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Overview

Today's morning session began with the finalisation of the interactive dialogue with the Independent Expert on the situation of human rights in Haiti, followed by consideration of the reports of the following mandate holders:

- Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;
- Independent Expert on the situation of human rights in Burundi;
- Independent Expert on the situation of human rights in the Democratic Republic of the Congo;
- Special Rapporteur on the situation of human rights in Myanmar
- Special Rapporteur on the situation of human rights in the Sudan;
- Special Rapporteur on the situation of human rights in Belarus
- Independent Expert on the question of human rights and extreme poverty

The Council also began to address the reports of the Sub-Commission on the Promotion and protection of Human Rights (the Sub-Commission). 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. During the day the Office of the High Commissioner for Human Rights (OHCHR) organised a general briefing with the Special Rapporteur on the

promotion and protection of human rights while countering terrorism. Public open-ended consultations were convened by the President to discuss the outcome of the Council. Informal meetings held during the day included events on Western Sahara, Cuba, Myanmar, torture and extraordinary rendition, South-East Asia and the poor in the United States of America (USA).¹

Independent Expert on the Situation of Human Rights in Haiti

After the presentation of his report yesterday there was insufficient time to finish the interactive dialogue on the report of the Independent Expert on the situation of human rights in Haiti, Mr Louis Joinet.² The interactive dialogue continued today. A number of mainly Latin American States,³ joined by Canada, the USA as well as Finland, on behalf of the European Union (EU), underlined their existing commitment to and engagement in Haiti. Like the Independent Expert, States pointed to the importance of institutional reform, land registry and civil status administration. The USA asked Mr Joinet how he thought the land registry reform would address land speculation. France enquired about how the international community could assist in this respect. Chile asked for concrete proposals to strengthen the credibility of the Office for Citizen Protection (OCP), a point the Independent Expert had underlined in yesterday's intervention. In his answers Mr Joinet drew attention to the difficulty of disarming the population, a difficulty, which he explained stemmed from problems in the Haitian Constitution. Many States expressed concern about reform of the judicial system, in particular lengthy sentences and excessive pre-trial detention.⁴ The need to give further international attention to this matter was underscored.⁵ The important role of elections in the transition from the institutional crisis was also pointed out.⁶ Argentina stressed that parallel to essential reforms, the process of reconciliation through an inclusive dialogue had to continue. Mr Joinet answered that reconciliation was the leitmotiv of his work, and that Haitians needed to learn that political opponents are not enemies. Brazil voiced its concern that the root causes of insecurity had to be tackled by addressing poverty and social insecurity. Nigeria asked for further focus on poverty that has a negative impact on the security situation. It also complained that no long-term development project was in place for Haiti as a least developed country (LDC).⁷ In its closing statement, Haiti itself stressed that many of these problems find their origin in unemployment and in widespread extreme poverty.

Most States underlined the crucial role of the international community and asked the Independent Expert on more guidance in this regard. Finland⁸ asked the Independent Expert how to prioritise reform measures. According to Mr Joinet, the most important priority is education and he called for strong action on that front. This includes existing efforts for training of judges and police, which are of equal importance. To conclude, the Independent Expert referred to a recent conversation with the Haitian President Préval, saying that the country now needed technical experts rather than more consultants.

¹ See *Bulletin of Informal Events*, 26 September 2006, available at www.ohchr.org/english/bodies/hrcouncil/2session/bim.htm for additional details.

² See the *Council Monitor Daily Update*, 26 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.

³ Chile, Argentina, Guatemala, Peru and Brazil.

⁴ Canada, Peru and the USA.

⁵ USA.

⁶ Argentina, Guatemala and the USA.

⁷ The need for long-term stability and economic development to improve security was also highlighted by Argentina.

⁸ On behalf of the European Union (EU).

Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea

Mr Vitit Muntarbhorn, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK), presented his annual report to the Council.⁹ Mr Muntarbhorn¹⁰ expressed his regret that the DPRK had declined to co-operate with him and refused him entry into the country. He pointed out that while the DPRK had taken a few positive steps such as working with the treaty bodies and adopting some key reform in its domestic law such as its criminal law, there is still a large gap between formal recognition of human rights and substantive implementation. The Special Rapporteur described continuing transgressions and discrepancies, which require effective redress. He highlighted violations of the rights to food and to life; right to security of the person, humane treatment, non-discrimination and access to justice; freedom of movement, asylum and refugee protection; and right to self-determination and political participation, access to information, freedom of expression, belief, opinion, association and religion. Although the DPRK had been affected by the food shortages, the Special Rapporteur pointed to the decision of the authorities not to accept multilateral food aid in 2005 and to end the presence of foreign humanitarian agencies as further evidence of the violation of the right to food; also he mentioned as problematic the missile tests in 2006 and devastating floods. The judicial system lacks independence, the treatment of prisoners, particularly political prisoners, and the conditions of detention as well as practices of torture and cruel treatment continue to be concerns. The Special Rapporteur stated that though the DPRK provides for freedom of movement, generally it is not possible to move internally or externally without official permission. The menace of punishment for those who leave without permission and who are then forcibly returned is ever present. He also addressed the issue of abductions of foreigners by DPRK agents, citing the examples of the abduction of Japanese nationals.

