

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COUNCIL, 2<sup>ND</sup> SESSION DAILY UPDATE, 21 SEPTEMBER 2006

Overview.....	1
Special Rapporteur on Torture .....	2
Working Group on Arbitrary Detention .....	3
Special Rapporteur on the Independence of Judges and Lawyers .....	3
Special Rapporteur on Freedom of Religion.....	4
Special Rapporteur on Freedom of Expression.....	5
The situation of detainees at Guantanamo Bay.....	6
Incitement to Racial and Religious Hatred.....	8
Other Practical and Procedural Issues .....	9

### Overview

Today's morning session of the Human Rights Council (the Council) began with the finalisation of the incomplete interactive dialogue with:

- the Special Rapporteur on torture, cruel, inhuman or degrading treatment and punishment;
- the Chairperson-Rapporteur of the Working Group on Arbitrary Detention;
- the Special Rapporteur on the independence of judges and lawyers.

The Council then considered reports from the following mandate holders:

- Special Rapporteur on freedom of religion or belief;
- Special Rapporteur on the right to freedom of opinion and expression.
- Joint Report on the situation of detainees at Guantánamo Bay;
- Joint Report on the incitement to racial and religious hatred and the promotion of tolerance
- Report of the High Commissioner for Human Rights on incitement to racial and religious hatred and the promotion of tolerance.

As there was insufficient time to finish the speakers list, the discussion regarding incitement to racial hatred and the promotion of tolerance will continue tomorrow. The presentation of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Paul Hunt, is also postponed until tomorrow.

All the presentations were followed by an interactive dialogue with participation from States and NGOs. Informal meetings held during the day included events on the situations of human rights defenders in Latin America, human rights defenders in Russia, freedom of religion, gender equality and development and development education, and the protection of children's rights.<sup>1</sup>

## Special Rapporteur on Torture

The interactive dialogue on the presentation of the Special Rapporteur on torture, cruel, inhuman or degrading treatment was not completed yesterday and so the remaining interventions were heard this morning.<sup>2</sup> A number of States again insisted on the importance of dialogue and cooperation between different special procedures and with regional and treaty-based mechanisms.<sup>3</sup> Some of the issues raised yesterday were repeated, notably the question of diplomatic assurances<sup>4</sup> as well as the importance of the absolute prohibition of cruel, inhuman or degrading treatment and punishment (cruel treatment) and how to prevent it from being undermined.<sup>5</sup> In this regard, Norway stressed that States could not be allowed to develop their own understanding of the material content of the relevant definitions. Answering a question from Norway on the distinction between torture and cruel treatment, Mr Nowak expressed his view that the existing jurisprudence of the European Court of Human Rights (ECHR), which relies on a 'proportionality test' to determine whether the treatment should be classified as cruel treatment and thus prohibited, would no longer be upheld should a new case arise. On diplomatic assurances, he once again stressed that such were only sought from States known to practice widespread torture.

Interfaith International accused China of torture in the context of alleged organ farming taking place in China. In responding to these allegations, Mr Nowak said he had transmitted detailed questions to the Chinese government and was expecting the answers shortly. Exercising its right of reply,<sup>6</sup> China accused the Falun Gong of fabricating this story, stating that they are an evil movement that is not peaceful. The representative of China explained that the Government has invited media and diplomats to travel to the hospital in question for an onsite visit.

The Special Rapporteur pointed out that torture was still often misunderstood as a concept. He stressed that the seriousness of the crime had nothing to do with physical injury but rather was related to the 'powerlessness of the victim'. He then gave details about his cooperation with the Sub-Committee on Torture, established under the Optional Protocol to the *Convention Against Torture*, which he intends to model on the existing cooperation with other treaty-body mechanisms. Turning to country situations, he pointed out that yesterday's examples of Austria and Jordan were not chosen for a particular reason, but rather to show that torture persists in very diverse country situations.<sup>7</sup> Addressing Uzbekistan, Mr Nowak reiterated that recommendations made by the previous Special Rapporteur still needed to be implemented and indicated he was still waiting for an invitation to visit.

---

<sup>1</sup> See *Bulletin of Informal Events*, 20 September 2006, available at [www.ohchr.org/english/bodies/hrcouncil/2session/bim.htm](http://www.ohchr.org/english/bodies/hrcouncil/2session/bim.htm) for additional details.

