

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL, 5TH SESSION DAILY UPDATE, 11 JUNE 2007

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Overview

The Human Rights Council (the Council) started its 5th session on 11 June 2007. This will be the last session in the first cycle of the Council's operation. The programme of work includes 15 dialogues with special procedures carried over from the 4th session in March (five meetings of three hours), follow-up to previous decisions of the Council (one meeting of three hours), as well as six meetings dedicated to the institution-building process, to be completed before 18 June 2007.

The President of the Council, Ambassador Luis Alfonso de Alba of Mexico, opened the session by calling on States to renew their political will to bring the institution-building to a successful conclusion in the coming week. The meetings on institution-building are intended to result in an overall package that will lay the foundation for the Council's future work. It is expected that most of these negotiations will take place in informal meetings, starting on Wednesday, 13 June 2007.

The Council also heard an update by Ms Louise Arbour, the United Nations High Commissioner for Human Rights. The High Commissioner touched on recent visits to Central Asia and the Great Lakes region in Africa. The Council then proceeded with the adoption of the agenda and the programme of work for this session.

The rest of the day was devoted to interactive dialogues with special procedures mandate holders. These included:

- the Special Rapporteur on the independence of judges and lawyers
- the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

The Special Rapporteur on trafficking in persons, especially in women and children, Ms Sigma Huda, had originally been scheduled, but was unable to present her report before the Council. As the dialogues with the first two Rapporteurs ran over into the afternoon session, the Council started but did not complete the interactive dialogues with the following special procedures:

- the Special Rapporteur on the right to food
- the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights
- the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
- the Independent Expert on the question of human rights and extreme poverty

From 1pm to 3pm, the African Group convened informal consultations on a revised version of their draft code of conduct for special procedures. These were the first open consultations held on the revised document, which many States see as a key part of the Council's institution-building process.

Introduction by the President

Ambassador Luis Alfonso de Alba, President of the Human Rights Council (the Council) opened the 5th session by stressing the importance he attached to the institution-building process of the Council. Touching on a few of the outstanding issues, he said that the universal periodic review (UPR) was a key tool on the move to universality in the promotion and protection of human rights. He also repeated his view that the agenda of the Council and its programme of work needed to be considered in parallel. This would allow to find the necessary balance between predictability and flexibility.¹ He also expressed his hope that various human rights would be treated in a balanced way throughout the yearly cycle of the Council.

The President recalled the political will that States expressed when creating the Council through General Assembly *Resolution 60/251*. He urged States to renew that political will in the final stages of the discussions and move the institution-building further in a spirit of flexibility, so that the framework could be worked out by 18 June 2007. The details could then be elaborated within that framework in later stages of the work of the Council. He thanked the OHCHR for its support in the process, saying it had been extremely valuable.

Update by the High Commissioner

Ms Louise Arbour, the High Commissioner for Human Rights addressed the Council and thanked Ambassador de Alba for his efforts to make the Council immediately operational and responsive to human

¹ For a detailed discussion of all aspects of the institution-building, including on the particular issues of predictability and flexibility that were discussed in the Working Group on the agenda, see ISHR reports available on <http://www.ishr.ch/hrm/council> in the Working Group section.

rights issues in its first year, and despite the focus on institution-building. In the context of the institution-building, she praised the system of special procedures as one of the most important legacies of the Commission on Human Rights, and strongly supported NGO participation in the work of the Council.

The High Commissioner highlighted some of her activities since her last presentation at the 4th session of the Council in March 2007. She discussed her visits to Central Asia and to the Great Lakes region of Africa. Regarding her mission to Central Asia, she stressed in particular the support of the Government of Kyrgyzstan for the planned establishment of an OHCHR regional office in Bishkek, as well as the conditions of detention, ill-treatment and torture, and the curtailment of democratic rights across Central Asia. She said that national human rights institutions (NHRIs) in Central Asia needed to be strengthened. Turning to her visits to the Great Lakes region, she emphasised that her mission had allowed her to brief the Security Council on the situation in the Democratic Republic of the Congo (DRC) and the Peacebuilding Commission on the situation in Burundi. She said that the region held a significant potential for sustainable peace and development, but was still at risk of sliding back into conflict and human rights challenges remained high. Discrimination in the enjoyment of economic and social rights was still widespread, and sexual violence was of pandemic proportions in the DRC. She was concerned about the prevailing culture of impunity and urged governments to reverse the trend of granting amnesties for the gravest human rights violations. In that context, she referred to the OHCHR report on the right to truth recently submitted to the Council. On her visit to Rwanda, she complimented the country's efforts to deal with the legacy of the genocide, but was concerned about due process guarantees in relation to trials in community tribunals (the *gacaca* trials). On a positive note, she expressed her appreciation for the willingness of the DRC to create an inventory of the gravest human rights and international humanitarian law violations that occurred between 1994 and 2004. It should result in a reference document so that the DRC could discuss transitional justice options. In Burundi, she said, the establishment of an independent steering committee had improved transitional justice.