Mr Muntarbhorn then spoke about his constructive work with the Republic of Korea (ROK), commenting positively on the new Inter-Korean dialogue since 2000. He highlighted however a 'strain' in these relations in 2006 due to the missile launches. He reaffirmed and detailed his recommendations for actions that the DPRK needed to undertake to address the transgressions that were still taking place and negatively affecting its citizens and other countries.

Interactive Dialogue

The DPRK "categorically and absolutely" rejected the report of the Special Rapporteur on the grounds that they do not recognise the mandate under which it is issued. It claimed that the report was part of a political conspiracy by the USA, Japan and the EU and "represented a confrontation between foreign forces trying to infringe upon DPRK's social system in the pretext of human rights". They criticised what they perceived as double standards applied against developing countries and stated that because of politicisation the Council should not fall into the same crisis as its predecessor body. Mr Muntarbhorn emphasised that he had nothing to do with the resolutions that had set up his mandate but simply carried out his work independently as he was requested to three years ago.

China described the difficulties faced by the DPRK in the past year and pointed out that despite these the State had not given up on making efforts towards the protection and promotion of human rights, especially through work with treaty bodies. It added that this had been recognised by the Special Rapporteur in his report. China stated that a country-specific approach should not be used in the Council. Cuba, Zimbabwe and Indonesia supported this view.

⁹ E/CN.4/2006/35, 23 January 2006. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

¹⁰ 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.

The ROK, along with several other States¹¹ commended Mr Muntarbhorn for his work and stated that they looked forward to his visit in December of this year. They also expressed their support for the six-point human rights (Six-Point Formula) formula recommended by the Special Rapporteur. Finland, on behalf of the EU, asked for more information about this formula. The Special Rapporteur explained that his Six-Point Formula listed a set of activities to improve the situation of human rights in the DPRK.

Finland, on behalf of the EU, the USA and Japan expressed their disappointment that Mr Muntarbhorn had been refused entry into the DPRK and encouraged the Government to review this decision. Finland (on behalf of the EU) asked about the establishment of a co-operative framework to address the refusal of the DPRK. Mr Muntarbhorn suggested there may be possibility for technical co-operation with the OHCHR in the future. He also called on the international community to assist in refugee protection. Canada and Peru enquired if Mr Muntarbhorn had any suggestions for alternative ways of addressing the human rights situation in the DPRK. Finland enquired into any progress in child protection and in response Mr Muntarbhorn answered that the DPRK had been working with UNICEF and had submitted information to the Committee on the Rights of the Child. Australia and Finland, on behalf of the EU, asked for an update on the status of the situation with the World Food Programme. Mr Muntarbhorn explained that there was a critical food shortage, that the WFP had been allowed access to help only 13,000 people and that the DPRK's missile launch had negatively impacted their work.

Finland (on behalf of the EU) also asked about the access and movement of NGOs into the DPRK. Japan brought up the issue of abduction of foreign nationals, stressing they were not only of Japanese origin and that the DPRK should urgently address this problem. On the issue of food aid New Zealand enquired into how a different strategic approach might be adopted. In his closing remarks, the Special Rapporteur distanced himself from the mandate debate and said that he would be open to the delegation of the DPRK approaching him informally. The DPRK reiterated their disgust at what they described as the hypocrisy and politicisation perpetrated by the USA and Japan. There were a number of statements back and forth between Japan and the DPRK again on Japan's conduct in the past and the issue of abduction of Japanese nationals.

Independent Expert on the Situation of Human Rights in Burundi

Mr Akich Okola, the Independent Expert on the situation of human rights in Burundi, presented his annual report to the Council.¹² Mr Okola commended¹³ the new Government¹⁴ for the strides it has made in the area of social and economic rights, especially for putting in place programmes for free primary education and free health care for expectant mothers and children under the age of five. He however stated that the human rights situation remained an area of grave concern. He highlighted that human rights violations are reported on a daily basis due to ongoing impunity, the prevalence of light weapons among the civilian population, widespread poverty and a weak human rights culture. He described the major human rights violations and abuses that were occurring, including violations of the rights to life, physical integrity, freedom, safety, integrity of the person, sexual violence, arbitrary and illegal arrests and detention, and violations of freedom of opinion and expression. He stated that national system for the administration of justice was under-resourced and inefficient. Since his last visit, Mr Okala expressed concern over many disturbing

¹¹ Finland, on behalf of the EU, Japan, New Zealand, Australia, and Peru.

¹² E/CN.4/2006/109, 23 December 2005. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.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 In power since October 2005.

developments with respect to civil and political rights. Tensions have increased since the arrest and detention of seven persons, including the transitional President, for the alleged planning of a *coup d'état*. Mr Okala reported that there has been widespread public criticism of the Government's lack of adherence to due process, which has intensified due to allegations that three of the suspects were subjected to torture. Mr Okala also stressed the Government's increasing intolerance towards all forms of criticism, including from members of rival political parties. He pointed to death threats and other forms of harassment directed at several journalists by the police and military. The Independent Expert also criticised the State party for its insufficient commitment to the establishment of a Truth and Reconciliation Commission (TRC) and the creation of a judicial chamber aimed at ending impunity and bringing perpetrators of serious international crimes to justice. Mr Okala warned States that the current situation in Burundi could again deteriorate into internal conflict, and urged the international community to increase its assistance to the country.

