

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 3 SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 3 JUNE 2009

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### Overview

On 3 June 2009, Mr Philipp Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions, presented the following reports to the Human Rights Council (the Council); an annual report, a communications report, final reports on missions to Afghanistan, Brazil, Central African Republic, Kenya, and the United States of America (US), and follow-up reports on country visits to Guatemala and the Philippines.<sup>1</sup>

The significant attention given by several States to the report on the mission to Kenya was notable. Generally, mission reports by special procedures enjoy little focus from States other than the country concerned, and the reports present a significant untapped potential for the Council to fulfil its mandate of addressing situations of human rights violations.

### Item 3 – Special Rapporteur on extrajudicial, summary or arbitrary executions

#### **Presentation by the Special Rapporteur**

Acknowledging the impossibility of discussing the reports in any detail due to time constraints, Mr Alston limited himself to first of all making a few brief observations on his annual report. He highlighted the major problem of reprisals against persons cooperating with special procedures and recommended that the Council consider how it can respond systematically to such violations. Concerning the execution of juvenile offenders, Mr Alston specifically referred to the situation in Iran and suggested that the Council designate a member of the Bureau to visit the country and engage in consultations to address the flagrant violation of international human rights standards. The Special Rapporteur also called on the Council to give more attention to the killing of those believed

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<sup>1</sup> A/HRC/11/2 (annual report), Add. 1 (summary of communications), Add. 2 (Afghanistan), Add.3 (Brazil), Add.4 (Central African Republic), Add.4 (Kenya), Add.5 (US), Add.7 (Guatemala), Add.8 (Philippines).

to be witches and to urge governments to ensure that such killings are treated as murder and dealt with accordingly. The fourth thematic issue dealt with by Mr Alston in his report was the use of lethal force in the process of policing public assemblies, a topic that he intends to study further in future reports.

In relation to his mission reports, Mr Alston chose to focus on the US and Kenya. Regarding the former, he emphasised the challenge of ensuring that the imposition of the death penalty complies with fundamental due process requirements. He also advocated that the Government track and make public the number of civilian casualties in US international military and intelligence operations, disclose the legal basis for killings by drone attacks, and address the serious shortcomings in the military justice system in terms of accountability. Relating to Kenya, Alston praised certain recent developments,<sup>2</sup> but identified four core areas of concern; post-election violence, police shootings, the situation in the Mount Elgon area,<sup>3</sup> and harassment and intimidation of human rights defenders, including the assassination of two defenders that talked to him during his recent mission. The Special Rapporteur singled out the police as ‘a major stumbling block’ and called for the dismissal of the Police Commissioner and the resignation of the Attorney-General.

Alston made brief remarks on Afghanistan, Guatemala, and the Philippines, before concluding that the challenge of his mandate is to address issues that lie at the heart of human rights both systematically and objectively, and to engage in constructive dialogue in order to help end unlawful killings.

### **Interactive Dialogue**

The majority of States thanked or commended Mr Alston for his work and commitment. Speaking as a concerned country, the **US** argued that the death penalty itself does not violate international law and insisted that the US system provides robust safeguards to prevent wrongful convictions. Interestingly, the US also declared that military operations during armed conflict do not fall within the mandate of the Special Rapporteur. In his very strong and clear response, Mr Alston called that position ‘simply unsustainable’, and rhetorically asked how the US would reconcile this position with ‘discussions about Sri Lanka, Afghanistan or Sudan’.

**Kenya**, undoubtedly due to the high level of attention the report of the Special Rapporteur and the recent killing of two prominent human rights defenders had been given in and outside of the Council, sent it’s Minister for Internal Security to respond to the Mr Alston’s report. In a remarkably cooperative statement, Kenya acknowledged that extrajudicial killings have occurred in the country and drew attention to the fact that many reforms are currently being implemented to address the seriousness of the situation.<sup>4</sup> It seems that the statement was the result of a last-minute negotiation within the coalition Government.<sup>5</sup> While affirming its support for special procedures mandate holders, Kenya however stressed that calling for the resignation of an official is not within their purview of their mandates.

Regarding the issue of **reprisals against persons cooperating with special procedures**, the Czech Republic, on behalf of the European Union (EU), enquired how adequate protection could be ensured and what the role of the Council and the UN should be in this regard. Pakistan, on behalf of the Organisation of Islamic Conference (OIC), remarked that the protection of resource persons is also addressed in the Code of Conduct for special procedures mandate holders. It argued that there is a need to pay attention to information provided by the Government concerned, and to check the veracity of other information received. The Russian Federation claimed that there is no need to create new mechanisms to deal with the issue of reprisals but rather the effective functioning of existing mechanisms should be ensured. It did, however, not comment on how existing special procedures mandates could

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<sup>2</sup> For example, the establishment of the Waki Commission to investigate post-election violence, the establishment of a police reform taskforce and the announcement of a new judicial reform initiative.

