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Overview

The Human Rights Council (the Council) held interactive dialogues today with:

- Ms Gay McDougall, the Independent Expert on Minorities;
- Mr Jorge Bustamante, the Special Rapporteur on the human rights of migrants;
- Mr Rodolfo Stravenhagen, the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people;
- Mr Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons;
- Ms Yakin Ertürk, the Special Rapporteur on violence against women, its causes and consequences;
- Mr Juan Miguel Petit, the Special Rapporteur on the sale of children, child prostitution and child pornography.

Ms McDougall, the Independent Expert on minorities, identified the high levels of discrimination and marginalisation of minorities by analysing references made to minorities in progress reports of 50 countries in relation to the Millennium Development Goals (MDGs). She also discussed her visits to Hungary and Ethiopia. Mr Bustamante, the Special Rapporteur on the human rights of migrants, noted that 200 million migrants in the world are vulnerable to human rights violations as they search for scarce common resources, especially women and children living away from their families. He made special mention of the upcoming Global Forum on Migration and Development to be hosted by Belgium, and also reported on his missions to the Republic of Korea and Indonesia. Mr Stavenhagen focused on the increasingly negative impact of destruction of natural habitats and environment, corruption in granting indigenous land for commercial purposes, and forced displacement and dispossession of land on indigenous peoples. He also commented on his visits to Ecuador and Kenya, and called for the adoption of the *Declaration on the Rights of Indigenous Peoples*. A number of NGOs participated in the interactive dialogue with these special procedures.

In the afternoon session, Mr Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons (IDPs) highlighted the importance of finding durable solutions for IDPs. He briefly touched upon the *Operational Guidelines on Human Rights and Natural Disasters* he has developed. He also referred in his statement to his country missions to Côte d'Ivoire and Colombia, working visits to Georgia, Turkey and Uganda and follow-up on his previous missions to Nepal, Montenegro, and Kosovo (Serbia). Ms Yakin Ertürk, the Special Rapporteur on violence against women emphasised that cultural practices should not be used to justify or explain violence against women. She also spoke about her visits to Netherlands, Turkey and Sweden. Mr Juan Miguel Petit, the Special Rapporteur on the sale of children, child prostitution and child pornography concentrated on the issues of illegal trafficking of children's organs and concerns related to missing children in his presentation. He also spoke about his visit to Ukraine. Though a number of States responded to their presentations, there was insufficient time in the afternoon session for all those on the speaker's list to make their statement and the interactive dialogue with these three special procedures will continue tomorrow morning.

Most concerned States generally responded positively to the special procedures' reports concerning visits to their countries. The exceptions were Ukraine which strongly attacked Mr Petit's report on Ukraine for using "doubtful methodology and emotional overstatements", Serbia which criticised Mr Kälin for referring to the possible impact on IDPs if the separation of Serbia and Kosovo were decided, and Kenya which disagreed with many of the points asserted in Mr Stavenhagen's report. The Republic of Korea welcomed Mr Bustamante's report but took the view that in some parts of the report, the information offered to the Special Rapporteur had not been dealt with in a balanced manner. States and NGOs raised a wide variety of issues in relation to the Special Rapporteur's reports and mandates.

The Facilitators of the discussions on the complaint procedure and the future system of expert advice held informal consultations during the day to get input from States on their new non-papers.

Independent Expert on Minorities

Ms Gay McDougall, the Independent Expert on Minorities, presented her annual report and a report on her mission to Hungary and to Ethiopia.¹ The annual report focused on minorities in the context of poverty alleviation, and the need for programmes and strategies for achieving the Millennium Development Goals (MDGs) by taking into account the situations of minority communities affected by racism, discrimination,

¹ A/HRC/4/9, 2 February 2007, A/HRC/4/9/Add.2, 4 January 2007, and A/HRC/4/9/Add.3, 28 February 2007. All the reports are available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm. ISHR has prepared unofficial summaries of these reports under its Reports in Short publication which is available at: www.ishr.ch/hrm/council.

exclusion and violence. Ms McDougall stressed that minorities are often neglected or excluded from MDGs. From her review of 50 MDG Country Reports,² Ms McDougall found that only a few countries had included minorities in their MDG reports.³ Even in these reports, Ms McDougall found that there was no discussion regarding how and why minorities are experiencing disproportionately high levels of poverty and other serious inequalities. Ms McDougall reiterated her concern regarding discrimination against minority women and girls. She concluded that, as enshrined in the *Millennium Declaration*, shared responsibility should be carried out by economically developed countries to address structural issues in order to eradicate the poverty experienced by minorities.

Ms McDougall pointed out that in her country visit to Hungary,⁴ she had focused on the particular situation of the Roma and on Hungary's unique system of minority self-governments. She stated that Roma communities continue to experience widespread discrimination as they do throughout the region. She highlighted the need for Hungary to address anti-Roma prejudice, extend to the powers of the Equal Treatment Authority, take stronger affirmative action measures, and enforce its policy of school desegregation. In relation to her visit to Ethiopia,⁵ the Independent Expert highlighted that despite the strong foundation for rights and federalism provided in the Ethiopian Constitution, many of the promises of the Constitution remained unfulfilled. She highlighted concerns about the lack of faith in political processes, continuing ethnic conflicts, and the fact that many ethnic Anuak had fled following a massacre in December 2003 and were now afraid to return to their homes.

Interactive dialogue

Many countries welcomed the Independent Expert's report⁶ and supported the continuation of the mandate⁷. Hungary recognised that national, ethnic, religious or linguistic groups' participation in the MDGs was important. The Russian Federation noted that effective and full political participation of minorities is also considered to be a crucial element in achieving the MDGs.⁸ France commended the extensive cooperation given to Ms McDougall by Hungary and Ethiopia. The issue of MDGs were also raised by Australia and China. Australia noted several key principles in achieving MDGs, namely poverty reduction, sustainable economic growth, investment, the broad distribution of benefit, and State security. China proposed that further study on the MDGs, particularly related to the inclusion of minorities was required.⁹ It emphasised that the international community is faced with the challenge of eradicating poverty among minorities.