Interactive Dialogue

Burundi thanked the Independent Expert for his report, and assured him that they would take note of his recommendations. They stated that as only one year has passed since the transition to a democratically elected Government this was too short a period to properly assess the record of the government. The Burundian delegation also argued that 12 years of civil war between the Government and National Liberation Forces (NLF) had hampered the Government's capacity to address human rights violations as most of the violations had occurred in the context of the conflict. They stated that conditions are now favourable for the strengthening of human rights in the country with the cease-fire of 7 September 2006, a legitimate Government, and high public expectations. The State also announced that they plan to establish a National Human Rights Commission in October 2006. Burundi described several positive initiatives that they had undertaken, including setting up a national committee on property redistribution, negotiations on the TRC with the UN, the amendment of a bill of inheritance to promote gender equality and training programmes for the police.

Algeria, on behalf of the African Group, welcomed the Independent Expert's report and called on donors to implement pledges that were made at various round tables. They encouraged the Government to open channels of communication with local and international partners. Finland, on behalf of the EU, expressed their concern that the *coup d'état* highlighted concerns regarding due respect of procedural guarantees, alleged practices of torture and freedom of the press and enquired if the Independent Expert had been in contact with the Government on this matter. They also requested Mr Okola to provide his assessment of the proposals to set up a TRC and a special chamber within the Burundian judicial system. Mr Okola responded that the response to the *coup d'état* raises serious doubt about the commitment of the Government to human rights, since it had occurred in a post-conflict environment. He urged the Government to respect procedural guarantees while prosecuting the suspects. Mr Okola also stated that Burundi had demonstrated a commitment to establish a TRC but intended to limit its jurisdiction to past abuses. It has shown less enthusiasm for a creating a judicial chamber that would have the purpose of prosecuting particularly egregious crimes and appears to be backtracking on its international commitments.

Canada stated that they had seen little evidence of a commitment to end abuses by agents of the State. They pointed to the arrests of State officials accused of arrested extra-judicial killings in Musinga as a hopeful case and asked Mr Okola if he believed that recent developments, including the cessation of hostilities would allow the Government to take a more measured and human rights compliant approach to security. Mr Okola responded that the officials had indeed been arrested and were going to be prosecuted, but only after strong evidence had been produced. Both Belgium and the United States raised the issue of sexual violence and asked for more details on the proposed visit to Burundi by the Special Rapporteur on violence against women. Mr Okola replied that a sexual violence and child abuse sensitisation programme is in progress, which is also aimed at the security forces. The Independent Expert welcomed the plans for the creation of a national human rights commission, and expressed hope that the new body would address the recent disturbing events in the country.

Independent Expert on the Situation of Human Rights in the Democratic Republic of the Congo

Mr Titinga Frédéric Pacéré, the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC), was scheduled to present his annual report today.¹⁵ The President announced that at the last minute Mr Titinga Frédéric Pacéré was unable to travel to Geneva to present his report. This prompted the representative of Algeria to take the floor to express his disappointment about the Independent Expert's absence. He commented on the way in which many State delegates travel from afar and on limited budgets to attend the discussions in Geneva¹⁶ and that it was important that mandate holders also participate and thus take such dialogues with governments seriously. Algeria also noted that if a mandate holder was unable to attend, delegations should be informed beforehand. The President passed on apologies to the plenary and affirmed he did not have any further information. The DRC, represented by the Minister for Human Rights, expressed their disappointment that the Independent Expert was not in attendance and supported the statements made by Algeria regarding the efforts taken by African States to be present in Geneva. The DRC highlighted their cooperation with the Independent Expert during his visits and stated the reforms that had recently been adopted. The delegate from the DRC asked the Independent Expert to conduct a visit to the DRC in the near future to see the changes that have taken place. During the NGO statements mention was also made of the situation in the DRC and the post electoral tensions, including the lack of protection for human rights defenders.¹⁷

Special Rapporteur on the Situation of Human Rights in Myanmar

Mr Paulo Sérgio Pinheiro, the Special Rapporteur on the situation of human rights in Myanmar, presented his annual report to the Council.¹⁸ The Special Rapporteur¹⁹ reminded the Council that he had not been permitted to conduct a fact-finding mission to Myanmar since November 2003. He stated that he continued to fulfil his mandate to the best of his ability based on information collected from a variety of independent and reliable sources. He expressed his pleasure that the Government of Myanmar had replied to a number of communications in recent months and hoped that this cooperation would extend to an invitation to visit the country before his mandate comes to an end. He stated that the reform process proposed in the 'seven-point road map for national reconciliation and democratic transition' had been strictly limited. He stressed that national reconciliation could not occur without a meaningful and inclusive dialogue with and between all political representatives. The persecution of members of political parties in the opposition and human rights defenders were contrary to a genuine transition process. The Rapporteur highlighted the situation of the General Secretary of the National League for Democracy (NLD), Daw Aung Sang Suu Kyi, and stated that her incarceration had been extended in spite of international appeals, including from the Secretary-General of

¹⁵ E/CN.4/2006/113, 15 February 2006. The report is available at 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

¹⁶ Particularly from African States.

¹⁷ International Federation of Human Rights Leagues.