The High Commissioner finished her presentation by referring to her recently released annual report for 2006, which gave details about all OHCHR activities and their source of funding (whether funded through the UN regular budget or by voluntary contributions).

Special Rapporteur on the independence of judges and lawyers

Mr Leandro Despouy, the Special Rapporteur on the Independence of Judges and Lawyers presented his annual report as well as a report on his missions to the DRC and the Maldives.² In his presentation, Mr Despouy discussed the main points raised in the report.³ Areas of concern included the independence of the judiciary, justice without undue delay, impunity and access to justice. He also stressed the importance of providing adequate protection for judges and lawyers, as they were often the object of harassment, intimidation, threats and violence. He emphasised that special attention must be paid to the attending circumstances that affect the independence of the judiciary, due process and the rule of law. Relevant factors in that regard include the judging of civilians in military courts and laws passed in the context of the fight against terrorism or to protect national security. Mr Despouy demonstrated particular concern about the rule of law during states of emergency and how constitutional order and institutions can be safeguarded when organised community life was threatened. He suggested that the Council should establish a mechanism to draft an international declaration with the purpose of ensuring the observance of human rights and the rule of law during states of emergency. In that way, all States would be held to the same international standards.

² A/HRC/4/29, 19 February 2007 (annual report) and A/HRC/4/25/Add.2, 2 May 2007 (Maldives), A/HRC/4/25/Add.3, 24 May 2007 (DRC). The reports are available at <http://ohchr.org/english/bodies/hrcouncil/5session/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/.

³ Oral statements made at the Council can be found on the OHCHR extranet (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

The Special Rapporteur also discussed his mission to the Maldives, noting that the emergence from a colonial past had made it difficult to modernise legal institutions. With regard to the DRC, Mr Despouy cited accessibility to justice as a serious problem and suggested that as the DRC has recently adopted a new constitution, it should establish the rule of law and democracy and face the crimes of the past at the same time.

Interactive dialogue

The Maldives as a concerned country welcomed the report. It highlighted that justice reforms were under way, in an effort to combine Sharia law and principles of common law. The Government expressed its commitment to work on the implementation of the recommendations contained in the report, and its hope that the international community would support it in this effort. Several States discussed the state of the judiciary in their respective countries, highlighting steps that were being taken to strengthen the judiciary and its independence.⁴

Germany, on behalf of the European Union (EU), expressed concern about situations in which the judiciary was subjected to external pressure, and recommended that States should implement measures to prevent this.⁵ Canada was especially concerned with corruption within judicial systems, and asked if the Rapporteur had the intention of examining corruption in a future report. Amnesty International questioned how the Council should respond to the establishment of parallel justice systems operating under a declared state of emergency, and how persistent shortcomings in the judiciary at a national level can be adequately addressed. The International Federation for Human Rights stated that States have the responsibility to ensure that persecutors act independently and impartially. Argentina raised some points related to the institution-building with the Special Rapporteur. It asked Mr Despouy if he could comment on the project of a code of conduct for special procedures and its impact on the independence of special procedures. It also enquired about his opinion on the relationship special procedures should have with the universal periodic review (UPR)

With regard to the Rapporteur's call for a universal declaration governing the rule of law and human rights during states of emergency, several States and NGOs expressed support.⁶ The Russian Federation asked the Rapporteur for greater detail regarding which obligations would need to be undertaken. Peru echoed the call for further information regarding an international document of states of emergency and supported the Rapporteur's call for a seminar to be held on this theme. Indonesia expressed reservations towards any international declaration, suggesting that States must be the final arbiter in determining when and how domestic rules of law should apply. The Rapporteur reiterated that the erosion of human rights in a situation of emergency must be analysed closely in order to determine the best way of dealing with this phenomenon.

South Korea and the United States of America (USA) criticised the scope of the Rapporteur's report, suggesting that it exceeded the boundaries of the mandate. The USA was of the opinion that the Special Rapporteur's thinking on states of emergency was outside the mandate and did not coincide with the USA's legal analysis. South Korea thought that the report presented significant overlap with other special procedures reports, but did not specify which reports it was referring to. Argentina suggested that future reports should focus on access to justice. The Rapporteur responded that access to courts would be considered into in an upcoming report.

Country situations raised in connection with the report included Sri Lanka, Fiji, Iraq and Zimbabwe. The World Peace Council expressed concern of the independence of the judiciary in Sri Lanka. The International Commission of Jurists (ICJ) stated that constitutional paralysis and unilateral actions by the executive were damaging the independence of Sri Lanka's institutions, particularly the judiciary. The Special Rapporteur

⁴ Including DRC, Maldives, Peru, Philippines.

