

# COUNCIL MONITOR

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## HUMAN RIGHTS COUNCIL, 4<sup>TH</sup> SESSION DAILY UPDATE, 27 MARCH 2007

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### Overview

The Human Rights Council (the Council) met again for an all day session that ran from 9 am to 6 pm. The morning session of the Council began with the conclusion of the interactive dialogue with the Special Rapporteur on torture and Special Rapporteur on the promotion and protection of human rights while countering terrorism that had begun yesterday. The discussion focused on specific and technical points raised in their reports, including the question of the application of universal jurisdiction and the situation in Nepal, Guantánamo and Iraq (torture), and issues relating to racial profiling and suicide attacks (counter terrorism).

The Council then heard presentations from and held interactive dialogues with:

- The Special Rapporteur on freedom of religion or belief;
- The Special Rapporteur on freedom of opinion and expression;
- The Chairperson-Rapporteur of the Working Group on Arbitrary Detention;
- The Special Rapporteur on extrajudicial, summary or arbitrary executions;
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- The Chairperson-Rapporteur of the Working Group of Experts on People of African Descent.

The Special Rapporteur on freedom of opinion and expression highlighted the issue of safety of media professionals. He also identified rising censorship as a concern and emphasised the need for global Internet governance that is anchored to a human rights vision. The Special Rapporteur on religion or belief stressed that preventive measures are a crucial tool in promoting religious tolerance and challenging intolerance. She highlighted violations occurring against individuals and raised concerns about the imposition of dress codes for women. She also highlighted her findings from her missions to Azerbaijan and the Maldives. The Chairperson-Rapporteur of the Working Group on arbitrary detention emphasised the issue of arbitrary detention in the context of international transfer of detainees and expressed concern about renditions, reverse diplomatic assurances, and the continuously growing prison population around the world. She highlighted the main findings and recommendations arising from the Working Group's missions to Ecuador, Nicaragua, Honduras, and Turkey. States and NGOs raised a wide variety of issues in the interactive dialogue with these three special procedures.

The Special Rapporteur on extrajudicial, summary or arbitrary executions touched on a number of significant issues in his presentation ranging from the necessary elements of thematic special procedures, to the relevance of the mandate in the context of the war on terror, and his conclusions in relation to the requirements that the death penalty may only be imposed for the 'most serious crimes' and the mandatory death sentences are prohibited. He highlighted concerns about the situation in Iran and Sri Lanka and described the findings of his missions to Guatemala and the Philippines. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance drew attention to the resurgence of racism and xenophobic violence and defamation of religion, persecution of national minorities, reactions against asylum and immigration, and increasing racism in sport. He gave an overview of his missions to Switzerland and Italy. The Chairperson-Rapporteur of the Working Group of experts on people of African descent focused on the issue of racial profiling in his presentation. As the last hour of the Council's session was devoted to consideration of draft decisions, there was insufficient time to conclude the interactive dialogue with the last three special procedures and only concerned countries were able to make presentations. The interactive dialogue will resume tomorrow morning.

The Council adopted two draft resolutions by consensus this afternoon. These resolutions dealt with the 'human rights situation in the Occupied Palestinian Territory: follow-up to the Human Rights Council resolutions S-1/1 and S-3/1'<sup>1</sup> and the intergovernmental Working Group on the review of mandates.<sup>2</sup>

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

### **Conclusion of interactive dialogue**

Overall, the report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism was well received by the Council.<sup>3</sup> Virtually all delegations expressed support for the

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<sup>1</sup> A/HRC/4/L.2, 13 March 2007 is available at 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](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>2</sup> A/HRC/4/L.6, 21 March 2007, is available at 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](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>3</sup> A/HRC/4/26, 29 January 2007, Add. 1 (Turkey) 16 November 2006, Add. 3 (Australia) 14 December 2006. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has provided unofficial summaries ("Reports in short") of these reports available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

mandate holder and the quality and content of his report. The Rapporteur was forced to leave the session early, and was therefore given the floor before all delegations had commented on his report. He did, however, address those questions that had been put forward already. He also stated that he would follow the discussion through the webcast and provide answers to those questions in writing.

Many States agreed that counter-terrorism strategies adopted by States should not violate human rights.<sup>4</sup> Germany, on behalf of the European Union (EU), elaborated on this point by stating that counter-terrorism efforts must be conducted in accordance with international law.

### ***Racial profiling***

Switzerland stated that racial profiling, one of the main themes of Mr Scheinin's report, can infringe on the principle of non-discrimination. The Republic of Korea noted the Special Rapporteur's findings that terrorist profiling based on stereotypical generalisations are ineffective and counter-productive, let alone incompatible with human rights.<sup>5</sup> India added that profiling should focus on individual conduct rather than on ethnicity or religion. Mexico was concerned about the use of terrorist profiling, and was of the view that profiling must be replaced by best practices in order to comply with international standards of human rights, the right to freedom, privacy and the presumption of innocence.<sup>6</sup> The delegation asked the Rapporteur for his suggestions in this regard.

Mr Scheinin replied that customs agents have to a great extent developed the professionalism of identifying certain traits that are indicative of someone about to commit a crime. He explained that these could also be used in the context of countering terrorism. In instances of heightened security, the Rapporteur stated that security agencies should either conduct universal or random searches, as terrorists would not be able to adopt strategies to avoid them. The Republic of Korea stated that 'optimal-inclusive profiling' based on accurate intelligence would be the ideal solution, but is hardly ever attainable. Therefore, the delegation welcomed the recommendation of employing random security checks. However, the Republic of Korea stated that this should be accompanied with a human rights-focused training and monitoring system for law enforcement officials on the ground.

Algeria felt that Paragraph 83 of Mr Scheinin's report undermined the principle of non-discrimination because it concedes that profiling may be acceptable 'if it is a proportionate means of countering terrorism'. The Algerian Ambassador felt that this is counter-productive because it opens the door for misinterpretation.

### ***Suicide attacks***

Switzerland asked the Special Rapporteur how he would legally qualify the process of targeted killings to prevent terrorist acts. The Rapporteur replied that human rights law establishes safeguards in this regard. However, Mr Scheinin stated that in a situation of armed conflict, humanitarian law must also be considered, and that "arbitrary deprivation of life" was defined differently in that context. He explained that when humanitarian law applies, there was a double requirement. The situation must be an armed conflict, and the target must be an active participant in the armed conflict to make the use of force permissible.

### ***Other issues***

The Swiss delegation also asked the Rapporteur how he would qualify the view that international law does not apply extra-territorially. Mr Scheinin responded by stating that humanitarian law was by definition

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<sup>4</sup> Indonesia, India, South Africa, Brazil, Chile.

<sup>5</sup> South Africa supported the view that it was counterproductive by adding that profiling based on religion or race was dehumanising.

<sup>6</sup> Indonesia, Islamic Republic of Iran, Kenya, Brazil, Algeria, Pakistan (on behalf of the OIC) also felt that profiling was incompatible with the principle of non-discrimination.

applicable extra-territorially, and that customary human rights norms are applicable in any part of the world. Mr Scheinin also supported the view of the Human Rights Committee and the International Court of Justice that the relevant articles of the *International Covenant on Civil and Political Rights* are applicable extra-territorially.

