate by outlining efforts they had undertaken at the national level to improve the recognition of the rights of indigenous people.⁴⁴ The Republic of Korea noted that a large implementation gap existed between the rights guaranteed on paper and the real enjoyment of these rights by indigenous peoples and congratulated the Special Rapporteur for addressing this gap in his recent reports.⁴⁵

Some delegations made suggestion how the mandate could be improved, and what its tasks should include. Norway suggested that the future mandate holder should focus on indigenous peoples in Europe, including in Norway. Bolivia suggested that the next mandate holder should be of indigenous origin, as the personal

³⁶ The General Assembly of the United Nations has adopted the declaration on 13 September 2007.

³⁷ Egypt (on behalf of the African Group), Russian Federation, Brazil, Bolivia, Portugal (on behalf of the EU), Peru, Switzerland, Mexico, Nicaragua, Nigeria, Canada, Philippines, Republic of Korea, Cuba, Panama, Chile, Venezuela, Argentina, Algeria, Norway, Ecuador, Indian Council of South America, International Indian Treaty Council (in a joint statement with the Indigenous Organisation for International Resource Development and Action Canada for Population and Development), International Service for Human Rights (ISHR).

³⁸ Egypt (on behalf of the African Group), Brazil, Peru, Republic of Korea, Venezuela, ISHR.

³⁹ Russian Federation, Mexico.

⁴⁰ This collaboration is also encouraged in the resolution renewing the mandate of the Special Rapporteur. This point was mentioned by Panama, Russian Federation.

⁴¹ Bolivia, Portugal (on behalf of the EU).

⁴² Nicaragua, Nigeria.

⁴³ Canada highlighted the Special Rapporteur’s special attention to the situation of children and women.

⁴⁴ Brazil, Chile, Argentina, Nicaragua, Panama, Venezuela.

⁴⁵ Also raised by Norway.

experience of the person would be useful for the implementation of the mandate. It suggested adding this as a specific criterion in the selection of the mandate holder.⁴⁶ The International Indian Treaty Council suggested changing the title of the mandate to refer specifically to ‘the rights of indigenous peoples’ in the plural and ensuring that the new mandate holder has the highest expertise in the area.

Many States drew attention to the recently adopted *Declaration on the Rights of Indigenous Peoples*.⁴⁷ All of them except Canada firmly supported the Declaration, and agreed that the future mandate of the Special Rapporteur should focus on the implementation of the Declaration. The Special Rapporteur reiterated this point in his replies. The Russian Federation pointed out that the task of the future mandate holder should include a ‘comprehensive clarification’ of the Declaration. ISHR stressed that the mandate should take an explicitly legal approach to the implementation of the rights contained in the Declaration

Canada explained that since it had voted against the Declaration in the General Assembly, there was no need for the Special Rapporteur to implement it in Canada. Nigeria said the current definition of ‘indigenous peoples’ was vague, and that the Council as a whole should discuss and agree on a less ambiguous definition. The Indian Council of South America stressed that any reservations to the Declaration could in no way diminish the rights of indigenous people.

A number of comments were made regarding the process of the review, rationalisation and improvements of special procedures mandates. Many States thanked and congratulated the co-sponsors Guatemala and Mexico for the exemplary way they had led the process of reviewing the mandate on indigenous people.⁴⁸ Egypt (on behalf of the African Group) appreciated that the co-sponsors addressed the renewal of the mandate in a separate and well-focused resolution and were open to include suggestions brought up in the informal consultations. In particular, it welcomed that the resolution outlines the methods of work of the Special Rapporteur, and the fact that the resolution provides some flexibility to change these over time. Algeria supported this statement, adding that the reference to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council (the Code of Conduct)⁴⁹ in the preambular part of the resolution was welcome.⁵⁰ Egypt reiterated that a final decision on all mandates had to ‘hinge on the overall satisfaction’ with the review process. Venezuela and Argentina recalled that the review should strengthen the system of special procedures.

Independent Expert on the human rights situation in Burundi

Address by H.E. Ms Immaculée Nahayo, Minister for national solidarity, human rights and women’s rights of Burundi

The Minister for national solidarity, human rights and women’s rights of Burundi, H.E. Ms Immaculée Nahayo gave a statement outlining the achievements and challenges for human rights in Burundi and gave her strong support to the extension of the mandate of the Independent Expert on the human rights situation in Burundi. She commented on the general human rights situation in Burundi and highlighted several challenges.

Regarding the security situation Ms Nahayo advised the Council that ‘peace and calm’ reigned in the country,

⁴⁶ Supported by Ecuador.

⁴⁷ States that raised this included Russian Federation, Brazil, Portugal (on behalf of the EU), Peru, Chile, Cuba, Switzerland, Republic of Korea, Canada, Philippines, ISHR.

⁴⁸ A/HRC/6/L.26, 24 September 2007.

⁴⁹ A/HRC/5/2, 18 June 2007.