The Russian Federation and Switzerland questioned Ms McDougall about discrimination against minorities. The Russian Federation noted that minorities often had to deal with discriminatory practices such as those involved when obtaining citizenship. Minorities Rights Group International urged the Independent Expert to include the issue of integration of minorities in political and economic life in her next report. It pointed out that reliable data on discrimination, including the decision for measuring the effectiveness of legal instruments to be adopted to eliminate such discrimination, is crucial. The Russian Federation pointed out that equal access to education in minorities' native language is important. It also noted that education is considered to be one of the main areas of discrimination against minorities.

² A/HRC/4/9/Add.1, 2 March 2007.

³ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

⁴ A/HRC/4/9/Add.2, 4 January 2007.

⁵ A/HRC/4/9/Add.3, 28 February 2007.

⁶ Hungary, Australia, the Russian Federation, Germany (on behalf of the EU), Austria, the Philippines, Switzerland, China, Peru, France.

⁷ Hungary, the Russian Federation.

⁸ The Russian Federation.

⁹ Germany (on behalf of the EU).

Germany, on behalf of the European Union (EU), supported the inclusion of the issue of minorities in the United Nations (UN) system.¹⁰ Germany raised questions to Ms McDougall on ways to prevent conflict (a major source of discrimination against minorities) and future challenges.¹¹ The Independent Expert stated that a poverty alleviation strategy on minorities is connected to conflict prevention. Ms McDougall emphasised that she will maintain existing collaboration with United Nations Development Program (UNDP) and treaty bodies, especially the Committee on the Elimination of Racial Discrimination; and that she will be working further with the Committee on the Elimination of Discrimination Against Women, the Organisation of American States (OAS), the African Union, and the Secretary-General's Special Adviser on the Prevention of Genocide. She stressed that the major obstacle to maintain such collaboration is resources.

The International Federation for Human Rights Leagues (FIDH) expressed concern regarding the arbitrary arrest, detention and imprisonment of human rights defenders working with minorities, as well as the killing of journalists, students, human rights defenders and minorities (largely of Anuak ethnicity) in Ethiopia. It urged fair trials for human rights defenders, including journalists. The Centre on Housing Rights and Evictions (COHRE) noted that systemic discriminatory practices against Roma existed across Europe. It requested the Council to urge the Hungarian Government to redouble its efforts in the field of school desegregation and slum settlement upgrading. The International Human Rights Association of America Minorities (IHRAAM) asked the Independent Expert if she had any advice for the Government of India to improve the situation of Muslim minorities, which faced severe discrimination in India.

Ms McDougall noted that she would respond to questions regarding best practices by states and the role of the Office of the High Commissioner for Human Rights (OHCHR) to reduce discrimination against minorities, the implementation of the *Millennium Declaration*¹², as well as extreme poverty faced by minorities¹³, in an ongoing dialogue.

Special Rapporteur on Migrants

The Special Rapporteur on the human rights of migrants, Mr Jorge Bustamante, presented his annual report, and the reports of his visits to the Republic of Korea and Indonesia.¹⁴ The Special Rapporteur explained that he had sent a questionnaire to all States on the "Impact of certain laws and administrative measures on migrants". The questionnaire focused on border control and measures to reduce and address irregular migration; expulsion; conditions for admission and stay; rights of migrants; and the protection of migrants. He had received 30 responses. The Special Rapporteur noted the importance of the Global Forum on Migration and Development that will be held in July this year as a way to identify best practices, exchange experiences and enhance cooperation between countries.¹⁵ He pointed out that he had received various communications regarding allegations of human rights violations towards migrants such as arbitrary detention, denial of labour rights, ill-treatment, abusive working conditions, ill-treatment in the context of border control, inhumane detention, deaths and other forms of violence and discrimination. He stated that the

¹⁰ Also supported by Switzerland, Minorities Rights Group International, and COHRE.

¹¹ These questions are supported by Austria.

¹² Austria asked a question in this regard.

¹³ France enquired about this issue.

¹⁴ A/HRC/4/24, 14 February 2007, A/4/24/Add.2, 14 March 2007, A/424/Add 3, 2 March 2007. All the reports are available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm. ISHR has prepared unofficial summaries of these reports under its Reports in Short publication, which is available at: www.ishr.ch/hrm/council.

¹⁵ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

plight of migrants should be effectively addressed through comprehensive policies and that human rights abuses against irregular migrants required international cooperation between countries of origin, transit, and destination. Mr Bustamante concluded by calling on States to commit to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (the Convention on Migrant Workers).

Regarding his visit to the Republic of Korea, Mr Bustamante noted that migrant workers were able to organise in trade unions, that civil society was well organised, and that they were in a dialogue with the Government. He expressed concern however about the vulnerable situation of unskilled migrant workers and a case involving the death of ten undocumented migrants in a fire at a detention centre. Regarding his visit to Indonesia, he highlighted the precarious situation of female migrant domestic workers. He urged Indonesia and Malaysia to amend their *Memorandum of Understanding* and to revise provisions that were not in accordance with international standards such as the right of the employer to withhold the foreign worker's passport.

Interactive dialogue

Indonesia noted that some measures have already been taken in relation to the recommendations made by the Special Rapporteur. Indonesia declared that the ratification process for the Convention on Migrant Workers was under way, and that a short visit of the Special Rapporteur to provide some inputs on this issue would be appreciated. The Republic of Korea pointed out that parts of Mr Bustamante's report interpreted a few cases as a general phenomenon. It was concerned that the report focused mainly on negative elements in spite of the efforts made by the Government to address these issues.