⁵ Similar concerns were brought up by Argentina, Australia, Djibouti, New Zealand and the USA.

⁶ Russian Federation, Peru, ICJ

responded that a future visit to Sri Lanka would be extremely useful. Australia and New Zealand expressed concern with regard to the situation in Fiji, specifically noting the continuing reports of the harassment and intimidation of judges and lawyers in that country. They asked the Rapporteur to comment on the situation. The ICJ questioned the effectiveness of the rule of law in Fiji. The Special Rapporteur responded by noting that although the Fiji Islands were no longer in a state of siege, they had not yet returned to the rule of law. Australia, the USA and the ICJ called attention to the situation in Zimbabwe, citing the recent incidences of arbitrary arrest, detentions and beatings of lawyers. They urged the Special Rapporteur to pay particular attention to Zimbabwe's situation. Mexico expressed its concern about the death penalty in Iraq. Iraq responded to Mexico's comment, noting that while there should be concern about the death penalty, the present situation in Iraq did not allow for capital punishment to be suspended. The NGO Nord-Sud XXI brought attention to the Rapporteur's findings regarding the independence of judges and lawyers in Iraq, suggesting that the judiciary lacks independence and regard for human rights. The Union of Arab Jurists echoed this statement.⁷ The Special Rapporteur acknowledged concerns about the present judiciary situation in Iraq, and made a special appeal that the death penalty be suspended with regard to the Iraqi tribunals. He also commented that in general, it was important to ensure that tribunals took account of international standards.

Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance

The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance began by outlining the main findings of his updated study⁸ on political platforms which promote or incite racial discrimination, and concluded by briefly discussing his mission to Russia.

In his report Mr. Diène discussed the main political platforms which exist in Asia, Africa, South America, North America and the Middle East. The Special Rapporteur explained that the occurrence of such political platforms is rising and that the propagation of racist ideology within a political system is a threat to human rights, democracy and social cohesion. He described a process in which racism, discrimination and xenophobia are being normalised for political gain and have stopped being solely in the domain of extremist right wing political parties. This process is supported by a concomitant political legitimisation of racist platforms through racist readings of social and political problems.

The Special Rapporteur also highlighted the particularly vulnerable situation of migrants in an increasingly hostile environment, where immigration is being viewed as a threat to national identity. He explained that racism and xenophobia expressed itself in two forms in these situations – invisibility and silence.

To fight the spread of this racist ideology he recommended a strengthening of commitment from intellectual political leaders and a simultaneous commitment to excluding racist parties from the democratic political process. He also stated that integration should be viewed not as a refusal of diversity but as a dialectical process between different communities. He emphasised that legal, political and administrative measures must be taken to address situations of racism and to balance the right to freedom of expression and freedom of religion. Additionally he explained that States should encourage inter-religious and inter-cultural dialogue and

⁷ Iraq responded 'with astonishment' in its right of reply to the propositions put forth by the Union of Arab Jurists. According to the delegate of Iraq, the Union of Arab Jurists legitimised the previous Iraqi regime led by Saddam Hussein, thereby legitimising the atrocities he committed. The Iraqi delegate stressed the point that the nation is free to prosecute former authoritarian regimes as it sees fit, including implementing the death penalty, and that those who commit such atrocities should be dealt with appropriately.

⁸ A/HRC/5/10, 25 May 2007 <http://ohchr.org/english/bodies/hrcouncil/5session/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/.

a voluntary international code of conduct should be set up to encourage multiculturalism and discourage racism and xenophobia.

The Special Rapporteur was concerned about the existing trends of discrimination, xenophobia, manifestation of anti-Semitism and Islamophobia in the Russian Federation. The issue of impunity in relation to hate crimes and cases of murder of people of Asian, African and Caucasian decent was the subject of principal concern for the Rapporteur. He pointed out two fundamental trends in the recent manifestation of racial discrimination in Russia: the ideological ground of racism rooted in the ethnic interpretation of political issues, and deep economic and social crisis in Russian society providing grounds for political manipulation and encouraging xenophobia and racism.

In his recommendations, the Special Rapporteur emphasised the importance of formal recognition by the Russian authorities of the existence of racism and xenophobia. He particularly stressed the necessity of strong political will. This includes a plan of action promoting democratic participation in all ethnic and national communities; the establishment of an independent institution to combat discrimination; strengthening of the legal structure to punish those responsible for racial violence; and the establishment of cultural and ethical measures aimed at uprooting racism. He acknowledged his continuous commitment to monitor all developments occurring in the Russian Federation.

