

Agenda Item 114 (b)-(e): Human Rights Questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, reports of special rapporteurs and special representatives and report of the High Commissioner on Human Rights

Statement by Hon'ble Dr. (Mrs.) J.G. Mohanta, MP on November 1, 2000

Madam Chairperson,

We thank the High Commissioner for Human Rights for her statement. We also wish to thank the Special Rapporteurs and Special Representatives for the opportunity of a dialogue with them. Since the canvas of this agenda item is extremely vast, we shall briefly comment on the reports and make some general remarks.

The Office of the High Commissioner for Human Rights has a unique role to play since it is one of the organs of the United Nations through which international law in recent years has been codified and implemented. These laws, fundamentally, are to promote human rights and protect them from gross violations. It, therefore, follows that laws or treaties that evolve through the mechanism of the Commission for Human Rights must find the widest international acceptance and the highest credibility. And for this, the Office of the High Commissioner for Human Rights must conduct its work on the broadest agenda of promotion and protection of human rights and in all its multifarious dimensions. This, quintessentially, should consist of a balance between the promotion of human rights and its protection. These two aspects are intricately linked; the most active promotion of human rights is the best guarantee for its protection.

Similarly, to have the widest possible breadth of understanding of the issues involved, which by their nature are sensitive and intricate, the Office of the High Commissioner for human rights requires a broader geographical representational balance which is currently not the case. Human rights are not the prerogative of one civilization; all open democracies protect and promote them, and universal human rights can best be understood and defended by the UN and its Secretariat if they absorb and reflect all points of view.

We have read with interest the Secretary General's report on strengthening the rule of law. We have noted the increase in the activities of the Office of the High Commissioner for human rights in providing technical assistance to states requesting them. The increasing popularity of national human rights institutions in the promotion of the rule of law and other human rights is reflected in the report, which states that in 1999-2000 the Office of the High Commissioner provided advice, assistance and information to 30 governments in establishing national human rights institutions. It is also heartening to note that the number of states requesting assistance for fortifying and consolidating the rule of law has increased significantly in recent years. In view of the evidently increasing relevance of rule of the law and the need to support national institutions, we would urge the High Commissioner to pay increasing attention to them. We would have expected the report of the Secretary General to have been more detailed and informative than the one before us, which has no indications of the resources spent on these activities.

Human rights defenders occupy an important position in civil society. They work towards democratic transformation and participation of people in the decision-making process. For this, they have faced increasing risks both from undemocratic and unrepresentative governments as well as organisations working outside the rule of law. ECOSOC this year approved the appointment of a Special Representative on Human Rights Defenders. In view of the importance we attach to this issue, we supported the appointment of the Special Representative.

We appreciate the comprehensive report of the Independent Expert on the Right to Development. We understand that this report was discussed in the first meeting of the Working Group on the right to development, ably Chaired by Ambassador Dembri of Algeria. The report is a forward looking document and seeks to view the promotion and protection of human rights including the realisation of the right to development in a more holistic and systematic manner. The independent expert rightly says that the realisation of right to development goes far beyond the concept of improving human development. Similarly, the human rights approach to development is not the same as realising the right to development. The right to development is also not a summation of a set of rights. It is a process and it must be understood to be so. The right to development has been presented as a vector of rights, which on one axis includes elements of individual rights, and on the other, the requirements of resources for growth and development. The realisation of this vector of rights and resource is what is required. Undoubtedly, this new integrated approach will be further discussed in the Working Group and we await its results.

By its resolution 54/165, the General Assembly had asked the Secretary General to take into account the views of the member states and to submit a comprehensive report on "Globalisation and its impact on human rights". What we have instead, is a recapitulation of the "global compact", without any indication whether the report was based on responses from member states. Though para 4 of the report claims that the Political Declaration of the 24th Special Session of the General Assembly was to be assumed as an "expression of the views of member states" on globalisation, we would have much rather preferred a report, highlighting the impact of globalisation on the promotion and protection of human rights, after receiving responses from member states.

The Special Rapporteur on extra-judicial, summary or arbitrary executions has provided a broad overview of the status of the implementation of the right to life. In the section on women, the Special Rapporteur has provided information on allegations in a number of countries but fails to mention Afghanistan, where such violations occur in their most heinous forms. This selectivity sends the wrong signals to the perpetrators of such crimes, and it carries with it the risk that the reports might be suspected of being coloured by a political bias.

