

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, 4TH SESSION DAILY UPDATE, 28 MARCH 2007

Overview	1
Special Rapporteur on extrajudicial, summary or arbitrary executions	2
Special Rapporteur on racism	4
Working Group of Experts on People of African Descent ...	5
Special Representative of the Secretary-General on transnational corporations	6
Special Rapporteur on health	7
Special Representative of the Secretary-General on human rights defenders	8
Informal consultation on the review of mandates of special procedures	10
Informal consultation on rules of procedure and methods of work	12
Rights of reply	13

Overview

The Council today resumed its normal daily schedule of two meetings to hear the reports of six special procedures. The morning session was devoted to the conclusion of the informal dialogue with the Special Rapporteur on extrajudicial executions, the Special Rapporteur on contemporary forms of racism and the Working Group of experts on people of African descent. The dialogue on extrajudicial, summary, and arbitrary executions addressed the Rapporteur's mission to the Philippines and the previous mission to Sri Lanka, as well as the death penalty, impunity, and the relationship between human rights law and international humanitarian law. The main issues raised in the interactive dialogue on racism included the rise of Islamophobia, multiculturalism and the balancing of freedom of expression and freedom of religion. Finally, the interactive dialogue relating to the Working Group on people of African descent addressed the Working Group's study on racial profiling, the question of country visits, and the need to secure funding in order to help the mandate to work effectively.

The morning's interactive dialogue, and the succeeding rights of reply, brought the Council up to the adjournment of the meeting at 1 pm. This meant that the Council was running exactly one meeting late. The afternoon meeting, which was originally supposed to take place in the morning, then comprised of the

presentations of Mr. John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Paul Hunt, Special Rapporteur on the right to health, and Hina Jilani, Special Representative of the Secretary General on human rights defenders.

Mr. Ruggie noted broad engagement from a wide range of stakeholders in the mapping of standards, gaps and trends. He pointed out that it is a State's duty to protect its citizens against human rights abuses, and that not all States had been punishing corporate actors who committed abuses. Ms Jilani highlighted the difficulties faced by defenders of social and economic rights, in particular defenders of land rights, labour rights and social rights, such as the right to adequate housing and the right to food. On the subject of private enterprise, she noted collusion between the public and private sectors to the detriment of the protection of human rights defenders. Mr Hunt noted that human rights are not mainstreamed in the work of the World Health Organization (WHO). He referred to the high rate of maternal mortality as 'a human rights catastrophe' and that the Council should hold a special session on it. Mr. Hunt expressed his concern at the health situation of refugees and IDPs in Iraq and neighbouring host countries, and the dire situation of the sick, infirmed and elderly in the Occupied Palestinian Territories (OPT) due to economic sanctions imposed by donor countries.

Elsewhere, the Facilitators of the Working Group on the review of mandates of special procedures, and on working methods and rules of procedure, held informal consultations on the progress of the Working Group.

Tomorrow morning will commence with a continuation of States giving their interventions in the interactive dialogue, which was not completed this afternoon. Mr. Ruggie will then respond. Mr Hunt and Ms Jilani have already made their responses and will not be in attendance. Four rights of reply will be heard tomorrow.

Special Rapporteur on extrajudicial, summary
or arbitrary executions

Conclusion of interactive dialogue

One matter given considerable time during the conclusion of the interactive dialogue with the Special Rapporteur on extrajudicial executions was the question of capital punishment. Germany (on behalf of the EU) worried specifically about China's and Saudi Arabia's use of the death penalty. Cuba addressed concerns with the USA's use of the death penalty in the greater framework of their understanding of the right to life. Mexico expressed concern over Mr. Alston's definitions of the "most serious crimes", in so far as they felt that he had included certain crimes that were sufficiently serious to warrant such categorisation, and hoped that he would continue to revise the list to be more representative of the worst offenses. Indonesia agreed with the Special Rapporteur's characterisation of the need to only impose the death penalty for the "most serious crimes," and insisted that it was up to each sovereign State to decide whether the death penalty would be legal in their country.¹ Singapore on the other hand noted that because there was no consensus in either the international community or customary international law, there were no standards as to what constituted a "most serious crime".

Certain States also raised the question of executions in other countries, or responded to statements raised concerning their own countries. New Zealand and Norway expressed concern regarding Iran's child executions, and were joined by the USA in this concern. Iran insisted that they were in accordance with their obligations under the *Convention on the Rights of the Child*. Mr. Alston responded that the agenda of the Council would be short indeed if nothing without complete consensus under customary international law was discussed. Mr. Alston also commended China for having a surprisingly open debate regarding the death penalty. Uzbekistan expressed concern that their communication to the Special Rapporteur was not mentioned in his addendum, and instead there was only information that the country did not facilitate a country visit. The delegate reminded the Council that Uzbekistan is in the process of abolishing the death penalty, a rule which will enter into force on 1 January 2008, following a moratorium that has been in force since March 2005.

¹ Singapore also mentioned their belief that each State must be responsible for their own laws regarding capital punishment.

Substantive questions were also put to the Rapporteur on the application of the death penalty. The UK, who expressed its concern at homosexuality ever being considered a capital crime, asked what the international community should do to ensure that homosexuality was not punished with the death penalty. New Zealand and Norway wondered what the Council could do to more effectively support the abolishment of the death penalty. The Rapporteur did not have time to respond to these questions posed.

