

# COUNCIL MONITOR

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## HUMAN RIGHTS COUNCIL, 2<sup>ND</sup> SESSION DAILY UPDATE, 26 SEPTEMBER 2006

Overview .....	1
Special Rapporteur on Adequate Housing .....	2
Special Rapporteur on the Right to Education .....	3
Special Representative on Human Rights and Transnational Corporations .....	3
Special Rapporteur on Human Rights and Counter Terrorism .	4
Special Rapporteur on the Situation of Human Rights in Somalia .....	6
Representative on the Situation of Human Rights in Cuba.....	7
Special Rapporteur on the Situation of Human Rights in the Palestinian Occupied Territories .....	9
Special Representative for Human Rights in Cambodia.....	11
Independent Expert on the Situation of Human Rights in Haïti .....	12
Other Practical and Procedural Issues.....	13

### Overview

Today's morning session began with the finalisation of the interactive dialogue with the following mandate holders:

- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living;
- Special Rapporteur on the right to education;
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises;
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

The Council then considered reports from the following country specific mandate holders:

- Special Rapporteur on the situation of human rights in Somalia;
- Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba;
- Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967;
- Special Representative of the Secretary-General for human rights in Cambodia;

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- Independent Expert on the situation of human rights in Haiti.

Each presentation by the country specific mandate holder was followed by a response by the concerned State, as well as an interactive dialogue with other States. NGO statements on country specific mandate holders were heard all together at the end of the day, when 20 minutes of the Council's time were set aside for this purpose. At lunch the Office of the High Commissioner for Human Rights (OHCHR) organised a general briefing with the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. Informal meetings held during the day included events on Cuba, the Occupied Palestinian Territories (OPT), China, the Olympic Games, transnational corporations (TNCs) and human rights, human rights defenders and ethics and medical research.<sup>1</sup>

## Special Rapporteur on Adequate Housing

After the presentation of his report yesterday there was insufficient time to begin the interactive dialogue on the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr Miloon Kothari.<sup>2</sup> The interactive dialogue continued today with delegations welcoming the guidelines on forced evictions<sup>3</sup>. There were questions however as to how governments and NGOs can cooperate on these. Some requested the Special Rapporteur's opinion on how to implement the guidelines,<sup>4</sup> and asked if he could provide the Council with examples of best practice. A further question was asked by Germany regarding what the main issues were for disaster relief and housing. In this regard the Special Rapporteur stated that he was currently working on guidelines on how to deal with post-disaster relief and rehabilitation.

Some delegations asked generally how to better incorporate housing rights into the concept of human rights.<sup>5</sup> On particular issues raised in the Special Rapporteur's reports and presentation, several delegations supported the Special Rapporteur's work on women's rights regarding violence and gender-equality.<sup>6</sup> Some States expressed support for the inclusion of a clause on women and housing in State legislation. NGO statements also expressed concern for women's housing rights.<sup>7</sup> NGOs inquired as to the effectiveness of customary and religious laws with regards to women's right to inherit<sup>8</sup> and expressed appreciation for the Special Rapporteur's recommendations regarding the Committee on Elimination of Discrimination Against Women (CEDAW).<sup>9</sup> Human Rights Watch extended this concern to state that those affected the most were women from minority groups. In his concluding remarks, the Special Rapporteur recommended the Council adopt model provisions on the treatment of women in housing.

In relation to country situations, Human Rights Watch and the Centre on Housing Rights and Evictions requested more information on the progress made in Zimbabwe.<sup>10</sup> In his concluding comments, the Special

<sup>1</sup> See *Bulletin of Informal Events*, 26 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*, 25 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.

<sup>3</sup> Germany and Bangladesh.

<sup>4</sup> Habitat International Coalition.

<sup>5</sup> Germany and Peru.

<sup>6</sup> Mexico and Canada.

<sup>7</sup> International Women's Rights Action Watch, a joint statement by Human Rights Watch and the Centre on Housing Rights and Evictions (COHRE), and a joint statement by Zonta International, Brahma Kumaris World Spiritual University, Pacific and South East Asia Women's Association International, International League of Women for Peace and Freedom, Worldwide Organization for Women and International Council of Women.

<sup>8</sup> Human Rights Watch and COHRE.

<sup>9</sup> International Women's Rights Action Watch.

<sup>10</sup> Human Rights Watch.

Rapporteur stressed that his work was ongoing. The Special Rapporteur responded to the comments made yesterday by the Islamic Republic of Iran (Iran), making it clear that in spite of the progress made in the housing sector there were still issues remaining. Particularly, he called on increased interaction across government agencies, and recommended that the government reconsider its 'eminent domain' law,<sup>11</sup> which does not allow people to challenge evictions. Regarding Cambodia, he welcomed the work of UN Habitat but criticised the ongoing evictions of low-income persons, particularly those coming from rural areas. Yesterday Switzerland had raised a question about land rights, and today the Special Rapporteur responded that the social dimension of property ownership needs to be studied in detail.

