
HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

Controversial first draft of study on traditional values and human rights



Photo: Wendy Tanner

The controversial draft of a study on the traditional values of humankind has been considered by the Human Rights Council Advisory Committee (the Committee) at its 8th session. The study has attracted particular attention due to concern that the concept of traditional values, if not carefully handled, could undermine the universality of human rights.

The meeting was held in Geneva from 20 – 24 February 2012. Draft reports on the following topics were also considered: the right of people to peace; international cooperation in the field of human rights; the human rights of the urban poor; the advancement of the rights of peasants; severe malnutrition and childhood diseases; and human rights and international solidarity. The Committee also considered a concept note for a study on rural women and the right to food.

The draft study on traditional values comes from Human Rights Council resolution 16/3,¹ which mandated the Committee 'to prepare a study on how a better understanding and appreciation of traditional values of dignity, freedom and responsibility can contribute to the promotion and protection of human rights.'² That resolution was presented by the Russian Federation.³

A DIVISIVE FIRST DRAFT

The first draft of the study was prepared and presented by Mr Vladimir Kartashkin, the Russian member of the Committee. Mr Kartashkin acknowledged critical comments on the report received prior to its presentation. However, he noted too that he had tried his best to address a subject that had divided the Council, in a way that took different views into account. Indeed, the resolution mandating the study had been adopted with 23 votes in favour and 22 against. At the same time, he said, the Committee could not go beyond the scope of the explicit mandate given to it, despite the positions taken up by a range of States. During initial Advisory Committee discussions on traditional values in August 2011, several States expressed concern that the Advisory Committee was not tasked to study *if* traditional values promote human rights, but only *how*. He argued the Committee must work with the concept of traditional values and with the values listed in the resolution, of freedom, dignity, and responsibility.

Mr Kartashkin presented his opinion that the 'universalisation of human rights' refers to a process, which must take place gradually. He cautioned against rushing the implementation of norms of international human rights, and called for applying these norms 'over time', with a 'respectful attitude to local cultures, customs and ways of life'. The Committee's mandate, he felt, was to explore how dignity, freedom and responsibility could contribute to this process.

Committee member Mr Wolfgang Heinz (Germany) said he was 'alarmed' by the draft study and could understand the concerns expressed by human rights experts.⁴ He felt the study did not respond to the mandate given to the Committee. Many

1 Adopted at the 16th session of the Council, March 2011.

2 A/HRC/RES/16/3, para. 6, available at: <http://bit.ly/gQtWFV>.

3 For more background on this resolution and the controversy surrounding it, see 'Human Rights Council Advisory Committee', *Human Rights Monitor Quarterly*, Issue 4, 2011, p.7, <http://bit.ly/y9aHvf>.

4 Mr Heinz listed a number of the concerns that were included in the written statement submitted by the Canadian HIV/AIDS Legal Network, A/HRC/AC/8/NGO/4, <http://bit.ly/HaYGIA>.

members reiterated points they had made at the 7th session of the Committee, that the mandate of the study is to look at how traditional values could be used in the *implementation* of human rights standards.

Mr Kartashkin disregarded these comments, since he had chosen not to take this approach. In particular, it was noteworthy that Committee member Ms Mona Zulficar (Egypt) said the drafting group had held a meeting earlier in the day, at which the consensus position had been that the report should focus on the role of traditional values in the implementation of human rights standards. This may also indicate that Mr Kartashkin himself had not attempted to solicit input from members of the drafting group. The opaque way in which Mr Kartashkin produced the draft was further highlighted by the fact that even the Russian Federation, which had been very supportive of Mr Kartashkin's comments at the previous session, expressed reservations about the approach taken in the report.

Mr Kartashkin's response was that he had always seen the production of the draft as an initial step, with other members and stakeholders getting involved during the discussion in the Committee. However, given the short time frame available to the Advisory Committee, with only two sessions to finalise the study, and the usual working method of inter-sessional consultations employed for other topics, Mr Kartashkin's solo approach surprised many.⁵

Mr Heinz also commented on the methodology used in preparing the study, noting that he would have expected it to engage with relevant academic literature and UN reports, such as reports by the special procedures. He expressed profound concern about the report, saying many points were unclear. He criticised its lack of analysis, and the inclusion of many 'dogmatic statements and conclusions' without arguments to back them up. Mr Heinz observed, for example, that the report makes several statements to the effect that all international human rights agreements must be based on the traditional values of humankind, without giving any argument to support these statements.

In fact, the draft itself says in paragraph 6 that there is as yet no accepted definition of the term 'traditional values of humankind', which undermines the idea that international human rights agreements ought to be based on such values. Several other speakers pointed out this fundamental problem, including Mr Shigeki Sakamoto (Japan), and the delegations of Mexico and Ireland.

5 For instance, to elaborate the *Declaration on Human Rights Education and Training*, the Advisory Committee issued questionnaires to States and civil society to seek their input, and went through a number of drafting stages in a transparent way.

UNIVERSALITY OF HUMAN RIGHTS

The draft study's affirmation that traditional values trump human rights attracted a great deal of attention during the discussion. It states in its Paragraph 75f that: 'all international human rights agreements, whether universal or regional, must be based on, and not contradict, the traditional values of humankind. If this is not the case, they cannot be considered valid.'

Several Committee members and observers commented on this paragraph. The EU said the way in which the study appears to subordinate international law to traditional values was the most problematic aspect. Switzerland too criticised the draft study as undermining the very basis of human rights in this paragraph. The delegation affirmed that there was never any justification for subordinating international treaties to traditional values, even if, according to the *Vienna Declaration and Programme of Action*, States should keep national and regional particularities in mind when fulfilling their human rights duties. Mr Sakamoto queried when traditional values had become a peremptory norm of international law.