¹⁸ E/CN.4/2006/34, 7 February 2006. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

¹⁹ 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.

the United Nations. He stated that space for the establishment of civilian and democratic institutions had been seriously curtailed, and that grave human rights violations were occurring not only with impunity but authorised by the sanction of laws. He expressed particular concern about the criminalisation of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses. He noted some progress in the area of forced labour with the Government's collaboration with the International Labour Organization (ILO) on three complaints. Mr Pinheiro expressed concern at the ongoing military campaigns in ethnic areas of Myanmar and warned that as a result of the military campaign, numerous cases of forced evictions, relocations and internal displacement had been reported. He urged the international community to act on the human rights situation in Myanmar and not to wait for the 'political normalisation' of the country before doing something. He criticised the actions of the Global Fund to end funding of health programmes in Myanmar and thanked the EU for their efforts to fund health projects. He noted the Security Council's inclusion of Myanmar on its agenda. He stated that although there was an urgent necessity to better coordinate different approaches among States to find ways of contributing to the process of transition towards democracy in Myanmar.

Interactive Dialogue

Myanmar welcomed the Special Rapporteur's observations about positive developments in the country. They challenged a number of the allegations in his report, stating that such allegations had been received from a few remaining insurgent groups and foreign funded expatriate groups with hidden political agendas. Regarding democratisation, they stated that the National Convention had completed 75% of its work. They stated that the Government was restoring economic stability and national solidarity. As they are not in an armed conflict, they rejected the Special Rapporteur's assertion about the large numbers of internally displaced persons. Myanmar also pointed to the recent visit of the Under Secretary-General of the United Nations.

India reiterated its opposition to country-specific mandates, stating that they were counterproductive and usually had negative outcomes. Several States thought it was important to recognise the increased cooperation of the Myanmar Government and expressed their encouragement for further dialogue.²⁰ New Zealand also enquired about how the international community could do more to promote increased dialogue. Some States expressed their disappointment that Myanmar had not invited the Special Rapporteur to visit.²¹ Several delegations also expressed concern about ongoing violations and called on Myanmar to do more to resolve the situation of human rights.²² Australia expressed concern at Myanmar's lack of commitment and stated that ongoing developments, such as the establishment of the National Convention, would have not credibility without an open debate. The Special Rapporteur stressed the importance of inclusion of all parties in the democratisation process. The USA asked the Special Rapporteur what it would take for all political prisoners to be released. Finland, on behalf of the EU, asked for the Special Rapporteur's assessment of the current situation in the Northern Karen State and Eastern Pegu Division, areas where the Government had been conducting counter-insurgency operations. They also requested for more information on any new development involving forced labour and forced recruitment of children. The Special Rapporteur stressed that although he continued to receive allegations of cases of forced labour, he felt that the situation could be resolved with the help of the ILO. Peru asked the Special Rapporteur for his opinion on the inclusion of Myanmar on the agenda of the Security Council, and whether the situation in the country constituted a threat to the region as a whole. Canada asked how the international community could aid those members of Myanmar civil society who are helping to deal with the situation of internally displaced persons. The Special Rapporteur reiterated the need for Myanmar to grant basic human rights and fundamental freedoms, and urged the Government to accept his mandate. He also urged the international community to act but once again

²⁰ China, India, Malaysia and New Zealand.

²¹ Finland, Japan and Australia.

²² Japan, Australia, New Zealand, the USA and Peru.

stated that there was not only one approach and it was more important that different approaches and efforts be coordinated.

At the end of the day three NGOs made statements on the situation in Myanmar, highlighting the continued detention of Daw Aung Sang Suu Kyi, as well as the arrest several hours earlier today of three well respected student leaders.²³ The NGOs called on the Council to take action, and pointed to the changes brought by country-specific mandates in other situations.

Independent Expert on the Question of Human Rights and Extreme Poverty

Mr Arjun Sengupta, the Independent Expert on the question of human rights and extreme poverty, presented his annual report and report on the mission to the USA.²⁴ In his statement to the plenary²⁵ Mr Sengupta outlined the concept set out in his report that the main cause of poverty is due to a failure in social action. He emphasised that he had no aim to finger-point States but simply to convey how a human rights approach can contribute to the complete eradication of poverty. He explained that extreme poverty is multidimensional and stressed that it was the obligation of States to make changes at the legal level in order to completely remove poverty. Overall Mr Sengupta emphasised that the complete eradication of poverty is achievable. However, he was clear that in order to realise this, greater political will is essential.

Speaking about his country mission to the USA he described that he had visited a range of groups to research the State's approach to those in extreme poverty. He described that he felt authorities were aware of the problem but often did not affect measures to address the problem, leading him to label this 'wilful neglect'. The Independent Expert called for greater accountability to implement decisions and monitoring mechanisms. He also highlighted the importance of participation of poor beneficiaries into the decision-making process and suggested this would promote non-discrimination.

The Independent Expert closed his presentation by emphasising that extreme poverty is a world-wide problem but one that can be feasibly eradicated. For those without the resources to do this he proposed international cooperation. He re-emphasised that extreme poverty was a violation of human rights but there are mechanisms that will allow abolishment to become a reality.

Interactive Dialogue

The USA took the floor first, pointing out that it had over 80 federal anti-poverty programmes and many more at the local and state level. It contested that the Independent Expert should have considered a greater scope of sources to write his study and invited him to do this in any further visits to the USA. The USA also questioned if he had any plans to address the issue of extreme poverty in other countries. In his concluding remarks Mr Sengupta emphasised that he looked at the USA because it provided an interesting case study to show that extreme poverty does not necessarily correlate with income per capita.