## Special Rapporteur on the Right to Education

After the presentation of his report yesterday there was insufficient time to begin the interactive dialogue on the report of the Special Rapporteur on the right to education, Mr Vernor Muñoz Villalobos.<sup>12</sup> The interactive dialogue continued today with comments from various States explaining the steps being taken at the national level to improve equal access to education. For example, Indonesia commented on its commitment to gender policies and its laws on gender mainstreaming, mentioning that gender disparities have almost disappeared in Indonesia as a result of these policies. The German delegation congratulated the Special Rapporteur for his extensive work and spoke of the reforms in Germany prompted as a result of his visit, including the enhanced provision of free kindergardens in some areas. Tunisia spoke of how the rate of female participation in schools has increased significantly and continues to improve, especially in remote areas. Mr Muñoz Villalobos responded to these and earlier comments, first by repeated once again how much he sincerely recognised the achievements made by Botswana in enhancing access to right to education. However, he highlighted his need to have contact with civil society in Botswana in order to balance his view. Further he considers that introducing charges for secondary education in Botswana is a step backwards.

Some questions were posed to the Special Rapporteur. The Friends World Committee for Consultation asked whether the Special Rapporteur plans to continue his thematic approach and if he is going to study the consequences of detention of women, including children with their mothers, from the perspective of the right to education. Mr Muñoz Villalobos confirmed he would address this in future studies. The Canadian delegation raised concerns about the difficult challenge ahead in achieving the Millennium Development Goals (MDGs) by 2015. In his responses Mr Muñoz Villalobos stressed the importance of budgets in achieving the MDGs, reiterating the fact that it is not possible to achieve these without proper allocation of resources. He also repeated the need to include considerations raised in the Durban Declaration and Plan of Action in education policies to address issues of discrimination. In response to a question from Finland (on behalf of the European Union) on education in armed conflict, he confirmed that because of the importance of this issue he is planning to address this in his next report, as well as the right to education for persons with disabilities. To conclude he highlighted how indicators are key, in particular in regard to making progress towards gender equality. He also highlighted the importance of human rights in the classroom and its institutionalisation in education systems.

## Special Representative on Human Rights and Transnational Corporations

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<sup>11</sup> The doctrine of eminent domain refers to the inherent power of the state to acquire private property even without the owner's consent, either for its own use or for other public purposes.

<sup>12</sup> See the *Council Monitor Daily Update*, 25 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.

After the presentation of his report yesterday there was insufficient time to begin the interactive dialogue on the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr John Ruggie.<sup>13</sup> The interactive dialogue continued today with a number of European States reiterating yesterday's praise for the Special Representative's practical and pragmatic approach.<sup>14</sup> His regional and multi-stakeholder initiatives that build on consultations with all affected parties were particularly commended by most speakers.<sup>15</sup> His approach was criticised by the delegate from the Russian Federation as a 'de-facto approach', taking too much note of the opinion of corporations. The Russian Federation explained that they believe it should be States setting the standards and not businesses through their practice. Mr Ruggie responded by pointing out that he saw his task as presenting the content of existing norms and standards and that the Council as the lawmaking body should decide on the status granted to them. States also asked for a preliminary impression of the lessons learned of his consultations. Mr Ruggie explained that the consultations had revealed a number of common elements across regions. Local stakeholders had displayed a keen interest in practical and immediate measures and a more broad focus on national enterprises in addition to transnational corporations (TNCs).

A recurring theme was the issue of State responsibility and how far this extended in light of the actions of TNCs. Delegates pointed out that States are the primary duty bearer of human rights obligations under international law, but that the links between State and TNC conduct had to be further explored. Mr Ruggie responded by underlining the importance of enhancing domestic capacities to regulate and adjudicate corporate behaviour. The elaboration of principles that would clearly express the separate responsibilities of States and corporations with regard to human rights is a key concern for Mr Ruggie.

The draft Norms on the responsibilities of TNCs and other business enterprises with regard to human rights (the Norms) were again the topic of discussion.<sup>16</sup> The Russian Federation expressed its view that Mr Ruggie had been even more critical of the Norms than States had been in previous discussions at the Commission on Human Rights. Bangladesh also drew attention to the stalled discussion about the Norms. The Norms in general were vocally supported by a number of NGOs,<sup>17</sup> who called on the Council to "adopt these Norms". Taking a different stance, the United Kingdom (UK) pointed out that first a critical mass of home and host States of TNCs was needed to bring the issue forward. A range of NGOs raised the issue of managing the effects of globalisation, and the binding standards needed to address them.<sup>18</sup> While acknowledging the need to channel globalisation into more just arrangements, Mr Ruggie repeated his view that the process had to be separated into 'content' and 'status', given the political and legal controversy faced by emerging standards. He was not able to respond to all questions, but signalled his readiness to engage in further bilateral dialogue with interested parties.