The question of impunity was also discussed in detail. Australia commended the Special Rapporteur for reminding all concerned that this was an issue that needed to be dealt with. It was also raised in the context of the Philippines and Sri Lanka. The World Council of Churches called the climate of impunity a factor in the continued extrajudicial killings in the Philippines, and called for the UN to create a Special Rapporteur for the Philippines to respond to this. Closely related to this concern are those who interact with the Special Rapporteur or representatives of special procedures on this and related subjects and are consequently placed in danger. The Asian Legal Resource Center expressed concern about Mrs. Siche Bustamante-Gandinao, who was interviewed by the Rapporteur during his visit and was later killed. Mr. Alston condemned this killing, as well as the military's response that she was a rebel. In their right of reply, the Philippines said that actions were being taken in response to the killing.

Four NGOs² made statements regarding extrajudicial killings in the Philippines, addressing the illegality of targeting civilians in armed conflict; the need for credible investigations; and the targeting of trade union activists. Several groups³ also raised their concerns about the situation in Sri Lanka, either requesting an update on the situation or questioning the country's cooperation. Sri Lanka insisted that it hadn't received a communication from the Special Rapporteur since March 2006. Mr. Alston responded that he will follow up in full when he is mandated to do so, which will fall next year. He also clarified that he had not sent many additional requests because he had been discouraged by Sri Lanka's lack of response. Sri Lanka also commented that they are taking positive measures, including a spokesman to discuss the arrest of gang members, and the resolution of some disappearances. They reminded the Council that they are committed to promoting and protecting human rights, but also must combat terrorism.

In his reply, Mr. Alston noted that perhaps he might need to change his approach in country recommendations, as Guatemala and the Philippines had reacted positively to his reports. He impressed upon the Council that the role of the Special Rapporteur—and special procedures more generally—was to be catalytic, and that they should stimulate national debate. Turning to specific issues, the Rapporteur was positive about the statement of the USA on the complementarity of human rights law and international humanitarian law⁴ and responded that he looked forward to an ongoing debate on that matter. He also responded that the Russian Federation's concern about the role of non-State actors in extrajudicial, summary, or arbitrary conditions was well-founded, and reaffirmed its importance. In response to Germany's (on behalf of the EU) comments regarding the activities of the New People's Army (NPA) in the Philippines, the Special Rapporteur commented that although the NPA is no doubt responsible for many killings, it was important that those who supported their political points of view were not targeted for violence. He also expressed concern over Iran's lack of responses to his inquiries, and recommended that the Council should start a dialogue between its Chair and the Government of Iran to facilitate cooperation. He hoped this could show the new spirit of cooperation that was supposed to be the 'leitmotif' of this new Council.

Other concerns raised that did not illicit a response from Mr. Alston included Sweden's enquiry into alternatives to replace the *manu dura* policies in Guatemala. Sweden also asked what could be done to make the most vulnerable groups in society suffer less, and noted that these groups were often targeted for violence that included arbitrary killings. Amnesty International asked about the extent to which full transparency had been discussed since the Special Rapporteur's previous report on the theme.

² Asian Legal Resource Center; the International League for the Rights and Liberation of Peoples; the International education department/Indian Council of South Africa; and Public Services International.

³ Australia and Germany (on behalf of the EU), but also the Asian Legal Resource Center, and the International Educational Development/Indian Council of South America.

⁴ The US delegation had said that the Special Rapporteur tended to misrepresent its position, and that the USA did not believe that human rights law ceases to apply entirely in times of armed conflict. Switzerland also mentioned the subject of human rights law and humanitarian law, and asked for an example of complementarity between the two.

Conclusion of interactive dialogue

The interactive dialogue continued on the report of Mr. Doudou Diène, Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance⁵ continued with almost all intervening States expressing appreciation for the work of the Rapporteur and his recommendations.⁶ Only Iran voiced specific objections to points raised by Mr. Diène.⁷ A group of countries explicitly welcomed the proposition of the Rapporteur to establish a monitoring centre on discrimination in the framework of the OHCHR.⁸

One of the main points of discussion during the dialogue concerned the issue of balancing freedom of religion and freedom of expression. Pakistan⁹ (on behalf of the Organization of Islamic Conference) addressed concerns on new trends of anti-Islamic feelings and Islamophobia after 11 September 2001. This could be seen in the prohibition of the Burka at schools and generally racist attitudes towards persons of allegedly Islamic appearance. Other States expressed a broader view on trends of religious discrimination¹⁰ and urged that a balance be sought between freedom of expression and freedom of religion, together with the need to promote the respectful enjoyment of both. In his response Mr. Diène expressed particular concern for the present imbalance between freedom of religion and freedom of expression, with freedom of expression having been manipulated and abused for purposes of racial discrimination in recent times. The Rapporteur drew particular attention to the case of the Danish cartoon controversy in this context.

Attention was also devoted to the resistance to multiculturalism by a number of States.¹¹ Cameroon illustrated that its own country was inhabited by many different religious groups and was a good example of mutual enrichment. The Russian Federation stressed that the impact on society is underestimated and underlined its view that it is unrealistic to think that these problems can be solved with one Report. Germany (on behalf of the EU) expressed the need for a balance between security and respect for cultural diversity, and stressed that these factors must be complementary. Germany also suggested a close cooperation between the mandate of the Special Rapporteur and Articles 18 and 19 of the *International Covenant on Civil and Political Rights*.