Many States²⁶ praised the work of the Independent Expert. Algeria, Ecuador, Saudi Arabia and Morocco stated that the duty to eliminate extreme poverty was an international as well as national obligation. Algeria

²³ Transnational Radical Party, International Peace Bureau and Pax Romana.

²⁴ E/CN.4/2006/43, 2 March 2006 and E/CN.4/2006/43/Add. 1, 27 March 2006. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

²⁵ 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.

²⁶ Algeria, Brazil, Indonesia, Cameroon, Peru, Ecuador, Saudi Arabia, India and China.

and Mali claimed that the subsidies upheld by richer States were responsible for exacerbating extreme poverty. Ecuador called for international cooperation and, along with Cuba, criticised the liberal model as a barrier to attaining eradication of extreme poverty. Cuba specifically referred to the marginalised people who were worst affected by Hurricane Katrina in the southern states of the USA. Cuba went on to question whether Mr Sengupta had noted patterns between extreme poverty and racial discrimination in his work. Mali enquired about the participation of children and young people as a way to relieve this problem and the Philippines and Saudi Arabia asked about education programmes and how the concept could be effectively articulated to civil society. Many States²⁷ asked for more advice on implementation of Mr Sengupta's conceptual suggestions into civil society through social policies. Peru endorsed Mr Sengupta's suggestions of taking a legal approach to this problem and defining extreme poverty as a violation of human rights, however, they urged movement from diagnosis and analysis towards implementation. The Philippines stated that it was committed to striving for the eradication of extreme poverty and would implement policies to fulfil this obligation in the next three years. Brazil also outlined the measures being taken domestically to fight extreme poverty.

Senegal and Finland (on behalf of the EU) took up the issue of social exclusion and stigmatisation of those in extreme poverty, asking the Independent Expert how to address the need for participation. The National Coordinator of the Poor People's Economic Human Rights Campaign²⁸ criticised the Government of the USA for their lack of policy attention paid to sectors of society living in extreme poverty. In his concluding remarks, Mr Sengupta re-emphasised the multi-dimensionality of the issue of extreme poverty but that the problem can be resolved. Citing the example of Hurricane Katrina, he stated the need for transparency and non-discrimination at both the international and national levels and encouraged working forward in a consensual way.

Special Rapporteur on the Situation of Human Rights in the Sudan

Ms Sima Samar, the Special Rapporteur on the situation of human rights in the Sudan, presented her annual report.²⁹ Ms Samar initiated her presentation³⁰ by summarising recent events that have taken place in Sudan in order to illustrate the situation today. She noted that despite initiatives such as two different peace agreements, the formations of a Government of National Unity and the adoption of a new interim constitution, the situation on the ground had not changed as arbitrary arrests, torture, *incommunicado* detention, killings of civilians and deprivation of basic rights are still taking place. The Special Rapporteur highlighted a number of specific issues addressed in her report. These included violations of the right to life, justice and reconciliation, deprivation of freedom of expression and association, rape and sexual violence, inadequate mechanisms for holding Darfur perpetrators accountable and problems relating to the around 2 million internally displaced persons. Ms Samar expressed her satisfaction with the Security Council decision to refer the situation in Darfur to the International Criminal Court (ICC). She specifically focused on the issue of sexual and gender violence against women and girls and the situation of the internally displaced persons. The Special Rapporteur recommended all parties to the conflict to comply with the peace agreements in place and respect international humanitarian law and human rights law, including facilitating the provision of humanitarian assistance and access to communities in need. She further called for the disarmament of all armed groups, investigation of human rights abuses and an end to the culture of impunity, and for the Sudanese Government to strengthen its cooperation with the ICC in order to end the culture of impunity. Ms Samar called on the

²⁷ Brazil, Philippines, Cameroon, Peru, Senegal, Finland (on behalf of the EU), Morocco and India.

²⁸ Statement made by the Centre on Housing Rights and Evictions.

²⁹ E/CN.4/2006/111, 11 January 2006. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

³⁰ 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.

international community to continue to provide financial and technical support and to facilitate an inclusive dialogue process.

Interactive Dialogue

Speaking as a concerned country, the Sudan directed attention to its commitment to cooperate with the Special Rapporteur, the OHCHR, the Security Council, the ICC and other agencies, as evidence of their dedication to addressing human rights, particularly in Darfur. They claimed that pressure from other States to address these issues further at the international level would only put further pressure on the victims. The delegation noted that the signing of the two peace agreements was a very positive development and called on the outlaw groups to join the peace process. In the opinion of the Sudanese Government the implementation was progressing well and this position was also supported by a letter from the High Commissioner for Human Rights commending the Government on its achievements. In response to the alleged targeting of international personnel in Sudan, the delegation stated that if this took place it was not with the consent of the Government. Finally, the delegation also stated that article 142 of the National Interim Constitution provided for the establishment of a national human rights institution.

