

COUNCIL MONITOR

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Overview

During the morning meeting, the Human Rights Council (the Council) considered the report of the Independent Expert on the situation of human rights in Somalia, and completed the review, rationalisation and improvement of special procedures mandates planned for the 7th session. It reviewed the mandates of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC) and the Independent Expert on the situation of human rights in Somalia.

Egypt (on behalf of the African Group), as the main sponsor of the mandate of the Independent Expert on the situation of human rights in the DRC, stated that it opposed the renewal since the mandate had not contributed to the promotion of human rights in the country and since the DRC did not support its continuation. However, the majority of delegations that spoke during the review were strongly in favour of renewing the mandate.

Despite a brief delay due to the late arrival of the Ambassador of Somalia for the review of the mandate on that country, the Council remained on schedule. During the afternoon, the President held a closed informal meeting with the 32 States that will be reviewed in the first two sessions of the Universal Periodic Review (UPR) Working Group in April and May respectively.

Item 10 – Technical assistance and capacity building

Report of the Independent Expert on the situation of human rights in Somalia

Mr Ghanim Alnajjar, the Independent Expert on the situation of human rights in Somalia, introduced his annual report.¹ Mr Alnajjar began by remarking that ‘normally, I would say that it gives me great pleasure to introduce my report, but today there is nothing that gives me pleasure.’ He described the situation in Somalia as ‘a dire humanitarian crisis’ and asked the Council to take a moment of silence in respect for the lives being lost there. The instability in the country has had a devastating impact on the population, who experience repeated violations of their rights. Mr Alnajjar highlighted the situation of ‘boat people’ as a symbolic example of the human rights situation and suffering in Mr Alnajjar emphasised impunity, arbitrary detention, sexual violence, deaths and disappearances of journalists and human rights defenders, and the vast numbers of internally displaced persons (IDPs) as just some of the consequences of the conflict in the country.

Mr Alnajjar declared that ‘the situation in Somalia continues to be one of the worst in the world’, and called upon the international community to ‘go beyond making recommendations and not implementing anything’. The international community must seize the window of opportunity that exists in the country as a result of the newly created Transitional Federal Government that is paving the way for elections in 2009. He called for the international community to technically and financially support the authorities to allow them, in turn, to implement the Transitional Federal Charter. Furthermore, he stated that Somalia needs to be supported in its efforts to create an independent human rights institution, end impunity, uphold the rule of law, and protect vulnerable groups. Mr Alnajjar ended his statement with a number of recommendations to the United Nations (UN) and to the international community at large. These included support to the Transitional Federal Government, protection of IDPs, establishment of an international commission of inquiry, and the urgent establishment of an independent human rights presence in the country.

As the representative of Somalia, the concerned country, had not yet arrived, the Council proceeded to the interactive dialogue. Ambassador Yusuf Mohamed Ismail ‘Bari-Bari’ of Somalia spoke during the review, rationalisation and improvement of the mandate of the Independent Expert on the situation of human rights in Somalia.

Interactive dialogue

Many speakers commended the tireless work of the Independent Expert² and several noted that the international community should pay more attention to the dire situation in Somalia.³ This was reiterated by the Independent Expert in his closing comments. Many countries highlighted the need to support the transitional authorities in their efforts to stabilise the State,⁴ and Canada specifically asked for the Independent Expert’s opinion on how the international community could do this.

¹ A/HRC/7/26, 17 March 2008, available at <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm>. ISHR has prepared unofficial summaries of the reports by special procedures (‘Reports in short’), available at http://www.ishr.ch/hrm/council/reports_in_short.

² Egypt, Djibouti, Italy, United States of America (US), Sweden, Yemen, Human Rights Watch.

³ Amnesty International, Yemen, Kenya.

⁴ Egypt, Italy, Kenya, Ethiopia, United Kingdom (UK).

