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THE UN HUMAN RIGHTS COUNCIL
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1. Overview

The UN Human Rights Council (HRC) adopted at its 15th regular session more than 30 resolutions, including the establishment of a new mandate of the UN Special Procedures a) on assembly and association, and b) a working group on the topic of discrimination against women by law and practice. The mandate of the Special Rapporteur on indigenous peoples has a new title: Special Rapporteur on the Rights of Indigenous Peoples (before: UN Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People). The U.S. and UK articulated their dissent (due to, rights' and 'peoples' which addresses the collective dimension of human rights, so far rejected by many western states), but the resolution could pass without a vote.

The HRC established also a working group composed by government representatives in order to prepare a standard relating to private sector military and security companies. The HRC agreed on a President's Statement on the relations between HRC and the Office of the High Commissioner for Human rights (OHCHR) under-scoring the legal basis of this relationship. The Advisory Committee has still a difficult stand to be perceived and to reach more than a shadow existence. The greatest attention was given to its report on the draft guidelines on discrimination against leprosy sufferers and their families (A/HRC/15/30).

Noteworthy: the Council adopted for the first time a resolution on the Right to Water by consensus and understands in Operative Paragraph (OP) 3 the right to water and sanitation as a right that is enshrined by the UN Covenant on Economic, Social and Cultural Rights (CESCR) on the context of

the right to adequate living standards and, thus, legally binding (A/HRC/15/L.14). The UN General Assembly had paved the way on 28 July 2010 with its declaration on the Right to Water (A/64/L.63/Rev.1).

2. Organization HC and SG Reports

The High Commissioner for Human Rights, **Navi Pillay**, raised in her opening statement recent natural disasters, the protection and rights of human rights defenders and those who report to UN agencies. The Organization of Islamic Conference (OIC) complained that she had failed to mention recent incidents of religious intolerance, especially against Muslims. Both issues - human rights defenders and defamation of religions - played a greater role in the following debate. In particular the discrimination of Roma people in France was mentioned. Unfortunately, at the side of western countries, only Switzerland made some remarks on this issue, and in the same way, only few NGO contributions referred to it.

3. Promotion and protection of all human rights, HR bodies and mechanisms

The HRC appointed the new Special Rapporteur on internally displaced persons, **Chaloka Beyani** (law professor from Zambia), and **Juan Ernesto Méndez** (human rights lawyer and 2007 Special Advisor to UN Secretary General on Genocide Prevention) as Special Rapporteur on torture and other cruel or degrading treatment and punishment.

The HRC listened to reports of the Special Representative of the UN Secretary-General on children in armed conflicts (A/HRC/15/58), inter alia on mass rapes in the Democratic Republic of Congo, of the Special Rapporteur on contemporary forms of

slavery (A/HRC/15/20+Add.1 / communication with governments) and on the situation in Mauritania (Add.2), Ecuador (Add.3) and Brazil (Add.4). The Chairperson of the Working Group on mercenaries noted a growing trend towards privatization of security concerns (A/HRC/15/25 + Add.1) and presented country reports on Afghanistan (A/HRC/15/25/Add.2) and the U.S. (A/HRC/15/25/Add.3). The Chairperson also reported on regional consultations on the subject in the Asia and Pacific (A/HRC/15/25/Add.4), Africa (A/HRC/15/25/Add.5) and within Western and Other States (A/HRC/15/25/Add.6).

Further reports were presented by the Independent Expert on safe drinking water and sanitation (A/HRC/15/31), a progress report on the collection of good practice (A/HRC/15/31/Add.1), a preliminary report on Slovenia (A/HRC/15/31/Add.2) and her report on Egypt (A/HRC/15/31/Add.3). Together with the Independent Expert on extreme poverty, both presented their report on Bangladesh (A/HRC/15/55). The Independent Expert on extreme poverty wrote draft guidelines on human rights and extreme poverty (A/HRC/15/41). The Independent Expert on human rights and international solidarity presented his annual report (A/HRC/15/32) as well as the Special Rapporteur on toxic waste (A/HRC/15/22 + Add.1) and country visits in Kyrgyzstan (A/HRC/15/22/Add.2) and India (A/HRC/15/22/Add.3).