During the interactive dialogue two main opinions were expressed by the States taking the floor. Regardless of the findings of the Special Rapporteur, a number of States expressed their faith in the initiatives taken by the Sudanese Government, commenting positively on the effects of the two recent peace agreements and highlighting their belief that regional problems should be solved by regional entities. General support was also voiced for the work of the African Union in its efforts to bring peace to Sudan and many of the States highlighted the role of the international community as being one of financial and technical support.³¹ Taking note of the general description of the situation in the Sudan provided by Ms Samar, some States reiterated her concern about the lack of implementation of the two peace agreements. These States reiterated most of the concerns of the Special Rapporteur and focused especially on impunity in relation to rape and sexual violence and the general protection of women and children. The role of the international instruments was highlighted through support for the role of the UN Mission in Sudan (UNMIS) and calls for enhanced cooperation with the ICC.³²

A number of questions were also posed to Ms Samar. She was asked to elaborate on the most effective avenues of OHCHR support for the Government and support for the fulfilment of her mandate.³³ Furthermore, States expressed interest in effective measures to protect women and children, measures to repeal the emergency laws still governing parts of the country and the implications of restrictions on NGOs.³⁴ NGOs, in their statements, highlighted the deteriorating situation and the urgent need to protect the Sudan's civilian population, particularly in Darfur.³⁵ Amnesty International, Human Rights Watch and UN Watch requested the Council to take action in acknowledging the serious violations of human rights international humanitarian law, and asking the Sudan to comply with the Special Rapporteur's recommendations.

Commenting on the general situation in Sudan, Ms Samar noted that even the Sudanese Government accepted that the 2005 peace agreement has not been implemented. Another concern was that a number of groups had not signed the 2006 *Abuja Accord*, leading to a deteriorating situation. Impunity was still widespread and the number of prosecutions worryingly low. With regard to solutions, Ms Samar highlighted the need to speed up the law reform, build trust between rebel groups and stop the culture of impunity. The Sudan used its right of

³¹ States aligning themselves with this position were Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bahrain (on behalf of the Arab Group), India, Bangladesh, Egypt, China, Cuba, Senegal, Morocco, Tunisia, Jordan and Malaysia, as well as the African Union.

³² States aligning themselves with this position were Finland (on behalf of the EU), Republic of Korea, Japan, Canada, the USA and Argentina.

³³ Canada, Japan and Finland (on behalf of the EU).

³⁴ Canada and Finland (on behalf of the EU).

³⁵ Amnesty International, Human Rights Watch and UN Watch.

reply to address three specific issues. The delegation noted that the emergency laws had been lifted and the police were not acting in Darfur in accordance with the peace agreement. In relation to the alleged targeting of international personnel the delegation found it hard to believe these allegations as there were no media reports or complaints from international organisations to suggest that these violations are really taking place.

Special Rapporteur on the Situation of Human Rights in Belarus

Mr Adrian Severin, the Special Rapporteur on the situation of human rights in Belarus, presented his second annual report.³⁶ Mr Severin stated³⁷ that he had not been given the opportunity to visit Belarus as the Government did not wish to cooperate and did not recognise his mandate. He therefore relied mostly upon information from other stakeholders obtained during his missions to neighbouring countries. In his presentation he updated some points from his last report, emphasising the steady deterioration of the situation of human rights in Belarus. This deterioration is characterised by a disregard for freedom of assembly, association and expression, arbitrary use of State power, and widespread detentions, especially during the last Presidential elections held on 19 March 2006. He highlighted numerous violations of human rights that had occurred during those elections, for example the unfair trial of the presidential opponent candidate Mr Alexander Kozulin, who was sentenced to five and a half years on charges of “hooliganism” and “organising and participating in group activities that gravely violated public order”.³⁸ He also referred to the way in which his conclusions mirrored those shared by numerous other UN special procedures mandate holders and the European Parliament. Mr Severin pointed to the grave breaches of international human rights instruments which Belarus is a party to. The Special Rapporteur called on the Government of Belarus to recognise all mandates of the former Commission on Human Rights, including his mandate, and sign the draft International Covenant on Enforced Disappearances as soon as it becomes open for ratification. He recommended that the Council mandate the OHCHR to establish a group of legal experts to investigate the involvement of the Government of Belarus in the disappearance and murder of several journalists and politicians. Finally, he called on NGOs to multiply efforts to dialogue with the Government.

Interactive Dialogue

Belarus repeated its rejection of the Special Rapporteur’s mandate, claiming his report was a “clear attempt to stigmatise and slander the Republic of Belarus” and nothing more than notorious Cold War propaganda. In addition, they accused the Special Rapporteur of using his mandate more as a form of political propaganda, criticising the political, economical and social choice of the Belarusian nation rather than acting to improve the human rights situation. The Government of Belarus accused the Special Rapporteur of defaming it, and called for an end to the mandate.

Numerous states supported Belarus in its refusal to recognise Mr Severin’s mandate.³⁹ According to Cuba, the Special Rapporteur’s report was “a political pamphlet” aimed at overthrowing Belarus’ Government. A number of countries accused Mr Severin of being partial and called for the abrogation of his mandate, including some calls for the end to country-specific mandates in general.⁴⁰ Strong criticisms were made by

³⁶ E/CN.4/2006/36, 16 January 2006. The report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

³⁷ 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.

³⁸ He also expressed grave concerns about other political opponents like Alexander Milinkevich, Vintsuk Vyachorka, Alexander Buchvostau and Sergei Kalyakin.