Cuba focused its attention on the risk of new forms of racism due to the increasing gap between rich and poor, to the treatment of migrants and for the necessity for international cooperation in these areas. Many States also addressed the necessity for enhancing dialogue on multiculturalism and cooperation in antiracism strategies.¹² Morocco and Djibouti suggested the promotion of manifestations related to cultural-religious and educational aspects of diversity and agreed with the Rapporteur in working at an intellectual, educational and communication level to eradicate all forms of racism. Mr Diène emphasised in his conclusions the central role of multiculturalism and the importance of dialogue and cooperation between the Special Rapporteur and member States of the UN, and noted that resistance to multiculturalism

Among other issues raised, a group of States deplored the existence of discrimination on the basis of sexual orientation.¹³ Belgium asked the Rapporteur on the current legislative situation in Nigeria and what he has done in relation to that. Nigeria replied to Belgium that the proposed Bill was being discussed in parliament but this did not mean that it would be adopted. Nonetheless, Nigeria expressed the view that same sex

⁵ A/HRC/4/19, 12 January 2007 (annual report).

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 http://www.ishr.ch/hrm/council/reports_in_short/.

⁶ Cuba, EU, Germany, UK, France, USA, the Russian Federation, Japan, Brazil, Pakistan, Morocco, Djibouti, Indonesia, Mexico, China, Zambia, Chile, Cameroon, Uruguay, Canada Belgium, Senegal, South Africa Norway, Armenia, Iran.

⁷ In particular related to the treatment of Jews in the country.

⁸ South Africa, Chile, Uruguay, Senegal.

⁹ Supported by Uzbekistan, Armenia and Cuba.

¹⁰ Mexico, China, Norway, Zambia, Indonesia and the USA.

¹¹ Pakistan, Indonesia, Russia, Djibouti, Brazil.

¹² Zambia, US, Djibouti, Morocco, Morocco, Brazil, Chile, Uruguay, Cuba, Chile, Cameroon, Uruguay, Armenia.

¹³ Canada, Belgium and Norway.

marriage is an attempt to reverse the natural order of family life and that the promotion and protection of human rights is not achieved by certain States imposing alien values on others.

Another area of discussion was focused on recent phenomena of racism in sports, particularly football games in Europe. Such concerns were addressed by the EU itself,¹⁴ Cuba, Uzbekistan, and South Africa. The latter welcomed the resolution of the General Assembly to initiate a constructive dialogue with football associations in France and Germany. In particular, France recalled the occurrences in France where television celebrity Mr. Pascal Sevran published racist material relating to Africa, and emphasised that these actions were publicly condemned by the French authorities.

Many NGOs chose to draw attention to country issues. The International Association Against Torture (IAAT), denounced systematic racist behaviours in the US against black people, in particular deplored the discriminating attitude and abuses operated by the police and the relative impunity of police agents. Finally IAAT proposed the Rapporteur to undertake a visit to the community of Africans in USA. The Centre of Housing Rights and Evictions denounced the Israeli government process of gradually confiscating lands to Palestinian communities in Israel and alleged that the remedies and reparations to victims of these practices were racially discriminatory. B'nai B'rith International and the Coordination Board of Jewish Organizations¹⁵ recalled that Mr. Diène's report addressed new forms of anti-Semitism both in Europe and in Middle East. Both encouraged States to wage a campaign against racial and religious hatred and called for seeking a balance between respect of secularism and respect of religions.

Germany (on behalf of the EU) asked the Special Rapporteur which countries he next intends to visit. He replied that he is to visit Mauritania and the Baltic countries in the near future. He also stated that he would like to visit India, Pakistan and Nepal, but has been awaiting a reply to his requests for the last two years. He underlined that he is also still awaiting a response from the USA and the Dominican Republic. He suggested that the Council should seriously consider the establishment of set deadlines for the replies to the requests of special procedures in order not to paralyse their work.

Amnesty International took the opportunity to urge that the Council seek to ensure better follow-up to the mission and reports of special procedures. Brazil pinpointed the positive comments of the Rapporteur on the Durban Program of Action. Furthermore, Brazil reported the meeting in South America of High Authorities on Human rights, where ten South American countries congregated with the aim of combating racism, and hoped that this kind of cooperation would be taken as an example for other regions.

Finally, the Democratic Peoples Republic of Korea (DPRK) denounced as a racist crime the repression of Korean people in Japan and called for immediate cease of any discrimination of Korean nationals and for the Council to further investigate. Japan rejected these accusations in its exercise of the right of reply.

Working Group of Experts on People of African Descent

Conclusion of interactive dialogue

Resuming the debate with the Chair of the Working Group on people of African descent, intervening States focused on the practice of racial profiling, as highlighted in both the report of the Working Group and the report of the Special Rapporteur on racism.¹⁶ Many states thanked the Working Group in general and welcomed its work on racial profiling in particular.¹⁷ Several speakers also reiterated their full support to the mandate of the Working Group.¹⁸

¹⁴ Germany, on Behalf of EU, UK,

¹⁵ Supported by NGOs Jubilee Campaign and the Consultative Council of Jewish Organization.

¹⁶ Senegal.

¹⁷ Brazil, Mexico, China, Senegal, and South Africa.