The Russian Federation was of the view that Mr Scheinin's report should place more emphasis on the rights of the victims of terrorism. It also felt that non-State actors bear responsibility for the violation of human rights, especially in situations where they have *de facto* control of a region. The Rapporteur responded by suggesting that delegations refer to his first report, where he set out a methodology to address the rights of victims and the responsibility of non-State actors.

Pakistan (on behalf of the OIC) stated that a distinction must be made between terrorism and the right to resist foreign occupation. The International Organization for the Elimination of all Forms of Racial Discrimination identified foreign occupation as a major act of terrorism, and declared that resistance to occupation is a legal right; therefore it was lawful for Palestinians and Iraqis to resist occupation. However, the representative stated that his statement did not intend to justify or condone the killing of innocent civilians.

### **Response to Turkey**

Mr Scheinin addressed the comments made by Turkey on the previous day regarding the observations and conclusions he had made in his report. The Special Rapporteur began by welcoming the continued cooperation of the Turkish Government. However, he did remain concerned about the *Law on Compensation of Damages Resulting from Terrorism and Combating Terrorism*. Mr Scheinin was of the view that the law contained some elements of best practice, but he remained concerned about the uneven application of the law in different parts of the country.

The Special Rapporteur agreed with Turkey that an assessment of the root causes requires an interdisciplinary approach, he refuted their claim that such an approach fell outside of his mandate.<sup>7</sup> He explained that by addressing the root causes he was in no way condoning acts of terrorism. He was of the view that it was indeed part of his mandate, since his mandate fell within the remit of the UN Counter-Terrorism Implementation Task Force (CTITF).<sup>8</sup> Mr Scheinin explained that part of the work of the CTITF involves addressing root causes of terrorism.<sup>9</sup> He also stressed that strategies to counter terrorism should be long-term and not a reaction to immediate events. He elaborated that the promotion of human rights is critical to any such sustainable strategy, and that looking at root causes was therefore essential.

### Special Rapporteur on torture

### **Conclusion of interactive dialogue**

Almost all States<sup>10</sup> expressed gratitude to the Special Rapporteur on Torture for his valuable report<sup>11</sup> and condemned the use of torture.

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<sup>7</sup> He thanked Finland for welcoming his considerations of the root causes.

<sup>8</sup> The CTITF was set up following the adoption of the United Nations Global Counter-Terrorism Strategy by General Assembly Resolution 60/288.

<sup>9</sup> The root causes include: prolonged unresolved conflicts; dehumanisation of victims of terrorism in all its forms and manifestations; lack of rule of law and violations of human rights; ethnic, national and religious discrimination; political exclusion; socio-economic marginalisation; lack of good governance.

<sup>10</sup> Cuba, Cameroon, Morocco, Senegal, Switzerland, Australia, Germany (on behalf of EU), Indonesia, Georgia, South Africa, Norway, Nepal, New Zealand, Netherlands, Mexico, Costa Rica, Denmark, Kenya, Mali, USA, the Republic of Korea, Colombia, Canada, Paraguay, Costa Rica, Brazil, Chile, Nigeria.

A number of States, besides deploring the use of torture, described in detail all domestic measures undertaken by their own government to fight torture, to improve detention conditions, to guarantee prosecution, to punish those committing torture, to implement the *Convention against Torture* (the Convention), to comply with international provisions, and to continue to cooperate with the United Nations (UN) and the Special Rapporteur.<sup>12</sup> A number of States also pointed to their ratification and implementation of the Convention<sup>13</sup> and its Optional Protocol.<sup>14</sup> Mr Nowak welcomed such positive steps forward.

Many countries recalled visits by the Special Rapporteur or provided information on forthcoming visits for the benefit of the Council. Uzbekistan recalled its invitation to the Special Rapporteur on Torture in March 2004. It also stressed that the Government has adopted the national plan of action for the implementation of the legislation against torture and that torture has been condemned by all authorities in Uzbekistan. Paraguay also drew attention to Mr Nowak's country visit in November 2006 during which he attended a workshop on prevention of torture organised by the Government, the APT, and other NGOs. Paraguay highlighted the freedom granted to the Special Rapporteur in visiting any detention centres and in making any personal interviews he wished. Paraguay clarified that it could not comment on the report on the mission to Paraguay since the Government had not yet been able to access the report in Spanish.

The Senegalese delegation recognised that the recent developments in Senegal could not have been included in Mr Nowak's report. However, it stressed that a number of measures have been taken by its Government. Senegal also stressed that international cooperation is needed in support for these measures and for mobilising the necessary resources in order to ensure effective follow-up. Mr Nowak welcomed the measures taken regarding the Hissène Habré case. Finally, Nigeria recalled the country visit of the Special Rapporteur and underlined that that was made possible thanks to the cooperation of the Government. Furthermore, Nigeria stressed its willingness to continue to cooperate with the UN and with the Special Rapporteur. Nigeria asked Mr Nowak to submit his report as soon as possible to the Council.

Nepal was less supportive of the work of the Special Rapporteur. Declaring the report to be ambiguous and unverifiable, Nepal stated that it is fully committed to end torture and is party to international conventions. Nepal admitted that isolated cases of torture had occurred in the past, yet asserted that the Government does not allow for torture in any way and that persons accused of committing torture are prosecuted and that victims receive compensation. The Asian Legal Resource Centre (ALRC) challenged this statement, and declared that numerous allegations of cases of torture were still received. Mr Nowak responded that he appreciated the cooperation showed by Nepal. However, he underlined that the use of torture at the time of his visit was systematic in Nepal. He concluded that he was happy to hear that the situation has improved and that he looks forward to undertaking a new visit.

Concerning future visits, the US expressed the need for an urgent visit to Zimbabwe. Mr Nowak replied that he has sent urgent appeals to Zimbabwe and had received two informal invitations, which he hoped could soon become "formal" invitations. Germany (on behalf of the EU) regretted the few number of pending visits and asked whether any visit to Indonesia and Sri Lanka was on the agenda and whether he received any invitation by Iraq. International Educational Development (IED) regretted that the mission of the Special Rapporteur to Sri Lanka had been postponed, and that the Government did not allow the Working Group on Disappearances to assess the Tamil crisis on-site. It also suggested a joint visit of Mr Nowak with the special procedures on internally displaced persons (IDPs) and racism. IED asked the Special Rapporteur to explain what plans are underway for his visit, and which steps he could take to ensure free and unfettered access to all

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<sup>11</sup> A/HRC/4/33, 15 January 2007. The report is available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports that are available at [www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

<sup>12</sup> Cameroon, Morocco, Senegal, Costa Rica, Georgia, Uzbekistan, Mali, Kenya, Colombia, Paraguay, Brazil, Nigeria, Mexico.

<sup>13</sup> Cameroon, Morocco, Senegal, Georgia Costa Rica, Paraguay, Brazil, Mexico.

<sup>14</sup> Senegal, Georgia, Costa Rica.

areas. Mr Nowak replied that new visits are on the agenda. The Indonesian delegation further informed the Council that the Special Rapporteur was invited to a visit to Indonesia and asked for clarification on how countries can be better assisted in combating torture in a manner not infringing national sovereignty.

On the question of protocol, the Russian Federation expressed concerns on some elements of the country visit system as contravening Russian legislation. Mr Nowak responded that he is always ready to undertake a visit, and that he would like to visit the Caucasus. As his mandate is non-negotiable, he replied that it is up to the Russian Federation to elevate its laws to meet UN standards on country visits.

