

COUNCIL MONITOR

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Overview

The Human Rights Council (the Council) reconvened in plenary session to first review the mandate of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC). Before consideration of the mandate could commence, Egypt, speaking on behalf of the African Group, requested that the review of the mandate and the consideration of draft resolution L/19¹ be deferred to the December 2007 session of the Council, a request seconded by Sri Lanka, speaking on behalf of the Asian Group, and approved, with noted dissatisfaction, by the President of the Council, Ambassador Doru Romulus Costea of Romania.

The morning session continued with consideration of Item 8, follow-up to and implementation of the Vienna Declaration and Programme of Action (the Vienna Declaration). The unfolding events in Myanmar dominated this debate. Consideration of Item 10, technical assistance and capacity building, followed, with a number of States pressing that country consent was essential to the establishment of country-specific human rights mechanisms and the provision of technical assistance and advisory services.

The morning session closed with comments from a handful of States and from the President on the process for the review, rationalisation and improvement of mandates. This issue was also taken up during the afternoon session and the President announced that agreement had finally been reached on a simple set of guidelines.

¹ Technical cooperation and advisory services in the Democratic Republic of the Congo (DRC), submitted by Egypt (on behalf of the African Group).

In the afternoon the Council adopted decisions on: the general guidelines for the preparation of information under the universal periodic review (UPR); the technical and objective requirements for eligible candidates for the special procedures; the technical and objective requirements for submission of candidatures to the Advisory Committee; the mandate of the Special Rapporteur on the right to food; human rights and international solidarity; and protection of cultural rights and property in situations of armed conflict.

Review of the mandate of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo

Egypt (on behalf of the African Group) proposed the deferral of the consideration of the review, rationalisation and improvement of the mandate of the Independent Expert on the situation of human rights in the DRC and of the related draft resolution L/19 to the December 2007 session of the Council. The session is scheduled to take place from 10 to 14 December. This proposal was seconded by Sri Lanka (on behalf of the Asian Group). The President accepted this proposal but pressed that he and the Bureau had gone to great lengths, at the insistence of ‘some regional groups’, to accommodate the review of specific country mandates into the 6th session's programme of work. He asked for consistency in such requests and warned the Council of the already heavy workload scheduled for the Council's resumed 6th session.

Discussion on Item 8

Follow-up to and implementation of the Vienna Declaration and Programme of Action

The morning session continued with consideration of Item 8, follow-up to and implementation of the Vienna Declaration and Programme of Action.² The main themes drawn from the consideration of the Vienna Declaration under Item 8 were the: universality, indivisibility, interdependence and interrelatedness of all rights, including the right to development;³ the importance of international solidarity and ‘third generation rights’;⁴ the right to health;⁵ and poverty alleviation and social exclusion.⁶

Myanmar

Discussion was dominated by State comments on the military crackdown on public protests and demonstrations led by Buddhist monks and nuns in Myanmar. States from all but one of the United Nations (UN) regional groups discussed the situation,⁷ citing abuses by the military Junta against civilians that included the repression of the freedoms of association, expression, opinion, and peaceful assembly, the use of violence, and the arbitrary arrest and imprisonment of protestors and demonstrators.

² Adopted at the Vienna World Conference on Human Rights, 14-25 June 1993, Vienna, Austria.

³ See paragraph 5 of the Vienna Declaration. This provision was raised by Pakistan (on behalf of the Organization of the Islamic Conference (OIC)), Bangladesh, Slovenia.

⁴ Including the right to a healthy environment, raised by Cuba.

⁵ The Philippines called on the international community to address leprosy and its attached social stigma.

⁶ Pakistan (on behalf of the OIC), Bangladesh.

⁷ States that commented on the situation, using ‘Burma’ and ‘Myanmar’ interchangeably, included: Portugal (on behalf of the EU), Switzerland, Canada, Slovenia, India, the Netherlands, the Republic of Korea, Peru, Japan, Sweden, Norway, New Zealand, Ireland, Australia, Chile, Finland, the United States of America (USA). No States from the African Group commented on the situation.