Egypt (on behalf of the African Group) stated that all parties in Somalia must refrain from violence and respect their obligations under human rights and international humanitarian law. It repeated the Independent Expert's call for technical and financial support to assist Somalia establish independent institutions.⁵

The Independent Expert's request for a UN peace keeping mission was highlighted by several speakers.⁶ Furthermore, several countries voiced their concern that the distribution of humanitarian aid is being obstructed and that aid workers are being violently targeted.⁷ Slovenia, on behalf of the European Union (EU), asked the Independent Expert how these aid workers can be assisted. Sweden and the United States of America (US) voiced their fears that the right to freedom of expression is being seriously violated.

Ethiopia was the only country to raise an objection to the report of the Independent Expert, stating that certain information contained therein regarding the conduct of Ethiopian troops in Somalia had not been verified.

In his closing comments, the Independent Expert supported the call from Human Rights Watch for an independent session of the Council dedicated to the situation in Somalia. He also thanked the delegations for their support. He addressed Ethiopia's accusations by stipulating that his work was done in an independent and professional manner, and without any intention of making allegations against any State. He finished on a positive note, highlighting the work of the UN Rule of Law Programme which has been very effective in the country. Mr Alnajjar once more urged the international community to pay due attention to the situation in Somalia and to ensure a human rights presence is established there.

Review, rationalisation and improvement of special procedures mandates

The Council completed the review, rationalisation and improvement of special procedures mandates scheduled for this session. Based on the institution-building package contained in *Resolution 5/1* adopted in June 2007, the Council has set out to review each special procedures mandate over the course of its second cycle. The Council started this review at its 6th session in September 2007. So far, it has reviewed 12 mandates, and all of them were renewed.⁸ During its 7th session, the Council is to review 14 mandates.⁹

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

Egypt (on behalf of the African Group) as the main sponsor introduced the mandate. It thanked the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC) for all the efforts he had made and acknowledged his personal commitment. However, it noted that the context in which the mandate had been established was different from the one prevailing today. Post conflict political progress had been made since the Presidential elections in 2006, including through political, legislative and judicial reforms. The Government had also taken steps to promote the realisation of economic, social and cultural rights. The DRC had also made efforts to stabilise the security situation. Egypt (on behalf of the

⁵ Canada and New Zealand also supported the establishment of independent institutions.

⁶ Amnesty International, New Zealand Djibouti.

⁷ Slovenia (on behalf of the EU), Canada, US.

⁸ Four country-specific mandates (those on Haiti, Burundi, Liberia and the Sudan) and eight thematic mandates (on food, international solidarity, arbitrary detention, indigenous peoples, internally displaced persons, housing, health and human rights while countering terrorism) were renewed. See ISHR's overview of the first part of the 6th session as well as the *Daily Updates* of the resumed 6th session held in December 2007, available at www.ishr.ch.

⁹ See the latest version of the programme of work, available at www2.ohchr.org/english/bodies/hrcouncil/docs/7session/PoW170308.doc

African Group) noted that these efforts were 'slated to improve the situation and return it to normalcy'. It further stated that the Independent Expert had been unable to mobilise or provide the necessary assistance to the DRC. Egypt (on behalf of the African Group) concluded that the mandate had not 'offered the clear prospect for improving the human rights situation' that was required in the institution-building package and that it had not 'been of benefit to the DRC'. It underlined that the Government of the DRC had explicitly requested that the mandate not be renewed and this was supported by the African Group's principled position regarding country mandates. Egypt (on behalf of the African Group) recalled the institution-building package, which stated that a decision to create or renew a country mandate should take account of the 'principles of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations'. Egypt (on behalf of the African Group) argued that, in view of the request of the DRC, a renewal would be counter productive and would not lead to improvement of the situation on the ground. Finally, it noted that the DRC has fully cooperated with the thematic special procedures and suggested that a joint visit be undertaken by some of the special procedures. Furthermore, the DRC could report to the Council on the human rights situation, and Egypt (on behalf of the African Group) claimed that this would be a 'more viable alternative' than a mandate that had not achieved any clear results. It concluded that the African Group opposed the renewal of the mandate.