States that participated in the interactive dialogue generally supported the mandate of the Special Rapporteur. They expressed concern towards particularly vulnerable migrants such as undocumented migrants living away from their families, and women and children that are subject to trafficking.¹⁶ Concern was also expressed at the growing phenomenon of racism and xenophobia against migrants. Several States¹⁷ supported the Special Rapporteur's call for ratification of the Convention on Migrant Workers. The Philippines asked the Special Rapporteur on what further efforts should be made to promote ratification and what are, in his view, the most urgent issues regarding the human rights of migrants that the Council should respond to. Some¹⁸ also expressed their support to the Global Forum, which they saw as important and as an appropriate mechanism to discuss migration issues. Germany (on behalf of the EU), asked the Special Rapporteur to explain the reasons for a lack of reply from States to his questionnaire, and his views on possible solutions to conciliate the need to secure borders, and at the same time protect the human rights of migrants. Regarding the questionnaire, two NGOs¹⁹ regretted the low number of replies by States. Other NGOs wanted to know how the lack of replies of States had an impact on the work of the Special Rapporteur.²⁰ In response, Mr Bustamante noted that the number of responses he had received were the average of what he usually receives.

China also addressed the question of migration as 'a brain drain', and asked the Special Rapporteur his view how to resolve this issue. Further, China also wanted to know what were the responsibilities of 'sending countries' in order to protect the human rights of migrants. In his reply to this question, Mr Bustamante noted that responsibility should not be put only on the country of origin. He argued that an interaction between both countries of origin and destination shapes the phenomenon of migration. Human Rights

¹⁶ Ecuador and Guatemala.

¹⁷ The Philippines, Morocco, Guatemala, Ecuador, and Nicaragua.

¹⁸ Spain, Morocco, and Brazil.

¹⁹ The Consultative Council of the Jewish Organisation and the Asian Migrants Centre.

²⁰ The Asian Migrants Center.

Advocates, also asked the Special Rapporteur what steps the Council should take for States to reform their migration policy and respect the human rights of migrants. A number of NGOs in a joint statement requested the Special Rapporteur to continue monitoring the situation of undocumented migrants in the Republic of Korea.²¹ FORUM-ASIA, the Asian Migrant Centre and Migrant Rights International highlighted the serious violations of migrants rights in Asia, particularly in relation to migrant domestic workers. They noted that the responses sent to the Special Rapporteur's questionnaire indicated many States did not recognise domestic workers as workers, and that migrant workers were not protected by labour laws in Singapore, Malaysia, Saudi Arabia, and several Middle Eastern countries. They also pointed to instances of migrants facing corporal or capital punishment in Malaysia, Indonesia, Saudi Arabia, and Singapore. Singapore and Malaysia exercised a right of reply and asserted that the statements made by these NGOs was groundless and that their countries had adequate protections for migrant workers.

The Special Rapporteur concluded by emphasising the importance of the participation of civil society in the protection of the rights of migrants, and was grateful that States mentioned this in their interventions.

Special Rapporteur on Indigenous People

Mr Rodolfo Stavenhagen, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, presented his annual report, study on best practices in the implementation of his recommendations, and the reports on his missions to Ecuador and Kenya.²²

Mr Stavenhagen noted that, despite some progress, concern remains regarding the implementation gap between norms and practice.²³ The global economy increasingly had a negative impact on indigenous people due to the world's increasing dependency on forms of energies and water resources, which tended to have a destructive impact on environments in which indigenous people live. He referred in particular to the destruction of forests and other natural habitats in locations including, Siberia, Equatorial Africa and Latin America. He pointed out that in Cambodia and South East Asia, indigenous peoples are particularly vulnerable because of the corruption in granting indigenous lands for commercial plantations. Similar situations were also apparent in other countries.²⁴ Mr Stavenhagen raised serious concerns regarding the loss of lands without compensations, the fragmentations of lands, forced displacement, the loss of identity, and isolated living conditions of indigenous people. These circumstances are often characterised by the disappearances and torture of indigenous people. Further, he mentioned increased violence against indigenous human rights defenders, and stressed that protests of indigenous people are often viewed by States as criminal behaviour. He argued that increased immigration of indigenous people is a consequence of globalisation, and that indigenous people as migrants are particularly vulnerable. Mr Stavenhagen also pointed to discrimination, violence and abuse against indigenous women, either in their own countries or in foreign countries where they are forced to immigrate. The Special Rapporteur stated that his study on best practices indicated that implementation has been more effective in cases where specific follow-up initiatives to his recommendations exist. He also emphasised the importance of the *Declaration on the Rights of*

²¹ MINBYUN-Lawyers for a Democratic Society, Joint Committee with Migrants in Korea, Korea Center for United Nations Human Rights Policy, and Migrant Forum in Asia.

²² A/HRC/4/32, 19 March 2007, A/HRC/4/32/Add. 4, 26 February 2007, A/HRC/4/32/Add. 2, 28 December 2006, A/HRC/4/32/Add. 3, 26 February 2007. All the reports are available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm. ISHR has prepared unofficial summaries of these reports under its Reports in Short publication, which is available at: www.ishr.ch/hrm/council.

²³ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

²⁴ Mexico, the Philippines, Guatemala

Indigenous Peoples to indigenous communities and for the countries in which they live and urged all States to direct their efforts to ensuring the adoption of the Declaration by the General Assembly.

The Special Rapporteur stated, based on his visit to Ecuador, that though the Constitution of Ecuador granted collective rights to indigenous peoples and nationalities these rights had not been fully incorporated into domestic legislation. He also highlighted concerns about problems faced by indigenous peoples in accessing justice; access of indigenous peoples to basic social services; and the gradual deterioration of the indigenous habitat and effects of extractive industries on indigenous communities and their rights. In relation to his visit to Kenya, Mr Stavenhagen highlighted discrimination against hunter-gatherers and pastoralist communities. He stated that these communities are facing increasing difficulties because of widespread corruption in the allocation of national and trust lands; forced displacement from ancestral lands as a result of the creation of protected areas; lack of access to social services; and discrimination in the field of property rights and existence of harmful traditional practices, such as female genital mutilation, affecting women and girls.