³⁹ Cuba, China, the Democratic People’s Republic of Korea, Pakistan (on behalf of the OIC), Yemen, the Russian Federation and the Islamic Republic of Iran.

⁴⁰ Malaysia, Tunisia, India, Indonesia, Bangladesh, Sudan, Syria, Pakistan (on behalf of the OIC), Yemen, the Russian Federation, DPRK.

States who had also been mentioned in the report, with many claiming the Mr Severin had gone beyond his mandate to do so.⁴¹ Mr Severin was particularly criticised for his comments about arms control.⁴²

In contrast, other States strongly supported the independent and constructive work of the Special Rapporteur, noting with regret the lack of cooperation by the Government of Belarus.⁴³ The USA and Canada considered that the international community should be more involved and asked for the Special Rapporteur's advice regarding how to better protect human rights in Belarus. Finland noted its concern regarding fair trial and the independences and impartiality of the judiciary, and asked the Special Rapporteur for an update on the situation of political detainees and minorities.⁴⁴ Lithuania expressed concern about the treatment of active intellectuals. Poland raised concerns over the freedom of association, stating there was no freedom to join trade unions in Belarus. Peru asked the Special Rapporteur for an update about the investigation of murders of journalists as well as the implementation of other civil and political rights. The International League for Human Rights expressed concern about the human rights abuses in Belarus including deaths, beatings and disappearances of journalists and media personalities. Others defended both the mandate of the Special Rapporteur and the value of the country-specific mandate holders in general.⁴⁵

In his conclusion to the interactive dialogue, Mr Severin denied the accusations of partiality and referred to his report as a list of facts carefully selected among thousands to support what he was reporting. He explained he had done his best to cooperate with Belarus but that without cooperation from both sides this was difficult. He explained he would accept any shortcoming or mistakes in his report, but would not accept accusations of lack of fairness or neutrality. Mr Severin called for more involvement from the international community to help the people of Belarus.

Sub-Commission on the Protection and Promotion of Human Rights

Mr Marc Bossuyt, Chairperson of the 58th session of the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission), presented the reports of the Sub-Commission on the Protection and Promotion of Human Rights.⁴⁶ In his presentation Mr Bossuyt stated⁴⁷ that the work of the Sub-Commission at this session included a number of resolutions, all adopted by consensus, notably two resolutions including draft guiding principles including one on extreme poverty and another on small arms and light weapons. He then went on to explain the Sub-Commission's *Decision 2006/112: Implementation by the Sub-Commission of Human Rights Council Decision 102*, which outlines the vision of the Sub-Com on its future. In the view of the Sub-Commission, the Council needs a standing, collegial, independent, expert body of general competence in the field of human rights. He suggests the name of this future body could be the Human Rights Consultative Committee (HRCC). He emphasised that the collegiality of the body was critical to its independence and impartiality. The body should be elected and contain 26 to 28 members of varying backgrounds who would be elected with the view to maintaining the principle of regional representation. Mr Bossuyt stated that the functions of the HRCC should include research, the promotion and progressive development of human rights (through thematic studies and standard setting), coordination within the UN

⁴¹ The Islamic Republic of Iran (Iran), Pakistan, Yemen, Ghana, Algeria, Tunisia and Morocco.

⁴² Iran.

⁴³ The USA, Finland (on behalf of the EU) and Canada.

⁴⁴ Supported by Poland.

⁴⁵ Czech Republic and Human Rights Watch.

⁴⁶ A/HRC/2/2; A/HRC/Sub.1/5836 (Appendix), 11 September 2006. The reports are available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

⁴⁷ 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.

human rights system, promoting coherence, and identification of challenges and gaps. Mr Bossuyt explained further that the functions of the HRCC may also encompass participation in the 1503 procedure and the Universal Periodic Review (UPR). The Sub-Commission found that the 2000 reform to the 1503 procedure⁴⁸ had not been successful and recommended the restoration of authority to a plenary body of independent experts. Mr Bossuyt reported that the Sub-Commission was split over involvement in UPR, with some members seeing no role for the expert advice body, and some seeing the HRCC involved in the review.⁴⁹ However, Mr Bossuyt underlined that these functions must not interfere with the HRCC's normative and thematic work. Mr Bossuyt also stated that the inter-sessional working groups of the Sub-Commission were invaluable forums for the participation of affected communities, and stressed the importance of their continuation. Mr Bossuyt argued that the work of the Sub-Commission should continue despite the transitional period. He reiterated that the independent collegial body of experts is a means of enhancing the credibility of the Council itself.