¹⁸ China, South Africa, and the NGOs International Association against Torture and the 12 December Movement.

China expressed its agreement with the conclusion of the Working Group that the practice of law enforcement officers' reliance on racial profiling was a violation of the right of non-discrimination. It stated that the recommendations of the Working Group should be followed and that all Governments should ensure the prohibition of racial profiling. South Africa declared that it was good that racial profiling had been highlighted and that it should be combated. It urged OHCHR to provide more resources for the effective functioning of the Working Group. In his reply, the Chairman of the Working Group stressed that the recommendations made were realistic and implementable, and therefore encouraged States to apply them. On the latter issue, Mr Kasanda thanked the States¹⁹ that called for additional funding that could help the mandate of the Working Group.

In a more general statement, Brazil declared that it paid special attention to people of African descent by establishing a programme of scholarship for these people, and that it will continue its policy of racial equality. The chairman of the Working Group thanked Brazil for the affirmative measures it has undertaken in this regard.

Among other issues, the International Association against Torture and the 12 December Movement in a joint statement dealt with the plight of people of African descent in the United States that face discrimination and arbitrary detention, as well as the racist culture of impunity for US police officers. It asked the Chairman of the Working Group how important he felt it was that the Working Group visit people of African descent in the Western hemisphere. Regarding country visits, Mr Kasanda said that he had visited Belgium and was now in the process of making requests for future country visits. He will request a visit to the US because there are about a million people of African descent living there, and hopes that the Government will reply positively. He insisted on the importance of these visits, especially to monitor the implementation of the recommendations made towards this country. He concluded by thanking NGOs for their cooperation.

Special Representative of the Secretary-General on transnational corporations

Mr John Ruggie, the Special Representative of the Secretary-General for Business and Human Rights, presented his annual report and several accompanying addenda²⁰, which mapped the current situation of current trends and procedures. Mr. Ruggie noted a broad engagement from a wide range of stakeholders in the mapping of standards, gaps and trends. He pointed out that it is a State's duty to protect its citizens against human rights abuses, and that not all States had been punishing corporate actors who committed abuses. Mr Ruggie noted that some States seem not to be taking full advantage of legal and policy tools available to them to fulfil this duty. Mr. Ruggie note that there has been growing liability for companies who perpetrate international crimes; this has occurred through domestic laws, which reflect international standards. The ratification of the International Criminal Court (ICC) statute and the incorporation of it by States into domestic law have contributed to this. However Mr. Ruggie noted that civil cases such as the United States of America (USA) Alien Tort Claims Statute, also contributed to standards entering national legal systems. Mr. Ruggie made the point that many States had failed to enforce corporate responsibilities related to standards of the international bill of human rights and its related mechanisms. This left a substantial protection gap. Mr. Ruggie noted that surveys on voluntary practices by corporations had shown that collective self-regulation initiatives do recognise a broad range of human rights protection mechanisms, however they remain somewhat haphazard. Mr. Ruggie said that he would welcome the extension of the mandate for another year.

Interactive dialogue

¹⁹ Canada, Mexico and South Africa.

²⁰ A/HRC/4/35, 19 February 2007, Corr.1 13 March 2007, Add.1, Add.2 15 February 2007, Add.3 28 February 2007, Add.4 8 February 2007. 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>

Germany on behalf of the EU asked Mr. Ruggie what areas he intended to make suggestions on and how far he thought individual responsibility could be drawn. Norway asked how state-owned enterprises could be engaged. Some States voiced concern over the lack of interest in situations in developing countries, and issues associated with poverty and listening to the victims of abuses²¹. France made a strong point that the developing trend of corporations to voluntarily implement international standards was a dangerous system. France stated this approach was allowing corporations to pick and choose which human rights abuses they should be concerned about. Indonesia, Bangladesh and Cuba all highlighted the need for a definition of corporate responsibility and the need for regulations. Many States voiced their support for the extension of the mandate for a further year.²² The dialogue was not completed and Mr. Ruggie will respond to the speakers at the conclusion of the interactive dialogue tomorrow.

Special Rapporteur on health

Mr. Paul Hunt, the Special Rapporteur on the Right to the Highest Attainable Standard of Health, presented his interim report.²³ Mr. Hunt acknowledged the positive developments in the integration of health and human rights with the contributions of member states, UN specialised agencies and civil society. However he expressed concern that human rights are not mainstreamed in the work of the WHO. Mr. Hunt recommended that the right to the highest attainable standard of health should be mainstreamed in the WHO and other UN agencies, as well as at the national level across ministries of health and other ministries.

He referred to the high rate of maternal mortality as 'a human rights catastrophe'. He noted each year 500,000 women died in childbirth, and that this could be reversed by minimal interventions. Mr. Hunt, strongly urged the Council to devote equitable attention to this issue, just as it does to other issues related to civil and political rights, such as disappearances and death penalty. He also thanked the Government of India for inviting him to examine the issue, which confirms its seriousness.