<sup>2</sup> See the *Council Monitor Daily Update*, 20 September 2006, <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>, for a summary of Mr Nowak's presentation and the interactive dialogue.

<sup>3</sup> Austria and Lichtenstein.

<sup>4</sup> Lichtenstein

<sup>5</sup> Norway, World Organization Against Torture (OMCT), International Commission of Jurists (ICJ)

<sup>6</sup> After a lengthy discussion on the length of time permitted for this right of reply, see further below.

<sup>7</sup> Jordan exercises its right of reply to state that it did not understand this explanation and considered the repeated presentation of its situation (Jordan will also be presented by Mr Nowak to the General Assembly and in a further session of the Council) is superfluous and that it seeks some streamlining potential in this matter.

## Working Group on Arbitrary Detention

The interactive dialogue between States, non-governmental organisations (NGOs) and Ms Zerrougui, the Chairperson-Rapporteur from the Working Group on Arbitrary Detention, continued today.<sup>8</sup> NGOs commented on the use of pre-trial detention and asked the Chairperson-Rapporteur to elaborate on alternatives.<sup>9</sup> The arbitrary detention of Baha'i people was highlighted and it was noted that the Special Rapporteur on freedom of religion or belief had also expressed her concern about this particular issue. Iran exercised its right of reply and stated that Baha'i people have the same rights as the rest of the population under the Constitution as long as they did not engage in unlawful acts. Iran said that in the cases of wrongful detention of Baha'i people they had been released again very quickly. However, it made assurances that if other cases are communicated to the Government these would be thoroughly investigated.

In other statements, the Chairperson-Rapporteur was also asked about the status of the Working Group's request for a visit to Colombia.<sup>10</sup> In responding to this matter, the Chairperson-Rapporteur affirmed that the government had not responded to the request. She said more generally that coordination between the special procedures regarding urgent appeals is essential. There could be different reasons for states not replying to requests from special procedures but some of the factors are the level of NGO activity in the country and the visibility of victimised groups.

On the topic of the detention of immigrants and asylum seekers, the Chairperson-Rapporteur noted that one of their main tasks was ensuring the *de facto* access to appeal, explaining that often this right exists only *de jure* due to language problems or lack of awareness of this right. Good practices would include ensuring the availability of legal aid and separating detained asylum seekers and immigrants from regular criminals in the detention centres. On the issue of pre-trial detention, the Chairperson-Rapporteur highlighted the harsh conditions in pre-trial detention centres and more specifically focused on the plight of women with children. She noted secret detention was also still of great concern to Working Group and it would continue to monitor situation around the world.

Cuba commented on an opinion adopted by the Working Group<sup>11</sup> addressing the issue of five Cubans detained in the United States of America (the USA) and noted that it considered that despite the final ruling of American courts, the five persons were arbitrarily detained.

## Special Rapporteur on the Independence of Judges and Lawyers

Yesterday, the Special Rapporteur on the independence of judges and lawyers, Mr Despouy, presented his reports, and many States posed questions and comments during the interactive dialogue that followed.<sup>12</sup> The interactive dialogue continued during the morning session today, with Iraq picking up on the points raised by the Special Rapporteur regarding the Iraqi Special Tribunal. The delegate from Iraq assured the Special Rapporteur of the independence of this tribunal and its compliance with international law. Iraq considers this tribunal to be the best forum for judging criminal responsibility for violations under the former Iraqi regime.

---

<sup>8</sup> See the *Council Monitor Daily Update*, 20 September 2006, <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>, for a summary of Ms Zerrougui's presentation and the interactive dialogue.

<sup>9</sup> Friends World Committee for Consultation (Quakers) and International Federation for Human Rights Leagues and Baha'i International in a joint statement.

<sup>10</sup> Question posed in the Joint Statement of FIDH and Baha'i International on behalf of FIDH.

<sup>11</sup> E/CN.4/2006/7/Add.1, 19 October 2005.

<sup>12</sup> See the *Council Monitor Daily Update*, 20 September 2006, <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>, for a summary of Mr Despouy's presentation and the interactive dialogue.

The Special Rapporteur responded by requesting that he be invited to visit Iraq to ensure the Special Tribunal respects international standards.