Interactive dialogue

The representative of the Russian Federation, speaking as a concerned country, believed that the visit of the Special Rapporteur was not a serious, impartial, objective analysis of the situation, as was intended. The representative claimed that the report was politically motivated and the information provided by the Russian authorities was not fully taken on board. It was claimed that the information was unverified and arbitrarily chosen, based on speculation and having no relation to the real situation in the Russian Federation. It was therefore unacceptable as a whole. The representative concluded by questioning the principles of the work of the Special Rapporteur, and calling into question his professionalism, impartiality, objectivity and openness in regard to collaboration.

The Special Rapporteur responded to Russia's statement by confirming the existence of xenophobic violence as a 'massive phenomenon' in the Russian Federation. He pointed out the availability of data which provides sound evidence about the occurrence of racist crimes and xenophobic violence in Russia, and noted that the figures brought by the Government itself vary between 10,000 and 20,000 cases of racist violence. The cases compiled by NGOs amount to over 50,000. The Special Rapporteur then queried whether the code of conduct for special procedures, as proposed by certain member States and supported by Russia, would require the Special Rapporteur 'to hide the reality when he sees it'.

The Russian Federation again responded to the Special Rapporteur with hostility in its right of reply at the close of the day. In reference to the Rapporteur's singling out of the treatment of Georgians, the representative stated that Georgians have made several unjustified claims regarding their treatment in Russia, that the treatment of illegal Georgians in Russia has been the same as the treatment of all illegal immigrants, and that the monitoring of the migration of foreigners into Russia is carried out with full legality and respect for national origin. Additionally, the violations by the interior ministries' forces were individual cases, not a representation of the governmental branch itself, and preventative measures for the future have been put forth. The representative closed by asking what causes the influx of Georgians into Russia and suggested that this issue should be researched *in lieu* of Russia's treatment of its immigrants.

The majority of States that took the floor thanked the Special Rapporteur for his work and joined him in his concern on political platforms which promote or incite racial

Special Rapporteur on the right to food

The Special Rapporteur on the right to food, Jean Ziegler, presented his annual report⁹ to the Human Rights Council (the Council) and the preliminary note of his mission to Bolivia.¹⁰ The annual report covered the period from January to December 2006, and included the Special Rapporteur's assessment of the realisation of the right to food.

The Special Rapporteur touched on several key issues included in his annual report. He began by stating that that every five seconds, one child dies from malnutrition, and that 854 million people in the world are consistently malnourished.

The Rapporteur then went through the four chapters of his report. He briefly noted that some of his activities included visits to the German and EU Parliament.

The second part of his report addressed situations of serious concern, including Darfur, Zimbabwe, the Democratic Republic of Korea, the Democratic Republic of Congo and others. He noted that there were also positive developments in South Africa, Bolivia and Venezuela.

The Rapporteur went on to explain the relation between malnutrition and children in armed conflict. He stated that several studies carried out by Sweden, Norway and the USA have shown that there is an increase in the number of child soldiers when there is an increase in the lack of food. He explained that malnourished children over the age of ten are particularly susceptible to recruitment into armed groups.

Mr Ziegler also spoke strongly about the 'tragedy of African refugees'. He explained that malnutrition in Africa has risen to 223 million people, and that these figures are beyond dispute. He argued that the primary reason for this is agricultural dumping by the European Union, which provides heavy subsidies to its farmers. He explained that in any African market it is possible to find goods from countries such as Portugal, Italy and France for half the local price. This undercuts local African farmers, who have little opportunity to combat agricultural dumping. He stated that the EU is causing famine and malnutrition in Africa, particularly in those 37 countries whose economies are based almost exclusively on agriculture.

The Rapporteur was of the view that this was an intolerable situation that leads to families fleeing on small boats to seek refuge in Europe. He stated that thousands disappear in the process. The Rapporteur followed by condemning the EU's policy regarding migration, which monitored its borders in a 'military manner' and amounted essentially to 'waging a war on refugees of African famine'. He did acknowledge that Spain and Italy were making 'great strides regarding refugees in increasing cooperation with the governments of the countries where most of the refugees originate'.

Mr Ziegler recommended that a distinction needs to be drawn between economic refugees and famine refugees. He stated that a famine refugee should have the right to 'temporary refugee status' as they are in a state of emergency, while an economic refugee is migrating 'for comfort's sake'. The Rapporteur explained that it is possible to identify famine refugees quite easily, as the UN World Food Program has documentation on regions where there has been no harvest for six months, and where there will not be any harvest for the following half-year.

He stated that the Council is the only place in the UN system that can create a mechanism to address the right of temporary refugee status. He recommended that when it is established, the Human Rights Council

⁹ A/HRC/4/30. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/5session/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/.

¹⁰ A/HRC/4/30/Add.2

Advisory Committee should be given the task of drafting an international standard on the right of temporary refugee status.

The Rapporteur concluded his report by providing a brief summary of his mission to Bolivia. He explained that one of the Government's first social programs had a component to combat malnutrition, and that the right to food will be included in the new Constitution. He also stated that the Government nationalised petroleum, which should allow them to earmark the necessary funds to combat hunger.