A number of these States prefaced their discussion of the situation in Myanmar by citing the Vienna Declaration provision that ‘the promotion and protection of all human rights is a legitimate concern of the international community.’⁸ States urged the Junta to exercise restraint and to: respect the physical integrity of protestors and to refrain from violence;⁹ release political prisoners, including Daw Aung San Suu Kyi¹⁰ and members of Generation 88;^{11/12} cooperate with relevant UN mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar;¹³ cooperate with the Secretary-General’s Special Envoy for Myanmar, Dr Ibrahim Gambari;¹⁴ open a dialogue with partners, opposition leaders and ethnic groups;¹⁵ continue its shift toward democratisation, political reform, national reconciliation, and the completion of its constitutional process;¹⁶ and observe the people’s right to freedoms of expression, opinion, association and assembly.¹⁷

In stronger statements on the violation of human rights in Myanmar: Switzerland called on States to ‘bring their influence to bear’; Canada stated that the Council has a ‘responsibility to address’ the situation; the Netherlands pressed that the Council had an ‘obligation to act on human rights violations’; Ireland called on the UN to ‘speak with one voice’ in response to the violence; and Finland stressed that the Junta must be ‘held accountable’ for its actions. Chile recalled that it had voted in favour of the defeated Security Council draft resolution 61/232 on Myanmar¹⁸ and the USA, pressing that that it has ‘long called’ on the Council to address the situation of human rights in Myanmar, called for ‘strong action to underscore – clearly and unequivocally – that Burma must fulfil its human rights obligations’.

Other issues

Brazil, in a joint statement on behalf of the Group of Friends and others,¹⁹ discussed the draft UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children, a text focused on the rights of children deprived of parental care. Drafted by a working group of international NGOs within the NGO Group for the Convention on the Rights of the Child, and with the cooperation of the United Nations Children’s Fund (UNICEF), the guidelines were debated at a consultation in Brasília in August 2006. UNICEF and the Friends World Committee for Consultation (Quakers)²⁰ also took the floor to respectively endorse and call for the adoption of the guidelines by the General Assembly in 2008.

⁸ Paragraph 4 of the Vienna Declaration. These States included Switzerland, Slovenia, the Netherlands, the Republic of Korea, Sweden, Norway, Finland.

⁹ Portugal (on behalf of the EU), Switzerland, Canada, Chile, USA, International Commission of Jurists (ICJ).

¹⁰ Nobel peace prize laureate and leader of the National League for Democracy, a pro-democracy movement in Myanmar.

¹¹ ‘Generation 88’ or ‘88 Generation’ is a movement comprising the generation of students active during the 1988 pro-democracy uprising in Myanmar.

¹² Switzerland, Canada, Slovenia, the Netherlands, Norway, Chile, USA, ICJ.

¹³ Portugal (on behalf of the EU), Switzerland, Slovenia, Norway, ICJ.

¹⁴ Switzerland, Peru, Japan, Ireland, Finland, ICJ.

¹⁵ Switzerland, Canada, Slovenia, India, Sweden, Norway, USA.

¹⁶ Slovenia, India, the Netherlands, the Republic of Korea, Chile.

¹⁷ Sweden, New Zealand, Chile, Finland, USA, ICJ.

¹⁸ Draft resolution 61/232 called on the Government to take concrete steps to allow full freedom of expression, association, and movement by unconditionally releasing Daw Aung San Suu Kyi and all political prisoners, lifting all constraints on all political leaders and citizens, and allowing the National League for Democracy and other political parties to operate freely.

¹⁹ The Group of Friends includes Brazil, Argentina, Chile, Egypt, Georgia, Ghana, India, Mexico, Morocco, Philippines, Portugal, Sudan, Sweden, Ukraine, Uruguay. Brazil also spoke on behalf of Finland, Germany, Italy, Switzerland.