We agree with the Special Rapporteur that children are being increasingly enlisted by militant non-state actors to engage in violence and are indoctrinated to use violence. This indoctrination, however, is not only confined to political ideology; in some countries, children receive religious indoctrination calculated to inflame religious hatreds.

In the section on violations of right to life of persons exercising the right to freedom of opinion and expression, we are astonished that the Special Rapporteur includes India in her list. Nowhere is freedom of expression as liberal, sometimes to the point of license, as in

India. Thousands of publications in both national and vernacular languages freely disseminate independent views. Nowhere are street demonstrations and public action as common as in India. We had thought the Special Rapporteur would be aware of this.

We are even more surprised at India being listed among countries where “large scale extra-judicial killings” are being carried out by government security forces or armed groups reported to be sponsored, supported or tolerated by governments. This is utter nonsense. Our open, democratic, plural and rule based society, cannot and does not allow this, nor could such activities be kept hidden from the media and the public at large, or escape the scrutiny of our judiciary and the system of public interest litigation, used specifically to ensure that the executive does nothing that is illegal, arbitrary or despotic.

The Special Rapporteur claims that her mandate allows her only to take cognizance of violations when the perpetrators are believed to have a direct or indirect link with the state. The narrow interpretation is that she can only report if violations are internal to the state. Perpetrators who could be other states, or their proxies, therefore, escape her scrutiny. Her reportage would be more balanced and comprehensive if she looked at violations occurring in one state through sponsorship of armed groups by another; that, even by the narrowest definition of her mandate, is within her remit.

The general statement in the report that the global situation in regard to the respect for right to life is bleak, does not fit very well with the rapid increase in the number of countries choosing the democratic path of governance with an independent judiciary, press, rule of law and fundamental freedoms. It is too sweeping a comment.

We appreciate the work of Mr. Abdelfattah Amor, Special Rapporteur on the elimination of all forms of intolerance and of discrimination based on religion or belief. We thank the Special Rapporteur for having reflected the responses of my Government to various allegations transmitted to it. A point to note in the responses is that the sensibilities of the minorities and their personal laws have been fully taken into account by the Government of India. Also the investigative and judicial mechanisms have striven to halt any violations or attempted violations. I take this opportunity to point out that in a nation of our size, and of such plurality and diversity of faith, creed, language and ethnicity, the number of violations are minimal and mostly of a criminal nature. Nevertheless, we are committed to correct aberrations.

The analyses of the communications and their responses by the Special Rapporteur are important but they should be more broad-based. While we agree that extremism is on the rise, leading to religious fanaticism, we fail to understand the implication of paragraph 81 where an example has been quoted regarding “questioning the role of a religious minority in the educational, social and cultural field in order to widen the electoral base of national political parties of a religious character” which is “according to the communications from the Special Rapporteur”. We wonder which Special Rapporteur has reported on this example to this Special Rapporteur. This is an example of a conclusion drawn even before examination of the evidence.

We support any effort at increasing understanding and tolerance, and secularism as basic to peace and development. Education is an effective weapon to defeat forces that believe in exclusion or exclusivity. Hence we support the initiative of the Special Rapporteur

for an “International Consultative Conference on School Education” to be held in November 2001 in cooperation with the Government of Spain.

Madam Chairperson,

The past decade has witnessed a strengthening of the rights based approach in implementing human rights instruments and obligations arising from them. However, its application to economic and social and cultural rights, particularly in developing countries, has not been fully recognised nor amplified. The right to development and the right to an enabling “social and international order” as contained in the Universal Declaration on Human Rights, through the sharing of obligations at the national and international level, has not been sufficiently elaborated. We recognise the rights based approach as including civil and political rights as well as economic, social and cultural rights together and as inherent to the individual. These composite rights are not something that are conferred on the individual but are intrinsic to every human being. They reflect a corpus of laws, entitlements, duties and obligations which can be claimed by right and is codified in law as well as adjudicated by law. We believe that the respect of this composite and interdependent corpus of human rights is independent of the level of development of a country. India has never mortgaged its democracy for development or the eradication of poverty and disease, nor made human rights contingent upon development; this continues and will continue to be our policy.