Concerning allegations of the use of torture in other countries, Cuba was the first to raise the issue of Guantánamo, and for his insight on the denial of a visit to a joint mission of rapporteurs to detainees in Guantánamo. The International Commission of Jurists (ICJ) urged the USA to grant unlimited access to persons under detention, including Guantánamo Bay. Mr Nowak replied that he has not yet been allowed to visit Guantánamo but that he had presented a new request. The International Islamic Federation of Student Organisations also raised the question of the excessive use of force in occupied territories such as Kashmir, and urged the Council to ask the Special Rapporteur to visit Kashmir.

Substantive thematic questions arising from the report included the question of universal jurisdiction. Switzerland, Mexico, the USA, and IED welcomed the discussion on the application of universal jurisdiction over persons alleged to have ordered or committed torture, and asked what can be done to promote its use. In this regard, the Association for the Prevention of Torture (APT) asked the Special Rapporteur whether this obligation of States could be considered as customary international law, and thus applies to all UN member States. Mr Nowak added that the universal jurisdiction principle applies also to non-State parties because of its universal nature. Switzerland and the Netherlands asked the Special Rapporteur on his opinion on the reasons for the reticence by many State parties to make use of the possibility (not to speak of the obligation) to exercise universal jurisdiction given by the Convention. Mr Nowak answered that a good practice would be to incorporate obligations into national legislation, and took Senegal as a positive example.

Australia, Norway and the USA also highlighted the importance of preventing impunity as an essential deterrent for ceasing torture perpetuation. Germany (on behalf of the EU), the Republic of Korea and Canada focused on the right of victims of torture to remedy and reparation and welcomed with interest the mechanism that requires States where torture is systematic to contribute to the UN Fund for Victims of Torture. The Netherlands emphasised the importance of regional organisation cooperation in combating torture. Denmark asked how the Council could elaborate criminal responsibility of States for violating the Convention and how to avoid double standards in country visits.

Other issues were raised by NGOs that did not receive attention by States. The APT asked Mr Nowak whether he would consider the question of the obligation to criminalise torture in a report, or whether it would suffice to leave this to a general comment of the Committee against Torture. It also asked if he would undertake joint country visits with other Special Rapporteurs from the African Commission or the Organization of American States for instance. Human Rights Advocates asked the Special Rapporteur how psychological torture could be addressed without the availability of strong special procedures, and how limitations to the imposition of capital punishment can continue to be recognised and enforced by the Council. Defence of Children International raised concerns relating to torture in juvenile detention centres as a means of obtaining confessions. It asked Mr Nowak what steps he may take to address the issue of torture of children in custody, and what recommendations he would make to States to more effectively investigate and prosecute cases of torture and other human rights violations against children. The Asian Legal Resource Centre (ALRC) declared its concern at the use of torture as a political tool. It asked the Special Rapporteur how the Council could assist his mandate to address this widespread problem.

Mr Ambeyi Ligabo, the Special Rapporteur on the right to freedom of opinion and expression, presented his annual report and report on communications sent and replies received from governments.<sup>15</sup> Mr Ligabo stated that the exercise of freedom of opinion and expression is a significant indicator of the level of protection and respect of all other human rights in a given society. Freedom of the media, especially the press, is essential for the functioning of truly representative democracies. He noted that the issue of safety of media professionals, and journalists in particular, lay at the heart of his mandate. Mr Ligabo emphasised that the international community must take a greater sense of responsibility for legal norms of the safety of media professionals because of the limited protection currently available for them in international humanitarian law. He stated that media companies should ensure that their employees are equipped with life insurance but that the main responsibility lay with governments to ensure that journalists are protected from attacks and to provide an enabling environment for their activities. The Special Rapporteur stated that his report provided a draft outline of themes for a study on the safety of journalists, something he has proposed from 2002 on. He requested a concrete engagement from the Council on this initiative and also suggested creating a UN fund for the safety of media professionals.

The Special Rapporteur also addressed the issue of rising censorship, which he identified as a major obstacle for the exercise of freedom of expression. He noted in this regard the importance of the exercise of freedom of speech in the examination of historical events. He also stated that the exercise of the right to freedom of expression carried with it responsibilities, which require good judgement and tolerance. He emphasised that global Internet governance, while anchored to a strong human rights vision, should guarantee that economic and commercial initiatives do not suffocate the exercise of individual and collective freedoms. Mr Ligabo also spoke about the need to increase access to information and for individuals to have the right to submit a complaint to an independent body when their right to access of information was violated.

### Interactive dialogue

A number of States commented on the inter-relationship and complementarities between freedom of expression and freedom of religion.<sup>16</sup> The Order of Malta requested that both Special Rapporteurs advise the Council on what steps are being envisaged on the issue of promoting a reflection of the interpretation of Article 20 of the ICCPR, that they had referred to in their joint report to the second session of the Council. Indonesia noted references to the correlation between freedom of expression and religion in the Special Rapporteur's report and asked him whether this suggested that distinction between various mandates had become blurred leaving them each susceptible to various interpretations by different relevant special procedures. Indonesia also asked the Special Rapporteur how States and other stakeholders can effectively coordinate their efforts to ensure that the overlap between freedom of religion and expression can be better coordinated in the Council's deliberations.

Pakistan, on behalf of the Organization of the Islamic Conference (OIC), stated that right to freedom of opinion and expression is not absolute and entails certain responsibilities. It endorsed the Special Rapporteur's recommendation that independent media authorities and associations should be vigilant about the use of forms of expression characterised by defamation of religions and discriminatory connotations of ethnic and vulnerable groups. It also encouraged the Special Rapporteur to draw broad guidelines that may help the media in building a code of ethics to better organise their work. Mr Ligabo responded that he viewed cooperation between media professionals and the State as a code of conduct may not be as helpful.

Canada, in a statement on behalf of Canada, Australia and New Zealand (CANZ), welcomed the joint initiatives that the Special Rapporteur had undertaken with his counterparts at the regional organisations on

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<sup>15</sup> A/HRC/4/27, 2 January 2007 (report), Add.1 (summary of communications), The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports that are available at [www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

<sup>16</sup> Order of Malta, Indonesia, the Sudan.



the central role of the press in progression of democracy and human rights and enquired about any projects he was considering undertaking to advance discussions this issue. Georgia drew the attention of the Special Rapporteur and international community to the role of non-State actors that negate the freedom of opinion and expression, especially in cases where the legitimate government does not exercise control. Mr Ligabo responded by pointing out that he had stated in his presentation that the exercise of the right to freedom of expression carries responsibilities both on State and non-state actors.

