

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, 2ND SESSION DAILY UPDATE, 22 SEPTEMBER 2006

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Overview

The morning session of the Human Rights Council (the Council) began with the finalisation of yesterday's incomplete interactive dialogues on the reports on incitement to racial and religious hatred and the promotion of tolerance. The Council then considered reports from the following mandate holders:

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Special Rapporteur on the right to food;
- Special Representative of the Secretary-General on the situation of human rights defenders;
- Special Rapporteur on the sale of children, child prostitution and child pornography.

The presentations were followed by interactive dialogues with participation from States and non-governmental organisations (NGOs). There was insufficient time to begin the interactive dialogue with the last Special Rapporteur and to hear the presentation of the reports from the other mandate holders scheduled to present today. These have been rescheduled for Monday afternoon, as the Council will discuss the 1503 procedure in a closed session in the morning. As the Council is running behind schedule, there will be an extended session in the afternoon, which will run from 1 to 6 pm.

The Office of the High Commissioner for Human Rights (OHCHR) organised general briefings with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the sale of children, child prostitution and child pornography. Informal meetings held during the day included events

on human rights defenders and the human rights situation in the Philippines.¹ Informal consultations were organised this morning by the Mexican delegation on proposals for the ‘omnibus resolution’².

Incitement to Racial and Religious Hatred and the Promotion of Tolerance

There was insufficient time yesterday to complete the interactive dialogue on the joint report on incitement to racial and religious hatred and the promotion of tolerance submitted 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 the report of the High Commissioner for Human Rights (the High Commissioner) on the same topic.³ In their concluding statements, the Special Rapporteurs indicated that the international legal frameworks were already in place to deal with the issue of religious defamation.

Several States reiterated the need to achieve a balance between freedom of speech and the prohibition of religious intolerance.⁴ Australia reminded the Council that freedom of expression should be exercised responsibly. Belgium, Canada, the United States of America (USA) and Poland reiterated that States must ensure the protection and promotion of the rights of all people, not just religious people.⁵ The USA also emphasised the need to preserve the sacred principle of freedom of expression and for States to ensure that religious freedom is respected for all religions as well as the freedom not to affiliate with any religion at all. Algeria and Morocco stressed that the Council should not create a hierarchy of rights, with freedom of expression at the top. A particular concern in many statements was the increasing trend of Islamophobia in the world.⁶ Some States expressed support for the Rapporteurs’ call for a dialogue between religions, cultures, and civilisations.⁷

Several delegations expressed their support for more pro-active measures on the part of States through the enacting of laws⁸ and ‘technical assistance’.⁹ This was linked to calls for the ratification of relevant international instruments such as the *International Covenant on Civil and Political Rights* (ICCPR)¹⁰ or the *Durban Declaration*.¹¹ The International Service for Human Rights (ISHR) stated that the Council’s work on the issue of incitement to racial and religious hatred must be based in human rights law and supported the recommendation that the Human Rights Committee prepare a General Comment on Article 20 of the ICCPR. UN Watch questioned whether the term ‘defamation of religions’ had a sound basis in international human rights law.

Mr Diène stated in his reply that the Council needed to develop a long-term strategy to deal with this issue, which should include legal, political and intellectual strands. At the heart of this lay the challenge of

¹ See *Bulletin of Informal Events*, 22 September 2006, available at www.ohchr.org/english/bodies/hrcouncil/2session/bim.htm for additional details.

² An omnibus resolution is a resolution that covers many issues together. An example of this kind of a resolution is the former Commission on Human Rights’ annual omnibus resolution on economic, social and cultural rights issues, see Commission on Human Rights *Resolution 2005/22*.

³ See the *Council Monitor Daily Update*, 21 September 2006, <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>, for a summary of the presentations of the reports and the interactive dialogue that followed.

⁴ Australia, Malaysia and Iran.

⁵ Belgium, Canada, the USA and Poland.