The International Commission of Jurists enquired about how the Special Rapporteur would use his mandate to preserve the role of courts in protecting human rights in counter-terrorism and the way in which many States' policies on counter terrorism erode the capacity of the judiciary to protect human rights. They referred to the system of renditions established in the USA and the special or military tribunals and their failure to meet standards of independence. The Special Rapporteur commented that he shared this concern, and stated that overall, anti-terrorist legislation provides few guarantees to protect human rights or to prevent violations.

## Special Rapporteur on Freedom of Religion

Ms Asma Jahangir, the Special Rapporteur on freedom of religion or belief, presented her annual report,<sup>13</sup> reports on country mission to Nigeria, Sri Lanka, and France<sup>14</sup> as well as a summary of her communications with governments.<sup>15</sup> Ms Jahangir stressed that since the terrorist attacks of 11 September 2001 the situation of religious freedom in the world has become an increasingly salient and pressing problem. She reiterated her conviction that governments must take a fully non-partisan stance towards the religion of their citizens and encourage inter-religious dialogue.

She announced two country visits since her last update, to Azerbaijan and the Maldives, and stated that the reports of these two visits will be forthcoming. She congratulated the government of the Maldives for signing the *International Covenant on Civil and Political Rights* (ICCPR), but expressed disappointment at its reservations to Article 18. In her report on Nigeria, the Special Rapporteur highlighted the conflict between Muslim and Christian communities. She pointed to the operation of Sharia courts, including the application of Islamic law to non-Muslims, as creating the polarisation of society along religious lines. Ms Jahangir called for an end to impunity for those who have perpetrated crimes, especially against non-Muslim women. She also accused the Nigerian government of undue interference in the religious lives of its citizens by subsidising programs of selected religious groups. With respect to Sri Lanka, Ms Jahangir highlighted the issue of unethical religious conversions, which has become controversial due to alleged conditionality of humanitarian aid after the recent tsunami. In her report on France, the Special Rapporteur underlined the issue of the ban of religious symbols in public schools.<sup>16</sup> While not expressly condemning the law, Ms Jahangir expressed concern over the widespread political support for the ban, and urged religious sensitivity in its implementation. She also criticised the French Government for its policy of publishing a list of religious movements that it considered to be 'cults.' She noted that she would continue to monitor this issue closely.

Ms Jahangir expressed disappointment that she had not received replies from many countries of whom she had requested a country visit. She announced her upcoming visit to Tajikistan in early 2007. Ms Jahangir reminded the States of her *Framework for Communications*, a document in the appendix of her report outlining her mandate, which she said would be very useful to any State party wishing to engage with her mandate.

## Interactive Dialogue

---

<sup>13</sup> E/CN.4/2006/5, 9 January 2006. The report is available at [www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm](http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm). Please see the unofficial ISHR summary of the report for a short overview of the report and main issues, available at [www.ishr.ch/hrm/council/SPs/specialprocedures.htm](http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm).

<sup>14</sup> E/CN.4/2006/5/Add.2, 7 October 2005; E/CN.4/2006/5/Add.3, 12 December 2005; E/CN.4/2006/5/Add.4, 8 March 2006.

<sup>15</sup> *Summary of cases transmitted to Governments and replies received*, E/CN.4/2006/Add.1, 27 March 2006.

<sup>16</sup> The Law on the Separation of Church and State of 1905.

Nigeria, Sri Lanka and France each responded very positively to the visits of the Special Rapporteur. Nigeria however, criticised her conclusion that “the level of enjoyment of the freedom of religion or belief is not satisfactory”. Nigeria also noted that it was planning to discontinue subsidising religious programs and turn their operation over to their respective religious groups. The representative of Nigeria also stated that the existence of Sharia courts in Nigeria indicates a high level of respect for the right to freedom of religion. Sri Lanka noted that since Ms Jahangir’s visit, they have created a Ministry of Religious Affairs that has the functions of promoting religious harmony and the protection of the freedom of religion. The International Commission of Jurists expressed concern about the targeting of religious minorities such as Christians and Muslims in Sri Lanka, citing alleged attacks against both groups by the government as well as the LTTE. France advised the Special Rapporteur to examine the ruling of the European Court of Human Rights, which found that the ban on religious symbols in public schools did not contravene any European human rights conventions. They also announced that they had eliminated its list of ‘cult’ groups, pursuant to an order by the Prime Minister.