The Special Rapporteur on the Rights of Indigenous Peoples presented a series of reports: (A/HRC/15/37 + Add.1), indigenous peoples in Botswana (A/HRC/15/37/Add.2), Colombia (A/HRC/15/37/Add.3), Australia (A/HRC/15/37/Add.4), Russian Federation (A/HRC/15/37/Add.5), preliminary notes to Saami in northern Europe (A/HRC/15/37/Add.6), Ecuador (A/HRC/15/37/Add.7), and provisional notes on Guatemala

(A/HRC/15/37/Add.8) and New Zealand (A/HRC/15/37/Add.9). In his annual report, he devotes a special chapter to corporate responsibility. The OHCHR also reported on recent developments in the implementation of the UN Declaration on the Rights of Indigenous Peoples (A/HRC/15/34), and the Expert Mechanism on its 3rd Meeting (and A/HRC/15/35 A/HRC/15/36).

The Special Rapporteur on racism and racial discrimination presented in addition to his annual report (A/HRC/15/45) a report which deals specifically with defamation of religions (A/HRC/15/53), in particular Islamophobia. In his recommendations, however, he stresses the need to get away from the concept of defamation and to speak instead of racist or religious hatred that incites to discrimination, hostility or violence, and thus to situate the debate more in the existing legal framework. The Working Group on people of African descent mainly dealt with the country visit to the U.S. (A/HRC/15/18). The report highlights the comprehensive legislation and programs in the United States but notes the high unemployment rate among women, the high rate of inmates and the de facto less favourable treatment in court by this group. The reports on thematic issues were completed by a series of presentations by OHCHR and the UN Secretary General.

4. Human rights situations

In relation to country situations, mostly the European Union and other western countries took the floor in order to address situations in Iran, Bahrain, Sudan, Somalia, Syria, DR Congo, Myanmar, Cuba, North Korea, Sri Lanka, Belarus, Kyrgyzstan, Swaziland, Fiji, Cambodia, Vietnam, Eritrea, Uganda, Zambia, Iraq, Malawi, Zimbabwe, Ivory Coast, Kenya, the occupied territories in Palestine, Gaza. Japan made critical

assessments of Myanmar, Sri Lanka and North Korea. The representative of the Russian Federation, however, disapproved such interference in internal affairs and referred to the Universal Periodic Review (UPR) as the appropriate instrument to address country situations. China mentioned the situation of the Roma and religious discrimination in Europe, as well as Iran.

The Independent Expert on Sudan presented his annual report (A/HRC/14/41), the report on the implementation of the recommendations of the expert group (A/HRC/14/41/Add.1), an update (A/HRC/15/57) and a progress report to August 2010 (A/HRC/15/CRP.1). He recommended e.g. a law reform with reference to international human rights standards. The Special Rapporteur on Cambodia highlighted a remarkable progress in human rights and the will to cooperate with UN agencies (A/HRC/15/46) while the situation for journalists, human rights defenders and political opponents is still inadequate as well as the lack of independence of the judiciary. On Somalia, the HRC organised a stand-alone discussion with all UN agencies operating in the country. The debate was attended e.g. by the Deputy Prime Minister of the transitional government. The debate was subsequently amended by the report of the Independent Experts (A/HRC/15/48).

5. Palestine and other occupied Arab territories

The debate on Israel and the occupied Palestinian and Arab territories was supported by reports of the OHCHR (A/HRC/15/51), the UN Secretary-General (A/HRC/15/52), and a member of the Committee of Experts, which followed the fact-finding mission to the Gaza conflict, i.e. the Goldstone report (A/HRC/15/50). The Israeli government has never responded

to the questions of the expert committee. A second debate on the region dealt with the fact-finding mission after the Israeli attack on the Gaza solidarity flotilla (A/HRC/15/21). The chairman of the mission stated that the action of the Israeli military had been disproportionate and that the blockade of Israel is illegal.

6. UPR

The following outcomes of the UPR Working Group have been adopted: Kyrgyzstan (A/HRC/15/2), Kiribati (A/HRC/15/3), Guinea (A/HRC/15/4 + Add.1), People's Republic of Laos (A/HRC/15/5 + Add.1), Spain (A/HRC/15/6 + Add.1), Lesotho (A/HRC/15/7 + Add.1), Kenya (A/HRC/15/8), Armenia (A/HRC/15/9 + Add.1), Guinea-Bissau (A/HRC/15/10 + Add.1), Sweden (A/HRC/15/11 + Add.1), Grenada (A/HRC/15/12), Turkey (A/HRC/15/13 + Add.1), Guyana (A/HRC/15/14 + Add.1), Kuwait (A/HRC/15/15 + Add.1), Belarus (A/HRC/15/16 + Add.1).