The Special Rapporteur undertook a visit to Sweden in January 2006. He congratulated the Government for the high standard of living, health status and quality of health care despite a number of areas where progress should still be made. He visited Uganda to examine the effectiveness of the Swedish Government's assistance policies on development, health and human rights. Mr. Hunt expressed his concern on the health situation of refugees and IDPs in Iraq and the pressure faced by neighbouring host countries. Regarding the situation in the Occupied Palestinian Territories (OPT), he expressed concern on economic sanctions imposed by donor countries, which adversely affected health services for the sick, infirmed and elderly. Mr. Hunt viewed this as contrary to their human rights responsibilities. Mr. Hunt also informed the Council of the invitation he received from Ecuador to examine the health of indigenous people regarding aerial spraying in its northern border. He announced his plan to undertake a mission on HIV/AIDS to a country (to be announced) this year. He also stated that he would continue his work on the preparation of draft guidelines for pharmaceutical companies on access to medicines.

Interactive dialogue

Many states agreed with his overall comments.²⁴ Sweden as a concerned country stated they are prioritising the effort to achieve the highest attainable standard of mental and physical health for its citizens. Peru explained the progress that has been made in following the Rapporteur's recommendation after his visits in 2004 and 2006.

²¹ Pakistan, Brazil, France, Bangladesh

²² Argentina, Norway, Switzerland, Pakistan, Canada.

²³ A/HRC/4/28, 17 January 2007, and A/HRC/4/28/Add.1, 23 February 2007, A/HRC/4/28/Add.2, 28 February 2007 A/HRC/4/28/Add.3, 21 March 2007. The reports are available at

<http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm> ISHR has produced unofficial summary of these reports (The Reports in Short) available at www.ishr.ch.

²⁴ Cameroon, Germany, Indonesia, Mali, Mexico, New Zealand, Peru, The Order of Malta, Tunisia,

Mali and Mexico noted the Council's unequal attention to economic, social and cultural rights (especially for the right to health) compared to civil and political rights. Ecuador reiterated that health and human rights are mutually reinforcing, and that the Council should pay more attention to commenting on integrating the right to health in national policies. Ecuador also repeated its invitation to the Special Rapporteur to visit. On maternal mortality issue, New Zealand expressed its concern, and asked which parts of the UN system should make appropriate responses. Brazil also asked the Rapporteur to elaborate more in this issue.

On the situation of health in Iraq, the Islamic Republic of Iran asked the Rapporteur whether he raised the issue with the occupying power. Syria also spoke on the burden of healthcare and education it experiences due to the large number of refugees in Syria.

The Order of Malta suggests the Council draw attention to discrimination against people with leprosy. Belgium raised the issue regarding measures states are taking to stop the poor mental health of people due to discrimination against them on the grounds of sexual orientation. Germany (on behalf of the European Union) encouraged Mr. Hunt to map problems and action on mental health. Indonesia in the context of the avian influenza pandemic, urged wider availability, acceptability and good quality of medicines. Mali asked for assistance from the international community for its social development program. Canada asked Mr. Hunt to mention the situation of children with HIV/AIDS in Uganda and other countries in his next report.

In his concluding remarks, Mr Hunt commented he was looking forward to continue the dialogue with Sweden. On the question from New Zealand on the role of UN system in the maternal mortality issue, he referred to a partnership based in WHO with states as an effective practice model. He noted that the Council should hold a special session on maternal mortality. As he was unable to reply to all comments and questions forwarded in the interactive dialogue, he promised to provide written replies.

Special Representative of the Secretary-General on human rights defenders

The Special Representative of the Secretary-General on Human Rights Defenders, Ms Hina Jilani, presented her annual report²⁵ and the report on her mission to Brazil²⁶. She highlighted the difficulties faced by defenders of social and economic rights, the legal framework protecting them in international law and the importance of their work. She stressed that the *Declaration on Human Rights Defenders* protects the right to draw attention to Government bodies that violate the rights of defenders. Ms Jilani noted in particular the difficulties faced by the defenders of land rights, labour rights and social rights, such as the right to adequate housing and the right to food. On the subject of private enterprise, she noted collusion between the public and private sectors to the detriment of the protection of human rights defenders. She also discussed the current reforms being developed by the Council, and stressed the importance of supporting participation by NGOs. Finally, the Special Representative presented the report on her mission Brazil. She acknowledged the significance of social movements in Brazil, but concluded that despite positive developments at the Federal level and in some States, human rights defenders still lack protection in Brazil. She recommended measures be taken to address this lack of protection.

Interactive dialogue

Brazil, responding to the Special Representative's report on her mission to Brazil, noted that several developments had occurred since the mission had taken place, including the National Programme for Human Rights Defenders. Brazil announced that the Federal Government has now signed agreements with two States under this programme, and that it was ready to be introduced. Brazil also stated that a nationwide investigation into the situation of human rights defender would be conducted this year. In response to the

²⁵ A/HRC/4/37, 24 January 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 publications which is available at: www.ishr.ch/hrm/council

²⁶ A/HRC/4/37/Add.2, 19 December 2006

Special Representative's concerns about the police, Brazil noted that measures had been taken to train police in human rights. Finally, Brazil asked Ms Jilani how it could facilitate dialogue between the Government and human rights defenders. The Special Representative responded by recommending that Brazil ensure that defenders of economic and social rights are included in this dialogue.