Interactive dialogue

Brazil noted that hunger continues to grow as a worldwide problem despite commitments by governments, such as those made by the World Food Summit. However, it also stated that there had been positive developments, such as Brazil's 'Zero Hunger Program' which was implemented in 2003. It claimed that this program had concrete and far reaching results, providing relief to 40 million out of the estimated 52 million poor in Brazil.¹¹ The delegation also explained that Brazil supported Spain and Chile's international campaign against hunger and poverty.

Pakistan added that it is a matter of concern that there are 854 million people worldwide who are malnourished despite the fact that the world produces twice the quantity of food required to feed the global population.

Brazil urged countries to recognise the right to food, and to adopt an appropriate legal framework to guarantee this right.

The delegation of Sudan took 'the opportunity to correct some of the information' that the Rapporteur had provided. It explained that food security has been provided by the Government to narrow the gap, and that a joint summit of the UN and the African Union in March 2007 confirmed that access to food has improved in Darfur. The delegation also added that armed groups that had not signed the peace agreement were obstructing access to food.

The informal dialogue with the Special Rapporteur on the right to food will continue at the morning session on 12 June 2007.

Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Mr. Okechukwu Ibeanu, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, presented the annual report of the Working Group.¹² Mr. Ibeanu began with an introduction of the establishment of the mandate. He then discussed the main points raised in the report, and closed with a brief introduction to his country visit to Ukraine.¹³

¹¹ Brazil's total population is 185 million. The statistics on the 'Zero Hunger Program' were provided by the Brazilian delegation.

¹² A/HRC/5/5, 5 May 2007. The reports are available at <http://www.ohchr.org/english/bodies/hrcouncil/5session/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/.

¹³ Oral statements made at the Council can be found on the OHCHR extranet (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

The Rapporteur stressed the increase in the illicit movement and dumping of toxic wastes, as well as new kinds of wastes including electronics, as a result of increased economic growth, use of energy, and need for consumer products. While he noted that there has been progress at various national and regional levels, as well as new environmental agreements promulgating the objectives of removing these products, he stressed that the implementation of these initiatives has not solved the situation. In fact, the new laws in industrialised countries have forced closings of domestic landfills, thereby creating more exportation of the material to poor and remote areas.

The report submitted to the Council was concerned primarily with the connection between armed conflict and exposure to toxic and hazardous waste. There was little new information given here, with a focus on armed conflict inhibiting a country's ability to properly dispose of waste, inform its people of the dangers of toxic waste, and control its borders to prevent the influx of waste.¹⁴ Additionally, both the intentional and unintentional damage of waste centres (for example power plants, oil wells and oil freights) has both short and long-term detrimental effects on human health, food sources, various professions, and the marine environment amongst others. The use of herbicides, which kill plants indiscriminately, has clear negative consequences for civilian food stores.

The overall objective of the Rapporteur was to offer a "rights based approach" to the case for increased care in armed conflict with regards to toxic waste. The human rights specifically affected are: the right to life, the right to the highest attainable standard of health, the right to adequate food, the right to work, and the right to information. Additionally, the Rapporteur called on nations to help provide clean-up crews and health warnings in war torn areas.

Mr. Ibeanu also conducted a mission to the Ukraine in January of 2007. Whilst final results from this mission will be presented at an upcoming session, the Rapporteur did provide the Council with the initial results. The main environmental challenges Ukraine faces come from the thousands of inadequate storage facilities left over from the industrial boom from the 1990s. There is also a need for stricter border controls and dispersion of information to the general population. While ultimately the responsibility for the influx of waste lies with the corporations involved, in urgent cases the intervention of State authorities is necessary. The Rapporteur noticed and supported the new legal framework established by the Ukraine, but warned that proper enforcement of the legislation will be vital. That the Office of the Prosecutor in Ukraine has a branch specialising in environmental crimes is encouraging.

Mr. Ibeanu concluded by stating that he will continue to monitor the movement and dumping of toxic waste and the results thereof as it applies specifically to electronic waste, pesticides and transnational corporations.

Interactive dialogue

The Ukraine responded to Mr. Ibeanu's report as a concerned country with full appreciation and support of the work he had done. They were grateful for the work he had put into the preliminary findings and are looking forward to the official report. Additionally, they stated that they would like to continue a dialogue with him and thank him.

There were no further comments directed toward the Special Rapporteur in the interactive dialogue, which continues on the morning of 12 June 2007.

¹⁴ Somalia was cited as a recent example of this.

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Mr Miloon Kothari, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, presented his annual report, the report of his visit to Australia and his findings during his mission to Spain and South Africa.¹⁵ In his presentation, Mr Kothari discussed his activities and the main points raised in his reports.