Interactive dialogue

Ecuador stated that the report was balanced and that its conclusions were justified. They noted that information from the report will be relevant for strengthening national institutions and public policy for the promotion and protection of effective rights for indigenous people. Ecuador mentioned that in some cases, the isolation of indigenous peoples on their Pacific coast tends to lead towards crimes against indigenous peoples.

Kenya argued that it was improper for one or more groups to be identified as ‘indigenous people’ as all African-origin people were indigenous to Kenya. It pointed to efforts by the Government to improve the livelihood of nomadic and pastoralist communities and stated that marginalisation and discrimination against women were not specific to these communities but were problems that were faced across the country. It thought that the issue of transition justice, identified by the Special Rapporteur, was misplaced. It stated that the report did not differentiate between access to game reserves and game parks though local communities have access to the former. It also stated contrary to the Special Rapporteur’s assertion, that customary law is recognised in Kenya in civil matters.

Germany (on behalf of EU), and Denmark encouraged the Council to maintain its involvement in the human rights situation of indigenous peoples. Denmark stressed the need for international cooperation in promoting the human rights of indigenous people. Mexico called for States to assess the effectiveness of their policies in terms of protecting the rights of indigenous people. Various States²⁵ acknowledged that challenges remain for real guarantees on the rights of indigenous people and expressed concerns for the gap between implementation and norms on the rights on indigenous people. Mexico argued for the establishment of an oversight mechanism which includes local level authorities. Many States²⁶ called for the adoption of the *Declaration on the Rights of Indigenous Peoples* by the General Assembly. Canada argued that Mr Stravenhagen’s comments regarding why Canada did not support the Declaration were not accurate.

Many NGOs expressed concerns regarding the continuing discrimination against indigenous people, and suggested that representatives of indigenous communities should be included in government policy processes. Asia Pacific Forum on Women, Law and Development (APWLD) argued for a classification of those crimes committed specifically against indigenous people. APWLD and Women’s International League for Peace and Freedom (WILPF) called for the particular protection of indigenous women. The Colombian

²⁵ Mexico, Norway, Guatemala, Peru, Brazil.

²⁶ Mexico, Norway, Guatemala, Peru, France, Brazil, the Republic of Congo.

Commission of Jurists noted that displacement of indigenous people had to cease in order to prevent genocide. The Foundation for Aboriginal and Islander Research Action (FAIRA) expressed its disappointment that there has been no written report on the progress of the Second Decade of the World's Indigenous Peoples, and asked for indigenous experts to be appointed to experts bodies advising the Council.

The Philippines exercised a right of reply to clarify that it had already replied to the Special Rapporteurs on Violence Against Women and Torture on the specific case of the killing of an indigenous woman in the Philippines that APWLD had referred to in their statement.

Representative of the Secretary-General on Internally Displaced Persons

Mr Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons presented his annual report,²⁷ a report containing *Operational Guidelines on Human Rights and Natural Disasters*, reports of his country missions²⁸ to Côte d'Ivoire, Colombia, and a joint mission to Israel and Lebanon. He also undertook working visits to Georgia, Nigeria, Turkey and Uganda and followed-up on his previous missions to Nepal, Montenegro, and Kosovo (Serbia).²⁹

Mr Kälin focused on the issue of durable solutions for internally displaced persons (IDPs), which he identified as return, resettlement and reintegration.³⁰ He underscored the need to ensure that durable solutions are found by peace negotiations or preventing situations from becoming protracted. The Special Rapporteur cited Turkey and Georgia as examples of protracted displacement situations where the problems faced by IDPs could have been addressed and appeased earlier. He welcomed the adoption of the National Strategy for IDPs in Georgia but stressed that it should be complemented by a comprehensive action plan. He also commended Turkey for their policy implementation and action plan and for the allocation of resources that should contribute to finding durable solutions. He however urged the Government to reconsider the expiration of the deadline for submission of claims of damages by property owners. With regards to his mission to Colombia, Mr Kälin stated that a durable solution would be possible if a humanitarian approach was combined with a developmental approach. In his view, the situations in Kosovo, Nepal and Northern Uganda demonstrated the crucial need to ensure that IDP concerns were included early on in peace processes in order to ensure that at the time of implementation, the foundation was laid for durable solutions. He welcomed the peace agreements that had been concluded in Côte d'Ivoire and Uganda.

Unlike refugees, there was no given moment in time in which IDPs stop being considered as such. Mr Kälin stated that he had drafted a series of benchmarks for the humanitarian community to help them to determine when humanitarian assistance and protection is no longer necessary. Mr Kälin also explained that he had urged the Peacebuilding Commission to focus on the challenges that IDPs and their rights to durable solutions pose in the context of rebuilding a society after the ravages of war. He expressed concerns about the situation of IDPs in the Central African Republic, Iraq, the Sudan and Sri Lanka.

²⁷ A/HRC/4/38, 3 January 2007.

²⁸ A/HRC/4/38/Add.2, 18 October 2006, A/HRC/4/38/Add.3, 24 January 2007, A/HRC/2/7, 2 October 2006.

²⁹ For further details on these working visits and follow-up activities, see A/HRC/4/38, 3 January 2007, pp. 5 – 10.

³⁰ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

Interactive dialogue

The delegation of Côte d'Ivoire welcomed the report on the Representative's visit but commented that in one of the instances he had identified, the Government had displaced persons who were living around military camps because rebels were attacking these camps in 2002. It also stated that the report was only based on a sample of five towns. It also stated that public health services were subsidised by the State and were not restricted to those who could provide identification documents. This also applied to education and displaced children were being provided education in schools that had been moved to government-controlled areas.