The Independent Expert, Mr Titinga Frédéric Pacéré, noted the statement made by Egypt regarding the lack of contribution made by the mandate. He noted that he had been appointed to the mandate in July 2004 and that over the years he had highlighted several concerns regarding the human rights situation in the DRC, including sexual violence, massacres and serious violations of human rights in Kivu, arrests and arbitrary detention, the situation of children, and widespread impunity. He explained that he had presented a vast number of recommendations on all of the issues of concern to him. He stated that he had not received any acknowledgement of receipt from the Government or information on what had been done to implement these recommendations. These concerns had been reflected in more than 40 resolutions adopted by the former Commission on Human Rights (the Commission) and the General Assembly calling on the Government to end impunity. He argued that one should be careful to conclude that the mandate had not made any contributions. He noted that on the question of impunity, he had raised concerns in his reports and had presented recommendations and that this had produced certain results. He stated that the High Commissioner had visited the DRC and that funding had been made available. He explained that he had asked for a minimum of assistance in fulfilling the tasks assigned to him and recalled that the Independent Expert is not paid. He also noted that he had been forced fund some colleagues to work with him. Finally, he emphasised that the Independent Expert had done as much as possible and that he had received no response to his communications. He queried what had been done to implement all these recommendations and urged that the Council's resolutions be used to obtain assistance.

The DRC as a concerned country recalled the institution-building package and the guidelines set out therein regarding the renewal of country mandates, in particular the principles of cooperation and dialogue. It noted that several factors speak in favour of not continuing the mandate. At the national level new institutions had been created as a result of free and fair democratic elections. It stated that the country is in a state of post-conflict, but no longer in an emergency situation where systematic and massive human rights violations occur. It noted that in the near future a national human rights commission would be established. Furthermore, the Government is taking steps to fight impunity and adopting other important measures to protect human rights. At the international level, the DRC highlighted that it will be examined under the universal periodic review (UPR) like all other States. It noted that it would continue to work with the treaty bodies and receive visits of thematic special procedures and that their reports could help the country achieve human rights. Finally it noted that the mandate had not benefited from sufficient support from the international community and that as a result, no programme of institutional capacity building had been initiated in the DRC as part of the mandate. In conclusion, the DRC claimed that country mandates are selective and a result of politicisation. Such mandates are not in line with the new spirit of the Council based on dialogue, cooperation, and non-confrontation. It stated that the mandate did not deserve to be renewed but that it was open to

proposal to examine the possibility of other mechanisms contributing to the promotion and protection of human rights.

Interactive dialogue

Many States thanked the Independent Expert for his work¹⁰ and his commitment.¹¹ Switzerland stated that the Independent Expert had provided assistance to the DRC.

The vast majority of delegations supported the renewal of the mandate.¹² Slovenia (on behalf of the EU) noted that the mandate had been a useful tool for reporting on the DRC since its establishment in 1994. Amnesty International recalled that the Special Rapporteur on the DRC had been replaced by the Independent Expert in 2004 as an acknowledgment of the Government's readiness to address human rights violations. However, it had also contributed to an erroneous impression that the human rights situation was no longer dire.

Many speakers emphasised that although much progress had been made, there were still many challenges and much needed to be done to improve human rights protection.¹³ Slovenia (on behalf of the EU) highlighted continued violations of all rights.¹⁴ Amnesty International stated that the situation continued to be extremely grave. Many expressed concern about the prevalence of impunity and the lack of an independent judiciary.¹⁵ They stated that the Government of the DRC should reinforce its efforts to end impunity and to bring all perpetrators to justice. Switzerland stated that profound changes are necessary in the judicial system to improve access to justice. Belgium stated that the national budget for issues of justice and to fight impunity was insufficient. Many speakers also expressed serious concern about the human rights situation of vulnerable groups¹⁶ such as internally displaced persons,¹⁷ children, women, and about political harassment,¹⁸ torture, and arbitrary arrests.¹⁹ Human Rights Watch highlighted the extremely high number of people killed during the conflict, the unique scale of sexual violence, the prevalence of child soldiers and the high number of displaced persons and refugees. The International Federation of Human Rights Leagues (FIDH) also expressed alarm at harassment and killings of journalists. Sweden asked how the mandate could continue to assist the Government in addressing these serious concerns.