⁶ Malaysia, Indonesia, Iran, Algeria, Morocco and Azerbaijan.

⁷ Costa Rica, The Islamic Republic of Iran and Turkey.

⁸ Mexico.

⁹ Australia and the Netherlands.

¹⁰ Argentina.

¹¹ Argentina and Indonesia.

multiculturalism and the need to take into account the complexity of religious pluralism. Ms Jahangir stated that the current climate of intolerance was more political in nature rather than legal.

Special Rapporteur on the Right to Health

Mr Paul Hunt, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health presented his annual report, the report of his mission to Uganda, and summary of communications.¹² Mr Hunt related his progress, since his last report in 2003, with respect to his three key objectives: raising the profile of the right to health, accurately defining it, and operationalising it.¹³ While acknowledging that the right to health was one of the most extensive and complex human rights, Mr Hunt spoke of his attempts to ‘unpack’ the concept to make it manageable and easier to grasp by illustrating the approach in the context of many specific issues. Mr Hunt stated that the right to health is ultimately a right to an effective, integrated health system, encompassing health care and underlying determinants of health, which is responsive to national and local priorities and accessible to all. Mr Hunt also highlighted his efforts to set out a human rights based approach to health indicators that was designed to help a State recognise which health policies are working and which are not. He reminded States that the Millennium Development Goals (MDGs) are clear about the role of both developing and developed countries in establishing effective, inclusive health systems and urged national health ministers to set up health programmes that reflected what is actually needed to achieve this objective.

The Special Rapporteur also spoke about his mission to Uganda to study “neglected diseases”,¹⁴ as part of his objective to operationalise the right to health. He stated that the focus of his visit was not the country itself, but to study the issue of neglected diseases through the prism of the right to health and identify what needs to be done at both the national and international levels. Next year, the Special Rapporteur hopes to have sufficient resources to identify and examine the key features of a health system that complies with the right to health.

Interactive Dialogue

Uganda thanked the Special Rapporteur for his report and noted that the recent peace process with the Lord’s Resistance Army (LRA) will allow better delivery of basic health care. Many States and NGOs expressed support for Mr Hunt’s human rights based approach to health, specifically his work on indicators and benchmarks.¹⁵ Several States¹⁶ also concurred with Mr Hunt in underlining the importance of the right to health to the realisation of the MDGs. Finland, on behalf of the EU, enquired what the specific issues States should focus on when applying a human rights based approach to health indicators and also as to the role of national human rights institutions (NHRIs) in relation to the right to health. Mr Hunt responded that States had the freedom to apply the methodology to selected health issues of their choice and use it to evaluate which of their policies are working or not. He also stated that he was working in a coordinated and

¹² E/CN.4/2006/48, 3 March 2006 (Report), E/CN.4/2006/48/Add.1, 22 December 2005 (Summary of Communications), and E/CN.4/2006/48/Add.2 19 January 2006 (Uganda). The reports are available at 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.

¹³ 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.

¹⁴ Neglected diseases are diseases which are characteristically common to developing countries, and are often linked to malnutrition and poverty. Examples include sleeping sickness, river blindness, and lymphatic filariasis.

¹⁵ Austria, Chile, Cuba, Finland (on behalf of the EU), International Women’s Rights Action Watch (IWRAW) and Norway. These parties all expressed considerable support for Mr Hunt’s human-rights based approach. IWRAW also appreciated Mr Hunt’s use of disaggregated data, especially with respect to gender.

¹⁶ Finland (on behalf of the EU), Morocco and Nicaragua.

complementary process with the World Health Organisation, the Committee on Economic, Social, and Cultural Rights and the OHCHR.

