

Steps Forward – Towards an Uncertain Future

The 57th session of the Sub-Commission on Human Rights and the 67th session of the Committee on the Elimination of Racial Discrimination

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The United Nations is opening a new chapter in its history. The ‘outcome document,’ adopted at the UN World Summit held in September, represents significant changes – hopefully for the better – in the way in which the United Nations is going to operate, including in the field of human rights. The agenda for the summit, when proposed by the Secretary-General in March, contained many reforms deemed unrealistic. Among major changes proposed to the human rights systems, replacing the Commission on Human Rights with a Human Rights Council came as a particular shock to many in Geneva. After intense negotiations, world leaders did however manage to reach agreement in principle; the Human Rights Commission is to be upgraded to a Council, the details to be negotiated in the months to come.

The UN treaty system has also been going through a series of reforms over the past years and has been improved in many respects. As ‘the cornerstone of the United Nations framework for human rights,’¹ the treaty system receives constant review and working methods regularly change and evolve. The latest major reform, which is to coordinate the working methods of various committees and streamline reporting requirements, has started taking shape. Without waiting until this was completed and its effectiveness evaluated, the High Commissioner for Human Rights made clear that, in the long term, the work of the seven treaty bodies should be further consolidated, including through the creation of a unified standing treaty body.

But reforms should not end up changing only ‘form’ – they should bring about change in the lives of people on the ground. Compared to inter-governmental bodies, expert bodies are far more open to NGOs including indigenous and minority groups, and engage more of these groups in their relevant work. What will become of such access and participation of people?

Sub-Commission

The fifty-seventh session of the Sub-Commission on the Promotion and Protection of Human Rights (SCHR), was dominated and overshadowed by discussion of reform. Under a new Human Rights Council, it is unclear what will become of the SCHR itself, and its working groups, including the Working Group on Indigenous Populations (WGIP) and the Working Group on Minorities (WGM). The High Commissioner stated that ‘there will always be room for normative and analytical work in the future of the principal UN human rights body, *whatever form that takes. The appropriate forum for such work is a question that is now in the hands of several stakeholders, including States.*’² Essentially, she neither supported nor guaranteed the continuation of the Sub-Commission.

1 See statement of Ms Louise Arbour, High Commissioner for Human Rights, to the Fourth Inter-Committee Meeting, 22 June 2005.

2 Statement by Louise Arbour, United Nations High Commissioner for Human Rights, at the opening of the 57th session of the Sub-Commission on the Promotion and Protection of Human Rights, Palais des Nations, Geneva, 25 July 2005.

Significantly, not all the members or all NGOs called for the SCHR's survival. Both underlined the importance of an expert body under a Human Rights Council. Consequently, the SCHR adopted by consensus a document, annexed to a decision,³ entitled 'The Role of an independent expert body within the reform of the United Nations human rights machinery.' Here the SCHR outlined not only the role of an expert independent collegiate body, but also why a need exists for this standard-setting role.

The SCHR and its working groups offer an invaluable forum for various NGOs, including victims, to raise cases of human rights violations and take part in relevant standard-setting activities. Many NGOs consistently underline the importance of continued participation of NGOs with or without consultative status with the Economic and Social Council.

The SCHR has also been taking steps to reform itself, such as through the possible formulation of guidelines or criteria for membership, the issue of term limits, the improvement of the prioritization, choice and discussion of working papers and reports, and how to make more effective use of information on country situations.

The relocation of the SCHR under the Human Rights Council would not necessarily guarantee the continuation of existing mandates/studies. IMADR is particularly concerned about the future of the study currently undertaken by the Special Rapporteurs on discrimination based on work and descent. In their preliminary report, the Special Rapporteurs presented plans for the preparation of a draft set of principles and guidelines for the elimination of discrimination based on work and descent. These plans, which include convening regional and international consultations, were subsequently approved by the SCHR. Consultations with representatives of affected communities among others would be essential for principles and guidelines to be effective, and the process would empower communities concerned.

The future of the WGIP and WGM has been at stake even before the current UN reform began. The appointment of an Independent Expert on Minority Issues last April was realised at the expense of a WGM being reduced to one session of three consecutive working days held annually during the SCHR. The SCHR questioned this decision, requesting the restoration of its original inter-sessional status. It is uncertain if either of these working groups will survive the UN reform at all.