A few States<sup>17</sup> raised the issue of conscientious objection, asking the Special Rapporteur if she planned to address this issue. Ms Jahangir responded that the OHCHR has produced a very useful report on this topic, which was presented during the last Commission. She stressed that conscientious objection must be defined as an individual right, not one linked to recognised religious groups.<sup>18</sup> Pakistan praised Ms Jahangir’s criteria on the acceptability of limitations on the right to freedom of religion as an approach that is gradually gaining acceptance in the international community.<sup>19</sup> The State party also raised the issue of increasing Islamophobia since the 11 September 2001 attacks.<sup>20</sup> Ms Jahangir responded that she was hesitant to conclude that Muslims were the greatest victims of religious discrimination in the world, but she acknowledged that Islamophobia was indeed on the rise. Ms Jahangir affirmed that she had plans to visit Israel, but stated that no specific dates have been set. The Netherlands also welcomed the Special Rapporteur’s forthcoming visit to the Islamic Republic of Iran. Concerning the status of her requested visit to Cuba, Ms Jahangir stated that she has not had a response from the Government. Cuba expressed considerable consternation that this issue had been raised. A few NGOs<sup>21</sup> requested the Special Rapporteur to direct her attention towards religious rights violations in China, citing persecutions of Tibetan Buddhists as well as Falun Gong practitioners.

## Special Rapporteur on Freedom of Expression

Mr Ambeyi Ligabo, the Special Rapporteur on the right to freedom of opinion and expression presented his annual report.<sup>22</sup> Mr Ligabo expressed concern that journalists were being targeted by military operations and that many journalists were killed while investigating corruption and mismanagement cases by State officials. He recommended drafting international guidelines and rules on the security of medial professionals. He also reiterated his support for decriminalisation of defamation and related offences. Mr Ligabo addressed the ‘Danish Cartoons Affair’, stating that freedom of religion and expression must walk together and there could not be one without the other because beliefs are an essential component of the life of billions of people. The Special Rapporteur stated that the establishment of an intergovernmental organisation on Internet governance

---

<sup>17</sup> Armenia and Croatia.

<sup>18</sup> She also commented that as stipulated by Human Rights Committee General Comment 22, the right to conscientious objection can be derived from Article 18 of the ICCPR.

<sup>19</sup> This approach holds unacceptable limitations as “aggravating indicators,” in that they are based on principles derived from one tradition, and are discriminatory in purpose. Conversely, “neutral indicators” do not contravene international human rights standards.

<sup>20</sup> The Islamic Republic of Iran and Tunisia also voiced this concern. They asked the Special Rapporteur for her views on how the human rights agenda could be used to promote inter-religious and inter-civilisation dialogue.

<sup>21</sup> International Educational Development, and a joint statement presented by the Society for Threatened Peoples.

<sup>22</sup> E/CN.4/2006/55, 30 December 2005 and E/CN.4/2006/55/Add.1, 27 March 2006. The report and the summary of cases transmitted to Governments and replies received are available at [www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm](http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm). ISHR has produced unofficial summaries of these reports that are available at <http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm>.



must be anchored to the right to freedom of expression. He expressed concern over the harassment and arrests of persons who were expressing their views over the Internet in several countries. He concluded by thanking Algeria, Azerbaijan, Guatemala, Honduras, Libya, Jamaica, Macedonia, the Maldives, Sri Lanka, the Sudan and Ukraine for their invitations for him to visit their countries in the future.

### Interactive Dialogue

Croatia stated that prison sentences for journalists concerning their work had been abolished and only monetary fines were currently in place. Algeria claimed that persecution of journalists did not exist in their country, contrary to what had been stated by the Special Rapporteur in his report. They highlighted the varied scope of the media industry in Algeria but admitted they required more training and invited Mr Ligabo to visit their country in the near future.

Many States<sup>23</sup> welcomed Mr Ligabo's report. Finland, on behalf of the EU, enquired if ineffective legal standards or inappropriate enforcement were responsible for the lack of security of journalists and other media professions and what practical measures could be taken by the international community to improve this situation. Peru asked for clarification on how Mr Ligabo's ideas of access to information could be implemented in States to benefit civil society. Armenia stated that it shared the Special Rapporteur's concern about the use of the Internet for child pornography, sexual exploitation of women, racial discrimination and other discriminatory practices. They also shared his concerns about the use of defamation laws and increasing use of violence against media professionals.