7. Panel Discussions

The panel discussions inside the HRC – a major instrument to bring an issue to the public and official attention – were prominently dealing with women's issues. The panels stood under the overarching theme of mainstreaming gender added by the half-day discussion of the integration of a gender perspective in the HRC's work and another panel on Discrimination against Women – in Law and in Practice. The newly founded United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the very recent assignment of Michelle Bachelet as its head clearly stood in the limelight of the two half-day discussions. Actual aim of the two

meetings, however, was the debate on establishing a HRC mechanism regarding the discrimination against and empowerment of women. Whereas gender specific discrimination had been examined under various mandates, and in cooperation with numerous UN bodies such as CEDAW and UNIFEM (now UN Women), a special HRC mandate entrusted only with gender related questions yet needed to be established.

During the half day discussion on **women's equality before the law**, the Deputy High Commissioner for Human Rights presented the OHCHR's thematic study on discrimination against women, in law and practice (A/HRC/15/40). She highlighted the progress that had been made on the international level and stressed, further, that it was high time to put national law in line with international obligations. Lee Waldorf, from UN Women, stated that whereas legal standards had been in the international focus for a long time, the actual impact of gender specific jurisdiction was still a grey area in many countries. The opportunities women are offered by law would not be acted upon. She suggested that the new mechanism should offer guidance of content and to make best practices systematically available.

Victoria Popescu from the Committee on the Elimination of Discrimination against Women (CEDAW) emphasized the numerous challenges that women all over the world still face *de jure* and *de facto*. She mentioned *inter alia* the fields of domestic violence, property rights, inheritance and employment. The subsequent discussion showed how reluctant states from all regions were with regards to the necessity of a special mechanism that would consolidate the work done under other mandates. Member States to the Organization of the Islamic Conference (OIC) especially felt targeted and thus

highlighted consistently their dislike of a new mechanism.

The **annual discussion of integrating a gender perspective in the HRC's work** was entitled "Lessons learned, shortcomings and future challenges: 2007-2010". During the opening presentations certain panelists focused on their respective organizations' and institutional gender policies while more substance would have been appropriated. **Cynthia Rothchild**, independent gender consultant, and **Florence Sambiri Jaoko** from the Kenyan National Human Rights Commission, highlighted the enormous potential of UPR in addressing gender related issues which yet needed to be exploited. Ms Rothchild further urged the Council to provide Special Rapporteurs and Independent Experts with particular gender related training to be able to better assess mainstreaming gender in their work. Two aspects to be integrated in the HRC's work emerged from the presentations: the sharing of "best practices" and implementation of the international framework on a national scale. During debate, progress was made regarding the establishment of a new mandate. Whereas many delegations expressed their support of this new mandate, states of the Arab Group and the OIC remained depreciative.

Whereas all HRC members repeatedly stated their concern about women's issues and highlighted the importance of the two panels, the organization of the panels by the HRC secretariat was publicly criticized. The reports had not been published or translated on time, not enough time to hear even half of the scheduled speakers, and the fact that panelists were not granted the appropriate time to answer all questions raised resentment among the delegations. Thus the Russian Federation called upon the

secretariat to either “revise panels organization or not to do them at all”.

During the discussions on the draft resolution for the new mandate, the OIC countries tabled an amendment which caused much disarray in the HRC. Saudi Arabia, at last minute, proposed to integrate “national obligations” in the mandate thus diminishing the importance of the international framework of norms on the matter. This suggestion was rejected by

the sponsors of the resolution: Mexico highlighted that the discrimination of women all over the world would not just be a political issue but a question of principle. Integrating such proposition would clearly question the absolute right of women and could thus not be accepted. In the end, the resolution was adopted without a vote and establishes a Working Group of five Independent Experts on the issue of discrimination against women in law and in practice.