Regarding his activities, the Special Rapporteur stated that he was in constant dialogue with the UN treaty bodies, especially the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) to develop a general comment on the right to adequate housing. He also attended various regional forums, such as the one in Angola on the issue of the right to adequate housing.

On his report, Mr Kothari mentioned that the questionnaire concerning women and the right to adequate housing and land served as a basis for seven regional consultations and was now a useful tool to monitor the implementation of this right. He also highlighted the lack of tools to measure the implementation of the right to adequate housing and the need for an operational framework, which became more pertinent with the emergence of the Millennium Development Goals (MDGs).

The Rapporteur stated that the elements of the right to adequate housing are as follows: adaptability, accessibility, affordability and security of tenure. He continued that land was a critical element of the human rights to housing. He then dealt with the issue of forced eviction, referring to his work with the German Foreign Office on guidelines for forced evictions that provided practical steps for States to ensure the right to adequate housing. These guidelines correspond to new stringent criteria and include a gender perspective. He also insisted that he received complaints on this issue from every part of the world and that this was reflected in his communications, as well as other issues such as violence against women, discrimination and access to land and livelihood.

Among his recommendations, Mr Kothari declared that the Council should recognise the right to adequate housing as a human right, test and adapt the indicators on the right to housing, incorporate the guidelines on forced eviction in States' domestic law and revisit the 2006 recommendations on women and housing.

The Special Rapporteur summarised his visits to Australia, Spain and South Africa. Concerning Australia, he declared that the country had policies to address the problem of implementation of the right to adequate housing, such as accessible housing programmes. However, these policies do not have a significant impact on communities. There are still problems such as homelessness, discrimination and poor living conditions for indigenous people. He advised Australia to develop a clear housing strategy and to create a Housing Ministry to develop such strategy and policies.

Mr Kothari specified that he was unable to present a full report on his visit to Spain but that a preliminary note was available. He welcomed the creation of a Housing Ministry. However, he expressed concern at the lack of any alternative possibility to address the housing problem in the country and with the rise in house prices. He appreciated the will of the Government to monitor the latter element. He encouraged Spain to review the impact of its social policies that affect housing. Finally, he welcomed the progresses made by

¹⁵ A/HRC/4/18, 5 February 2007; A/HRC/4/18/Add.2. All reports are available at <http://www.ohchr.org/english/bodies/hrcouncil/5session/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.

South Africa in addressing racial segregation and stated that its good practices would be reflected in his report.

Interactive dialogue

Australia and Spain both took the floor as concerned States. Both of them started by stating their support to a system of strong and independent Special procedures that are important and valuable to the UN machinery. Australia, however, declared that it would be good for Rapporteurs to focus their resources on the most serious issues. It then proceeded to thank the Special Rapporteur but expressed disappointment that the mission report to Australia was ‘inadequate and unbalanced’. The delegation acknowledged that there are areas where Australia can make improvement such as on indigenous issues, but that there are other positive elements that are not reflected in his report. The delegate of Australia then listed particular statistics cited in the report, which she then referred to consecutively as ‘wrong’, including in relation to the productivity sector, renter assistance, reduction of waiting lists and the maintenance of public housing. She claimed that the State has targeted poverty and is in the top three countries in the UN’s development report. The delegation claimed that Mr Kothari discussed issues primarily with ‘special interests groups’ and that his claims regarding the housing sector were exaggerated.

The Spanish delegation appreciated that the preliminary note of the Rapporteur recognised the efforts taken in the area of the right to housing. The delegate mentioned that he would have liked to discuss the final report because it has been six months since Mr Kothari’s visit. Spain acknowledged that there were obstacles to access to housing but that the Government was trying to solve this issue, and that he would be happy to discuss what has been put in place with the new legislation. He declared that Spain took the approach that housing is a basic human right. Some measures have been put in place and gave rise to stability in the market, and there are special solutions for vulnerable groups such as youth, students and large families. He finally pointed out that the Special Rapporteur should differentiate between access to proper housing and the market for ownership, and that some of his statements were not completely correct.

Cambodia took the floor and explained that it was at a difficult period in its history, and that due to the Khmer Rouge the right to property was not established in the country until 1989. The delegation stated that public policy for land management and land registration is very important for the population of Cambodia, but that the question of land property is very different than in other parts of the world. However, the delegation explained that thanks to the implementation of the new land law, many land disputes had been settled. The delegation therefore rejected the Rapporteur’s statements relating to Cambodia, and corrected him on a reference made to the ‘Vietnamese Bridge’. However, the delegation did not state what the correct name of the bridge was.

The interactive dialogue with the Special Rapporteur on the right to housing will continue at the morning meeting of the Council on 12 June.