### The situation of detainees at Guantánamo Bay

The Council had before it the joint report on the situation of detainees at Guantánamo Bay submitted by five special procedures: the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on freedom of religious or belief, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>24</sup>

The report<sup>25</sup> was presented by Ms Leila Zerrougui, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention. She explained that the five special procedures had followed the situation at the Guantánamo Bay detention facility since 2002. In 2004 the five special procedures had submitted a request for a joint visit to the detention facility. The US Government only invited three of the special procedures and in its invitation specified that it would not allow private interviews with detainees. Their main conclusion was that the 'war on terror' could not be treated as an armed conflict justifying indeterminate detention under international humanitarian law. The report finds that the right to judicial review of detention is being violated and that the continuing detention of all persons held at Guantánamo Bay amounts to arbitrary detention. They had also found that the interrogation techniques used, particularly if used simultaneously, amounted to degrading treatment and if the victim experienced severe pain or suffering, to torture. The practice of rendition of persons to countries where they might face torture violated the principle of non-refoulement. There were indications that detained persons had been subjected to violations of the right to freedom of religion or belief and that the totality of the conditions of confinement at Guantánamo Bay constituted a right

---

<sup>23</sup> Finland (on behalf of the EU), Kenya, Armenia and Peru.

<sup>24</sup> E/CN.4/2006/120, 27 February 2006. The report is available at [www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm](http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm). Please see the unofficial ISHR summary of the report for a short overview of the report and main issues, available at [www.ishr.ch/hrm/council/SPs/specialprocedures.htm](http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm).

<sup>25</sup> Oral statements made at the Council can be found on the OHCHR extranet (fill out the form on the page to receive the user name and password) at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm).

to health violation. Certain methods of forced feeding of detainees could amount to torture and the right to health. Ms Zerrougui noted the Special Rapporteurs disappointment at the lack of progress made and concluded by reiterating the recommendation of closing the facility at Guantánamo Bay. The Special Rapporteurs called on the Council to direct its attention to the issue of secret places of detention recently admitted by the Bush administration.

### Interactive Dialogue

The delegation of the United States of America (the USA) said that it shared many of the concerns of the five Special Rapporteurs and stressed that it was working on changing the situation. However it rejected the report at four levels. First, the representative voiced disappointment at the approach taken by the Special Rapporteurs and pointed out that other organisations chose to accept the conditions for visits to the detention facility.<sup>26</sup> Due to this 'non-cooperative' approach chosen by the Special Rapporteurs, their report suffered from unreliable sources. Second, the USA disagreed on the facts, saying that the accounts of the Special Rapporteurs were wrong. A parallel report by the OSCE was more balanced and held that the rights of detainees were fully protected. Third, the USA interprets the applicable international law differently. Concretely, the USA repeated its well known position that the *International Covenant on Civil and Political Rights* (ICCPR) was only applicable within the territory of the States party and therefore not to the naval base in Guantánamo Bay.<sup>27</sup> Finally, the USA insisted that its constitutional checks and balances were already working towards correction of its policy and practice. It referred mainly to the United States' Supreme Court's judgement of June 2006, confirming the applicability of common Article 3 of the 1949 Geneva Conventions. The USA seemed to be of the opinion that given the thorough domestic focus on the issue there was no need for international scrutiny.

Most states showed deep concern about the alleged violations of international law apparent in the situation in Guantánamo Bay.<sup>28</sup> The issue of secret places of detention was taken up by a number of States who enquired to whether the five Special Procedures intended to further scrutinise this issue. This enquiry was answered positively by Mr Nowak, noting that such cases were by definition enforced disappearances.

In the context of the criticism that the use of military tribunals violates international fair trial standards,<sup>29</sup> Finland<sup>30</sup> and Peru asked for further details on the suggestion to try Guantánamo detainees before international courts. In their replies the Special Procedures pointed out the right to challenge the legality of detention is a universal right and that any solution taken by the USA must be in accordance with international law.

In relation to health issues States questioned the practice of forced feeding. Finland asked how the Special Procedures responded to the USA's claims that it was done in order to protect lives. States also expressed concern about the general status of the mental health of the detainees as illustrated by the recent three cases of suicide. Mr Paul Hunt underlined that the state of mental health of the Guantánamo Bay detainees was comparably worse than in other places of detention. As to the issue of forced feeding, he expressed his difficulties viewing the USA as a human rights defender.