The ongoing and escalating violence, including sexual violence, in the eastern part of the country was of particular concern to many delegations.²⁰ Slovenia (on behalf of the EU) noted that boys are recruited into combat and that girls suffer from sexual violence.²¹ Switzerland also expressed concern at violence against

¹⁰ Slovenia (on behalf of the EU), Switzerland, Canada, Belgium, Norway, Sweden.

¹¹ Switzerland.

¹² Slovenia (on behalf of the EU), Netherlands, UK, France, Belgium, US, Norway, Switzerland, Sweden, Canada, International Federation of Human Rights Leagues (FIDH) in a joint statement with the World Organisation against Torture, Human Rights Watch, Comité International pour le Respect et l'Application de la Charte Africaine des Droits de l'Homme et des Peuples (CIRAC), Amnesty International.

¹³ Slovenia (on behalf of the EU), France, Norway, Action Internationale pour la Paix et le Développement dans la Région des Grands Lacs.

¹⁴ Canada and the UK also expressed concerns about the human rights situation.

¹⁵ Slovenia (on behalf of the EU), Switzerland, UK, Belgium, International Federation of Human Rights Leagues (FIDH) in a joint statement with the World Organisation against Torture, Comité International pour le Respect et l'Application de la Charte Africaine des Droits de l'Homme et des Peuples (CIRAC).

¹⁶ Switzerland, Slovenia (on behalf of the EU), France.

¹⁷ Centre on Housing Rights and Evictions.

¹⁸ Human Rights Watch.

¹⁹ Slovenia (on behalf of the EU), France, Amnesty International.

²⁰ Slovenia (on behalf of the EU), Netherlands, France, Belgium, Norway, Sweden, FIDH, Amnesty International.

²¹ France.

women in the eastern part of the country. Several delegations stated that the international community should assist the DRC to achieve concrete improvements to the situation on the ground, especially in the eastern part of the country.²²

Canada stated that the loss of the mandate would be an obstacle to international and regional cooperation on the human rights situation in the DRC. France stated that the UPR could not substitute the Independent Expert in addressing the urgent needs in the DRC. Switzerland also highlighted that continued monitoring is necessary. The UK stated that the Independent Expert was necessary to provide the necessary support in a timely manner. Belgium argued that the DRC had identified some gaps in the Independent Expert's mandate and that the serious situation in the country required strengthening of the mandate.²³

Several delegations called on the Council to renew the mandate.²⁴ Belgium noted that the mandate had always achieved consensus or broad agreement and that confrontation had never been the objective. Norway stated that it hoped a consensual approach could be reached on the renewal of the mandate. Human Rights Watch stated that the Council should not limit its concern to specific themes or regions and should instead continue to be seized of the situation.

Only two delegations did not support the extension of the mandate. The Russian Federation stated that it favoured reaching stability in the DRC as quickly as possible and ensuring human rights protection. However, it emphasised that technical assistance should only be provided or continued with the consent of the country concerned. It called on the DRC to develop cooperation with the thematic special procedures, especially in those areas where this assistance is required. Algeria argued that the UPR would be an excellent way of promoting dialogue and cooperation among States and avoiding confrontation. It noted that the Independent Expert had underlined some weaknesses on the side of the DRC while not clearly highlighting the progress made. It further stated that the excessive focus on weaknesses had not been sufficiently balanced with assistance from the international community.

In his closing comments, the Independent Expert stated that the comments made had demonstrated the need for the mandate. He noted that he was grateful to the DRC for drawing attention to the difficult working conditions of the Independent Expert. Finally he noted that he had been well-received by the Government on several occasions, and as recently as last week, and that his relations with the Government were excellent.