Serbia asked Mr Kälin to explain why he had improperly referred to 'Montenegro and Kosovo' in his report instead of Montenegro and Serbia and if this was an intentional omission. It supported the Representative's approach that IDPs should decide freely where they want to live by choosing between return, local integration or resettlement. However, the Serbian delegation felt that the report failed to provide information on the possibility for IDPs' to freely opt between possible solutions. The Serbian delegation asked the Representative to explain what he thought were the main obstacles for the return of IDPs to Kosovo and Metohija, and in what way these obstacles should be removed. Serbia thought that there were no grounds to link the issue of IDPs to the political negotiations on the future status of Kosovo and Metohija. It thought that the Representative had prejudged the outcomes of these negotiations by referring to the risk of non-registered IDPs becoming stateless if the separation of Serbia and Kosovo were decided and considered it unacceptable for the Representative to discuss political negotiations and prejudice political solutions.

Many delegations expressed support for the Special Representative's report.³¹ Germany (on behalf of the EU), stated that IDPs need the increased attention of the international community. On the issue of land disputes in the aftermath a natural disaster or an armed conflict, it asked the Representative to give his views on what role the international community could play in this regard. The German delegation also inquired as to what could be done to safeguard the electoral rights of IDPs and ensure their full participation in electoral processes. Norway was concerned about gaps in policy and implementation referred to in the Representative's report and requested him to indicate how many States have incorporated the *Guiding Principles on Internal Displacement* into their national policies and legislation. It also referred to the Representative's invitation to NHRIs and NGOs to monitor implementation and give feedback, and enquired to what extent he had received feedback.

Switzerland asked the Representative to comment on the UN High Commissioner for Refugees' offer of an increased role in the protection of IDPs. It also asked the Representative if he had any general recommendations on the situation of IDPs in Sri Lanka. Georgia indicated that a comprehensive set of rules and proactive development mechanisms need to be established. Austria asked if the Representative could elaborate further on whether he envisaged that the benchmarks he had developed could be applied. The Austrian delegation also inquired into what precautionary measures could be promoted by the international community with regards to natural disasters as a way to prevent infringements on the human rights of IDPs. Indonesia noted the recommendations of the Representative and stated that it was grateful for the support provided by various agencies to it after the natural disasters it had experienced.³² The Democratic Republic of Congo (DRC) stated that they look forward to the Special Representative's visit, and acknowledged that it was facing a humanitarian catastrophe. Congo explained that this catastrophe was due to the long period of military hostilities in the country.

³¹ Germany (on behalf of the EU), Austria, Belgium, Mexico, the Democratic Republic of Congo, Switzerland, Georgia, Albania, Norway, Azerbaijan, Nepal, Serbia, Indonesia.

³² Nepal, the DRC, Georgia, Azerbaijan all expressed support for UN agencies.

Special Rapporteur on Violence Against Women

Ms Yakin Ertürk, the Special Rapporteur on violence against women, its causes and consequences, presented her fourth report, as well as country reports from her missions to Turkey, the Netherlands and Sweden to the Council.³³ In her statement,³⁴ Ms Ertürk emphasised that violence against women, which is embedded in gender inequality, remains a universal phenomenon. She stated that cultural based practices are being used to justify or explain violence against women, thereby trying to reduce the problem to a cultural one and ignoring its links to general concerns for women's rights, empowerment, and equality. She pointed to the need to reject cultural relativism, the essentialisation of culture, and all oppressive practices justified in the name of culture.

The Special Rapporteur then outlined her findings from the three country missions undertaken in this reporting period. Discussing Turkey, she expressed her concern about the rise in the number of suicides of women in certain provinces, which may in fact be disguised 'honour' related murders or forced suicides. She however commended the Turkish Government on measures taken since her visit. Regarding the Netherlands, she expressed concern that measures to address violence against women were addressed in a gender neutral legal framework; that specific vulnerabilities of women with a non-permanent residence status have only been partially addressed; and that policy interventions on women with a foreign background seem to be dominated by a cultural approach. She also stated despite regulations and enforcement operations, women in prostitution still face violence, especially within the 'grey' sex sector that continues to escape monitoring and regulation. In relation to Sweden, the Special Rapporteur highlighted concerns about the under-representation of women in senior management positions; low prosecution and conviction rates against violence against women; and the increased vulnerabilities for local women in prostitution, especially those addicted to hard drugs. Ms Ertürk was encouraged to hear that the Swedish Parliament will next month consider amendments to the Social Services Act to help protect women at risk of violence.

Regarding her previous missions, the Special Rapporteur welcomed that since her visit, the Government of Mexico has enacted legislation to combat violence against women. The Special Rapporteur announced that she has recently received an invitation from the Government of Zimbabwe. Finally, the Special Rapporteur noted that her mandate is the only mandate exclusively dedicated to women and which allows the specificities of violence against women to be considered in the context of wider questions about women's status. She expressed her hope that the Council would strengthen her mandate and all other special procedures in the current review of special procedures.

Interactive dialogue

All the countries that received visits from the Special Rapporteur welcomed her report and recommendations. Sweden spoke in broad support of her mandate and the importance of tackling violence against women and stated that it was studying her report carefully. Turkey also welcomed the report but noted that it was geographically limited in its scope. It explained that after the Special Rapporteur's visit, Turkey has included violence against women in its Ninth Development Plan and a Prime Ministry Circular has established a comprehensive roadmap for the prevention of violence against women and of 'honour and custom-related killings', which incorporates many of the Special Rapporteur's recommendations. The

³³ A/HRC/4/34, A/HRC/4/34/Add.2, A/HRC/4/34/Add.3 and A/HRC/4/34/Add.4

³⁴ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

Netherlands stated that it welcomed all the recommendations put forward by the Special Rapporteur and were taking them to ‘heart’. It outlined various steps that are being taken in response including boosting the equal opportunities policy by adopting a new plan and strengthening mechanisms for coordination; examining the gender neutral approach to domestic violence; putting forward a bill requiring a comprehensive risk assessment by which potential perpetrators of domestic violence may be banned from their homes for ten days; integrating the Special Rapporteur’s recommendations in the evaluation of the prostitution policy which is currently being undertaken; and that it hopes to ratify the Council of Europe *Convention on Action against Trafficking in Human Beings* within four months.