Several States<sup>17</sup> reiterated the importance of protection for journalists. The United Nations Education, Scientific and Cultural Organization (UNESCO) stated that freedom of expression was important for building strong democracies. It stressed that the ultimate threat to freedom of expression stemmed from violence against media professionals and their institutions and pointed out that over 500 journalists have been killed in the last decade, but only a few of the killers are brought to justice, and expressed its concern that violence and harassment of journalists has been used as a means of silencing those who are trying to shed light on unpopular opinions, investigate crime or corruption, or highlight political opposition. The Netherlands enquired what the Special Rapporteur's views were on the role of the international community in combating this kind of violence. Norway requested that the Special Rapporteur elaborate on his proposed study and how it could be realised and used after its completion.<sup>18</sup> It also requested the Special Rapporteur's opinion on what could be done to identify and adequately punish perpetrators of attacks against journalists. Reporters Without Borders drew the attention of the Council to Security Council *Resolution 1738* which focused on the issue of protection of civilians, with a special emphasis on journalists. It enquired whether the Special Rapporteur would make available all information at his disposal to the UN Secretary-General for inclusion in his report to the Security Council and would he, if mandated by the Council, testify before the Security Council on this issue. It also asked whether the draft resolution on the study proposed by the Special Rapporteur would be re-tabled or would this important task have to wait till the Council completed its institution building. Mr Ligabo affirmed that he was ready to undertake a study on the safety of journalists. He had proposed that the study look critically at the roots causes of violence against journalists, international protection for media professionals and their legal status, responsibilities on States and non-State actors for security of journalists, accountability. It could also examine other ways to improve the security situation of journalists and he reminded the Council of his proposal for a compensation fund for the families of journalists that have been killed. In response to the questions posed by Reporters Without Borders, Mr Ligabo stated that he would be happy to provide all information at his disposal to the Security Council and was ready and available at anytime to address the Security Council and put forward proposals on the issue of safety of journalists, if so requested.

The Netherlands expressed its concern with regard to Internet censorship and registration of Internet users in several countries, including China and Vietnam. It requested the Special Rapporteur's opinion on whether the registration of Internet users could constitute a violation of the right to freedom of opinion and expression, and in what circumstances. It also requested a clarification from the Special Rapporteur on what the specifications of different categories of Internet users are and the consequences this distinction would have in terms of protection as he had referred in his report to collection of data from and tracking of 'regular' Internet users. Norway also highlighted that several countries are systematically tracking and harassing website contributors and bloggers and enquired whether the Special Rapporteur believed any progress had been made on this issue at all. Germany (on behalf of the EU) also requested that the Special Rapporteur elaborate on the limitations on the right to freedom of expression on the Internet that he had referred to and also provide an assessment of whether these negative developments are on the rise. The USA also asked the Special Rapporteur to advise the Council on how it could help prevent threats to Internet freedom. Mr Ligabo responded to Germany by identifying the following limitations on the right to freedom of expression on the internet: close monitoring of websites in order to identify criticism and opposition by people who use the internet; arrest of persons for expressing their opinion on the internet or websites; and political repression by governments.

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<sup>17</sup> Canada (on behalf of CANZ), Norway, Czech Republic, Morocco, and the Netherlands.

<sup>18</sup> This was also raised by Germany (on behalf of the EU).



The Republic of Korea shared the Special Rapporteur's views on the necessity of an international organisation for Internet governance and stated that it would like this body to have a strong human rights approach, enhance digital infrastructure, and reduce the digital divide. Finland also requested the Special Rapporteur's assessment about the gender-related core problems that need to be addressed in order to empower women and to narrow down the digital gap. Due to a lack of time, Mr Ligabo was unable to respond to Finland in detail but he pointed out that he had dealt with this issue comprehensively in his previous reports. On the issue of internet governance, he noted that the World Summit on Information Society had decided in 2005 to establish an international organisation on internet governance and a working group was currently focusing on this issue.

Germany (on behalf of the EU) also requested the Special Rapporteur to inform the Council on when he plans to visit Zimbabwe and whether he would report his findings to the sixth session of the Council. Australia expressed concerns about the treatment of civil society and the press in Zimbabwe, Fiji and Sri Lanka. Mr Ligabo explained that he would not be visiting Zimbabwe as he had sent an invitation to undertake a visit in 2003, which had never been responded to.

The Czech Republic, in view of the joint statement by 54 States at a previous session of the Council, requested that the Special Rapporteur include in his next report violations of freedom of expression in relation to sexual orientation and gender identity.<sup>19</sup> The delegation drew the attention of the Special Rapporteur to the recently adopted *Yogyakarta Principles* in this regard.<sup>20</sup>

## Special Rapporteur on freedom of religion

Ms Asma Jahangir, the Special Rapporteur on freedom of religion or belief, presented her annual report, report on communication, and on her visits to Azerbaijan and the Maldives.<sup>21</sup> She stressed that preventive measures are a crucial tool in promoting religious tolerance and challenging intolerance and it was essential to take balanced and proportionate measures to early signs of developments that may lead to religious persecution or intolerance. The Special Rapporteur highlighted that there were issues and incidents occurring that were of alarming concern. These included: State agents torturing persons to force them to abandon their faith; threats to lawyers who defend those accused of religious offences; the insensitivity of staff of prisons to the spiritual needs of prisoners and disregard for religious convictions; and women being made to suffer the worst forms of humiliation, which are justified in the name of religion. Ms Jahangir noted that the imposition of dress codes for women is widely reported, despite the fact that such directives can only be made in very exceptional circumstances, when necessary to protect public safety, health, order, morals or the fundamental rights of others. In a number of countries, even where no specific legislation exists, women are turned away from educational institutions and jobs for wearing a religious symbol. In other situations, they are denied jobs for not wearing a religious symbol and women's attire continues to be a subject of government policies and laws.

Ms Jahangir referred to her joint report on incitement to racial and religious hatred and promotion of tolerance and noted that the threshold of acts referred to in Article 20 of the *International Covenant on Civil and*

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<sup>19</sup> The statement signed by 54 States had called for all special procedures to include in their focus the issue of sexual orientation and gender identity.

<sup>20</sup> The *Yogyakarta Principles* are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity, as a result of an international seminar of legal experts that took place in Yogyakarta, Indonesia from 6 to 9 November 2006. For more information, please check [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

<sup>21</sup> A/HRC/4/21, 26 December 2006, A/HRC/4/21/Add.2, 18 October 2006, A/HRC/4/21/Add.3, 7 February 2007. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries of these reports (*Reports in Short*) that are available at [www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

*Political Rights* (ICCPR) was relatively high. She stated that though some of the allegations concerning intolerance and hate speech in various countries that she received did not meet this high threshold, this information could sometimes be an early warning sign of rising intolerance.

In relation to her missions to countries in 2006, Ms Jahangir stated that she thought there was a high level of religious tolerance and harmony. She noted that she was encouraged by the interfaith engagement of religious leaders in Azerbaijan but recommended associating other religious communities, members of the civil society and women in this initiative. She was concerned however that in some cases the authorities may have blurred the thin line that distinguishes facilitation of religious freedoms from control. She stated that this had resulted in actual limitations on the collective right to freedom of religion or belief. She was also concerned that because of fear, some religious communities had been reluctant to meet with her during her visit. The Special Rapporteur stated that she welcomed the fact that national unity is highly prized in the Maldives. She was concerned however that the concept of national unity appeared to have become linked to that of religious unity or homogeneity. She stated that Maldivian citizenship is based on religious belief and political rights are only guaranteed to Muslims, and non-Muslims cannot exercise their religious rights in public. She also regretted the fact that the Government has entered a reservation to Article 18 of the ICCPR, which it has recently acceded to.