8. Resolutions and Decisions

The following resolutions have been adopted without a vote

- Resolution on the Elimination of Discrimination against Women (A/HRC/15/L.15)
- Resolution on the Special Rapporteur on Contemporary Forms of Slavery (A/HRC/15/L.9)
- Resolution on the Independence and Impartiality of Judiciary, Jurors and Assessors and the Independence of Lawyers (A/HRC/15/L.16)
- Resolution on the Right to Education (A/HRC/15/L.19)
- Resolution on Forensic Genetics and Human Rights (A/HRC/15/L.29)
- Resolution on Adequate Housing as a Component of the Right to an Adequate Standard of Living (A/HRC/15/L.13)
- Resolution on Human Rights and Access to Safe Drinking Water and Sanitation (A/HRC/15/L.14);
UK dissociated from the consensus
- Resolution on the Elimination of Discrimination against Persons Affected by Leprosy and their Family Members (A/HRC/15/L.18)
- Resolution on the World Programme for Human Rights Education: Adoption of the Plan of Action for the Second Phase (A/HRC/15/L.26)
- Resolution on Human Rights and Indigenous Peoples (A/HRC/15/L.5)
- Resolution on Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Right of Indigenous People (A/HRC/15/L.6);
UK articulated its reservations towards collective rights
- Resolution on Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Mandate of the Special Rapporteur on the Promotion of Human Rights and Fundamental Freedoms While Countering Terrorism (A/HRC/15/L.7)
- Resolution on the Human Rights of Migrants (A/HRC/15/L.8/Rev.1)
- Resolution on Preventable Maternal Mortality and Morbidity and Human Rights: Follow-Up to Resolution 11/8 (A/HRC/15/L.27)
- Resolution on Arbitrary Detention (A/HRC/15/L.24)
- Resolution on Draft Guiding Principles on Extreme Poverty and Human Rights (A/HRC/15/L.25)

- Resolution on the Rights to Freedom of Peaceful Assembly and of Association (A/HRC/15/L.23);
China and Russian Federation dissociated from consensus, Cuba, Libya and Pakistan doubted the need for such a mandate
- Resolution on the Right of Everyone to the Enjoyment of the Highest Attainable standard of Physical and Mental Health (A/HRC/15/L.28)
- Decision on Human Rights and Issues Related to Terrorist-Hostage Taking (A/HRC/15/L.20)
- Resolution on Nelson Mandela International Day (A/HRC/15/L.21)
- Resolution on Advisory Services and Technical Assistance for Cambodia (A/HRC/15/L.17)
- Resolution on Assistance to Somalia in the Field of Human Rights (A/HRC/15/L.2/Rev.1)
- Presidential Statement on Technical Assistance and Capacity Building to Haiti
- Presidential Statement by the Council on Ecuador
- Presidential Statement on the Strategic Framework of Programme 19 (Human Rights) / OHCHR
- Follow-up to the Report of the Independent International Fact-Finding Mission (*Gaza flotilla*) (A/HRC/15/L.33);
30 in favour, 1 against, 15 abstentions
- Resolution on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self Determination (A/HRC/15/L.31);
31 in favour, 13 against, 2 abstentions
- Resolution on Human Rights and International Solidarity (A/HRC/15/L.32);
32 in favour, 14 against
- Resolution on Human Rights and Unilateral Coercive Measures (A/HRC/15/L.11);
32 in favour, 14 against
- Resolution on the Right to Development (A/HRC/15/L.12);
45 in favour, 1 abstention
- Resolution on Working Group on Elaborating Framework on Private Military and Security Companies (A/HRC/15/L.22);
32 in favour, 12 against, 3 abstentions
- Resolution on the Situation of Human Rights in the Sudan (A/HRC/15/L.35) as amendment to L.3;
25 in favour, 19 against, 3 abstentions
Vote on A/HRC/15/L.3 – 25 in favour, 18 against, 3 abstentions
- Resolution to the Follow-up of the Committee of Independent Experts (A/HRC/15/L.34);
27 in favour, 1 against, 19 abstentions

9. Conclusions

The development of standards by the HRC made progress in this September session by a further differentiation with the creation of two new mandates of the UN Special Procedures. The mandate of freedom of assembly and association was politically a wise move by the U.S., who got on board

co-sponsors from all regional groups, including countries such as Nigeria and Indonesia. This was without doubt diplomacy at work. Correspondingly countries like China, Cuba could not publicly deny such a right and felt obliged to join the consensus although they might have preferred not to. This kind of political strategy proves that certain majorities in the

HRC are not set in stone but subject to change – as far as there are players with clear ideas and a strong implementation.

The unspoken but prominent topic of the 15th session was the review process, which at the end of October started its first meeting in Geneva. Main aspects of possible and demanded new elements for the work of the HRC are summarised and available via www.fes.de/GPol/en/hrc-conference.htm as well as the final report

of an international conference in mid-October in Berlin, via <http://library.fes.de/pdf-files/iez/07625.pdf>.

In November 2010, the HRC started a marathon of informal consultations, and in the beginning of December there will be a meeting at Ambassador's level in Bangkok (Thailand holds the HRC Presidency). In February 2011, there is a second formal Working Group meeting scheduled again in Geneva.

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