## Special Rapporteur on Human Rights and Counter Terrorism

After the presentation of his report yesterday there was insufficient time to begin the interactive dialogue on the report of the Special Rapporteur on the promotion and protection of human rights and fundamental

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<sup>13</sup> See the *Council Monitor Daily Update*, 25 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.

<sup>14</sup> Norway, Lichtenstein and Belgium.

<sup>15</sup> Belgium, Norway, France and Russia. The UK also underlined the need to combine the views of business and civil society.

<sup>16</sup> See also the *Council Monitor Daily Update*, 25 September 2006, <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>, for further information.

<sup>17</sup> Centre Europe Tiers-Monde, International League for the Rights and Liberation of Peoples and Indian Movement 'Tupaj Amaru' in joint statement. Written statements 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).

<sup>18</sup> Peru also expressed doubts about the long-term efficiency of ethics and moral to regulate corporate behaviour.

freedoms while countering terrorism, Mr Martin Scheinin.<sup>19</sup> The interactive dialogue continued today with a number of States<sup>20</sup> highlighting the need to find a clear definition of terrorism and to identify good practices in promoting and protecting human rights while countering terrorism. Algeria, Cuba and the NGO International Educational Development more specifically raised the issue of how the lack of a clear definition of terrorism could lead to States using anti-terror initiatives to violate the rights of non-terrorists, for instance relating to the right of people to self-determination. In this regard Human Rights Watch brought the Council's attention towards the recent actions of the Government of Uzbekistan where dissidents have been labelled terrorists. Algeria suggested that a definition of what is not terrorism would be a possible solution to this problem. On a related issue Cuba highlighted the need for the Special Rapporteur to also focus on the issue of State terrorism.

Russia asked the Special Rapporteur about his view on how to deal with the very important issue of non-state actors in relation to terrorism and linked this question to what it perceived as the right to be protected from terrorism. Mr Scheinin replied that the non-state actor issue could be dealt with through establishing an international system of criminal accountability. A number of questions were also posed on how the Special Rapporteur envisaged interacting with other UN actors, such as the Counter Terrorism Committee (CTC),<sup>21</sup> the United Nations counter terrorism task force, the Human Rights Council (the Council) and other special procedures. More specifically Cuba enquired on the Special Rapporteur's reasons for not joining the five other special procedures in their request to visit the Guantánamo Bay detention facility. Mr Scheinin replied that he was considering conducting joint country visits with the Counter Terrorism Committee and regarding interaction with the Council he saw the Universal Periodic Review as a venue for such interaction. He further noted that a possible future mechanism for alerting the Bureau of the Council could be another venue for such interaction. Regarding the CTC Mr Scheinin gave a general statement noting that human rights is a central pillar in all counter terrorism activities.

A number of specific situations, both thematic and country related, were highlighted by Iran and NGOs. Special reference was made to practices such as extraordinary renditions, secret detention and the use of diplomatic assurances.<sup>22</sup> FIDH and International Educational Development made comments on the situation in the USA regarding recent cases of abolishment of the right to habeas corpus rights and the holding of prisoners as quasi prisoners of war. On a related issue, International Educational Development highlighted cases of governments<sup>23</sup> categorising internal conflicts as war against terrorism to avoid being obligated by the rules of armed conflict. Bangladesh expressed concern about the increasing targeting of people of muslim faith in the war on terrorism. Lastly Interfaith International brought the Council's attention to the targeting of journalists and others by Pakistan in the war against terrorism. As a conclusion on the discussion on situations, FIDH encouraged the Council to adopt a resolution on the Situation on the Guantánamo Bay detention facility. With regard to the questions regarding renditions, the Special Rapporteur noted that while it was not in the main focus of his work, he had done some work on the issue especially related to the new European Union extradition treaty with the USA. He further noted that the issue of targeting of persons or groups would be addressed in his next report.

Replying to the comments and questions raised yesterday, Mr Scheinin noted that while he agreed that the Special Procedures should not redefine nor expand their mandates, he felt that his actions were in keeping with his mandate. Regarding interaction with the media, the Special Rapporteur noted that in his opinion general questions from the media should be answered but he did not find it appropriate to comment on

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<sup>19</sup> See the *Council Monitor Daily Update*, 25 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.

<sup>20</sup> Algeria, Bangladesh, Cuba and Mexico.

<sup>21</sup> A body created in order to monitor compliance with Security Council *Resolution 1373* (2001).

<sup>22</sup> Iran, Human Rights Watch, International Federation of Human Rights Leagues (FIDH) and International Educational Development.

<sup>23</sup> Turkey and Sri Lanka.

conclusions before the discussion in the Council. The Special Rapporteur concluded the dialogue by noting that he was hoping to be able to respond the remaining questions on a bilateral basis.