Interactive Dialogue

The vast majority of delegations expressed their support for the continuation of a form of advisory body to the Council, in accordance with operative paragraph 6 of *UN Resolution 60/251*. In addition to this, several delegations also expressed their appreciation for the work and contribution the Sub-Commission provided in the past in the protection and promotion of human rights in addition to its standardisation and standard-setting role.⁵⁰ This was often followed by calls for the new advisory body to draw on the strengths of the Sub-Commission, and to draw on new methods of work.⁵¹ Many delegations called on the future advisory body to have a normative function in drafting new standards.⁵² Japan added that studies performed by the Sub-Commission should be sent directly to the Council. Some delegations blamed part of the Sub-Commission's failure on the lack of specificity given to its work.⁵³ In his concluding statement, Mr Bossuyt confirmed this opinion, stating that the Council and former Commission had often not given specific instructions as to what it wanted. The USA strongly criticised the Sub-Commission for being out of synch with the previous Commission, and criticised its attempt to create mandates at its last session. Argentina and Brazil proposed that the Sub-Commission has an important role to play in the 1503 procedure, a view that Algeria opposed. There were different suggestions on how experts should be chosen. Finland called for a roster of experts. China stated that members should be nominated by the Council and elected by the members of the Council with a maximum of two four-year terms. There were also calls for the experts' terms or time in office to be limited,⁵⁴ and calls for an equal geographical representation of experts.⁵⁵ Some delegations proposed that the 'review' of the Sub-Commission be forwarded to the Working Group on the review of the mandates of special procedures.⁵⁶ Finally, there was strong criticism of the Sub-Commission's extremely high financial cost.⁵⁷ In his concluding statement, Mr Bossuyt criticised this statement. He was adamant that one could not simply compare the Sub-Commission with the Council and that such arguments were not valid. Many delegations reiterated the opinion that the Sub-Commission should address only thematic issues.⁵⁸ This was

⁴⁸ Economic and Social Council *resolution 2000/3*, 16 June 2000.

⁴⁹ These members suggest that the size of the HRCC be increased to 28, with four chambers of seven members each carrying out those parts of the UPR process which require the input of independent experts.

⁵⁰ Mexico, Zambia, Argentina, the Russian Federation, Brazil, Japan, Nigeria, Bangladesh, Algeria (on behalf of the African Group) and China.

⁵¹ Finland (on behalf of the EU). Finland noted that the EU had already expressed its views on the future of the body during the intersessional consultations chaired by the Ambassador of Jordan.

⁵² Peru and Japan.

⁵³ Nigeria.

⁵⁴ Japan and Algeria.

⁵⁵ China and Pakistan (on behalf of the OIC).

⁵⁶ India and Nigeria.

⁵⁷ The USA and Bangladesh.

⁵⁸ China.

often linked to warning calls for the Sub-Commission not to be politicised either institutionally or through the politicisation of its members.

In relation to the non-reform focused work of the Sub-Commission, some States expressed support for a number of the Sub-Commission's decisions including the draft guiding principles on small arms and light weapons⁵⁹ and those on extreme poverty.⁶⁰ States expressed their view that the Council should take appropriate action to implement some of these decisions.⁶¹ A number of States explained that some of the proposals, such as the creation of new mandates,⁶² should be left pending until the new future body has commenced its work, or at minimum reviewed in more detail at a later date.⁶³ Given the limited time available it was not possible to finish the interactive dialogue, which will continue tomorrow.

Other Practical and Procedural Issues

This morning the President convened public open-ended consultations in order to discuss the outcome of this Council session. At the beginning of the consultation the President explained that as the idea of an omnibus resolution had been rejected by States, he was presenting an alternative option, being the compilation of an inventory of issues which identify the various topics which could be dealt with through different resolutions, decisions or Presidential statements. Once the issues are identified, decisions can be made regarding how each will be dealt with. As explained by the President, a distinction will need to be made between issues of a purely procedural nature, which will be needed to ensure the system continues to work, and those which may have a different objective, for example highlighting one aspect of an issue or making a particular proposal. The President also discussed the need to take action on some of the issues raised in the presentations by the special rapporteurs. The President explained that during the Council session there have been discussions on a number of issues which deserve a reaction, and that not to react substantively would be avoiding the issues and would be badly perceived. He proposed that delegations devise their own contributions to the list of issues to be discussed, and develop their texts on the basis of making them short and action orientated. He encouraged all delegations to adopt a constructive approach, although noting this need not require consensus (which is difficult to obtain on many issues).

This proposal was the subject of much debate and some confusion.⁶⁴ Delegates also spoke of the need to act carefully in relation to the special rapporteurs, as the process of reviewing and rationalising these mandates is still underway.⁶⁵ There was discussion about how, if it is possible to draft a general text dealing with special procedures, this text should be neutral as it will not be possible to 'welcome' all of the special procedures' reports.⁶⁶ The session concluded with the President asking delegates to respect the practical deadline of Friday for submission of ideas for the 'inventory' of issues to be considered, and to begin drafting and distributing short texts containing proposals for how the Council should act on the issues that are important to them. Some delegates reserved the right to put forward proposals, including resolutions, after this date, which is allowed

⁵⁹ Mexico, Argentina, Nigeria, Peru and Bangladesh.

⁶⁰ Peru.

⁶¹ Mexico suggested that the Council take action on draft decision four of the 57th session of the Sub-Commission, and draft decisions three, four, five, and nine of the 58th session.

⁶² Finland (on behalf of the EU), Canada and Argentina.

⁶³ Mexico, Argentina.

⁶⁴ China and Cuba.

⁶⁵ South Africa, India, Finland (on behalf of the European Union) and Norway.

⁶⁶ Egypt.

in accordance with the '24 hour rule'.⁶⁷ The President explained that next week there may be further consultations called to discuss the 'inventory' of issues as it develops, as well as what action to take on the issues raised.

⁶⁷ Palestine. In accordance with the General Assembly Rules of Procedure and the traditional practices of this body, delegates are entitled to submit proposals for resolutions or other types of texts up to 24 hours before the final voting on the agenda item is scheduled.

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

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