²⁰ In a joint statement with ECPAT International, International Foster Care Organisation (IFCO), International Alliance of Women, International Catholic Child Bureau (ICCB), International Council of Women, International Federation of Social Workers, International Save the Children Alliance, International Social Service (ISS), Plan International, SOS-Kinderdorf International, World Vision International.

New Zealand and Australia expressed concern at the lack of independence of the Fiji National Human Rights Commission, whose accreditation to the Council was suspended by the International Coordinating Committee of National Human Rights Institutions in early 2007. To Australia, the Fiji Commission had been ‘compromised...through the partisan comments and actions of the Director’. New Zealand also attributed the actions of the ‘current leadership’ to compromises in the effectiveness of the Fiji Commission, ‘which in turn has seriously weakened the protection of citizens whose rights have been violated’. Australia and Morocco voiced strong support for the work of national human rights institutions (NHRIs), with Australia also lauding the work of the Asia Pacific Forum on NHRIs (APF).²¹ The International Service of Human Rights (ISHR) called for Item 8 to be used to enable an annual exchange between the Council and the Coordination Committee of the special procedures to discuss ‘system-wide issues, concerns and challenges’.

In further comments, Pakistan welcomed the fact that, ‘through the President’, the Office of the High Commissioner for Human Rights (OHCHR) had ‘assured’ States that ‘a discussion on the relationship between the Council and the High Commissioner’ would be opened. Australia called for an independent international human rights monitoring mechanism to be established in Sri Lanka. Algeria called on the Council to consider holding a review conference on the Vienna World Conference on Human Rights.

Discussion of Item 10

Technical assistance and capacity building

General debate on Item 10, technical assistance and capacity building, focused on a few key themes. The main subject of the debate pertained to the ‘voluntary nature’ of technical assistance and capacity building, and its goals and parameters. Several speakers also mentioned the potential role of the UPR in capacity building. The role of human rights education as a preventative strategy²² and as a critical means for capacity building was also highlighted by a number of speakers.

The voluntary nature of technical assistance

Several States²³ insisted that technical assistance and capacity building should not be imposed on States, but provided with the consent of and in consultation with concerned States. In this regard, Sri Lanka stated that General Assembly *Resolution 60/251* gave the Council a clear mandate to revisit the nature of technical assistance and capacity building to avoid reverting to the practices of the Commission on Human Rights (the Commission).²⁴ Sri Lanka also stated that technical assistance and capacity building should be ‘demand-driven’ and based on the need of beneficiary countries.

Pakistan (on behalf of the OIC) stated that States should determine their own needs, and pressed that the level of development and the cultural and religious specificities of countries had to be taken into account. It was also of the opinion that States should be consulted on the establishment of technical assistance and capacity-building programmes in their country and that, equally, relevant States should be consulted with regard to the establishment of regional technical assistance and capacity-building presences.

²¹ The APF is a member-based organisation that supports the establishment and strengthening of NHRIs in the Asia.

²² International Alliance of Women Jurists.

²³ Sri Lanka, Pakistan (on behalf of the OIC), Malaysia, Bangladesh.

²⁴ Burkina Faso called for technical assistance and capacity-building programmes to be premised on the strengthening of dialogue rather than ‘systematic confrontation’.

Portugal (on behalf of the EU) stated that one of the core elements of technical assistance and capacity-building programmes was their voluntary nature. It reaffirmed the importance of national ownership²⁵ of technical assistance and capacity-building programmes, pressing that technical assistance and capacity building must be based on a ‘mutual commitment’ to the common values of human rights, democracy, and the rule of law, and built upon structured processes with well defined benchmarks and stipulated timeframes.

Role of technical assistance and capacity building

A difference of opinion arose between States on the role of technical assistance and capacity building. Some States viewed technical assistance and capacity building as a direct means of addressing human rights situations on the ground. Other States pressed that the goal of technical assistance and capacity-building programmes should be the empowerment of State national capacities to address human rights violations.