Every State that participated in the interactive dialogue welcomed the Special Rapporteur’s report and praised both her work and her mandate.³⁵ A number of States focused in particular on the issue of intersections between culture and violence that was focused on in the Special Rapporteur’s annual report.³⁶ Germany (on behalf of the EU) referred to the recommendation in the Special Rapporteur’s report that States should not invoke any custom, tradition or religious consideration to avoid their obligations in eliminating violence against women. It asked the Special Rapporteur to provide more in-depth information on what customs and traditions States may refer to in this regard. It and Switzerland also asked the Rapporteur to elaborate further on how States should develop strategies to reform harmful aspects of a given culture that are linked to violence against women, and requested some examples of best practices. Belgium enquired about the concept of demystifying culture, asking for examples of current myths and clarification on what role States might play in the demystification process. India, Lichtenstein, and Switzerland supported the Rapporteur’s proposed guidelines on addressing the links between culture and violence against women, in particular the proposal to make explicit reference to the *Convention on the Elimination of All Forms of Discrimination against Women*.³⁷ Mexico requested that the Special Rapporteur comment further on promoting the concept of universality of rights raised in her report. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), welcomed the detailed analysis provided for in the annual report, but requested the Special Rapporteur to focus further on the new patterns of cultural practices that she had highlighted such as gun ownership and the portrayal of women as sexual objects in the media. Indonesia asked whether the Special Rapporteur’s definition of culture was an agreed definition and stressed that cultural specificities should not be seen as incompatible with human rights. Indonesia also asked the Special Rapporteur to clarify whether she was condoning the view that human rights are originally a Western concept.

Pakistan (on behalf of the OIC) noted that the Special Rapporteur’s report had made “only a passing reference” to the impact of foreign occupation and armed conflict on violence against women. It called for more attention to be paid to this issue by both the Special Rapporteur and the international community in general.³⁸ It called on Ms Ertürk to comment on the culture of impunity in situations of foreign occupation and its impact on violence against women. Both the Democratic People’s Republic of Korea (DPRK) and the Republic of Korea raised the issue of sexual slavery and highlighted the failure of Japan to implement the recommendations of the former Special Rapporteur in relation to sexual slavery by the Japanese Military during World War II. The Republic of Korea suggested that the Special Rapporteur further explore the issue of sexual slavery during times of war.

³⁵ Australia, Azerbaijan, Belgium, the DPRK, the DRC, Germany (on behalf of the EU), Guatemala, India, Indonesia, the Islamic Republic of Iran, Lichtenstein, Mexico, Netherlands, New Zealand, Norway, Pakistan (on behalf of the OIC), South Africa, Sweden, Switzerland, Turkey, Uruguay, Uzbekistan

³⁶ Australia, Belgium, Germany (on behalf of the EU), Guatemala, Indonesia, Lichtenstein, Mexico, Pakistan (on behalf of the OIC), South Africa, Switzerland, Uruguay

³⁷ Convention on the Elimination of Discrimination Against Women

³⁸ This was supported by Azerbaijan and Iran.

Germany (on behalf of the EU) enquired about the statement in the Rapporteur's report that only half of the communications she sent to Governments were responded to. It asked why she thought States did not respond to her communications. Switzerland asked the Special Rapporteur to explain and elaborate on her description of international forced marriage as a form of trafficking. It also asked whether this form of forced marriage could be included in the definition of trafficking provided in the *Palermo Protocol*. Mexico also questioned the Special Rapporteur on the special procedures as a system. It asked how the Special Rapporteur felt the Human Rights Council could support the interrelationship between mandates without weakening their specificities.

Several States made general comments on the fight against violence against women. In a joint statement, New Zealand and Norway called for international focus on violence against women on the basis of their sexual orientation. They asked the Special Rapporteur for her comments on what kinds of violence against women are linked to sexual identity. South Africa advocated the need to address the links between poverty and violence against women. Australia stated that boys and men must be included in the process of addressing violence against women and called the Special Rapporteur's attention to violence against women in the Asia Pacific area. Guatemala praised the Special Rapporteur's focus on migrant women and called for more international attention on migrant women and trafficking.

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

Mr Juan Miguel Petit, the Special Rapporteur on the sale of children, child prostitution and child pornography presented his annual report³⁹, a report on his mission to Ukraine⁴⁰ and on communications.⁴¹ In his presentation, the Special Rapporteur focused on the issues of the illegal trafficking of children's organs and tissues and on concerns related to missing children.⁴² A questionnaire was circulated to States, international organisations and NGOs on these two issues and their replies are reflected in the Special Rapporteur's annual report. Mr Petit noted that there is partial or inaccurate information in many cases about trade in children's organs and the sporadic information received remains unsubstantiated, making it difficult to have effective intervention. In the responses he had received to the questionnaire, very few States indicated that they had encountered cases of sale or trafficking of organs. He noted a number of initiatives and standards developed by international organisations, by NGOs and at the regional and national levels to address this issue. He encouraged States to adopt legislation regulating organ and tissue transplantation, in line with World Health Organization's guidelines.