Brazil and Switzerland asked the Special Rapporteur about his plans to address the issues of access of the poor to essential medicines, which had been the subject of a Swiss-sponsored resolution at the Commission. Mr Hunt responded that many States did not even have a national 'essential drugs' strategy plan. He commented that it was necessary to look at both the responsibility of States as well as pharmaceutical companies, and that this would be an area that would be studied in his future reports. Various States¹⁷ gave details of their initiatives towards implementing national health plans, and towards eliminating discrimination with respect to health care access.¹⁸ International Women's Rights Action Watch requested that the Special Rapporteur address issues such as corruption in health services, increasing costs of healthcare and the privatisation of health services and also integrate a gender perspective in his monitoring and reporting. Amnesty International raised the issue of how the Special Rapporteur intended to follow up on his reports and recommendations, giving the case of Peru as an example.

Special Rapporteur on the Right to Food

The Council had before it three reports of the Special Rapporteur on the Right to Food, Mr Jean Ziegler. The reports were the annual report of the Special Rapporteur and reports of the Special Rapporteur's missions to India and Guatemala.¹⁹ Mr Ziegler stated²⁰ that it was quite clear that the MDGs regarding the right to food will not be met as there is still one child dying from hunger every five seconds around the world. He further stated that since agriculture has the potential to feed every person on the planet, every child dying from hunger is murdered. He expressed concern about the situation in Darfur as a large number of displaced persons were malnourished and, due to the security situation, could not receive help from international organisations. Mr Ziegler also mentioned that Sudan has not replied to his request for an invitation to a country visit. The Special Rapporteur directed the Council's attention towards the responsibility of international organisations, especially the responsibility of the World Trade Organisation (WTO). The widespread use of agricultural subsidies used by countries presents a major problem to the enjoyment of the right to food in Africa. Unfortunately this problem was not addressed in the WTO during the Doha round. Mr Ziegler called for the Council to facilitate a dialogue between the WTO and relevant special procedures.

The Special Rapporteur highlighted Brazil and France as positive examples of initiatives to combat hunger. In Brazil, he stated that President Lula has effectively given 22 million people access to a humane life through setting up the 'zero hunger' programmes, which reach 34 million people. In France, President Chirac has established an international tax on flights, giving one half of the proceeds to combating HIV/AIDS and the other to fighting hunger. Regarding his country visit to Guatemala, Mr. Ziegler noted that the national average of infant deaths is two times higher than the rest of Latin America. While highlighting land distribution as one of the main issues in Guatemala, the Special Rapporteur commended Guatemala on the progress made especially in setting up the anti-hunger programme. Commenting on his visit to India, Mr Ziegler stated that approximately half of the malnourished people in the world are living in India. He commended India on its public food distribution system as it reached the whole population. Mr Ziegler also praised the recent Indian

¹⁷ Cuba, Morocco and Sri Lanka.

¹⁸ Indonesia.

¹⁹ E/CN.4/2006/44, 16 March 2006 (Annual Report), E/CN.4/2006/44/Add.1, 18 January 2006 (Guatemala) and E/CN.4/2006/44/Add.2, 20 March 2006 (India). The reports are available at

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.

²⁰ 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.

Supreme Court rulings recognising the right to food as well as its jurisprudence allowing civil society organisations to engage in court cases on behalf of individuals.

Interactive Dialogue

The Special Rapporteur's description of the state of affairs in the Darfur region was rejected by the Sudanese delegation. Mr Ziegler replied that he was not accusing the government of Sudan and repeated his request for a visit to the country. Guatemala stated that the report of the Special Rapporteur had actively contributed to the advancement of the right to food in Guatemala and it was continuing to carry out agricultural reform as the use of land was seen as essential to eliminating hunger. The Indian government thanked the Special Rapporteur for his report and noted that it would be giving consideration to the recommendations. FIAN International²¹ expressed its disappointment about the low level of discussions with civil society during the Special Rapporteur's visit to India and the fact that he had only been able to visit a few states in the Indian federation. They requested that India fight hunger in the same way as it had successfully fought famine and increase its focus on access to natural resources.