## Special Rapporteur on the Situation of Human Rights in Somalia

Mr Ghanim Alnajjar, the Special Rapporteur on the situation of human rights in Somalia, presented his annual report.<sup>24</sup> Mr Alnajjar<sup>25</sup> described the extensive political developments in Somalia during the last six months. He referred to the recent take-over of large portions of Central and Southern Somalia by militias associated with the Islamic Courts Union (ICU). While the victories of the ICU has brought a state of relative peace and security to the troubled country, the Independent Expert deplored the increase in loss of civilian life, particularly the 1,000 people killed during the siege of Mogadishu. The fighting has also created another wave on internally displaced persons (IDPs). He expressed concern over the targeting of journalists, humanitarian workers, and members of civil society, as well as threats against the UN country team. The Independent Expert also conveyed fears that the recent assassination attempt on the Transitional Federal Government (TFG) President, Mr Abdullahi Yusuf Ahmed, may lead to an escalation of hostilities. Mr Alnajjar was nonetheless encouraged by peace talks brokered by the Arab League in Khartoum, which resulted in an agreement between the ICU and TFG on 4 September 2006.<sup>26</sup>

The Independent Expert pointed to widespread insecurity, extra-judicial killings, violations against women and children, and breaches in economic and social rights. He drew attention to the practical impossibility of most children, especially girls, accessing education.<sup>27</sup> With respect to economic and social rights, Mr Alnajjar cited frequent violations of Somalia's coastal waters and overfishing by foreign vessels. He also highlighted the problem of piracy. The Independent Expert urged States to support Somali leaders and civil society with financial and technical support. He referred to a UN consolidated appeal that has only been able to raise 40% out of a requested \$326.7 million. He stressed that Somalia was on the brink of a major crisis, and the international community had only a small window in which to act.

### Interactive Dialogue

Finland (on behalf of the EU) asked the Independent Expert what measures the international community might take to improve the situation, specifically with reference to minorities and IDPs. It also enquired as to what steps could be taken to counter gender-based violence and discrimination against women and children. Mr Alnajjar responded that the international community needed to support the Khartoum peace process, with which Sudan concurred. He also stated that there was a tendency to look at human rights in Somalia chiefly in terms of peace and security, but that social and economic rights were also of prime importance. Mr Alnajjar reiterated that discrimination against women continued to be a grave concern, despite recent measures to ensure women's political participation. Italy and the United States also asked the Independent Expert about what could be done to deal with the IDP problem. Mr Alnajjar answered that the conditions of IDP camps were absolutely atrocious, and are getting worse. He also pointed out that human trafficking, particularly to Yemen was also a considerable problem. Italy also asked if any specific attention was being paid to land and property issues, which are a large source of conflict. Mr Alnajjar replied that in Somalia, where 80% of the

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<sup>24</sup> A/HRC/2/CRP.2, 13 September 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 summaries of the reports for a short overview of the reports 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).

<sup>26</sup> Pursuant to the terms of his agreement, both sides consented to recognise each other, establish a joint police force, and re-establish the Somali militia.

<sup>27</sup> Outside Somaliland, only 13% of children attend primary school.

population works in livestock, land is a very important. He stated that a TFG parliamentary committee had been created to deal with the issue. Italy also requested the Independent Expert to suggest strategies to address the critical situation of the police and judicial system. Mr Alnajjar responded that the UN Rule of Law and Security Program had been very successful in training police and strengthening the judicial system. Djibouti inquired whether the proposed African Union (AU) mission to Somali could serve to buttress the Khartoum peace process. Mr Alnajjar replied that public opinion in Somalia was very wary of external intervention, and that foreign troops are not needed. Responding to the United States of America, the Independent expert stated that there was a high level of coordination and cooperation between the UN country team, local civil society, and other international actors.

## Representative on the Situation of Human Rights in Cuba

Ms Christine Chanet, the Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba, presented her annual report.<sup>28</sup> Ms Chanet<sup>29</sup> began her presentation by stating that after four years the Cuban authorities continued to refuse to work with her. She thanked NGOs and the Inter-American bodies for providing information that was used to write the report. Ms Chanet recognised that the Government had made efforts in the promotion of health, education, and discrimination against women. However, she highlighted that there were still major problems in the justice system and prison services and that the mental and physical condition of people in detention still remains a concern. Ms Chanet explained that in her reports on Cuba she has always tried to emphasis the positive aspects of the government's attempts to put money into education and health, despite the disastrous restrictions of the embargo. She also added that the embargo had caused a serious impact on the civil and political rights of Cuban citizens as it had caused the Cuban authorities to adopt repressive laws. She referred to recommendations that remained from her previous reports, such as the revision of the penal code, release of persons in detention, maintaining the moratorium on the death penalty, guaranteeing freedom of movement and expression, authorising NGOs (even foreign NGOs) to access Cuba, and freedom of the press and political parties. She particularly pointed to Cuba's failure to ratify the *International Covenant on Civil and Political Rights* (ICCPR). Ms Chanet questioned why the Cuban authorities appeared to have no problems cooperating with other special procedures (such as a number of other special rapporteurs of the Council).