<sup>3</sup> It is claimed that in 2008, over 200 people were killed or disappeared by security forces in the area but there has been no serious response to these allegations.

<sup>4</sup> For example, the establishment of a Witness Protection Act and a task force on reform of the judiciary which is due to complete its work in two weeks time. Since 2000, 81 police officers have been prosecuted.

<sup>5</sup> See for instance <http://www.nation.co.ke/News/-/1056/606536/-/ujrajp/-/index.html>.

be empowered to achieve that goal. Various countries expressed their shared concern with the Special Rapporteur and either welcomed his recommendations on developing mechanisms to ensure effective protection or sought further information on how this could be achieved.<sup>6</sup> Austria in particular enquired how such a mechanism would relate to the Secretary-General of the UN, whose spokesperson has recently affirmed the mandate of the Human Rights Council to ensure the protection of persons communicating with its special procedures.<sup>7</sup>

Referring to the issue of **execution of juvenile offenders** in Iran, the Czech Republic (on behalf of the EU) questioned how the situation could be better addressed and asked the Special Rapporteur for suggestions of other possible measures which could be undertaken. It also encouraged the Special Rapporteur to elaborate on his proposal of consultation between a Bureau representative and the Government of Iran. Iran disputed the statement of the Special Rapporteur and countered that there have been no juvenile executions in Iran for ‘the past years’. It also persisted in its argument that in the case of *qesas*, the State can do nothing to change the sentence.<sup>8</sup> In his answers, Mr Alston expressed its disappointment at this ‘semantic response’ and declared that it was in fact a failure to respond. He noted that it would be very disappointing if the Council fails to respond to a situation where ‘one of the most established norms of international law is being openly violated’.

The two other thematic issues raised in the annual report, lethal force in the policing of assemblies and killings related to persons accused of witchcraft did not receive much attention, although States generally appreciated the Special Rapporteur’s continued focus on these issues.

Several States picked up the Special Rapporteur’s concern raised in the report about persistent **lack of response** to his requests for visits, and general non-cooperation with the mandate. Sweden urged those with pending requests to respond favourably, to ensure the effective functioning of the special procedures system. The Czech Republic (on behalf of the EU) also expressed its regret at the continuing non-cooperation of some States with the mandate. Pakistan (on behalf of the OIC) claimed that a delay in responding to communications may be a reflection of difficult national circumstances, and does not necessarily mean that violations are occurring.

Most attention was given to the Special Rapporteur’s report on and the situation of human rights in **Kenya**.<sup>9</sup> Several States and NGOs expressed grave concern about the situation. The Czech Republic (on behalf of the EU) asked what elements should be included in judicial and police reform and enquired about the next step for accountability mechanisms in the aftermath of the post-election violence. Norway stressed the importance and necessity of effective police reform and Denmark urged the Government of Kenya to consider the findings of the report with utmost seriousness and offered support for an independent inquiry into police death squads. In his concluding remarks, Mr Alston underlined once again the seriousness of the issue of harassment and intimidation of human rights defenders in Kenya and reminded everyone that human rights defenders have been forced into exile because of their cooperation with him. He stressed the necessity of following-up Government claims and assurances in relation to this issue.

In addition, many **specific situations of human rights violations** were raised during the dialogue, including Afghanistan,<sup>10</sup> China/Tibet,<sup>11</sup> Iran,<sup>12</sup> Sudan,<sup>13</sup> the US,<sup>14</sup> the Philippines,<sup>15</sup> Guatemala,<sup>16</sup> Colombia,<sup>17</sup> Brazil,<sup>18</sup>

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<sup>6</sup> Including Austria, Australia, Canada, Norway, Sweden, United Kingdom.

<sup>7</sup> See the report of the Special Rapporteur, above.

<sup>8</sup> Alston notes in his report that no other State with Islamic law invokes this exception. See A/HRC/11/2 p. 14.

<sup>9</sup> Czech Republic (on behalf of the EU), Denmark, Norway, Switzerland, United Kingdom.

<sup>10</sup> India, Afghan Independent Human Rights Commission, Amnesty International.

<sup>11</sup> Society for Threatened People.

<sup>12</sup> Czech Republic (on behalf of the EU), Australia, UK.

<sup>13</sup> Commonwealth Human Rights Initiative.

<sup>14</sup> Czech Republic (on behalf of the EU).

<sup>15</sup> National Human Rights Commission of the Philippines, Asian Legal Resource Centre.

<sup>16</sup> UK.

<sup>17</sup> UK.

Iraq,<sup>19</sup> Palestine,<sup>20</sup> and Bangladesh.<sup>21</sup> In his replies, the Special Rapporteur thanked the Government of Colombia for its invitation to visit, and reiterated his request for a visit to Sri Lanka.

### Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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<sup>18</sup> Conectas Direitos Humanos, Amnesty International.

<sup>19</sup> Union of Arab Jurists, General Union of Iraqi Women.

<sup>20</sup> Arab Human Rights Commission.

<sup>21</sup> Asian Legal Resource Centre.

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

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