Switzerland focused on the interrelationship between agriculture and the issue of land rights and enquired to Mr Ziegler's view on these issues. Luxembourg expressed concern that the MDG targets would not be met and also enquired whether donor countries should not be encouraged to attach importance to food security and agriculture. Algeria requested the Special Rapporteur to compile best practices to help Africa deal with hunger. The issue of transnational corporations (TNCs) was taken up by number of States²², who highlighted the problem of holding TNCs accountable for their role played in relation to the right to food. Switzerland enquired who the Special Rapporteur visualised should conduct the monitoring of the TNC's and how this should be undertaken. On the same issue, Argentina and Chile requested that the Special Rapporteur should work in collaboration with the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises in addressing this particular issue. Relating to suggestions that he should work with the Special Representative, Mr Ziegler stated that he is in favour of a more normative approach, which is very far from the approach taken by the Special Representative.

The role of the international community was addressed by both Chile and Pakistan. Chile expressed the opinion that States have an extraterritorial obligation to protect the right to food and noted that it had already been exploring financial mechanisms in collaboration with other countries in a zero hunger campaign. Pakistan further suggested that an international mechanism should be set up to deal with the aim of dealing with food emergencies around the world for instance related to natural disasters. Mr Ziegler commented that this was a very important issue and noted that the concern of Pakistan was very relevant and should be given due attention. The Food and Agricultural Organization elaborated on its use of the *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security*. FIAN International highlighted challenges around implementing and monitoring these guidelines. Among other issues addressed during the interactive dialogue were the interrelationship with the right to health, the right to drinking water and the need to compile best practices.

Special Representative on Human Rights Defenders

Ms Hina Jilani, the Special Representative of the Secretary-General on the situation of human rights defenders, presented her annual report, reports on summary of communications, compilations of developments in the area of human rights defenders, and missions to Nigeria, Brazil, Israel and the Occupied

²¹ Food First Information and Action Network International.

²² Cuba, Argentina, Chile and Switzerland.

Palestinian Territories (OPT) to the Council.²³ Ms Jilani explained²⁴ that in addition to an account of her activities, her annual report presented a comprehensive review of the six years of implementation of the mandate and highlighted areas of progress and remaining challenges. She had also submitted an assessment of the situation of human rights defenders in 118 countries. Positive developments included the public recognition of the role and status of human rights defenders (defenders) by several governments. She however highlighted a number of serious concerns that persist, including reprisals against defenders who have cooperated with international bodies or used national or international mechanisms to seek redress for violations; increasing tendency to label defenders as criminals, terrorists or seditious by references to national security or ideology; and the adoption of legislation to give legal status to NGOs, which was in fact used to impose controls on their independence and autonomy, seriously impairing their freedom of association and ability to organise and take collective action.

Ms Jilani stated that the overall climate for human rights defenders in Nigeria had improved but there were concerns about the situations of defenders working on issues that the government perceived as sensitive. She pointed to the difficulties encountered by journalists, labour workers, women's rights activists and those working on economic, social and cultural rights (ESCR) issues, especially in the Niger Delta. In relation to her mission to Israel and the OPT, she stressed that the dominant concern for human rights defenders, even among many Israeli organisations, was the violation of the human rights of the Palestinians living under Israeli occupation. Though Israel generally respects the rights of Israeli human rights defenders, organisations and defenders face difficulties in promoting the rights of Arab and Palestinian communities in Israel. They encounter even less tolerance for their activities for the rights of Palestinians in the OPT or criticism of the occupation. Defenders within the OPT work in conditions of grave risk and obstacles because of the occupation and violations against them which included killings; oppressive practices restricting their access, expression and ability to seek justice; severe restrictions on their freedom of movement because of the construction of the Wall and other requirements; use of security and anti-terrorism laws; and other forms of harassment. She also highlighted the failure of the Palestinian Authority to respect human rights and rule of law. On Brazil, Ms Jilani noted a number of positive initiatives and responses by the government. She however highlighted a wide gap between policy and implementation, particularly the serious harm experienced by defenders working on ESCR issues and others working to end impunity and discrimination.