Portugal (on behalf of the EU) and several other States²⁶ stressed that technical assistance and capacity building was one of the tools available to the Council to address human rights violations,²⁷ referring to the situation of human rights in Haiti, Liberia, Burundi, Nepal, and Colombia. Portugal (on behalf of the EU) called for the renewal of the mandate of the Special Rapporteur on Haiti for adoption without a vote, discussed the continuing need for the Independent Expert on Liberia to continue his work, and welcomed the initiative of the Government of Burundi to renew the mandate on its country. It also highlighted the ongoing culture of impunity, sexual violence, armed violence and attacks on human rights defenders and civilians in the DRC and the Darfur region of the Sudan, calling for mandates of both the Independent Expert on the situation of human rights in the DRC and the Special Rapporteur on the situation of human rights in the Sudan to be renewed.

Sri Lanka stated that technical assistance and capacity-building programmes should aim to ‘enhance the indigenous capacity’ of States. It called on OHCHR to focus its efforts on enhancing the national human and institutional capacities of States, and to aid in the development of national protection systems and human rights strategies based on development goals. Bangladesh highlighted the distinction between technical assistance and capacity building, pressing that the former referred to the transfer of skills and ‘know-how’ while the latter involved ‘putting in place sustainable programs’. While it conceded that both were interrelated, it pressed that capacity building should be the main aim. Bangladesh also stated that capacity-building programmes must draw on existing national expertise within States and should not impose on States the cultures or values of other societies.²⁸

Sweden stated that the Council should be perceptive of potential gaps in technical assistance and capacity-building programmes and that the Council, as an institution leading the struggle for human rights, should facilitate human rights mainstreaming into the work of other UN institutions.

Human rights education

Burkina Faso stated that human rights education was a sustainable way for moving forward with capacity building. Costa Rica, supported by Chile, highlighted that human rights education was an instrument for promoting beliefs and attitudes of people to defend their own human rights and those of others. It stated that General Assembly *Resolution 59/113* of 10 December 2004, which established the World Programme for

²⁵ Supported by Sri Lanka, Bangladesh.

²⁶ Made on behalf of Turkey, Croatia, former Yugoslav Republic of Macedonia, Albania, Montenegro, Serbia, Liechtenstein, Ukraine, Republic of Moldova, and Georgia.

²⁷ Sweden also supported the view that the Council’s capacity-building measures should address human rights situations on the ground.

²⁸ Pakistan (on behalf of the OIC) also stated that OHCHR should use experts who can assess the specific needs of the concerned country, and that the experts should be recruited at the national or regional levels.

Human Rights Education, was a concrete strategy promoting human rights education at local and national levels. Costa Rica urged States, UN agencies, and NGOs to implement the 'first phase' of this programme. In an NGO statement, Soka Gakkai International²⁹ supported Costa Rica's call and added that human rights education and training should be undertaken for government officials, law enforcement officers, and members of the judiciary. Other NGOs discussed the importance of integrating a gender perspective into human rights education.³⁰

Other issues

Sweden stated that one of the central capacity-building tasks of the Council rests with managing the outcomes of country reviews under the UPR, which could include both general guidance and specific recommendations. Pakistan (on behalf of the OIC) also acknowledged that technical assistance and capacity building could 'flow' from the UPR, underscoring again the need for country consent. Bangladesh stated its support for the establishment of the UPR voluntary trust fund.

Burkina Faso pressed that the strengthening of special procedures was essential to monitoring human rights activities. It called on States to support the work of the special procedures and to implement their recommendations. Burkina Faso also called for NGOs to be supported in their capacity-building work.

Continuation of the debate on the process for the review of mandates

Near the close of the morning meeting, the President gave the floor to delegations that, due to time constraints, had not been able to take the floor during debate on the process for the review of mandates held on Wednesday, 26 September 2007.

China expressed its support for a holistic and coherent review of mandates. It pointed out that the process of review was intended to analyse and improve mandates.³¹

Egypt (on behalf of the African Group) stated that the Council needed to ensure that all reviews conformed to a minimum set of objective criteria and should form part of 'a global picture'. It called on the Council to consider postponing of decision making to the second part of the 6th session in December 2007.