Ms Chanet's statement then focused on her call for the formulation of a new framework to address the situation, as she felt that within the current mandate her work in Cuba had reached a 'dead end' due to the refusal of the Cuban authorities to accept it. She suggested an evolution of the mandate that would open up dialogue with Cuba, which should be discussed within the development of the Universal Periodic Review (UPR). While she made clear that the Council cannot allow States to escape review either by the Council or by the treaty bodies,<sup>30</sup> she expressed her hope that the change from the Commission to the Council would provide an opportunity to review how the body deals with this particularly difficult country situation, and all States in a similar situation (namely where a State does not wish to accept a rapporteur and opposes the rapporteur's action).

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<sup>28</sup> E/CN.4/2006/33, 20 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 summaries of the reports for a short overview of the reports and main issues, available at [www.ishr.ch/hrm/council/SPs/specialprocedures.htm](http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm).

<sup>29</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).

<sup>30</sup> Ms Chanet also noted Cuba's failure to cooperate with the treaty bodies.

## Interactive Dialogue

Cuba accused Ms Chanet of political manipulation, claiming that her time as Representative had “not been one of the most honourable jobs” and that “no one would remember her mandate”. The delegate from Cuba called on Ms Chanet to resign if she wished to do something to contribute. He denigrated those who were “instruments serving a fascist clique” under the false disguise of dissidents. Cuba claimed that their people were being denied the right to self determination and the right to defend their homeland in their struggle against an aggressive empire.

China, the DPRK, Zimbabwe and Algeria supported Cuba in its refusal to recognise Ms Chanet’s mandate. The Chinese delegate described Cuba as a small country that had suffered under an oppressive embargo, noting that this negative impact caused by the embargo was also recognised by Ms Chanet. China, joined by the DPRK and Zimbabwe, called for the embargo enforced by the United States of America (USA) to be lifted. In addition, the Chinese delegation reminded the Council that both the resolution to investigate Cuba and the mandate itself did not come out of a consensus of State parties. North Korea, Iran, China, Belarus, Zimbabwe and the Russian Federation raised concern over the politicisation surrounding the mandate – Iran claimed this politicisation introduced a double standard in the judgments of the Representative. According to the Russian Federation, such mechanisms of control should be terminated because they are counter-productive and give rise to confrontation between States. Zimbabwe broadened this criticism to include all country specific mandates, claiming that no such mandates or resolutions should be the order of the day in the Council. Belarus added that Cuba should have the right to choose its own way of development and the Council must respect this choice. Algeria, comparing the basic human rights such as the right to life and the right to health, proposed that as Cuba maintains one of the highest rates of longevity, it seems Cuba respected these rights. Algeria called for a move away from politicisation and greater support between all States. Ms Chanet, in her responses, supported the praise Algeria had given to Cuba regarding their fulfilment of the right to health.

In contrast, the USA and the European Union (statement by Finland) strongly supported the independent and constructive work of the Representative. The USA described Cuba as one of the most repressive countries in the world and was responsible for creating instability throughout the region. It said that every day Cuba denied the freedom of speech, association, and all the rights included in the *Universal Declaration of Human Rights*. It supported the comments made by Ms Chanet regarding the need to allow NGOs access into Cuba. Finland, on behalf of the EU, asked Ms Chanet whether the detention conditions had improved in Cuba and whether she had noticed any efforts to follow her recommendations. In response to Finland Ms Chanet said that there was still cause for concern in the state of the prison services in Cuba as the situation had not changed, although she highlighted that the problem was not hidden and this was conducive to improvement. She went on to state that there had been some improvement in reaching gender equality, which had been another issue raised by Finland. Vietnam took neither side and simply recommended that the situation in Cuba needed to be improved.

In her conclusion to the interactive dialogue Ms Chanet refused outright to respond to the personal attacks directed at her by a number of delegations. She directly responded to China’s question regarding why she had not recommended lifting the embargo and stated she recognised both in her oral statement and written report the debilitating effects it imposed on Cuba, but that recommendations directed towards other countries were beyond her mandate. On the issue of the mandate she simply repeated her opening remark that there was a need for overhauling the situation in order to move forward with work on human rights in Cuba. In a right to reply, Cuba vigorously maintained its independence and called for the USA and affiliated States to stop their hypocrisy and instead respect the intelligence of Cuba. Following this statement the President demanded that all States refrain from personalisation in Council dialogue.