Most States spoke in support of the Special Rapporteur's work and mandate.²⁷ Several States praised the Special Representative's focus on defenders of social and economic rights.²⁸ Bangladesh felt this contribution was particularly important, due to a disproportionate focus in the Council on political and civil rights. It suggested that more NGOs should speak on economic and social rights in the future. Germany (on behalf of the EU) asked the Special Representative how both Governments and the international community could change the perception of defenders of economic and social human rights as campaigners, rather than defenders of fundamental human rights. Switzerland asked how the Council could better protect these defenders. Ireland asked for examples of best practice where National Human Rights Institutions (NHRIs) had supported the work of defenders of economic and social rights. Ms Jilani replied that NHRIs had already made significant contributions to increasing the capacity of defenders of economic and social rights. She gave the particular example of work undertaken by the Philippines NHRI.

Germany (on behalf of the EU) and Argentina highlighted Ms Jilani's comments regarding the vulnerability of defenders of LGBT rights. They asked for comments on what progress has been made in this area and recommendations for actions to be taken. The Special Representative responded by referring to Article 7 of the *Declaration on Human Rights Defenders*, which records the right to develop and discuss new human rights ideas and principles and encourage their acceptance. She stated that this principle should be used to protect defenders of LGBT rights.

Several States asked questions on other aspects of Ms Jilani's report and mandate. Australia asked what strategies would best combat a culture of impunity for crimes against human rights defenders. Norway asked about the vulnerability of defenders of indigenous rights and asked for recommendations on how this should be addressed. Canada highlighted the importance of civil society's contribution to the fight against HIV/AIDS. Ireland addressed Ms Jilani's comments on private actors who are causing violations of human rights and asked what the role of human rights communities is in combating this. The Special Representative responded that it was indeed important to address the impunity protecting these actors. Switzerland referred to Ms Jilani's comments on the need to support NGO participation in the Council and asked how this could best be facilitated. Ireland and Canada also asked what mechanisms the Council could put in place to further protect human rights defenders.

Australia and New Zealand drew specific attention to the situation of human rights in Zimbabwe, noting the recent treatment of the political opposition and the "Save Zimbabwe Coalition". New Zealand asked for the Special Representative's comments on these recent developments. Australia also drew attention to the specific situation in Fiji.

A number of States took the floor to respond to negative comments made about them in the Special Representative's report. Uzbekistan stated that it had replied appropriately to all communications. Guatemala defended its postponement of the Special Representative's visit, noting that in 2006, it received visits from three special procedures as well as appearing before three treaty bodies. In 2007 Guatemala stated they would be receiving visits from two special procedures and appearing before another treaty body. Guatemala reiterated its invitation to the Special Representative to visit in 2008. Cambodia also took issue with a comment made in the Special Representative's report on the freedom of civil society in Cambodia. They refuted the allegation and requested that it be removed from the Report. Cambodia reminded the Special Representative to thoroughly monitor information she received from civil society and argued that reports from NGOs frequently lacked transparency.

Both Algeria and the Russian Federation expressed their displeasure that the first addendum to the Special Representative's report had not been released in sufficient time for it to be considered by States before the

²⁷ Germany (on behalf of the EU), Indonesia, Norway, Algeria, Brazil, Australia, New Zealand, Switzerland, Argentina, Uzbekistan, Guatemala, Switzerland, Ireland, USA, Canada

²⁸ Germany (on behalf of the EU), Indonesia, Switzerland, Ireland, Bangladesh

interactive dialogue. The President of the Council agreed that this was a problem, but noted that the document was available in electronic form the night before the interactive dialogue took place. He called upon both the secretariat and the mandate holders to ensure that texts are made available as early as possible.

The Russian Federation was the only State to make a broad criticism of the Special Representative and her mandate. It drew attention to Article 3 of the *Declaration on Human Rights Defenders*, which states that domestic legislation constitutes the legal framework in which fundamental rights and frameworks should be ensured. It stated that on the basis of this Article, the Russian Federation could not support the Special Representative's definition of human rights defenders, and that this definition results in a loss of confidence in this Special Procedure. Further it alleged that inaccurate and low quality information had been provided to the Special Representative, which discredited her mandate. The Special Representative responded that Article 3 must always be read in combination with Article 4.

Informal consultation on the review of mandates of special procedures

The Facilitator of the Working Group held informal consultations from 1:30 to 3:00. The Facilitator noted that discussions on the code of conduct would take place at the April session of the Working Group.²⁹

The Facilitator invited comments on the section of his non-paper dealing with review, rationalisation and harmonisation of mandates and in particular on proposals for the review of individual mandates. The section suggests five ways of addressing the review of individual mandates: 1) review of existing country established by vote by the Commission on Human Rights, 2) criteria for establishment and functioning of the working groups – review of functioning of the working groups, 3) limiting the proliferation of mandates on particular issues and prevention of a too general focus of mandates, 4) adjustment of special procedures in relation to human rights issues, and 5) establishment of a new mandate on contemporary forms of slavery.

A number of States emphasised the need to undertake an individual review of country mandates without delay and that the process must be completed by 18 June 2007.³⁰

Some of these States argued that those country mandates established by vote should be terminated as soon as possible. The Russian Federation stated that these mandates had been the main reason for the politicisation of the work of the Commission on Human Rights. India underlined that country mandates were not useful and that the Universal Periodic Review and special sessions should be used to address country situations. Algeria stated that the African Group was against country mandates. The UK noted that it was its position that the mandate on the occupied Palestinian territories was a country mandate and the Algerian representative in a last minute reply stated that this mandate had been established until the end of the occupation and would not be discontinued before that.