Switzerland stated that *Resolution 5/1* gives a clear review framework, allowing for the consideration of mandates 'one-by-one' while keeping in mind a broader picture of the review process. Echoing the comments made by Cuba on Wednesday, 26 September 2007, Switzerland pressed that since some mandates had already been reviewed it was time for the Council to implement *Resolution 5/1* without delay.

President's concluding remarks

The President stated that the process of review, rationalisation and improvement of mandates had already begun, and that draft decisions had been tabled following consultations. He urged States to keep in mind the broader context when reviewing individual mandates. Recalling the earlier statement by Egypt, the President reiterated that discussion should focus on the broader review process rather than assessing the individual

²⁹ On behalf of 17 other organisations for human rights education.

³⁰ International Federation of University Women (joint statement on behalf of 12 NGOs) and International Alliance of Women Jurists.

³¹ Its specific concerns were the overlapping and proliferation of mandates and the protection gaps in the system.

merits of mandates. Moreover, he stressed that the review of mandates was an ongoing process that could also take place when mandate holders presented their periodic reports to the Council.

In closing, the President assured the Council that consultations would continue in various forms and with as many States as possible to 'arrive gradually at a shared outlook on how to deal with these issues'. Calling on States to intensify their discussions, the President pressed that the Council required a broad set of principles to orient the review process and to ensure that the Council's work would be transparent and efficient.

As a final word, the Moroccan Ambassador took the floor to ask why the distribution of draft resolutions had been restricted to Council member States. The President committed to taking up the issue with the Secretariat and providing an answer after the lunch interval.

Conclusions and decisions adopted by the Council

The President opened the afternoon meeting by again explaining the process for the adoption of decisions and resolutions.³² He informed that there were 36 draft proposals to take action on.

Decisions adopted without a vote

At the suggestion of the President, the Council decided to extend the mandate of the former members of the Working Group on communications until the new Advisory Committee is established and can elect the new members of the Working Group on communications.

Draft decision submitted by the President on follow up to Resolution 5/1³³

The draft decision contains the general guidelines for the preparation of information under the UPR, the technical and objective requirements for eligible candidates for the special procedures, and the technical and objective requirements for submission of candidatures to the Advisory Committee. It was adopted without a vote.

Slovenia (on behalf of the EU States that are members of the Council) made a general comment expressing appreciation to the Facilitators for their work. It also underlined the need for a public list of highly qualified candidates for the special procedures. It noted that it would have preferred more demanding requirements and expressed the hope that the process for the appointment of mandate holders would ensure that the best candidates be appointed. It recalled that the qualifications of current mandate holders could be used as guidance. Sri Lanka (on behalf of the members of the Council of the Asian Group) thanked the Facilitators for their excellent work.

At the request of Cuba, the draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination³⁴ was deferred to the December session of the Council.³⁵

³²The text of all of the draft resolutions are available on the OHCHR extranet, that 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.

³³ A/HRC/6/L.24.

³⁴ A/HRC/6/L.19.

³⁵ The session is scheduled to take place from 10 to 14 December 2006.

Draft resolution on the Protection of cultural rights and property in situations of armed conflict³⁶

This draft resolution was introduced by Azerbaijan stating that the text aimed at addressing the interlinkages between human rights and humanitarian law in relation to the protection of cultural properties in time of armed conflict. It stated that the text had been carefully drafted to stay within the scope of the Council's mandate.

Slovenia (on behalf of the EU States that are members of the Council) considered that the linkages established in the text between the protection of cultural property and human rights were not sufficiently clear and should be dealt with by other bodies, such as the International Committee of the Red Cross (ICRC). It stated that the draft resolution was an example of the proliferation of initiatives and that it had little connection with the mandate of the Council. Slovenia noted that the EU would not oppose the adoption of the resolution on the understanding that the issue would not be brought before the Council at future sessions.