At the end of the day's session a number of NGOs made statements addressing both sides of the situation, some focusing on the difficult human rights situation in Cuba and calling for an improvement,<sup>31</sup> and others focusing more on the embargo and its effects,<sup>32</sup> submitting that the report of Ms Chanet was biased against Cuba or that the mandate should be ended.<sup>33</sup>

## Special Rapporteur on the Situation of Human Rights in the Palestinian Occupied Territories

Mr John Dugard, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, presented his annual report to the Council.<sup>34</sup> Mr Dugard<sup>35</sup> reminded States that political militants have rights under international human rights law and international humanitarian law but that this obvious truth is rejected by Israel and some Western States who take the view that all acts, however brutal, are permissible in the war against terror. Instead of trying to convince persons with such entrenched convictions, the Special Rapporteur stated that he would speak only about Israeli actions against ordinary, non-militant, non-activist Palestinians. He highlighted that since he took up his mandate in 2001, the situation in Palestine, from a human rights perspective had deteriorated each year until it was now intolerable, appalling and tragic. He stressed that people in Gaza have been subject to continuous military bombardment since the capture of Corporal Gilad Shalit on 25 June 2006. 100 civilians have been killed and many hundred wounded; the only domestic power plant in Gaza has been bombed and destroyed cutting off more than half the electricity supplies and has left homes and hospitals without adequate power; many essential drugs are not available and three quarters of the population is dependent on food aid; crossing for persons and goods have been closed making Gaza a prison; and houses, schools and agricultural land and resources have been destroyed. Responding to Israel's descriptions of the civilian suffering as "collateral damage" he stated his opinion that these were in fact "indiscriminate killings", prohibited under international law. He reiterated his characterisation of the situation in Gaza as a form of collective punishment of a people, and a clear violation of Article 33 of the Fourth Geneva Convention.

On the West Bank, the Rapporteur stated that the Wall is no longer justified by Israel as a security measure and is instead openly acknowledged as serving the political purpose of annexation of settlements and settlement land. The humanitarian impact of the Wall is severe and has led to many Palestinians abandoning their land and the creation of a new category of internally displaced persons. He pointed out that in any other country, this process might be described as ethnic cleansing and described the use of checkpoints and roadblocks to fragment communities and to continually remind Palestinians of Israeli power. He described the situation in the West Bank also as a humanitarian crisis, which was in a large measure caused by the termination of funding to the Palestinian Authority since Hamas was elected to office. He highlighted the role of Israel but also the United States of America, Canada and European Union in this regard. He expressed concern that the Palestinian people were the first occupied people to have been subjected to economic sanctions. He stated that the United Nations (UN) has in effect condoned this action and therefore all members of the UN bear some responsibility for the present situation. He concluded by saying that the actions

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<sup>31</sup> Liberal International and Centrist Democratic International (joint statement with Freedom House and Transnational Radical Party).

<sup>32</sup> Federación Sindical Mundial, Unión Nacional de Juristas de Cuba, and Indian Movement "Tupaj Amaru" (joint statement with World Peace Council).

<sup>33</sup> Federación Sindical Mundial, Indian Council of South America, Organización de Solidaridad de los Pueblos de Africa, Asia y América Latina, and Federación de Mujeres Cubanas.

<sup>34</sup> E/CN.4/2006/29, 17 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 summaries of the reports for a short overview of the reports and main issues, available at [www.ishr.ch/hrm/council/SPs/specialprocedures.htm](http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm).

<sup>35</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).

of Israel and now other States against the people of Palestine challenge the commitment of the international community to human rights.

### Interactive Dialogue

Israel responded by stating that it did not recognise the value of a report that considered only one side of a problem. It described the report as an oversimplification of the situation, filled with omissions and distortions of facts. Israel thought there was an alarming disconnect between the report and the events on the ground. It pointed out to the threat posed on Israel by Palestinian terrorists and criticised the report for not giving any recommendations on how to combat these. Finally he noted that Hamas had not accepted the existence of Israel and the conditions of the Quartet for the advancement of the Peace Process known as the Road Map. The Ambassador of Palestine took the floor to express his appreciation for the report. He pointed to the ongoing deterioration of the situation in the territories by presenting the Council with numerous ongoing violations. He criticised the Wall's effect in separating Palestinian populations and deplored Israel's reoccupation of the Gaza Strip. Finally, he called on the international community to do more to ensure that Israel respects international law. He pointed out the example of a railway being built on occupied Palestinian land with the help of European companies. This is in direct violation of international law, and he called on the international community to address such issues. In conclusion, he said that an end to the Israeli occupation would also lead to an end of such complaints. The Special Rapporteur responded to the Israeli Ambassador's statement by saying that his report was concerned only with human rights violations, and that he simply reported those. He expressed dismay that there were so many violations coming from the Israeli authorities. He also commented on the fact that even though Israel may be justified in responding to terrorist attacks, its responses had been completely disproportionate.