Mr Petit pointed out that disappearances and abduction of children often constitutes the first step in abuses against children, including sexual exploitation of the victims. A focus on outreach, prevention, and fast and effective responses were essential in his view to deal with abduction and disappearances of children. He recommended that all States set up rapid-response programme, address this issue in their national legislation, and cooperate bilaterally and regionally to establish common standards and exchange information. The Special Rapporteur also focused on his findings and recommendations from his visit to Ukraine. He stated

³⁹ A/HRC/4/31, 26 December 2006. All the reports are available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm. ISHR has prepared unofficial summaries of these reports under its Reports in Short publication, which is available at: www.ishr.ch/hrm/council.

⁴⁰ A/HRC/4/31/Add.2, 24 January 2007.

⁴¹ A/HRC/4/31/Add.1, unpublished at the time of writing.

⁴² Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

that while many steps had been taken towards protection of children, trafficking, child prostitution and child pornography were not being adequately addressed. He also identified groups of children that were exposed to higher risks and stated that corruption was undermining the capacity of the State to prevent and redress human rights violations.

Interactive dialogue

In its response, Ukraine attacked the methodology used by the Special Rapporteur to assess statistical data and stated that chapter VI (6) of his report, in which he had outlined major areas of concern within Ukraine did not present an accurate picture of the real situation. Ukraine stated that under the Commission on Human Rights' (the Commission) resolutions, the Special Rapporteur was supposed to use credible and reliable information but it described the report as based on "doubtful methodology and emotional overstatements". It critiqued the Special Rapporteur for using estimate data, using unspecified sources of information and percentages instead of numbers, which meant that the level of representivity of the data was not known. Ukraine stated that the report mentioned that Ukraine had not ratified some treaties when they had in fact done so and also criticised the Special Rapporteur for his "preconceived views" on Ukraine's foreign policy orientation. In the Ukrainian delegation's view, a consensus on integration within the European Union did not exclude their maintaining a relationship with the Russian Federation and it was inappropriate for the Special Rapporteur to comment on this aspect of their foreign policy.

A few countries acknowledged the inclusion of the disappearance and abduction issue in the report.⁴³ Belgium and Luxembourg highlighted the need to share best practices between States regarding those issues. Germany (on behalf of the EU) asked the Special Rapporteur to explain what concrete measures could be used to facilitate the reintegration of child victims of kidnapping into their families and communities. It also asked the Special Rapporteur how States could concretely improve the collection of statistics and investigation processes on the trafficking of children's organs. Uruguay reiterated the need for mutual support between UN mechanisms in combating violence against children as discussed in the special event on violence against children held on 19 March 2007. It also questioned the Special Rapporteur on the most effective early warning systems that could be implemented globally. The Islamic Republic of Iran asked for more information on the global trends of supply and demands in the trafficking of children and organs.

Informal consultation on the system of expert advice

The Facilitator of the Working Group to establish a system of expert advice held an informal consultation in room XXIII (23) from 8.30 to 10 am this morning.⁴⁴ At the request of Cuba, it was decided that the discussion would focus on outstanding issues. The Facilitator then added that the present working paper⁴⁵ was a stock-taking of views and that should he not be thanked for it, as it merely attempted to reflect all opinions expressed in the Working Group.

⁴³ Belgium, Luxemburg, Uruguay

⁴⁴ For a detailed review of developments at the Working Group, see http://www.ishr.ch/hrm/council/wg/wg_reports/reports.html. For a review of the presentation of the Facilitator, Ambassador Burayzat, to the Council, see http://www.ishr.ch/hrm/council/dailyupdates/session_004/15_march_2007.pdf.

⁴⁵ The Facilitator's new non-paper and other background documents related to the discussions on the system of expert advice including oral statements made at the Working Group, are available on OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

The most overarching of the outstanding issues remained whether the future system would constitute a formal standing body or a pool/roster of experts. Cuba opened that there has been a hybrid system (or ‘pool’) in place for many years in the form of expert Working Groups established by the Commission. Having a pool, it said, limited the capacity of member States to put forward candidates. Germany (on behalf of the EU), then briefly detailed its reasoning in favour of the roster system, as elaborated in more detail at the two sessions of the Working Group. This included the ability of the roster to provide specialist advice if and when requested. It also added that it wished to see the non-paper use the words ‘expert system’ instead of ‘expert body’⁴⁶, and that its mandate be expanded in the working paper to include ‘protection’, as well as the present ‘promotion of human rights’.

India also took the opportunity to further elaborate on its compromise proposal, first raised at the final day of the last session of the Working Group. They proposed a standing pool of experts elected by the Council through a two-stage process of pre-screening and election. The Council would then decide how to assign tasks, either individually or collectively. The pool of experts would meet annually for at least two weeks, but only as a means of discussing issues and sharing information and ideas. There would be no need, however, for a collective adoption of individual studies, as is the practice at the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission). The EU and others⁴⁷ expressed an interest in considering the Indian proposal as a means toward compromise. The UK later added that such a two-week meeting may serve as an adequate means for NGO input.

The Russian Federation then asked for an explanation as to the difference between the proposed EU model of a roster of experts and the existing system of special procedures. This view that there was little notable difference was also taken up by China, Pakistan (on behalf of the OIC) and Egypt (although the Egyptian delegate conceded that he had not actually heard the statement by the Russian delegate). Germany countered that if States were content with the system of special procedures then perhaps they could commit to its strengthening and do away with the need for any system of expert advice. In any case, it saw the distinction according to the relationship of the system of expert advice with the Council. Whereas special procedures exist independently of the Council and can initiate their own studies, independent experts under the system of expert advice would undertake research only according to what was asked of them by the Council.

In line with its contributions at the Working Group, the USA highlighted that the costs of the Sub-Commission were four times that of the former Commission, and that this could be described as ‘the tail wagging the dog’. What was needed instead was a small, flexible, and responsive body that would only act on the needs of the Council. Cuba quickly responded that the cost differential was because the Commission and ECOSOC had created that cost by requesting that the Sub-Commission undertake so much work, and that this should not be blamed on the Council.