Suspension of the meeting

The President then announced that a request had been received for the suspension of the meeting. He stated that the suspension would be for 'no more than ten minutes'. Instead the session was interrupted for almost two hours.

When the meeting was reconvened, the President apologised for the delay. He noted that the break had been helpful in moving things forward and that after 'open and candid' consultations, agreement had been reached on a broad set of guidelines for the review, rationalisation and improvement of mandates and on the process for the continuation of work.

He stated that agreement had been reached on four guidelines for the process of review of mandates:³⁷

- Equal treatment of review, rationalisation and improvement of mandates in accordance with the provisions of *Resolution 5/1*;
- The review would take place without prejudice to the review, rationalisation and improvement of mandates in accordance with *Resolution 5/1*;
- The expectation of the Council that co-sponsors would adhere to *Resolution 5/1*;
- The President will continue to hold consultations to refine the methodology for the review, rationalisation and improvement of mandates.

Continuation of the adoption of decisions

The President stated that it had also been agreed that all proposals put forward at the current session relating to the review, rationalisation and improvement of mandates would be considered first. This process was different from the one outlined at the beginning of the afternoon session when the President explained that the Council would consider resolutions in the order of the Items under which they had been tabled. He explained that the new process took account of the fact that these resolutions would implement aspects of *Resolution 5/1*. He then stated that the resolutions on the review would be considered in the order in which they had been tabled.

³⁶ A/HRC/6/L.1

³⁷ These guidelines will be distributed as a non-paper and will be made available on the OHCHR extranet.

Mandate of the Special Rapporteur on the right to food³⁸

Cuba introduced the draft resolution noting that it had been discussed in the context of the review of the mandate. It proposed to revise the draft resolution to include a reference to the Code of Conduct for special procedures mandate holders.³⁹

A few States made general comments. Egypt (on behalf of the African Group) expressed appreciation for the reference to the Code of Conduct and urged all other sponsors to include the same reference in their resolutions. This call was echoed by Sri Lanka (on behalf of the Asian Group) noting that the reference should be fully adhered to. Guatemala stated that it could not accept any conditionality on the adoption of any resolution. It underlined that it would consider the content of each resolution and decide on a case-by-case basis. The resolution was then adopted without a vote.

Human rights and international solidarity⁴⁰

Cuba introduced the draft resolution stating that the international community must provide effective international cooperation to eliminate barriers to development. It noted that the resolution took account of the recent report by the Independent Expert on international solidarity.⁴¹ Cuba then introduced three revisions to the text, including the preambular paragraph that it had proposed for the resolution on the right to food.

Slovenia (on behalf of EU States that are members of the Council) gave an explanation of vote before the vote. It emphasised that States have the primary responsibility for the promotion and protection of the human rights of individuals. It could not endorse the assertion in the resolution that ‘full realisation of human rights depended on international assistance’. It recalled that the EU had not supported the creation of the mandate on international solidarity. It regretted that the resolution did not contain references to the positive efforts made with regard to development assistance. For these reasons, Slovenia asked for a vote on the resolution. The resolution was adopted with 34 in favour, 12 against, and one abstention.⁴²

At the end of the meeting, the President informed that the draft resolution on elimination of all forms of intolerance and of discrimination based on religion or belief⁴³ would be deferred ‘until later’.

³⁸ A/HRC/6/L.5/Rev.1.

³⁹ The revision replaced preambular paragraph 3 by ‘Recalling the resolutions 5/1 “Institution-building of the United Nations Human Rights Council” and 5/2 “Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council” of 18 June 2007 and stressing that the mandate holder shall discharge his/her duties in accordance with these resolutions and their annexes’.

⁴⁰ A/HRC/6/L.6.

⁴¹ A/HRC/4/8. ISHR has produced an unofficial summary of this report (*Reports in Short*) that is available at www.ishr.ch/hrm/council/reports_in_short/.

⁴² The voting records are available on the OHCHR extranet.

⁴³ A/HRC/6/L.15.

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