Egypt thanked the Independent Expert for his input and comments and thanked delegations for the comments they had made, which 'had been duly noted'. It reiterated that the African Group holds the Independent Expert in high esteem and that it had expressed appreciation for his work and personal commitment. The question, it argued, was not one of the performance of the mandate holder but regarding the mandate itself and what it has delivered. It argued that the purpose of the mandate is not just reporting or attracting the attention of the international community. It noted that while the circumstances have been difficult for the Independent Expert, the international community had not provided the necessary assistance. Egypt (on behalf of the African Group) further stated that some of the Independent Expert's recommendations could not be implemented due to the situation in the DRC or because of their partial nature. It reiterated that the renewal of the mandate would be counter-productive because of its 'lack of efficiency and its low output' and since the DRC did not want it. It argued that the notions of cooperation and dialogue would be absent if the Council renewed the mandate. Finally, it stated that it acknowledged that there are problems and that the situation in the east is of concern. However, monitoring would continue by the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on children and armed conflict. It argued that it anticipated 'much value' from the African Group's alternative proposal. It noted that the Office of the High

²² Netherlands, France.

²³ Action Internationale pour la Paix et le Développement dans la Région des Grands Lacs.

²⁴ Slovenia (on behalf of the EU), Netherlands, France, Canada, US, FIDH, Amnesty International.

Commissioner for Human Rights (OHCHR) component of the United Nations Mission in DRC (MONUC) was ‘quite valuable and helpful’. In conclusion, it hoped that the alternative proposal would meet the approval of the Council.

Independent Expert on the situation of human rights on Somalia

The mandate of the Independent Expert on the situation of human rights in Somalia was introduced by Egypt (on behalf of the African Group), as the main sponsor. It began by commending the Independent Expert for the work he has undertaken during his tenure. It acknowledged the obstacles that faced the Independent Expert in carrying out his mandate, and expressed its hope that given the recent improvement of the security situation, the next mandate holder will be able to work ‘in the most effective possible manner’. With regard to the African Group’s generally unsupportive stance *vis-à-vis* country mandates, Egypt (on behalf of the African Group) explained that it had decided to support the renewal of this mandate ‘given the willingness of the Somali Authorities’ and ‘in view of the exceptional circumstances and challenges’ facing the State. Finally, Egypt (on behalf of the African Group) stressed that regardless of the different titles that mandate holders may bear, their selection would have to conform fully with Council *Resolution 5/1*.²⁵

Next, Mr Ghanim Alnajjar, the Independent Expert on the situation of human rights in Somalia, addressed the Council. Mr Alnajjar began with a few brief remarks on how his mandate could be improved. He underscored the importance of visiting the country with an example, and requested that a provision be made for more visits to Somalia. He also pointed out that the reports of this Independent Expert are the only continual publications on Somalia, and emphasised the need for regular, periodic reporting to both the Council and the General Assembly. Mr Alnajjar described how vulnerable populations feel safer when they know that their situation is being reported and they hear statements addressed to them through, for instance, the radio. At the same time, Mr Alnajjar lamented that there are ‘so many events that are covered by the mandate that are not reported’ due to time and page constraints. Mr Alnajjar concluded by stating that the mandate would continue to be important until there would be a stable situation in Somalia, and that it was essential to renew it.

Interactive dialogue

The President first gave the floor to Ambassador Yusuf Mohamed Ismail ‘Bari-Bari’ of Somalia, as a concerned country. Ambassador Ismail thanked the Council for the opportunity for dialogue, as well as for its ‘valuable contributions to a fair and lasting peace’ in Somalia. He also commended the UN Secretary-General and the President of the Council for their work. Ambassador Ismail briefed the Council on the present security situation in his country, which remains fragile despite efforts on the part of the Transitional Federal Government (TFG). He regretfully acknowledged that violations of human rights and international humanitarian law ‘have been the norm’ in Somalia. He spoke of the Government’s focus on security and reconciliation, and listed other major issues confronting it in meeting its obligations under the Transitional Federal Charter before the end of 2009.²⁶ Ambassador Ismail also highlighted some areas of progress that have been made despite hardships such as the lack of resources. He also enumerated issues, such as IDPs and humanitarian needs, which require further assistance from the international community. Finally, Ambassador Ismail described the national Recovery Development Program,²⁷ and appealed to the international community to help in this regard.