⁵⁰ Supported by the Russian Federation. Egypt (on behalf of the African Group) asked that such a reference be included in all resolutions renewing special procedure mandates.

although there had been ‘isolated incidents’ of violence and killings causing displacement of persons. She explained that the Burundi police forces were not sufficiently equipped to deal with the crime in the country and she requested the international community to provide the necessary expertise and equipment. On a positive note, she added that disarmament efforts were underway.

Regarding the human rights situation in Burundi, Ms Nahayo informed the Council that it had evolved in a positive sense. Those responsible for the Muyinga massacre had been arrested and their cases were under review. She also emphasised that most political prisoners and prisoners of conscience had been released after their acquittal. Furthermore, the penal code was being revised, including the possible abolishment of the death penalty and harsher punishment for crimes such as rape and torture. The rights of women were being protected through a change to inheritance and matrimonial regimes.

Ms Nahayo drew attention to the Independent Expert’s recommendation to quickly implement the provisions of the *Arusha Peace Accord* and establish a national human rights institution. She advised the Council that a Truth and Reconciliation Commission was being established, together with a specialised judicial chamber and a National Human Rights Commission.

Ms Nahayo welcomed the ‘untiring efforts’ of the countries of the regional initiatives and the United Nations. She gave her thanks to the both the UN Integrated Bureau and OHCHR in Burundi and stated that their assistance in monitoring the human rights violations was helping Burundi take the necessary measures to address such violations. She emphasised that the Government of Burundi would like to see the OHCHR office maintained, particularly the judicial assistance unit, and she called on the international community to continue its provision of technical support. Finally, she stressed the ‘great benefit’ Burundi had drawn from the previous two special procedures mandates⁵¹ and stated that they had been of critical importance to the promotion and protection of human rights in Burundi. She underscored the enormous challenges of development in a post-war context and gave her full endorsement to the continuation of the Independent Expert’s mandate.

Interactive dialogue

A number of States and NGOs made statements during the general debate. Many expressed appreciation to Ms Immaculée Nahayo for her presence and statement, and believed this was a demonstration of the commitment of the Government of Burundi.

Several States commended the Independent Expert, Mr Akich Okola, for his excellent⁵² and valuable⁵³ work and his commitment,⁵⁴ which had contributed to the efforts of the Government to improve the human rights situation in Burundi.⁵⁵ Many States also appreciated the Independent Expert’s constructive approach and the good relationship he had established with all actors in the country.⁵⁶

Portugal (on behalf of the EU) stated that the human rights situation had shown improvements but that the situation remained fragile.⁵⁷ Consequently, the important work of the Independent Expert should continue. Rwanda noted that striking progress had been made in the promotion and protection of human rights and that

⁵¹ A Special Rapporteur on the situation of human rights in Burundi was appointed by the former Commission on Human Rights from 1995 to 2004 when the mandate of the Independent Expert on the human rights situation in Burundi was established.

⁵² Portugal (on behalf of the EU), United Kingdom.

⁵³ Belgium.

⁵⁴ Greece.

⁵⁵ Portugal (on behalf of the EU), Netherlands, United Kingdom.

⁵⁶ Belgium, France, Canada, United Kingdom, Human Rights Watch.

⁵⁷ Netherlands.

the extension of the mandate would allow Burundi to benefit from the ‘wisdom and expertise’ of the Independent Expert in devising measures for strengthening respect for human rights. Tanzania noted that Burundi still had a long way to go in strengthening mechanisms for durable peace, security, development, and human rights. Belgium noted that the support by Burundi of the renewal of the mandate attested to its value.

A number of States and NGOs expressed appreciation for the balanced and useful recommendations made by the Independent Expert to both the Government of Burundi and the international community.⁵⁸ These recommendations had identified the achievements of the Government and the challenges it faced as well as its needs for further support. Human Rights Watch stated that the recommendations were an important tool for the formulation of policies and legislation. It was also noted that the reports of the Independent Expert allowed the international community to become aware of the situation in Burundi, and to be alerted to emerging human rights violations.⁵⁹

Several States⁶⁰ welcomed the draft resolution extending the mandate of the Independent Expert put forward by Burundi⁶¹ and co-sponsored by a number of other African States.⁶² They stated that they supported the request for renewing the mandate. Belgium explained that the mandate had demonstrated its ‘added-value’.

Portugal (on behalf of the EU) underlined that the views of the country concerned are of primary importance when extending a mandate on technical assistance.⁶³ Egypt (on behalf of the African Group) shared this view.

Egypt (on behalf of the African Group) reiterated that it had always believed that dialogue and cooperation were the ‘best and only’ means to achieve success. It stated that out of respect for the ‘decision and sovereignty’ of Burundi, the African Group would not oppose the renewal of the mandate. Zambia stated that it fully supported the renewal of the mandate and respected the position of the Government of Burundi on the issue. Uganda said it respected and fully understood the decision of Burundi to seek an extension of the mandate. Tanzania also supported the request by Burundi to extend the mandate, and said that it should be supported ‘wholeheartedly’. Many delegations expressed the hope that the Council would adopt the draft resolution without a vote.⁶⁴

A number of States were especially pleased with the support provided by several African States to the draft resolution.⁶⁵ In a reply to these comments, Egypt reiterated that it did not support the mandate but would not oppose its extension. It reminded that these two positions were quite different.