Interactive Dialogue

All the States that Ms Jilani had carried out missions to commended her work and her comprehensive reports. Nigeria however questioned the accuracy of the Special Representative's assertion that there were 750 documented cases of extrajudicial killings in the country report. They also stated that this issue should have been left in the domain of the Special Rapporteur on extrajudicial killings. They expressed their willingness to meet with the Special Representative to discuss particular issues raised in her report. Brazil asked for advice on how to facilitate freedom of expression at the municipal and legal levels.

Israel praised the Special Representative's efforts to present a balanced and comprehensive overview of the situation in the region. They stated that their security concerns had not diminished after the disengagement and that they continued to be under attack but that they would make efforts to ensure that their "justified responses to such attacks" met the recommendations put forward in her report. Palestine highlighted the difficulties faced by the Palestinian Authority, such as the imprisonment of members of Parliament and attacks by Israel, which made it difficult for them to operate effectively. Palestine offered an open invitation

²³E/CN.4/2006/95, 23 January 2006, E/CN.4/2006/95/Add.1 (Corr.1 and Corr.2), 22 March 2006, E/CN.4/2006/95 Add. 2, 30 January 2006, E/CN.4/2006/95 Add. 3, 10 March 2006, E/CN.4/2006/95 Add. 4, 14 March 2006 and E/CN.4/2006/95 Add. 5, 6 March 2006. The report, summaries of cases transmitted to governments and replies received, country reports and compilation of the developments in the area of human rights defenders are available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm. ISHR has produced unofficial summaries of these reports available at <http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm>.

²⁴Oral statements made at the Council can be found on the OHCHR extranet (fill out the form on the page to receive a user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

to all special procedures to investigate the human rights situation in their country on any issue, to help them correct any mistakes on their part. Ms Jilani reiterated that the Palestinian Authority did have a responsibility to ‘strive’ to protect human rights defenders.

Finland (on behalf of the EU) and a number of NGOs²⁵ drew Ms Jilani’s attention to the situation in Uzbekistan and the crack down on NGO activities and asked for her insight on the situation. Norway, Canada, Argentina, Liechtenstein and ISHR commented favourably on her proposal to use compliance with the *Declaration on Human Rights Defenders* and responsiveness to communications as indicators of the situation of human rights more generally. Several delegations asked questions concerning measures for better protection at the national level;²⁶ to ensure accountability of non-State actors;²⁷ and the role of NHRIs in protecting defenders.²⁸ Indonesia and Tanzania invited Ms Jilani to carry out visits to their countries.

Cameroon referred to cases where defenders depart from the statutes of associations “abusing the confidence” of the Government. Malaysia and Indonesia stressed the importance of national laws regulating the action of defenders and Bangladesh argued for the need not only to focus on State action, but also to investigate the action of NGOs.

Algeria, on behalf of the African group, strongly criticised the Special Representative for having sent a communication to ECOSOC members regarding their refusal to grant consultative status to three NGOs working on human rights for lesbian, gay, bisexual and transgender (LGBT) persons. They complained both about the substance and procedure of the communication. On the substance, they claimed that requesting to States explanations for their vote in a UN body goes beyond the Special Representative’s mandate and is a violation of their sovereignty. On the procedure, they complained that the communication, as well as Ms Jilani’s letter of apology²⁹ withdrawing her communication, should have been channelled through permanent missions in Geneva and not be sent directly to governments. They used this incident to call for the adoption of a code of conduct for special procedures to avoid such “erratic action” on their part. Ghana, Tanzania and China also criticised the Special Representative for having sent this communication. Norway, New Zealand and Austria highlighted that they considered Ms Jilani’s actions as falling entirely within her mandate since she had addressed a case of discrimination against a specific group of defenders in the access to international bodies. General support for the mandate (but without reference to the ECOSOC communication) was expressed by Finland, on the behalf of the EU, Cameroon, the USA, Canada, Peru and Liechtenstein. ISHR stated that it was disappointing that the only comments from the African Group on the work of the Special Representative were on a communication that fell outside the reporting period under discussion, was not a part of her report, and which she had already withdrawn. In the circumstances, the attack could only be considered ‘gratuitous’. In her response, Ms Jilani strongly emphasised that her actions did fall within her mandate and refuted the accusation that her actions were ‘erratic’. Algeria, on behalf of the African Group, and China exercised a further right of reply and questioned why the Special Representative had withdrawn the letter and apologised if she believed it fell within her mandate. Algeria stated that they would take up this issue with the Coordinating Committee of the special procedures.