A key focus of States was how to deal with a post Guantánamo situation. While the USA's intentions to eventually close the detention facility was welcomed, States were concerned about what would happen to the detainees. They asked the Special Rapporteurs about their ideas as to how to protect the human rights of the

---

<sup>26</sup> Among others the OSCE.

<sup>27</sup> This argument has been advanced by the USA during discussion with the Committee Against Torture and the Human Rights Committee.

<sup>28</sup> Cuba, Malaysia, Finland (on behalf of the European Union), Peru, Algeria and Human Rights Watch (in a joint statement with the International Commission of Jurists and FIDH).

<sup>29</sup> As pointed out by Human Rights Watch.

<sup>30</sup> Speaking on behalf of the European Union.

detainees in the process of closing the detention facility.<sup>31</sup> Mr Nowak replied that those detainees against whom the USA authorities have credible evidence should be brought before an independent court. Others should be released, taking into account the principle of non-refoulement. As many detainees would be unable to return to their home countries, he called for the assistance of the international community and the United Nations.

## Incitement to Racial and Religious Hatred

The Council had before it two documents: the first a joint report on incitement to racial and religious hatred and the promotion of tolerance by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and a report of the High Commissioner for Human Rights on incitement to racial and religious hatred and the promotion of tolerance.<sup>32</sup> The first report was presented by both of the Special Rapporteurs, Ms Jahangir and Mr Diène.

Ms Jahangir explained that in accordance with the mandate of the Council,<sup>33</sup> the report focused on defamation of religions and the implications for article 20 of the ICCPR.<sup>34</sup> She reiterated the important relationship between the right to freedom of religion or belief and the right to freedom of expression, the latter constitutes an essential ingredient of the right to freedom of religion or belief. Ms Jahangir drew attention to the need to draw a distinction between defamation of religions by States and those caused by non-state actors. While states should be expected to set up measures and implement laws, non-state actors pose a more complex problem that still needs to be addressed. Ms Jahangir warned of the danger of violating the right to freedom of expression in combating religious defamation, stating that the freedom of religion or belief does not include a right to be free from “analysis, satire or criticism”. Rather, a balance must be struck which protects freedom of religion or belief while not restricting other rights.

In relation to the implications for Article 20 of the ICCPR, Ms Jahangir identified that difficulties arise from the fact there is little clear guidance regarding the scope of this article. Accordingly, she encouraged the Human Rights Committee to draft a general comment on the issue. In relation to legislation prohibiting the advocacy of racial or religious hatred, she called for objectivity and transparency while highlighting the crucial need for an independent judiciary.

Mr Diène, in his statement, explained that this topic cannot be understood without taking into account two factors: the impact of fight against terrorism on human rights and the emergence of new forms of discrimination. In their fight against terrorism, States are focused on their national identity and security. The measures guaranteeing the rights of national minorities, immigrants and foreigners are therefore deliberately violated or marginalized. Mr Diène stated that this political and ideological context is key to understanding the close link existing between the issue of defamation of religion and the right to freedom of expression, as indicated by the latest controversies about the caricatures of the Prophet Mohammed, or the troubling statement by Pope Benedict XVI. He expressed fears that this climate may normalize racism and xenophobia. He recommended that religious communities and their leaders analyse the internal factors in their beliefs, practices and relationships with other religious that may have contributed to defamation of religions.

A further issue addressed in the written report was a call for increased inter-religious, cultural, and civilisation

---

<sup>31</sup> Finland (on behalf of the European Union), Switzerland, Iran and Cuba.

<sup>32</sup> A/HRC/2/3, 20 September 2006, and A/HRC/2/6, 20 September 2006. The reports are available at [www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm](http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm).

<sup>33</sup> Decision 1/107.

<sup>34</sup> Article 20 paragraph 2 states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.



dialogue. In one of the parallel events held today,<sup>35</sup> Ms Jahangir stated that such a dialogue should occur between more than just Christian and Islamic groups, and should include other religions and non-believers. Indeed, she stated such a dialogue should go “beyond being nice to each other”. Also, she expressed the fear that smaller religions might be ‘drowned’ in situations where the major religions are the focus.