### Interactive Dialogue

Azerbaijan responded in their capacity as a concerned country saying that religious tolerance has been the bedrock of their society over a long period of time. The Government realise that problems do exist and believed that this may be due to a lack of professionalism from some officials. It however noted that some acts of religious intolerance mentioned in the report represented situations where representatives of non-traditional religious communities had systematically been in conflict with the current national legislation. It also disagreed with the assumption in the report that the Government controls the mass media. It pointed out the registration of religious associations was necessary in order for them to be treated as legal entities but was not a precondition to their exercising their right to freedom of religion. The delegation also informed the Special Rapporteur that the Council of Europe has submitted its views on a draft law related to conscientious objection that it is currently considering.

The Maldives said that they found Ms Jahangir report to be balanced and constructive with useful comments and suggestions. Maldives stated that as a country going through political change, it was important its new laws and legislation were in line with international standards. The Maldives fully concurred with the Special Rapporteur's conclusion that education was an area where much work is required. It also informed the Special Rapporteur that the Gender Ministry and the Attorney-General's office are holding discussions regarding the possibility of withdrawing Maldives' reservations to the *Convention on the Elimination of All Forms of Discrimination Against Women*. It noted that the Government was determined to ensure that Islam is practiced in the Maldives as a tolerant religion, which is respectful of human rights and fundamental freedoms.

Germany (on behalf of the EU) noted the Special Rapporteur had referred to communications which revealed violations of the right to freedom of religion coupled with violations of other human rights such as torture and deaths in custody. Which regions showed these negative trends and was she planning to request a visit to this group of countries, such as Eritrea, Democratic People's Republic of Korea and Uzbekistan?

In the interactive dialogue, many States expressed that more needed to be done to fully guarantee the freedom of religion and beliefs and to implement the 1981 *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*.<sup>22</sup> Some States also agreed that there was a need to depoliticise religious beliefs.<sup>23</sup> Germany (on behalf of the EU) enquired what the Special Rapporteur believed

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<sup>22</sup> Albania, India, Russian Federation, Australia (on behalf of CANZ group: Canada, Australia and New Zealand), the USA, and Bangladesh.

<sup>23</sup> India, Norway and Indonesia.

were effective ways in which the Council could depoliticise issues relating to religion or belief. In her response the Special Rapporteur strongly agreed with this statement saying that the depoliticisation of religion was a key requirement for the protection of rights surrounding religion and beliefs.

Finland and Albania both expressed concern at the vulnerability of women's religious rights and Finland asked Ms Jahangir if she had come across successful strategies for the protection of the religious rights of girls and women. In response Ms Jahangir stated that there had been good work towards strong practices protecting the religious rights of women and challenging the traditional cultural practices in some regions, she went on to say that change in this area had been achieved solely by women with very little support from other mechanisms and that they could congratulate themselves on this work.

The need for strong education against religious intolerance was highlighted by India and Australia (on behalf of CANZ). They stated that only through early intervention and education on plurality of beliefs, religious tolerance and understanding could religious intolerance be challenged. Australia (on behalf of CANZ) also expressed concern over reports of ill-treatment of religious minorities. Bangladesh expressed about the growth of Islamophobia in the mass media and pointed out that this has not been helpful in developing an atmosphere of tolerance and respect. Norway enquired about what could be done to counter the negative impact of the focus on religion (when it is used to reinforce illusions of exclusive identities and conflicts between groups or so-called civilisations), while maintaining a positive and active profile in regard to religious matters at large? India discussed the issue of incitement to religious or racial hatred and took due note of her recommendation that any legislation designed to prevent or counter this kind of incitement must be reviewed, assessed and applied by independent and non-arbitrary bodies. It also took note of her point that the application of hate speech legislation can be problematic where the law itself favours one religion or where a religion rather than freedom of religion or belief were the object of protection.

Switzerland voiced their concern that some States were requiring people to have their religion displayed on identity cards and asked the Special Rapporteur how the rights of minority groups and persons with no religion were affected by this. Ms Jahangir responded that in many situations the requirement of a religion or no religion to be shown on identity cards was detrimental to religious rights and could lead to persecutions of minorities. Indonesia and the Netherlands both stated that national interest policies such as counter-terrorism were challenging the standing of religious rights and Indonesia asked Ms Jahangir whether issues such as counter-terrorism can have an overriding importance above religious rights. The Becket Fund for Religious Liberty expressed concern on the use of defamation laws on religious issues. It and the United States of America highlighted the strong connection between freedom of speech and religious liberties. Ms Jahangir responded by stating that defamation laws should only be used in the most extreme cases and saw a close link between the use of defamation and the politicisation of religious rights.

## Working Group on arbitrary detention

Ms Leïla Zerrougui, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention (the Working Group) presented the report on its activities in 2006, a report on the opinions on individual cases adopted by the Working Group as well as reports on the Working Group's missions to Ecuador, Honduras, Nicaragua and Turkey.<sup>24</sup> Ms Zerrougui recalled that the Working Group had been working on a range of issues for the past 15 years, including the protection of human rights defenders and detention of persons because of their sexual orientation. She also pointed out that the Working Group is the only non-treaty based human rights mechanism expressly mandated to receive individual complaints.

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<sup>24</sup> A/HRC/4/40, 9 January 2007 (report); Add.1, 2 February 2007 (opinions); Add. 2, 26 October 2006 (mission to Ecuador); Add. 3, 9 November 2006 (visit to Nicaragua); Add. 4, 1 December 2006 (mission to Honduras); Add. 5, (mission to Turkey). The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports that are available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

Ms Zerrougui explained that the report of the Working Group contains legal opinions of a general nature on a number of issues including the applicability of international human rights law in international and non-international armed conflicts; detention of terrorist suspects in secret detention facilities, including their transfer from one country to another without extradition proceedings; prolonged detention of asylum seekers; and deprivation of liberty related to the exercise of freedom of religion or belief, opinion, expression and association.

The Chairperson-Rapporteur placed particular emphasis on the issue of arbitrary detention in the context of international transfers of detainees, an issue on which the Working Group has adopted a legal opinion in order to provide guidelines and recommendations to States. While supporting cooperation among States to bring perpetrators of terrorist acts to justice, Ms Zerrougui reminded the Council that normal criminal justice proceedings were better suited to try these persons than prolonged administrative detention or international transfers. The Working Group was of the opinion that circumventing the procedural guarantees associated with extradition proceedings by resorting to “renditions” risks to undermine the principle of non-refoulement.<sup>25</sup> Concern was also expressed at the increasing practice of so called “reverse diplomatic assurances”, where governments seek a guarantee from the receiving State that a person will continue to be detained when transferred.<sup>26</sup> The Working Group recommends that States cease the use of renditions, and refuse to give ‘reverse diplomatic assurances’. The Working Group was also alarmed by the continuously growing prison population around the world, as well as the high number of person awaiting judgment.

Turning to the reports on the country visits conducted, Ms Zerrougui recognised the efforts made by Ecuador to overcome the judicial crisis, but stressed that a recent amendment of the Code of Criminal Procedure which has led to a dramatic increase of pre-trial detainees should be repealed. On the visit to Nicaragua, Ms Zerrougui acknowledged that the country had undergone important reforms since the promulgation of the 1987 Constitution. She in particular commended the emphasis placed on the re-education and rehabilitation of juvenile offenders. The Working Group however noted that the registers kept at detention facilities are not adequate and a cause for concern, and that the penalties incurred for the use and sale of drugs, as well as those for insolvability are unnecessary high or not in compliance with international human rights law. With regards to the visit to Honduras, the Working Group applauded the entry into force of a new criminal procedure code in 2002, as well as the establishment of a separate juvenile justice system. Concern was expressed at the shortcomings in the system of public defenders, and about the issue of the violent youth gangs, the ‘maras’. Finally, she stated that the Working Group had observed substantial reforms in the past decade in Turkey but was concerned that the process appeared to have been more limited in relation to prosecution, trial and detention of terrorism suspects. Ms Zerrougui stated that the definition of terrorism was overly broad and the Working Group had recommended amending this definition. The Working Group also drew the Council’s attention to shortcomings in detentions outside the criminal justice system, including for asylum seekers and in psychiatric hospitals.