However, other States underlined that the problem was that only a few countries had been subject to a country mandate and suggested that all countries should have a country mandate.³¹ Norway stated that the criticism of the Commission was based, not on the mandates that it had established but on the many situations it had failed to address.

Several States argued that country mandates were useful and should remain one of the tools of the Council.³² Many of them also made the point that there was no reason to discontinue country mandates established by vote but that each mandate should be considered on its merits and whether the discontinuation would create a protection gap.³³ Australia also argued that decisions taken by vote were not inherently flawed.

²⁹ The session is scheduled to take place from 16 to 27 April 2007.

³⁰ Cuba, the Russian Federation, Algeria, Belarus, South Africa.

³¹ South Africa, Algeria, India.

³² The USA, the United Kingdom, Germany, New Zealand, Norway, Japan.

³³ Japan, New Zealand, Australia, Canada.

Cuba argued that there is a need to establish clear criteria for the future establishment of country mandates and this was supported by Germany. However, Germany noted that whether a mandate had been established by vote should not be considered a decisive criterion in this connection.

The Facilitator invited comments by delegations on the merits of the special procedures established by vote on those four country situations.

Belarus responded that it was not appropriate for the Working Group to discuss the situation in these countries. The representative emphasised that the government of Belarus refuses to recognise and cooperate with the mandate and suggested that the situation should be dealt with through the Universal Periodic Review and thematic mandates that the government was cooperating with.

On the review of thematic mandates, Cuba argued that the review could be undertaken after the Working Group has finished its current mandate period at the end of June 2007 and suggested that the Council could renew the Working Group's mandate. Argentina supported that the review of mandates could be postponed and Germany welcomed the proposal to have additional time for the review of individual mandates.

In that connection, the Facilitator noted that he did not believe it necessary to extend the mandate of the Working Group. He suggested that all thematic mandates could be extended for three years while country mandates could be extended for one year to allow the individual review to continue.

A number of delegations expressed doubts about the basis for this suggestion.³⁴ South Africa emphasised that the extension of all mandates for one year had been an exceptional decision of the Council premised on the continuing review process. China, however, stated that they were willing to extend the thematic mandates for one year while they would continue to be the subject of the outcome of the review.

Norway argued convincingly that mandates should be extended for a three year period following two years of uncertainty due to the reform of the UN human rights system during which many mandate holders had not been able to carry out the regular number of country visits and that this uncertainty had resulted in a protection gap. This was supported by the United Kingdom.

In response, the Russian Federation voiced its strong dissatisfaction with how the Working Group had conducted its work under the leadership of the Facilitator. The representative claimed that the Facilitator had produced a lengthy non-paper to stall the discussions and that the paper predominantly reflected the views of a minority of States. These comments were supported by Egypt suggesting that the paper should be shortened and only focus on issues of direct relevance to the mandate of the Working Group.

Norway on the other hand expressed its satisfaction with the work of the Facilitator and noted that the result of the Working Group's efforts would be no better or worse than the input provided to the discussions.

A number of States again emphasised the need to rationalise the system of special procedures and recalled the wording of the General Assembly resolution that established the Council.³⁵ Several States supported the clustering of thematic mandates.³⁶

Germany suggested that if country mandates established by vote were to be considered as a priority, the thematic mandates established by vote should be treated in a similar manner. This proposal has not been put forward before and received support from Australia.

Russian Federation argued that the thematic mandates established by vote should not be singled out and that the proposal by Germany would lead to more confrontation in the Working Group. The USA stated that all

³⁴ China, Iran, India.

³⁵ Algeria, India, South Africa.

³⁶ Cuba, India.

mandates should be reviewed on the basis of common criteria. Other delegations also emphasised that all mandates should be reviewed on an equal basis.³⁷

Regarding the establishment of new mandates, the Russian Federation argued that there should be a moratorium on the establishment of new mandates during the transitional period while acknowledging that there are lacunae in the system that could be filled. Cuba agreed that new mandates could be discussed in the future and expressed an interest in a mandate on cultural rights. Some delegations expressed surprise at the fact that only one possible new mandate was mentioned. The Franciscans International explained that the proposal was for a mandate to replace the working group of the Sub-Commission on contemporary forms of slavery.

Informal consultation on rules of procedure and methods of work

The Facilitator of the segment on rules of procedure and methods of work of the Working Group on agenda, programme of work, methods of work and rules of procedure convened the second informal consultations during this 4th session of the Council from 8.30 to 10 am. The purpose of the consultations was to seek comments on the non-paper prepared by the Facilitator, focusing on section two on the rules of procedure. According to operative paragraph 11 of GA Resolution 60/251, the Council has to apply where applicable the rules of procedure of committees of the GA. The Facilitator explained that it was necessary to define “new” rules to be added to the existing ones, since the Council had established certain new practices, and that such new rules are labelled accordingly in his non-paper.

Russia commented on rule 3, which specifies that the Council should meet in Geneva, saying that in order to ensure the necessary flexibility, the rule should be complimented by “unless otherwise decided”. A number of delegations supported this point,³⁸ with Cuba saying that the United Nations Office at Geneva (UNOG) was like a “supermarket” where everybody who pays can get rooms, and that accordingly there could be a scenario where the Council had to move elsewhere. Switzerland clearly opposed the idea to introduce flexibility in this regard, stating that the GA resolution 60/251 clearly stated that the headquarters of the Council should be Geneva. They appealed to delegations to show understanding in the transitional phase, to allow UNOG to adapt to the additional needs of the Council. The Facilitator noted that the clarification that the headquarters should be in Geneva could be a way to compromise.