²⁵ A/HRC/5/1, 18 June 2006, available at www2.ohchr.org/english/bodies/hrcouncil/5session/resolutions.htm

²⁶ These include the completion of the draft Federal Constitution, organisation of a national referendum on the Constitution, preparations for democratic elections, and the establishment of a national census machinery for conducting census of the population.

²⁷ This programme is intended to reduce poverty, foster development, and deepen peace.

All delegations that took the floor spoke in favour of the mandate and commended Mr Alnajjar for his work and dedication.²⁸ Italy, the traditional sponsor of resolutions on the provision of assistance to Somalia, expressed its ‘sincere appreciation’ for the initiative that the African Group had taken in presenting this draft resolution. It stressed that its main concern had never been its own role in this initiative, ‘but exclusively to raise awareness of the dire human rights situation in Somalia’.

Many States welcomed the progress that has occurred in Somalia since the establishment of the Transitional Federal Government, but expressed their concern about the continuing dire situation.²⁹ Slovenia (on behalf of the EU) highlighted a number of specific issues of concern, including widespread insecurity, extrajudicial killings, arbitrary arrests and detentions, torture, threats to freedom of opinion and expression,³⁰ and infringements of economic, social and cultural rights. Other States raised sexual violence and the weakness of the judiciary and the resulting widespread impunity,³¹ as particular areas of concern. Meanwhile, Canada stated that ‘a political solution must be found to end the violence, deprivation and displacement’ in Somalia. It also elucidated the need to ensure safe and unhindered access for humanitarian workers and NGOs. Human Rights Watch called the Council’s attention to the continuing displacement of the Somali population, and pointed out that the causes are linked to ‘ongoing widespread violations of international human rights, many of which amount to war crimes’.

Italy and Switzerland called for the establishment of a self-standing OHCHR office in Somalia.³² Human Rights Watch urged the Council to seriously consider new methods to deal with the situation in Somalia, and took this opportunity to thank the Independent Expert for his ‘constructive response’ to its idea of a special sitting of the Council dedicated to the situation.

Mr Alnajjar began his concluding comments by warmly welcoming Ambassador Ismail to Geneva, remarking that it was his ‘dream to have a Somali representative here’. Mr Alnajjar repeated his call for improving the mandate of the Independent Expert through including a provision on regular reporting to the Council and to the General Assembly. He also reiterated his call for the establishment of an independent OHCHR office in Somalia, reminding the Council that at present, there is no human rights presence there. Finally, he thanked all those who showed appreciation for his work and said, ‘I am glad that you like my work and am waiting to like yours in supporting Somalia’.

Egypt (on behalf of the African Group) was the last speaker in the interactive dialogue. It thanked the delegations that took the floor to support its initiative and reiterated its appreciation to Italy for its cooperation. It also expressed its pleasure at the presence of Ambassador Ismail. Egypt (on behalf of the African Group) repeated its explanation for its support for this mandate despite its general stance against country-specific mandates. It also assured Mr Alnajjar that his comments on the improvement of the mandate would be taken into account in the consultations on the draft resolution renewing the mandate.

²⁸ Slovenia (on behalf of the EU), Italy, Switzerland, Canada, Sudan, Human Rights Watch.

²⁹ Slovenia (on behalf of the EU), Italy, Canada, Sudan.

³⁰ Also mentioned by UK, Switzerland

³¹ UK, Switzerland

³² Italy, Switzerland

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