At its sixty-first session, the Sub-Commission adopted total 32 resolutions and 14 decisions.⁴

CERD

The Committee on the Elimination of Racial Discrimination (CERD), established by a treaty, is largely spared from UN Reform. However, proposals for a unified standing treaty body came as a blow. The idea is not new and was raised in previous reform discussion. Indeed, the idea of expanded core documents was a

³ Decision 2005/114

⁴ A more comprehensive report on the Sub-Commission highlighting discussions on the issues of IMADR's particular concern is available on IMADR website: www.imadr.org.

result of such discussion, and preparation of draft guidelines is now in its latter stages. The possible marginalization of the issue of racial discrimination, legal and procedural complications and practical questions are among concerns raised by Committee members. One positive comment was that such a unified body might be able to consider individual communications under all the relevant treaties.

A concept paper will probably be developed and a brainstorming meeting organised in May 2006. The results will be considered by the 5th inter-committee meeting and the 18th meeting of the chairpersons in June 2006. This will be followed by an intergovernmental consultation of States parties. Meanwhile, new procedures have been established, and existing ones refined at CERD.

Follow-up procedure

Follow-up procedure, established one year ago, started gaining a place in the work of the Committee. Following consideration of Botswana's report in March 2004, reports from local and international NGOs indicated that tribal Acts and constitutional provisions would have a discriminatory effect against those ethnic groups subordinate to a dominant tribe. The Committee sent letters to the Government to transmit those concerns. In March 2005, with substantial information received from the State party indicating that it was redrafting the legislation, CERD requested that it be kept closely informed. In August, the Committee was instead informed that the State party had submitted a periodic report and decided to continue its follow-up through consideration of that report in March 2006.

At its March session, in consideration of Surinam, experts expressed concerns over a revised version of the draft Mining Act, which would threaten the lives of indigenous and tribal peoples. The Committee commented that the state party 'actively disregarded the Committee's recommendations by authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples.'⁵ This case was therefore referred to the early warning and urgent action procedures. A decision was subsequently adopted in which CERD expressed its concerns and urged the UN Secretary-General to draw the attention of the competent UN bodies to the situation.

The Government of Ireland demonstrated positive follow up steps to the Concluding Observations adopted by CERD last March, in cooperation with the Follow-Up Coordinator. Also taken up under this procedure were People's Democratic Republic of Laos and Papua New Guinea.

Early-warning measures and Urgent Action Procedures

Early warning measures and urgent procedures are preventive measures introduced to the work of the Committee in 1994. Initially, CERD actively invoked those measures to consider cases of conflicts in the former Yugoslavia and in the Great Lake Region in Africa and later a wider range of situations such as Australia's amendment of its Native Title Act, considered racially discriminatory against indigenous peoples. Since then, these procedures have been little used, in part as the Committee struggled to redefine its preventive role.

⁵ Decision 1 (67), UN Doc. CERD/C/DEC/SUR/2

In March 2005 the Committee held a Thematic Discussion on the prevention of genocide and decided to commit itself to 'strengthening and redefining its early warning and urgent action'. It expressed its intention of 'developing a special set of indicators related to genocide'⁶ to strengthen its capacity to detect as early as possible developments in racial discrimination that may lead to violent conflict and genocide. The Committee adopted a set of indicators of systematic and massive patterns of racial discrimination at its 67th session. It was further decided that the Chairperson of CERD's working group on early warning/urgent action may take actions in response to information received *in between sessions* of the Committee about grave incidents of racial discrimination covered by one or more of the relevant indicators. Those actions include requesting further urgent information from the State party, and forwarding the information to the Secretary-General and his Special Advisor on the Prevention of Genocide.

The Committee considered requests submitted by the Crimean Tatars, relating to citizenship, and on land rights of the Western Shoshone indigenous people in the United States of America, under its early warning and urgent action procedure. In both cases, the Committee transmitted letters to the respective Governments with a list of questions so that the matter could be discussed further at the CERD's 68th session.

Under its regular reporting procedure, periodic reports were presented by Venezuela, Georgia, Zambia, Barbados, Tanzania, Iceland, Turkmenistan and Nigeria. Committee members further continued their exchange of views on the concept of multiculturalism. The Committee also adopted General Recommendations XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System⁷.

At its next sixty-eighth session, the Committee will consider periodic reports of Lithuania, South Africa, Guyana, Mexico, Guatemala, El Salvador, Uzbekistan, Botswana, Bosnia & Herzegovina and Israel.

⁶ Declaration on the prevention of genocide, UN Doc CERD/C/66/1

⁷ For details about this General Recommendations, see the article by Hayato Nakamura on pages ... of this issue – CUT?.