The USA said that the High Level Segment (HLS) should ideally be held in June, when the new members started their term.³⁹ A number of delegations were of the view that the HLS should not be mentioned in the rules of procedure at all, but rather form a part of the methods of work. Romania pointed out that the time of the HLS could only be determined when the calendar of the Council and the “supermarket” had been clarified.

Pax Romana complained that it had become very difficult for NGOs to speak, and asked that NGO participation be facilitated through the rules of procedure.⁴⁰ That request was supported by some delegations.⁴¹ A number of States expressed concern about the current phrasing of the rule on the participation of non-members, saying that NGOs and States that are not members of the Council could not be

³⁷ Iran Canada.

³⁸ Algeria, Mexico.

³⁹ A new rule on page 6 of the Facilitator’s non-paper reads “The Council shall hold an annual High-Level Segment during its main session in (March)(April).”

⁴⁰ The current non-paper includes a rule entitled “Participation of non-members of the Council” which is copied from operative paragraph 11 of GA resolution 60/251 and reads “Participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolutions 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.”

⁴¹ USA, Mexico,

thrown into the same basket.⁴² Others agreed to have an open formulation.⁴³ Azerbaijan suggested to call for the ‘effective contribution’ (rather than ‘most effective contribution’), saying that even member States sometimes did not live up to that qualifier. The Facilitator pointed out that the language in the paragraph in question was taken from the GA resolution establishing the Council. Germany, on behalf of the European Union (EU), supported retaining it as is, supported by Cuba who reminded all delegations that OP 11 of GA resolution 60/251 was the result of careful negotiations in New York, and should not be tinkered with.

Regarding the rule regulating the agenda and organisation of work, a number of delegations reiterated their positions heard during the discussion on the agenda: South Africa said that a predictable agenda was necessary,⁴⁴ while Germany reiterated their support for drawing up the program of work at the beginning of each year, based on a generic agenda.⁴⁵

The USA asked that the new rule regulating the setting up of Working Groups be adopted to explicitly allow for the participation of all stakeholders as stipulated by GA resolution 60/251. Cuba opposed this idea, by saying that some types of Working Groups needed to be limited in their membership.⁴⁶

A number of other points were raised. There was some confusion regarding a rule taken from the ECOSOC rules of procedure, and the Facilitator promised to clarify it in his next non-paper.⁴⁷ Almost all States who took the floor opposed the Facilitator’s proposal that the Council could take decisions by a one third majority, and he announced to eliminate it. South Africa enquired what a ‘council year’ would be; in the Facilitator’s opinion, this would be from the 19th June to the 18th of June of the following year. A number of States insisted on the need to include a reference to all official languages of the UN in the rules of procedure of the Council.⁴⁸ Algeria asked that the rules concerned with the elections of the Bureau be clarified to make sure that the Vice-Presidents need to come from different regional groups.⁴⁹

Finally, turning to part 3 of his non-paper, the Facilitator asked States to consider his proposed “Ground Rules for Special Sessions of the Human Rights Council”. He cautioned that the non-paper circulated was missing its last two paragraphs (6 and 7 had gone missing when the document was processed) and expressed his hope that they would be the ones allowing consensus on the proposal.⁵⁰ He encouraged States to informally discuss the text, so that the next formal session of the Working Group in April could tackle the issue.

Rights of reply

There were four rights of reply. The President decided that as there was insufficient time for all of these countries to exercise their right in the remaining time, it was decided they would speak the following morning.

⁴² Iran, Algeria, Cuba.

⁴³ Australia, Azerbaijan.

⁴⁴ Cuba, Iran.

⁴⁵ On behalf of the EU, supported by the UK.

⁴⁶ South Africa, Iran.

⁴⁷ The rule proposed by the Facilitator that is adapted from rule 22 of the ECOSOC rules of procedure reads: “If the President or any Vice-President ceases to be able to carry out his/her functions or ceases to be a representative of a member of the Council, or if the Member of the United Nations of which he/she is a representative ceases to be a member of the Council, he/she shall cease to hold such office and a new President or Vice-President shall be elected for the unexpired term.”

⁴⁸ Iran, France, Algeria.

⁴⁹ Russia supported the mentioning of the principle of regional representation.

⁵⁰ He read out the two missing paragraphs, saying that a complete version of the non-paper would be distributed soon. Paragraph 6 asks sponsors of draft resolutions during special session to convene open consultations with a view to foster consensus. Paragraph 7 specifies that special sessions should allow substantive debates geared towards concrete outcomes as well as the possibility of monitoring that outcome by the Council.

COUNCIL MONITOR STAFF

Meghna Abraham, Program Manager, Information Program

Gareth Sweeney, Human Rights Officer, Information Program

Michael Ineichen, Fellow, Information Program

Tony Morris, Information Program

Eléonore Dziurzynski, Communications Officer, Information Program

Contributors

ABOUT THE PUBLICATION

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch/hrm/council

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr-sidh.ch with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT AND DISTRIBUTION

Copyright © 2007 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr-sidh.ch