The vast majority of States thanked the Rapporteur for his report.<sup>36</sup> Many delegations addressed the ongoing violations committed by Israel through the displacement of Palestinians by the Wall and military offences/presence in Gaza and the West Bank.<sup>37</sup> The vast majority of those countries also called for an immediate end to the occupation. Several delegations pointed to the need for the parties to respect international law.<sup>38</sup> A number of delegations also expressed support for a two-State solution, including and independent Palestinian State.<sup>39</sup> Several States expressed their support for a resumption of dialogue between the parties.<sup>40</sup> The USA affirmed the relevance of the road map and made it clear that in order for a constructive dialogue to take place, Israel must dismantle settlements, and the Palestinians must renounce violence and terror. Pakistan stated that the Special Rapporteur's statement that the Quartet had become a party to sanctions on the Palestinian people needed to be studied further. Many delegations, however, stressed the importance of the international community in pressuring Israel to respect International Law.<sup>41</sup> The USA expressed its support for the Quartet and the road map as the only Peace Process endorsed by both parties. Malaysia and Indonesia stressed the urgency of the situation, and urged the Council to act on the situation from a human rights approach, in an attempt to avoid politicisation. Algeria pointed to the double standards which allowed Israel to continue its actions and urged the Council to act effectively and non-politically. A group of NGOs in a joint statement,<sup>42</sup> stated that they were shocked that the international community allowed the gross violations of human rights and humanitarian law to continue and worsen daily and that the Council must decide on measures that could help end the occupation. Finland asked for more information on the updated situation, the economic situation in Palestine, the role of local Palestinian NGOs,

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<sup>36</sup> Tunisia, Pakistan (on behalf of the OIC), Morocco, Bangladesh, Bahrain, Saudi Arabia, and Mali.

<sup>37</sup> Tunisia, Pakistan (on the behalf of the OIC), Morocco, Malaysia, Bangladesh, Syria, and Senegal.

<sup>38</sup> Tunisia, Malaysia and Ecuador.

<sup>39</sup> Morocco, Japan, Senegal, and Bahrain.

<sup>40</sup> India, USA, Indonesia, and Ecuador.

<sup>41</sup> Malaysia, Bangladesh and Bahrain.

<sup>42</sup> Movement contre le racism et pour l'amitié entre les peuples (MRAP), Women International League for Peace and Freedom, International Youth and Students Movement for United Nations, and World Young Women's Christian Association.

and the situation of the 300 hundred children in Israeli prisons. The Special Rapporteur replied that NGOs continue to monitor the situation and advocate for issues of human rights. While he did not have a chance to investigate the situation of children in prisons, he trusted the Israeli judicial system to set up a commission of inquiry into the situation. The Special Rapporteur also suggested a rewording of terminology for both sides by the elimination of the word “terrorist” in describing each other. He saw this as a first step towards dialogue, which he stressed must include all parties, even Hamas.

## Special Representative for Human Rights in Cambodia

Mr Yash Ghai, the Special Representative of the Secretary-General for human rights in Cambodia presented his annual report and an update on his report.<sup>43</sup> Mr Ghai expressed his concern<sup>44</sup> that none of the recommendations made by him or his predecessors had been implemented by Cambodia and that human rights continue to be violated on a systematic scale. He stated that this was not due to carelessness, lack or awareness of rights, the fact that Cambodia had suffered so massively during the regime of Democratic Kampuchea, or poverty but because the Government had subverted the essential principles of due process and democracy, deprived people of their economic resources and livelihood, and denied them their dignity. The Special Representative stressed that he had come to believe that these policies were integral to the political and economic systems through which the Government ruled. He highlighted that the rule of law had been rejected through limitations on the freedom of association, subversion of constitutional institutions, the selective application of the law, and the enjoyment of immunities by supporters of the Government. He discussed in detail the following issues which lent support to this conclusion: actions undertaken by the Government to ensure dominance in the political sphere; subversion of the legal and judicial system; the Government’s resistance to combating widespread corruption; and the illegal and forcible evictions of thousands of indigenous peoples and others as a part of land grabbing and exploitation of natural resources by local and foreign companies and the military. He discussed the responsibility of the UN and international community to support Cambodia and its people in their quest for justice and accountability. Mr Ghai highlighted the role of Cambodia’s neighbours and other influential governments in the Asian region as well as of the broader donor and international community in placing a higher priority on human rights within Cambodia and their implementation. He hoped that the efforts to establish a national human rights institution in Cambodia could mark the beginning of a genuine dialogue for human rights and agreement that basic laws and independent institutions, including a professional, impartial judiciary, needed to be first in place. The Special Representative stated that if the Government felt that he had been unfair in what he had said, they should inform the Council about the concrete measures taken or planned to address the issues he and others have raised.

## Interactive Dialogue

Cambodia reiterated that war and famine had created the situation in the country today. The Government had now moved towards a process of reconciliation and was committed to respect for democracy. They are working on a process of social peace, reconciliation, economic development and human rights. The rights to freedom of assembly and expression were guaranteed as long as they were asserted within the scope of the law. They underlined the efforts of the Government along with the UN to set up the Khmer Rouge tribunal as an important step in fighting impunity. The Government is working to establish a national plan for resolution

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<sup>43</sup> E/CN.4/2006/110, 24 January 2006 and E/CN.4/2006/110/Add.1, 8 March 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). ISHR has produced unofficial summaries of these reports that are available at <http://ishr.ch/hrm/council/SPs/specialprocedures.htm>.

<sup>44</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).

of land disputes and continues to make efforts to combat trafficking in women and children and a draft anti-corruption is before Parliament. They thanked the UN High Commissioner for Human Rights for her visit to the country and stated that the success of the visit was encouraging and hoped to continue working with her office.