### **Interactive Dialogue**

All four concerned countries welcomed the reports. Ecuador recognised the importance of the mechanism, and in particular the benefits of the Working Group’s ability to receive individual complaints. Regarding the recommendations by the Working Group, they explained that the constitutional court had already taken into

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<sup>25</sup> Non-refoulement is a principle of international law that forbids the expulsion of a refugee or the extradition of a person into an area where he or she might be subjected to persecution or to torture.

<sup>26</sup> Normal ‘diplomatic assurances’ involve the receiving State promising to not treat an individual contrary to human rights norms when that person is extradited/returned by a sending State; they are used by States to try to make sure that they do not violate the principle of non-refoulement (see n 25). The use of diplomatic assurances is criticised by a number of special procedures, because they do not guarantee that the human rights of the person to be extradited are respected. This is even more so in the case of ‘reverse diplomatic assurances’ where the sending State seeks an assurance that the person handed over will be deprived of liberty even though no criminal charges against that person have been brought up. In short, reverse diplomatic assurances can amount to an agreement to gravely violate an individuals’ human rights, with the express consent of not one State, but two.

account their views about pre-trial detention. Nicaragua said that they were currently refurbishing a number of detention facilities, and were devoting additional resources to combat crime and train police officers. They disagreed on the issue of penalties for drug related crimes that the Working Group had criticised as unreasonably high. Nicaragua see such crimes as threatening the national security and as closely linked to transnational crime. Honduras welcomed the report by the Working Group, and underlined the utility of the special procedures in general. It said that they were aware of the difficult situation in their prisons, which they are working on the reintegration of the 'maras'. Turkey assured that the right to have access to a lawyer was being strengthened, and that a 'national action plan' had been put in place to overcome the shortcomings in the area of asylum seekers.

Germany (on behalf of the EU) asked Ms Zerrougui if the number of persons detained during international transfers was increasing, and what her suggestion would be to safeguard human rights during such transfers.<sup>27</sup> It also enquired whether the Working Group had examined the question of arbitrary detention linked to the fight against terrorism in conjunction with other Special Rapporteurs who had already taken a view on these issues. In her replies, Ms Zerrougui stated that extradition and other measures were enough to allow persons to be transferred, while protecting them against torture and other human rights violations. Finland was concerned by the low level of response by governments to urgent appeals sent out by the Working Group, and asked how the Council could assist the Working Group in that regard. Ms Zerrougui reminded the Council that the current reform process was a good opportunity to address such weaknesses in the system. Germany (on behalf of the EU) enquired if she could recommend best practices for States to address shortfalls in lack of resources earmarked for the prison services and legal aid. Ms Zerrougui replied by explaining that in particular in developing countries, the resource allocation could be improved, and that efforts should be made to use the available resources most effectively. Norway asked Ms Zerrougui if she could report any progress in the international efforts to improve the rights of detainees, and said it was looking forward to the upcoming visit by the Working Group to Norway. In her replies, Ms Zerrougui said that a better dissemination of best practices could go far in remedying many of the problems observed, and that the Working Group hoped to identify best practices during their visit to Norway.

Cuba asked the Working Group to reaffirm its decisions to call on the USA to release five Cubans detained by them, as well as to allow the wives of the prisoners to visit their relatives. In a right of reply at the end of the session, the USA insisted that all the detainees referred to by Cuba were given extensive due process safeguards and noted that after a seven month trial, all five were convicted of serious offences and given lengthy sentences. Further, it noted that the appellate court had upheld the decision of the Court of Miami. Belarus underlined their cooperation with the Working Group, specifying that the recommendations by the Working Group had been taken into account in the reforms initiated. As a result of the reform, the presumption of innocence will be enshrined in national law, as well as the introduction of specialised juvenile courts. They also announced the construction of new detention facilities to reduce overcrowding. Belarus assured the Working Group of continued cooperation. The United States of America (USA) disagreed with the Working Group's suggestion that the detention facility at Guantanamo Bay was illegal. They also defended the practice of renditions as a well established and useful tool to assure dangerous terrorists do not remain at large. In her replies, Ms Zerrougui agreed with the need to bring terrorists before a judge, but stressed that this must be within the confines of international law.

Defence for Children International<sup>28</sup> thanked the Working Group for its focus on children in pre-trial detention, and drew the Council's attention to the fact that most human rights violations occur during pre-trial detention. They called on States party to the *Convention on the Rights of the Child* to assure that arrest, detention and trial is done in conformity with international law.

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<sup>27</sup> Supported by the Netherlands.

<sup>28</sup> In a joint statement with the World Organisation Against Torture (OMCT) and the International Alliance for Women.

Mr Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions, presented his annual report, report on communications issued to governments and replies received, and on missions to the Philippines and Guatemala.<sup>29</sup> Mr Alston emphasised that the Council is only able to engage constructively and critically with the real world of gross and persistent human rights violations because of the system of special procedures. Though there is immense room for improving the system, there is also considerable room for undermining the system, all illustrated clearly by many of proposals for reform that have been put forward recently. He stated that if the special procedures system is undermined, the credibility of the Council will be destroyed and this choice lay in the hands of the membership of the Council. The Special Rapporteur took the view that though country missions are often seen as the *raison d'être* of the system, the role of a special procedure was a year-around one and the challenge was to devise ways to address countries that do not cooperate, cannot be visited or do not warrant a mission. In his view, the necessary elements of an effective thematic procedure include turning the communications procedure into a meaningful dialogue and with substantive conclusions by the rapporteur; addressing situations in countries which refuse to cooperate in reports; systematic follow-up to missions so that they are not seen as isolated undertakings; and one of the major roles of a special procedure should be assisting in the development of jurisprudence.

The Special Rapporteur notes that the United States of America (the USA) has argued in recent years that the Special Rapporteur and by extension the Council have no legitimate role to play when individuals are intentionally killed so long as these actions form part of the 'war on terror'. The Special Rapporteur has provided a detailed refutation of this approach in his report on communications but noted orally that such an approach would overturn the policy established and consistently followed over the last 25 years since the Commission on Human Rights established the mandate. He also addressed the issue of the death penalty noting that the mandate is neither an abolitionist or retentionist one and engages States in dialogue concerning the application of norms regulating the death penalty, when it legally exists in a State. One of the violations that continues to be controversial and challenged by a few countries relates to the requirements that the death sentence may only be imposed for the 'most serious crimes' and that mandatory imposition of the death penalty is prohibited. Mr Alston highlighted in this regard that this concept is an evolving one; determination of whether a particular offence falls among the 'most serious crimes' requires the interpretation and application of international law and is not a matter to be determined by the individual State alone; a large number of specific offences have been found to fall outside the scope of 'most serious crimes'; and the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life. In terms of mandatory death sentences, his report reached the following conclusions: even when a crime is amongst the 'most serious', there will be persons who could not be sentenced to death without violating other human rights norms; the experience of various bodies has demonstrated that mandatory death sentences are inherently over-inclusive; and judges must always be permitted to decide not to impose a death sentence to prevent cruel, inhuman or degrading punishment and arbitrary deprivation of life.