Independent expert on the question of human rights and extreme poverty

The Independent Expert on Extreme Poverty, Professor Arjun Sengupta, began by stating that his present report¹⁶ on extreme poverty and human rights builds on developments of his previous two reports, the outcome of the workshop in Geneva on 23-24 February and his mission report to the USA. He stated that the

¹⁶ A/H/HRC/5/3. The reports are available at <http://ohchr.org/english/bodies/hrcouncil/5session/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/.

report highlights that the concept of poverty can be measured, is estimable and can be tackled by policy; and that there must be a social consensus in order to remove extreme poverty in countries.

Prof. Sengupta followed that poverty is multidimensional, and can be identified in three forms: income poverty; human development poverty; and social exclusion. The latter is less well noted and constitutes a new element following EU practice. He argues that those who suffer from all three of the above elements are those who suffer from extreme poverty. Recognising this categorisation would contribute to building a consensus towards the removal of extreme poverty.

The Independent Expert noted that the question of whether extreme poverty is in itself a human rights violation or whether it is a cause of multiple human rights violations is 'not so important', except in relation to the consensual acceptance of States of the definition of extreme poverty in the context of the obligations of individual States and the international community under international law. He provided the example of one economist, who illustrated that the transfer of 1% of the world's income would eradicate extreme poverty throughout the world. He added however, that this was not just a question for developing countries, as his mission report to the USA shows. Instead, this must be tackled as a broad societal problem.

In this light, the Independent Expert concluded that his studies would further work towards answering the question of how to eradicate extreme poverty, but the one point for the Council to take on board at this stage was the need to reach consensus on identifying its form.

Interactive dialogue

Only Brazil addressed the report of Independent Expert on Extreme Poverty in the afternoon meeting as there was very limited time. Brazil indicated that it shared the view of Prof. Sengupta that structural adjustment policies can exacerbate poverty unless combined with in-built efforts to mitigate these effects. It indicated elements it had undertaken domestically in this regard, including its emphasis on the importance of access to safe drinking water amongst its estimated 52 million poor. It also stressed the need for gender balance and education in targeting the root causes of poverty.

The interactive dialogue with the Independent Expert on extreme poverty will continue at the morning meeting of the Council on 12 June.

Informal consultations on a draft code of conduct for special procedures

The African Group held its first open-ended meeting on the code of conduct for special procedures' mandate holders (the Code).¹⁷ The basis for the meeting was the draft revised text of 5 June.

The Ambassador of Algeria presented the revised text and drew attention to ten main points in the new text that he said reflected the concerns expressed by States during private consultations held over the past few weeks. Responding to the concerns of some States that the Code contradicts the UN Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (the Regulations) he said that the intention of the Code was to provide detail to and expand upon the Regulations, not contradict them. Regarding the suggestion of some

¹⁷ At the resumed second session of the Working Group on review of mechanisms and mandates (27-29 November 2006), Algeria on behalf of the African Group tabled a Resolution¹⁷ asking for a review of the Manual of special procedures and calling for the Working Group to draft a code of conduct for special procedures. As no other proposals on the code of conduct were forthcoming, Algeria, on behalf of the African Group, submitted a draft code of conduct for mandate holders on 5 March 2007. The African Group has since been holding only private bilateral consultations with regional groups on the original draft text. A revised draft was submitted on 5 June 2007. This revised draft was intended to have taken into consideration the concerns and views of States on their original draft. For a more detailed discussion of the code of conduct, please refer to:

States¹⁸ that the obligations of States to cooperate with Special Procedures must be addressed in the present Code, the African Group stated that this would exceed the provisions of the Regulations and was thus not possible.

The African Group also referred to the concerns of several States and NGOs about preserving the independence of special procedures, by saying that the present Code is intended to ‘spell out the consequences’ of that independence for mandate holders. They went on to state that the Code requires that mandate holders respect national legislation while on mission, and that this is in keeping with the Regulations. They noted that the new Code contains a modified reference to being ‘scrupulously truthful’ in the solemn declaration to be made by mandate holders, in response to the objection of States to the original phrase ‘scrupulously observing the truth’. The Code also now contains admissibility criteria for letters of allegation, similar to those specified in the President’s text on the new complaint procedure. The African Group declared that the provision for coordinating country visits directly with the relevant State has been made in order to structure the operations of mandate holders for maximum efficiency. A new article on ‘conclusions and recommendations’, mainly pertaining to public statements made by mandate holders regarding allegations of human rights violations has also been added. The stipulation that mandate holders can only resort to urgent appeals if there is a loss or imminent risk of loss of human life has additionally been made in the new text. Finally, the African Group said that the Code provides for the creation of an ‘ethics committee’ to give expression to the ‘accountability’ of mandate holders.

Several States and NGOs made comments on the text highlighting concerns about the revised text. Some expressed the view that the previous consultations had not led to an improvement of the text but rather the opposite. In response, The Ambassador of Algeria said that the African Group was happy to return to the initial draft.