Before moving to the question of election or appointment of experts, Minority Rights Group International reminded States present ‘not to throw out the baby with the bathwater’ and remember the positive elements of the Sub-Commission. Amongst these was the scope for NGO participation, both ECOSOC and non-ECOSOC accredited, in the work of the previous working groups of the Sub-Commission. Minority Rights Group International noted that this was a point that was absent from the Facilitator's working paper, and requested that it be considered for future inclusion. The role of NGOs was supported by Mexico.

⁴⁶ Supported by Switzerland.

⁴⁷ Switzerland, Sweden, USA

Turning to the question of election or appointment, Switzerland regretted that the two-track process⁴⁸ of appointment had been removed from the present working paper of the Facilitator, despite the fact that no-one had objected to its inclusion in the previous 'concept paper'.⁴⁹ Cuba asserted that this was a State process and that only States should nominate and elect candidates as the 'most democratic way to do it'. This appeared to starkly contradict their position in the previous day's informal consultation on the UPR that any election of independent experts by States was inherently politicised and that it was impossible to assure independence as the experts are all political appointees. Australia rallied that Cuba was in essence proposing a 'mini-Council' and that this would diminish the independence of experts. The DPRK added its support for nomination solely by the OHCHR.

The Facilitator concluded by thanking those present for their contributions and stated that he would aim to incorporate and new suggestions or requests.

Informal consultations on the complaint procedure

Ambassador Blaise Godet, the Facilitator for the discussions on the complaint procedure, held informal consultations from 1:30 to 3:00 pm to get comments from delegations on the revised non-paper.⁵⁰ The Facilitator initially asked delegations to make general comments on the non-paper. However, after a few States had made general statements the representative of Algeria asked for a point of order to seek clarification from the Facilitator on how the comments received in the informal discussions would be dealt with and how they would impact the formal discussions that have taken place in the Working Group.⁵¹ The Facilitator responded that he proposed revising the non-paper unless he was instructed to proceed in a more formal manner by the Bureau. Algeria responded by emphasising that the Working Group had been given a clear mandate to conduct its work through formal meetings and that the informal setting was a major challenge to many delegations because of the lack of translation into other United Nations languages than English. The representative also expressed concern that not all concerned delegations were present in the room. A number of other delegations shared these concerns⁵² and some expressed the view that the informal consultation should not be used as a basis for revising the non-paper.⁵³

The Facilitator and a number of States⁵⁴ expressed their surprise that these concerns had not been raised in meetings of the Bureau or in the Council itself when agreement had been reached to hold informal consultations. Furthermore, they recalled that two other informal consultations had already taken place in the morning and the previous day and that no objections had been raised in those meetings. The Facilitator assured delegations that he would explore the possibility of getting conference services for the informal consultations and this proposal was acceptable to the Algerian delegation that seemed to be primarily concerned about the lack of interpretation.

⁴⁸ The two-track process, as discussed at the Working Group and included in the last 'concept paper' of the Facilitator, was composed of a selection process by States, the OHCHR, NGOs and other stakeholders, and then election of nominated candidates by the Council.

⁴⁹ Supported by the UK.

⁵⁰ The Facilitator's new non-paper and other background documents related to the discussions on the complaint procedure, including oral statements made at the Working Group, are available on OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

⁵¹ For *Council Monitor* reports on the discussions at the Working Group see www.ishr.ch/hrm/council.

⁵² Indonesia, South Africa, Pakistan, China, Cuba.

⁵³ Pakistan.

⁵⁴ Norway, Germany.

This part of the discussion took up the better part of the consultations and left little time for general comments and reactions to section one of the non-paper that discusses the objective and scope of the complaint procedure. A number of States emphasised the need to reflect that the procedure is based on confidentiality and requested that this be included in section one on objective and scope.⁵⁵ Cuba and the Russian Federation made concrete proposals for amending the text in that section. Other States expressed the view that there was no need to include a reference to confidentiality, as this was a means to ensure cooperation by States with the procedure and not an end in itself.⁵⁶

Mexico requested that the section on inadmissibility criteria for communications should include that the communication is not being dealt with by a regional human rights mechanism. This proposal has not been discussed in depth at the Working Group and would further restrict the criteria for admissibility of complaints. Mexico also suggested that the procedure should be conducted through two working groups both made up of independent experts to be appointed in the same manner as decided upon for other independent experts of the Council.

Some States also queried what the reference to the procedure being victim-oriented meant.⁵⁷ Bangladesh suggested that the focus of the procedure should be on improving the overall human rights situation in countries as it could not provide redress to individual victims of human rights violations. The Facilitator explained that the intention was that whenever possible the needs and interests of victims should be taken into account and that they should be informed about the status of their complaint. This understanding was echoed by the United Kingdom. Mexico sought clarification on the need to demand the exhaustion of domestic remedies if the procedure was not intended to provide redress in individual cases.

The United States argued that there was no need to include a reference that the procedure would address gross and reliably attested violations occurring “under any circumstances” and argued that this was duplicative. India agreed that it was not clear what this meant. The Facilitator explained that what was intended by this language was that situations occurring in any context, including armed conflict, would be covered by the procedure. A number of other States spoke in favour of retaining the language.⁵⁸

Azerbaijan and South Africa supported the reintroduction of the phrase "systematic human rights violations" in the scope of the procedure. This question has already been extensively discussed in the Working Group and the United Kingdom recalled that this would introduce a higher threshold for communications and would move towards a quasi-judicial procedure which would require that new measures to address situations. In relation to measures, Argentina proposed for the first time that the Council should be able to take urgent action and that this should be added to the list of measures in the non-paper.

⁵⁵ South Africa, Cuba, Bangladesh, China, India, Russian Federation,

⁵⁶ Canada, United Kingdom,

⁵⁷ Bangladesh, Pakistan, China.

⁵⁸ Iran, Pakistan, South Africa.

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