Mr Alston highlighted that he had received credible information that the Iranian judiciary is ignoring the prohibition on the juvenile death penalty. He noted that though the Islamic Republic of **Iran** (Iran) has issued a standing invitation to special procedures, it had failed to respond to his request to set dates for a visit. In relation to his mission to **Guatemala**, the Special Rapporteur concluded that there was credible evidence of death squad within the police force that was engaged in 'social cleansing'; murder of criminal suspects, gang members and other 'undesirables'. He stressed that the international community needs to act to ensure that this situation is addressed systematically including through prosecution of those responsible and implementation of the Guatemala's agreement with the UN to establish an International Commission against

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<sup>29</sup> A/HRC/4/20, 29 January 2007, A/HRC/4/20/Add.1, 12 March 2007, A/HRC/4/20/Add.2, 19 February 2007, A/HRC/4/20/Add.3, 22 March 2007. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports that are available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).



Impunity. He also pointed out that Guatemala has a very low conviction rate for murder, which he believed was linked to the deliberate failure to allocate sufficient resources, especially funding, to the criminal justice system and to a practice of using unregulated private security guards to provide protection to elites. Mr Alston also emphasised that the military in the **Philippines** remained in denial of the need to respond effectively to the significant number of killings attributed to them. He explained that they still maintain that leftist activists are being killed as part of continuing internal purges within the Community Party, despite the lack of evidence to support this claim. Mr Alston also suggested that the UN should establish a full-fledged international human rights monitoring mission in **Sri Lanka**.

### Interactive Dialogue

The Philippines welcomed the preliminary note by the Special Rapporteur on his visit to the Philippines but suggested that a number of improvements of a factual nature could be made in order to present a clearer and more accurate picture of the Government's efforts and the prevailing situation. It circulated a paper to the Council with information on the way its system of Government works and the respective human rights functions of various institutions to clarify some specific issues raised by the Special Rapporteur. It noted that the role of the prosecutor, for instance, which Mr Alston had described as passive and therefore problematic was actually so to ensure its independence. It was however exploring how cases might be evaluated and improved without damaging the prosecutor's credibility. The Philippine delegation stated that it needed information about the precise number of killings in order to address these cases but its own investigations had determined that some of the reports of the killings were inaccurate. It noted that action had been taken on many of the Special Rapporteur's first recommendations but commented that his recommendations concerning the Supreme Court failed to take into account the doctrine of separation of powers, which was an inherent feature of the Philippines Constitution. It also asked the Special Rapporteur to provide a copy of the document he had referred to as the "order of battle" in his report so that the Government could verify the authenticity of this document and then comment on it.

Guatemala welcomed the report and stated that it was considering the recommendations with great attention. It identified some of the steps taken by the Government to strengthen the justice system and fight against impunity but acknowledged that further action was needed.

The Council only had time to hear statements by concerned States today and the interactive dialogue will resume tomorrow morning with the other speakers who were on the list.

### Special Rapporteur on contemporary forms of racism

Mr Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance presented his annual report and his reports on his missions to Italy and Switzerland<sup>30</sup> to the Council. He drew attention to a variety of issues continued in his annual report, including: an international resurgence of racism and xenophobic violence targeted at minorities; reaction against asylum and immigration; persecution of national minorities; an international resurgence of defamation of religion, particularly against Muslims; and increasing racism in sports, particularly football. He examined the underlying causes of these trends and mentioned in particular the increasing legitimisation of racist parties and movements through tactics based on both ideologies and political alliances; an upsurge of racism amongst elites, for example in France; pervasive public comments downplaying racism; and a rise in revisionism. On

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<sup>30</sup> A/HRC/4/19, 12 January 2007, A/HRC/4/19/Add. 4, 15 February 2007, A/HRC/4/19/ Add. 2, 30 January 2007. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports that are available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).



the subject of revisionism, the Special Rapporteur discussed a recent conference on the holocaust organised by the Iranian Government, where the head of the American Ku Klux Klan was invited to speak.

The Special Rapporteur then gave an overview of his missions to Switzerland and Italy. On Switzerland, he noted the increase in racism and xenophobia and the absence of political recognition for this problem and strategies to combat it. He noted the rejection of multiculturalism and a gradual insertion of racist platforms into mainstream democratic parties, particularly surrounding the subject of immigration. The Special Rapporteur recommended that the Swiss authorities recognise racism and xenophobia in Switzerland and express their firm political will to combat these issues. He also urged the Swiss authorities to implement a comprehensive strategy of multiculturalism. Discussing his mission to Italy, the Special Rapporteur acknowledged a strong commitment by the Italian Government to combat racism and xenophobia. He stated that even though Italian society is not characterised by profound racism, xenophobia is increasing, partly as a result of the policies of the Berlusconi Government. He noted intolerance towards asylum seekers, Muslims and black communities and that these groups live in poor conditions. He specially highlighted the working conditions of migrants in agriculture, which he equated to modern slavery. He also drew attention to the situation of women migrant workers who work in miserable conditions as domestic workers and are strongly represented in prostitution. The Special Rapporteur urged Italy to establish democratic, egalitarian multiculturalism. Finally, the Special Rapporteur drew attention to positive developments in Japan, where historians are attempting to look again at the regional history to resolve painful memories that fuel current racism.

### **Interactive Dialogue**

Both Switzerland and Italy took the floor to respond to the Special Rapporteur's presentation. Switzerland commended the work, but wished to make some additions to the report. It noted that the Special Rapporteur had described the "dynamism" of racism and xenophobia in Switzerland. While acknowledging that racism existed in Switzerland, the Swiss delegation insisted that the authorities were fully aware of the problem. It noted that the report had discussed gaps in Swiss legislation and in response, the delegation had circulated information around the room which it felt would correct this allegation. It stated that there is no 'ghettoisation' in Switzerland and that foreigners are respected. Further, it noted that structures had been established to facilitate the situation at foreigners, with the federal system enabling a bottom-up approach to these problems.

Italy described several recent measures that had been adopted to supplement the information provided in the Special Rapporteur's report. It announced that the Italian parliament is currently considering a bill concerning the acquisition of citizenship; that the Government is exploring a specific legal agreement with Italian Muslim communities and a consultative council for Italian Islam was recently established within the Ministry of the Interior; that the Italian Government is about to present to parliament a comprehensive reform of the current immigration and also criminalise exploitation of foreign temporary workers; the parliament is discussing a comprehensive law on asylum-related issues; and that an inter-ministerial working group has been set up to draft an omnibus bill to develop a coherent framework for the rights of the Roma and Sinti population.

The Council only had time to hear statements by concerned States today and the interactive dialogue will resume tomorrow morning with the other speakers who were on the list.

### **Working Group of Experts on People of African Descent**

Mr Peter Kasanda, the Chairperson-Rapporteur of the Working Group of Experts on People of African Decent

presented the annual report of the Working Group.<sup>31</sup> Mr Kasanda focused on the issue of racial profiling, which affects people of African descent and Africans in all parts of the world.<sup>32</sup> The Working Group had reiterated the definition of racial profiling used in paragraph 72 of the Durban Programme of Action, which comprises the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities, or for determining whether an individual is engaged in criminal activity. He noted that the Working Group was of the view that religion should be included as one of the prohibited grounds for racial profiling as profiling on the grounds of religion had increased since 9/11.