Mr Heinz commented that if every tradition is allowed to examine how human rights standards fit within its values, then the utility of international human rights law as a universal moral standard is undermined. Ms Zulficar said efforts to agree on international human rights aimed to identify the standards that constitute dignified treatment of individuals across all cultures. Claiming that the test of those standards is their consistency with differing sets of traditional values would reverse and undermine that whole process. Mexico also cautioned against diminishing the status of international human rights standards.

In his concluding remarks, Mr Kartashkin recognised there were problems with paragraph 75 and agreed it needed rewording. While he expressed his gratitude to the EU for raising the issue, he professed surprise that so many other speakers had also chosen to focus their remarks on that paragraph, stating that criticism should be positive.

RESPONSIBILITY

Amongst other controversial views aired by Mr Kartashkin was his argument that a person's human rights could be denied if he or she commits a crime. He said individuals are obliged to not act contrary to the law, and described his view, also contained in the report, that responsibility is a form of obligation, and a stimulus for acting as a moral individual.

Many speakers criticised this position. Mr Sakamoto stated that in international law the promotion of human rights is not conditional upon people's responsible behaviour, a position with which the EU and Mexico concurred. In responding to this point, Mr Kartashkin said 'some NGOs would like to see

human rights as something unlimited'. He pointed out that the *International Covenant on Civil and Political Rights* (ICCPR) allows certain restrictions on the exercise of some rights on the basis of public morals. He reiterated his point on responsibility, that human behaviour must be responsible, in that if a person commits a crime, he or she must be held responsible for it. Human rights are not entirely unlimited, he stated, they are connected with duties, with values and with the responsible conduct of individuals. He added that if people persisted in seeing no connection between human rights and duties, and human rights were turned into an absolute, then 'human society would be thrown into anarchy'.

Article 12(3) of the ICCPR, to which Mr Kartashkin referred, says restrictions may be placed on the exercise of human rights in order to protect 'national security, public order, [...] public health or morals, or the rights and freedoms of others'.⁶ These legitimate restrictions must be clearly outlined in law and be necessary in a democratic society for the purposes outlined above. They must also be proportional to the purpose to be achieved, and must be consistent with the other rights mentioned in the ICCPR.⁷ These legitimate restrictions mean human rights are not absolute. However, this does not imply they are conditional upon 'responsible' behaviour. To require 'responsible' behaviour as a condition for enjoying human rights would go far beyond the kinds of limitations that could legitimately be imposed to prevent the 'anarchy' feared by Mr Kartashkin. The starting point must always be that human rights are universal.

NEGATIVE IMPLICATIONS OF TRADITIONAL VALUES AND THE FAMILY

Other Committee members and observers picked up on the potentially negative implications of traditional values, which they felt had not been sufficiently guarded against in the draft study. The EU stated that the report was not clear on the distinction between *tradition* and *traditional values*. It noted that the report did not clearly communicate that there could be negative traditional values. The EU also said the study assumed a wholly positive influence of 'the family', and failed to acknowledge that families can often be sources of human rights violations. It pointed members to the reports of the Special Rapporteur on violence against women, which repeatedly considered the connection between traditional values and domestic violence. UNAIDS intervened to give the particular example of how traditional values have been used to justify violence or discrimination against people on the basis of their sexual orientation or gender identity.

The Russian Federation, however, wanted the study to focus only on positive values. It went further and claimed that the concept of 'negative values' was paradoxical, like 'hot

ice' or 'illegal legality'. It also pointed out that, whereas Mr Kartashkin had said traditions could be either negative or positive, when it comes to the promotion and protection of human rights, its own view was that tradition, in itself, is neutral.

NGO PARTICIPATION

Several NGOs attended the discussion of the report on traditional values and made oral interventions. Many Committee members welcomed the contributions made by NGOs and picked up and reiterated the points made by civil society.

However, others were less receptive. Mr Kartashkin, for example, said he found NGOs to be overly harsh in their criticisms, so much so that it led him to doubt some aspects of their assessments. He added that if NGOs were to be believed, the report was 'an absolute disaster', whereas in his view it was a simple matter of rewording to make certain aspects less ambiguous. Mr Kartashkin was particularly critical of a written submission from the Canadian HIV/AIDS Legal Network, outlining key concerns with the report, which he claimed distorted the facts of the study.⁸ Ms Halima Warzazi, a long-standing Moroccan member of the Committee, stated that in her experience NGOs did not always present the facts accurately, and therefore their information needed to be 'considered with care'.

NEXT STEPS

The Committee agreed the report needed to be redrafted. It adopted a recommendation that the Council should take note of the comments and suggestions made on the draft study, and should request the drafting group to submit the revised preliminary study to the Committee at its 9th session (6 to 10 August 2012).⁹

The Chair concluded by saying that he encouraged all members of the drafting group to engage actively in the next stages of the process and to take into account the concerns expressed by stakeholders. Several members, including Ms Chinsung Chung (Republic of Korea), and Mr Shiqiu Chen (China), said it was not feasible for the Committee to submit the revised version to the Council by September, as requested under the mandate given by the Council. They suggested the deadline be postponed. The Committee will consider this suggestion at its next session once it reviews the revised draft. ■

⁶ ICCPR, Article 12 (3), at <http://bit.ly/glbli>.

⁷ See also Human Rights Committee General Comment 27, CCPR/C/21/Rev.1/Add/9, paras 11 – 18, <http://bit.ly/9aBjlc>.

⁸ A/HRC/AC/8/NGO/4, <http://bit.ly/HaYGIa>.

⁹ Adopted text 8/6: <http://bit.ly/KSwwcl>.