Most of the States speaking on the situation in Cambodia highlighted their concerns relating to the judiciary and the general legal system. The United Kingdom expressed its concern with the lack of implementation the constitution as well as other laws and asked Mr Ghai to elaborate on his views on measures to be taken to facilitate implementation. Canada sought the Special Representative's views on a report of the High Commissioner on Human Rights which had highlighted the need for strengthening of the judiciary. Finland, on behalf of the EU, expressed its longstanding concern about impunity in Cambodia and asked the Special Representative what measures he would recommend to address this situation. They highlighted their concern for the Government's use of defamation, disinformation and incitement laws and enquired what venues should be pursued to protect the freedom of expression and participation of civil society. In his concluding remarks, Mr Ghai noted that there had been no real improvement regarding the issue of impunity as there did not seem to be any political commitment to the rule of law. While reiterating that the constitution itself was well drafted, Mr Ghai suggested ways to immediately improve the situation in Cambodia. He stated that the two most important aspects were to build a strong independent constitutional court and review much of the existing legislation.

On a specific issue the Republic of Korea expressed its satisfaction with the amendments to the law on criminal defamation removing to statute for penal sanctions in the provision. However, Mr Ghai stated that the situation had actually worsened as the government had just started prosecuting person under other provisions for this offence. The Republic of Korea also raised the issue of forced evictions and Finland, on behalf of the EU, asked Mr Ghai to elaborate on the possibility of passing a moratorium on the land concessions. The Special Representative replied that the main problem was related to implementation and even though he had drawn the attention of the government to International Labour Organisation *Convention No. 169 concerning indigenous and tribal peoples in independent countries*, they had made no attempt to follow these provisions. In his opinion, it was important to involve the affected people in the implementation of land laws. In exercising its right to reply, Cambodia drew the attention to the position expressed in the previous statement. The delegation welcomed the engagement of the Office of the High Commissioner for Human Rights and expressed hope for further collaboration.

## Independent Expert on the Situation of Human Rights in Haiti

Mr Louis Joinet, the Independent Expert Appointed by the Secretary-General on the situation of human rights in Haiti presented his annual report.<sup>45</sup> Because the situation in Haiti has changed overwhelmingly since the submission of his report, the Independent Expert also submitted a comprehensive update.<sup>46</sup> He said that while there were still negative developments such as an increase in murders, armed robberies and kidnappings as well as persisting widespread corruption leading to impunity, the Government was recovering from the institutional crisis. He noted a general willingness for reform on the part of the Government, mainly in fields of police justice, penitentiary administration and human rights. Mr Joinet called for an overhaul of the Office for Citizen Protection (OCP). He indicated that the United Nation Stabilization Mission in Haiti (the MINUSTAH), and especially its human rights section, had a major role to play in improving the credibility of

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<sup>45</sup> E/CN.4/2006/115, 24 January 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). ISHR has produced unofficial summaries of these reports that are available at [www.ishr.ch/hrm/council/SPs/specialprocedures.htm](http://www.ishr.ch/hrm/council/SPs/specialprocedures.htm).

<sup>46</sup> This was distributed to the members and 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).

the OCP. He also called on the UN in general not to repeat its past mistakes when the MINUSTAH mandate ends and to continue demonstrating its commitment to support reform in Haiti. The Independent Expert also drew attention to the National Action Plan for Combating Violence against Women (the National Action Plan), as well as to the taboo he had lifted when calling for discussions on abortion laws.<sup>47</sup> He pointed out a number of reform projects under way.<sup>48</sup> Finally, he spoke briefly on the long term reform of civil status including new, un-falsifiable electoral cards as well as on the reform of the land register. He also reiterated his recommendations made in his original report.

### **Interactive Dialogue**

The Council was only able to hear the reaction of the Haitian delegation in the time available. Haiti underlined several positive initiatives that had been undertaken, including the National Action Plan, an equality decree intended to achieve greater equality between men and women as well as the increased numbers of chambers of correction tribunals to reduce pre-trial detention (this was a specific recommendation of the Independent Expert in his report). They also mentioned the National office for identification as well as a number of other initiatives<sup>49</sup> but underlined that there was still a long way to go. The delegation voiced particular concern about deportations of persons of Haitian origin who were convicted of criminal activities abroad. There were no time for questions and comments by other States and the interactive dialogue will continue tomorrow.

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

As foreshadowed earlier last week, NGO statements on the country specific mandate holders are held at the end of the day, when a block of 20 minutes is reserved for this purpose. The speakers list for NGO statements opens at 10am each morning, and NGOs can subscribe at the Secretariat's desk near the podium in Room 18.

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<sup>47</sup> Abortion is prohibited in Haiti.

<sup>48</sup> On the reformed law on the Superior Council of Justice, the reform of the judiciary regulations as well as the reform of the Judicial Training College; see also the written version of his update (in French).

<sup>49</sup> Micro credit programs, improved education for children.

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