Ghana congratulated the Government for its demonstrated commitment to improving the human rights situation in the country and stated that the Independent Expert could only assist the Government in its efforts to promote and protect human rights. Zambia stated that the mandate would offer an opportunity for Burundi to make some progress in a time of peace building and reconstruction. Several States and NGOs welcomed the cooperation of the Government with the Independent Expert and the international community.⁶⁶

⁵⁸ Portugal (on behalf of the EU), Belgium, UK.

⁵⁹ International Federation of Human Rights Leagues (FIDH), Human Rights Watch.

⁶⁰ France, Zambia, Slovenia, Netherlands, Switzerland, United Kingdom.

⁶¹ The text of the draft resolution is contained in A/HRC/6/L.29. It is available on the extranet of OHCHR. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

⁶² The co-sponsors are Burkina Faso, Ghana, Mauritius, Uganda, Rwanda, Tanzania and Zambia.

⁶³ Netherlands.

⁶⁴ Portugal (on behalf of the EU), Canada, Netherlands, Slovenia, Organisation Internationale de la Francophonie, United Kingdom.

⁶⁵ Slovenia,

⁶⁶ Switzerland, Slovenia, Germany, Human Rights Watch.

Ghana commended Burundi for its courage in making an ‘objective assessment of the human rights situation’ on the ground. It stated that only through objectivity could the Council achieve its objective of promoting and protecting human rights.⁶⁷

A number of States expressed their full support to the Government of Burundi and its efforts to make peace.⁶⁸ Ghana called on the international community to support the peace in Burundi, which could only be achieved with the promotion and protection of human rights.⁶⁹ International Federation of Human Rights Leagues (FIDH) called on the international community to strengthen its support for human rights in Burundi.

Some States noted that the very good results achieved by this mandate were an example of how technical cooperation mechanisms of the Council should function.⁷⁰ Portugal (on behalf of the EU) suggested that this ‘successful mandate’ should inspire the deliberations of the Council on other mandates on technical cooperation.⁷¹ Uganda stated that the Council should invest in mechanisms for the promotion and protection of human rights as there was ‘no human rights paradise anywhere in the world’. Zambia stated that the review of special procedures mandates, whether thematic or country-specific, should be done on case-by-case basis.

Ms Immaculée Nahayo was then given the floor to comment. She noted with appreciation the expressions of support for the Government of Burundi. She also reaffirmed the Government’s resolve to achieve full respect for human rights and called on the international community to provide continued support to Burundi.

Update on the process for the review, rationalisation and improvement

After the conclusion of the debates on the review, rationalisation and improvement of the mandates on food, indigenous issues and Burundi, President Costea commented on the procedure used for the review process. The previous day, he had been strongly encouraged by Pakistan (on behalf of the OIC) to produce a comprehensive ‘roadmap’ for the review process.

He pointed out that together with the universal periodic review (UPR), the review of mandates was the major task for the Council to accomplish during the 2nd cycle. He said that even though the process of review had begun, the Council was still exploring how it could best be done. He welcomed the way the reviews of the mandates on food, indigenous issues and Burundi had developed, and said that the approach of the co-sponsors of the resolution on indigenous people had encouraged him. Underscoring that the institution-building package contained guidelines on the goal of the process and how it should be carried out,⁷² he said that special procedures mandates were too diverse to be treated in the exact same way. According to the President, the review should be ‘learning by doing’; consequently, he opposed the elaboration of a detailed plan applicable to each mandate.

Pakistan reacted to his statement by saying that it merely wished to ‘streamline the process’. It reiterated the call for short, procedural resolutions to renew, rationalise or improve mandates. At the same time, it opposed long, substantial resolutions dealing with both the report of a special procedure and the renewal of its

⁶⁷ Zambia, Germany.

⁶⁸ Cote d’Ivoire, Uganda

⁶⁹ Uganda.

⁷⁰ Portugal (on behalf of the EU), Netherlands, United Kingdom.

⁷¹ Greece.

⁷² The institution-building package says that the review of mandates should take place in the context of the negotiations of the relevant resolutions. A/HRC/5/1, 18 June 2007, paragraph 55.

mandate.⁷³ Cuba, on the other hand, pointed out that depending on the issue of the mandate in question, resolutions that were more substantial could be justified.⁷⁴ Cuba agreed with the President that since the process of review had started, it should not be delayed.⁷⁵ India recalled the institution-building package, and said the text should not be reopened.⁷⁶

⁷³ It referred to the draft resolution tabled by Portugal (on behalf of the EU), dealing with freedom of religion or belief (A/HRC/6/L.15, 21 September 2007).

⁷⁴ Supported by Portugal (on behalf of the EU), Canada.

⁷⁵ Supported by Portugal (on behalf of the EU). Pakistan had requested to hold up decisions on the renewal of mandates until all mandates had been reviewed, to allow for a 'holistic' consideration of the special procedures. See ISHR's *Daily Update* of 25 September 2007, available at www.ishr.ch/hrm/council.

⁷⁶ Supported by Canada.

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