Mrs Mehr Khan Williams, the Deputy High Commissioner, presented the report of the High Commissioner for Human Rights on the incitement to racial and religious hatred and the promotion of tolerance<sup>36</sup>. She explained that the High Commissioner’s report was based upon an extensive review of international and regional human rights instruments and jurisprudence of the international mechanisms including treaty bodies and international courts and tribunals. Her presentation focused on the international human rights dimension of racism and xenophobia. She noted that international law recognises that freedom of expression is not absolute and should take into account other rights, such as the right to freedom of religion or belief. But the test for measuring the proportionality of restrictions of freedom of expression is strict and requires a high standard of justification from the State. Mrs Khan Williams then outlined a number of suggested measures the Council could take in relation to this issue including elaborating more concise definitions for incitement, hostility, hate and hatred, and compiling and exchanging cross national experiences on sanctions and remedies.

### **Interactive Dialogue**

Several delegations commended the Rapporteurs’ initial report and reiterated the need for increased tolerance and understanding across religions, cultures, and civilisations.<sup>37</sup> Pakistan, on behalf of the OIC, commented on Pope Benedict XVI’s speech at Regensburg University and the offence that this had caused many in the Muslim community. Pakistan expressed its concerns about a rise in anti-Islamic sentiment, and reiterated Islam’s commitment to peace. It requested concrete action by the Council, in the form of a rejection of the conflation of Islam with violence and terrorism, and called for a high level segment focused on incitement to racial and religious hatred and the promotion of tolerance to be convened at the next Council session. It also suggested that Council members consider the possibility of drafting Convention to combat the defamation of religions and to promote religious tolerance. The delegation of India reiterated these statements, linking the respect of religions to a respect for democracy, pluralism, and tolerance. The Holy See took the floor to express its concern that some legal structures are insufficient to protect religious minorities and their members.

A significant issue of concern raised by States was how to create a balance between the respect of the freedom of expression and the prohibition of religious defamation.<sup>38</sup> Switzerland asked the Special Rapporteurs what educative, legislative or other measures they could recommend in this regard. Along with other delegations, it expressed support for a constructive dialogue between religions, cultures, and civilisations. Many took the opportunity to present their own policies and measures to deal with religious defamation.<sup>39</sup>

### **Other Practical and Procedural Issues**

---

<sup>35</sup> “Freedom of religion” organised by the Franciscans International (co-sponsored by Baha’i International Community).

<sup>36</sup> Prepared in accordance with Human Rights Council Resolution 2006/107.

<sup>37</sup> Pakistan (on behalf of the OIC), the Holy See, Switzerland, Finland (on behalf of the European Union) India, United Kingdom and Brazil.

<sup>38</sup> Brazil and the United Kingdom.

<sup>39</sup> Finland, India, and the United Kingdom.

During the interactive dialogue in the morning session<sup>40</sup> a considerable amount of time was spent discussing the procedure of rights of reply. The Chinese Ambassador asked the President for clarification over the length of time he was entitled to speak for in exercising his right of reply, asking for two slots of three minutes since he wanted to reply to both Mr Nowak and 'a certain NGO'. President de Alba rejected this demand, with the explanation that only one right of reply of three minutes was permitted and that a second right of reply of two minutes could be requested subsequently. After much debate, the President offered to the Chinese Ambassador the option, on an extraordinary basis, of making his second reply at the end of the day, which the Ambassador refused to accept. After a suspension of five minutes to negotiate, it was agreed that the Chinese Ambassador could first make a 'general comment' and then exercise his 'right of reply', a solution which effectively granted China six minutes to speak.

---

<sup>40</sup> Relating to the reports of the Special Rapporteur on torture, cruel, inhuman or degrading treatment and punishment, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers.

## **COUNCIL MONITOR STAFF**

**Meghna Abraham**, Program Manager, Information Program

**Claire Mahon**, Human Rights Officer, Information Program

**Eléonore Dziurzynski**, Communications Officer, Information Program

## **Contributors**

**Jay Bahadur**, Intern

**Maxence Delchambre**, Intern

**Valeria Fruzzetti**, Intern

**Jessica Griffiths**, Intern

**Michael Ineichen**, Intern

**Asger Kjaerum**, Intern

**Gergey Pasztor**, Intern

**Chris Sidoti**, Director

**Katrine Thomasen**, Human Rights Officer, Liaison, Coordination and Advocacy Program

## **ABOUT THE PUBLICATION**

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/hrm/council](http://www.ishr.ch/hrm/council)

## **SUBSCRIPTION**

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail [information@ishr-sidh.ch](mailto:information@ishr-sidh.ch) with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

## **COPYRIGHT AND DISTRIBUTION**

Copyright © 2006 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.