²⁵ Asia Pacific Forum on Women, Law and Development (APWLD), FORUM-ASIA, the Observatory for the Protection of Human Rights Defenders and Pax Romana in a joint statement.

²⁶ Norway, Ghana and Germany.

²⁷ Ghana.

²⁸ Switzerland.

²⁹ In which she apologised for the procedural error that had occurred without prejudice to the substance of her remarks.

Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography

Mr Juan Miguel Petit presented his annual report, communications and reports on his missions to Greece and Albania.³⁰ Due to time constraints, the Special Rapporteur only had about ten minutes to present his report to the Council. The Special Rapporteur commented that much of his report on the demand side of trafficking was based on the 28 responses to the questionnaire that he had received from States as well as responses received from NGOs and intergovernmental organisations. The report highlighted the different understandings of what could constitute 'demand'. Mr Petit stressed the need to assess criminal penalties to the entire chain of individuals who were complicit in making trafficking possible and to confiscate their assets to compensate the victims. He drew attention to the achievements made in reducing trafficking of children as well as the challenges it still faced. He lauded the improved border controls, judicial reforms and police training that was occurring in many countries but encouraged improvements in the conditions of detention centres³¹ for trafficked persons as well as centres for street children. He also underlined the situation of children belonging to Roma communities in Albania who suffer from socio-economic and educational deprivation.

Other Practical and Procedural Issues

Mexico organised informal consultations to get comments on their contribution to the 'omnibus resolution',³² suggested by the President. The President is yet to formally present his ideas for the omnibus resolution but the Mexican delegation stated that the President hopes to have a single document based on consensus, an omnibus resolution, emerge as the outcome of the session. The President has invited contributions towards the text of this omnibus resolution from all delegations. Mexico has accordingly developed its contributions that are focused on concrete requests for future activities by the OHCHR, the special procedures and treaty bodies. Mexico suggested that other States develop their own contributions and organise similar consultations. Several delegations expressed reservations about the process and framework for the omnibus resolution and asked for more information about the way the process will operate, the time line, structure and format of the resolution. Some questioned what would happen if it was not possible to reach consensus on the resolution and also whether it would not be better to hold one set of consultations instead of a series of mini consultations. They invited the President, through the Mexican delegation, to formally present his proposals as soon as possible as it was difficult for them to contribute their own suggestions for the text without a better idea of the overall framework and procedures.

Some delegations welcomed the concise and action-oriented format of the contributions by Mexico and the President's proposal for new working methods. One delegation highlighted the need for a coherent and systematic approach that would allow the Council to address all the special procedures that they had interactive dialogues and which was not dependent on delegations suggesting piecemeal action on their own particular areas of interest. Another delegation also reminded States that the Rules of Procedure of General Assembly continued to apply and therefore the power of members to table other resolutions could not be restricted.

³⁰ E/CN.4/2006/67, 12 January 2006, E/CN.4/2006/67/Add.1, 27 March 2006, E/CN.4/2006/67/Add.2, 27 March 2006, and E/CN.4/2006/67/Add.3, 27 March 2006.

³¹ Specifically with respect to health and psychological services.

³² An omnibus resolution is a resolution that covers many issues together. An example of this kind of a resolution is the former Commission on Human Rights' annual omnibus resolution on economic, social and cultural rights issues, see Commission on Human Rights *Resolution 2005/22*.

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