Mr Kasanda noted that people of African decent and other minorities experience racial profiling in many situations. The most notorious practice of racial profiling against people of African decent is so called “driving while black”.<sup>33</sup> Individuals are sometimes subjected to physical abuse and/or racial slurs during these encounters. Mr Kasanda also pointed out that people can also be subjected to racial profiling while simply taking a walk down the street; while shopping; or while passing through the airports. They are questioned, searched, and even accused for doing criminal acts. He also noted the increase in manifestations of intolerance and discrimination against Muslims. He stated that the effects on victims of racial profiling can be very devastating because of a perception that due to the colour of his/her skin or ethnicity, a person is presumed to be guilty and attracts the suspicion of law enforcement agencies. Individuals not only feel humiliated but their human dignity is also violated. Profiling that is used as a tool to protect national security has the effect of institutionalising and legitimising prejudice against people who are being profiled. Mr Kasanda emphasised that no excuse should be used to justify racial profiling. The Working Group had taken the view that terrorist profiling practices that are based on race violate international human rights standards. Diversity, mutual understanding, and interaction are considered to be important tools for combating racism, racial discrimination, xenophobia and related intolerance and also for preventing the occurrence of racial profiling.

As his closing remarks, Mr Kasanda outlined a number of recommendations for action by States including eradicating the practice of racial profiling as a matter of urgency and clearly adopting and defining explicit legislative measures banning racial profiling and to address violations. He also welcomed the General Assembly’s decision to convene a Durban Review Conference in 2009.

## **Interactive Dialogue**

The Council only had time to hear statements by concerned States today and the interactive dialogue will resume tomorrow morning with the other speakers who were on the list.

## **Rights of Reply**

Several States spoke in right of reply to comments made throughout the day. Azerbaijan responded to comments made by the Armenian delegation on the treatment of Armenians in Azerbaijani territory. Azerbaijan argued that to the contrary Armenian aggression against Azerbaijan had in the past devastated historic and cultural monuments and resulted in ethnic cleansing of Armenians. Belarus responded to a statement made by Germany (on behalf of the EU) regarding a protest in Belarus. Belarus stated that the

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<sup>31</sup> A/HRC/4/39, 9 March 2007. The report is available at

[www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm](http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm). ISHR has prepared unofficial summary of this report under its Reports in Short publication, which is available at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council).

<sup>32</sup> This issue was discussed by the Working Group during its last session. All working papers submitted by the experts and participants are available at [www.ohchr.org/english/issues/racism/groups/african/4african.htm](http://www.ohchr.org/english/issues/racism/groups/african/4african.htm).

<sup>33</sup> Police officers often stop black people for minor traffic omissions. After such stops, police officers then proceed to look for aggravating evidence to implicate the driver.

organisers of the protest had attempted to hold their event in an unsanctioned place. They were warned that this place was not sanctioned and provided with buses to move to a permitted place. Belarus stated that even though the organisers ignored this warning, the authorities had not responded with force or detained them. Belarus recommended that the EU study its sources more carefully before making statements at the Council.

## Resolutions adopted by consensus

### **Human rights situation in the Occupied Palestinian Territory**

Pakistan, on behalf of the OIC and the Arab Group, presented the draft resolution on the 'human rights situation in the Occupied Palestinian Territory: follow-up to the Human Rights Council resolutions S-1/1 and S-3/1'.<sup>34</sup> The draft resolution calls for the implementation of Council *Resolutions S-1/1* and *S-3/1*, including the dispatching of the urgent fact-finding missions. It also requests the President of the Council and the High Commissioner to report on the implementation of, and Israel's compliance with these resolutions at the fifth session. Pakistan highlighted the lack of implementation of the Council's previous resolutions and stated that it was the common objective of all members of the Council to ensure the implementation of its decisions.

Germany (on behalf of the EU) noted that the EU had not supported the previous resolutions referred to<sup>35</sup> as they failed to call upon both parties to cease violence. It stated however that it regarded the full cooperation with mechanisms of the Council as a matter of principle and urged the adoption of the draft resolution without a vote.<sup>36</sup> Palestine thanked the EU for its position and in response to this gesture, did not present its prepared statement but merely urged the Council to adopt the draft resolution by consensus.

Israel stressed that *Resolutions S-1/1* and *S-3/1* were prominent examples of selectivity, politicisation, and double standards. Israel claimed that the OIC and the Arab Group were using the resolutions for their own purposes and these resolutions only allowed for the investigation of one side of the equation. Israel noted that it is never opposed to engagement with the international community through dialogue and consultation, rather than the imposition of inequitable and unbalanced resolutions. In an explanation after the vote, Canada stated that it supported the substantive principle with the view of the Council and encouraged all States to cooperate with the Council's mechanisms. It thought however that the extent of cooperation that can be expected will be a function of the fairness of the decisions. With regard to decision-making, Canada stated that decisions shall be made in accordance with General Assembly *Resolution 60/251*, which calls for universality, impartiality, objectivity and non-selectivity. Canada stated that it had been unable to support the original resolutions because they did not accurately and objectively reflect the situation and it could therefore also not support the follow-up proposed. It therefore disassociated itself from the Council's decision.

The draft resolution was adopted by consensus.

### **Working Group on review of mandates**

Algeria presented the draft resolution on the intergovernmental Working Group on the review of mandates.<sup>37</sup> The draft resolution requests the Coordination Committee of special procedures to extend the deadline for the

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<sup>34</sup> A/HRC/4/L.2, 13 March 2007 is available at 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](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>35</sup> *Resolutions S-1/1* and *S-3/1*.

<sup>36</sup> Supported by Palestine, Netherlands,

<sup>37</sup> A/HRC/4/L.6, 21 March 2007, is available at on the OHCHR extranet which can be accessed at

submission of comments on, and inputs to the draft manual of special procedures till the 18 June 2007. It also requests the Working Group on the review of mechanisms and mandates to present the outcome of its discussions on the code of conduct regulating the work of the special procedures to the fifth session of the Council. The President noted that there were three new co-sponsors from the African Group. With regard to the text of the draft resolution, Cuba made a correction in the Spanish version. It changed “the” in the sentence “...**the** system of the special procedures” to “...**a** system of special procedures”.

Germany (on behalf of the EU) and Canada emphasised that they did not support the original decision requesting the Working Group to draft a code of conduct. They would not break consensus on the follow-up decision but their actions should not be construed as support for the original decision. Canada expressed its deep concern on the code of conduct and stressed that the code of conduct will hinder the effectiveness of the special procedures in carrying out their mandates.

The draft resolution was adopted by consensus.

### Other issues

A revised schedule for the informal consultations was circulated today and indicates that the informal consultations on the future system of expert advice will now be held on Friday morning (30 March).

<b>Date</b>	<b>Morning (8.30 – 10 am)</b>	<b>Lunchtime(1.30 – 3 pm)</b>
28 March	Methods of work and rules of procedure	Review of special procedures
29 March	Complaint procedure	
30 March	Expert advice	
The informal consultations will be held in room XXIII (23).		

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<http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).



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