In addressing some of their specific concerns States and NGOs drew attention to the criteria for admissibility regarding letters of allegation (article 9 of the draft Code) that was introduced as a new element in the revised text.¹⁹ Germany explained that the criteria listed in the draft were adapted from the 1503 procedure for receiving complaints regarding gross violations of human rights and were not applicable here.²⁰ They said that applying these criteria to communications sent by victims to special procedures was inappropriate as victims were not experts and could thus not be asked to identify which rights had been violated before sending communications to mandate holders. Additionally, Germany stated that the process of sending letters of allegation to States was not a quasi-judicial procedure and thus the same criteria as the complaint procedure could not be applied to it. Amnesty International and the ICJ supported this view and drew attention to the inappropriateness of exhaustion of domestic remedies as a criterion for admissibility, and also emphasised that special procedures were not judicial bodies. India noted that while the special procedures are different from the complaint procedures, admissibility criteria were required to screen out frivolous complaints. He suggested that special procedures themselves could screen out communications and that the specific provisions could be further discussed.

Several States also raised concerns about the establishment of an ethics committee.²¹ Germany stated that they could see no convincing argument for the creation of such an entity, or how it would fit into the overall administrative structure of the UN. The ethics committee also received opposition from Ghana, who said if this was to be a consensus document and be presented on behalf of the African Group then this provision should not be reflected in the revised text. The idea of an ethics committee was also opposed by the Argentina, Australia, Canada, Japan, Switzerland and USA. The Philippines welcomed the formation of an ethics committee. Brazil said they were open to the idea of an ethics committee if mandate holders and civil society could be a part of it.

It was the view of Germany that urgent appeals could not be limited to cases where the loss of human life had already occurred or was about to occur. This provision received heavy opposition also from Argentina, Australia, Canada, Japan, New Zealand, Norway, International League of Human Rights (FIDH), and the International Commission of Jurists (ICJ).

¹⁸ Canada, Germany, New Zealand and Norway, Germany.

¹⁹ Germany (EU), USA, Canada, Australia, and Japan.

²⁰ Australia, Canada, Japan, USA, and FIDH, were also opposed to the admissibility criteria for letters of allegation.

²¹ Germany (EU), Canada, USA, Switzerland, Australia, Argentina and Japan.

For a detailed summary of the informal consultation on the draft code of conduct for special procedures, please see the report on the website of the International Service for Human Rights at www.ishr.ch/hrm/council.

Additional rights of reply and other issues

In addition to rights of reply made to statements by special procedures and/or NGO's, as detailed above under the respective interactive dialogues, certain States closed the day's meeting by issuing rights of reply to statements made by other States. Zimbabwe opened by directing its right of reply to the United Kingdom, Canada, the United States and Australia, accusing them of promoting double standards in their search for more land. The representative stated that there is no racial discrimination in Zimbabwe today, and that those Zimbabweans who work with foreign parties will be treated as "the traitors they are". Zimbabwe expressed its sympathy towards the aboriginals in Australia and suggested Australia focus more internally rather than externally. Similarly, Zimbabwe referenced an unjust judiciary established by the USA in Iraq and suggested the reparation of that system before criticism of the Zimbabwean judiciary would be accepted.

Sudan responded to the commentary on the situation in Darfur as it relates to racial discrimination. The representative stated that the warring factions are either nomadic farmers and Arabs or a result of internal fighting within a tribe – not a result of race, ethnicity, or religion. The representative added that the Janjaweed are an outlawed group in Darfur, that they are not working in any way with the Sudanese Government and that they are, in fact, being prosecuted for the crimes being committed. Additionally, he stated that the attempts to cleanse black Africans from the region are unfounded. He provided support for this by referencing the provisional Constitution for 2005, which provides equality to all citizens without discrimination. Lastly, the delegate claimed that the Sudanese Government wants a peaceful situation in Darfur and they urge groups who have not yet acceded to the Darfur agreement to do so.

Japan replied to the commentary put forth by the DPRK with regards to contemporary forms of racism in their country. The delegation of the DPRK stated that there is increasingly harsh racism against the Korean nationals in Japan. The Japanese delegation categorically denied that claim, stating that it is forbidden because they have acceded to the *International Convention on the Elimination of all Forms of Racial Discrimination*. Japan has cooperated with the Rapporteur and has taken measures to eliminate discrimination in their country and they will continue to do so.

The DPRK responded to the above commentary from Japan expressing concern with the allegations and claiming that human rights violations occurring in Japan have accelerated and are becoming harsher. They alleged that 'Korean victims' are still appealing for help

The Vice-President of the Council closed the meeting by reminding all present that the following day is to run from 9 am to 6 pm without a break, and that over twenty States remained to speak in the interactive dialogue with the experts on poverty, food, housing and toxic waste.

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Katrine Thomasen, Manager, Liaison, Coordination and Advocacy

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