

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## DAILY UPDATE HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION 2 JUNE 2008

### Overview

The first day of the 8<sup>th</sup> session opened with a general address from the President of Slovenia to the Human Rights Council (the Council) and the final update by the UN High Commissioner for Human Rights, Ms Louise Arbour. Her term of office expires at the end of June 2008. Among the issues raised by the High Commissioner, States and NGOs were:

- The various achievements of the High Commissioner in her term of office, including the expansion of regional offices, the inclusion of human rights experts in UN country teams, and her open dialogue with the Council;
- The finalisation of the institution-building process of the Council, including the early assessment of the universal periodic review (UPR) and the conclusion of the review of mandates of special procedures;
- Standard setting, including the consideration of the draft optional protocol to the *International Covenant on Economic, Social and Cultural Rights* (OPICESCR) and a possible future optional Protocol to the *International Convention of the Elimination of Racial Discrimination*;
- Thematic issues, including discrimination against women and prejudice on the basis of sexual orientation or caste, and the permissible limitations to freedom of expression in light of the prohibition of incitement to hatred, including religious discrimination;
- The situation of human rights in South Africa, Italy, Somalia, and Burma/Myanmar.

Informal consultations were also held by Portugal on the resolution to adopt OPICESCR. The most significant issue discussed was the non-inclusion of part I of the Covenant (on the right to self-determination) in the scope of the optional protocol.

The Council then opened Item 3 on the 'promotion and protection of all human rights' and started interactive dialogues with three special procedures mandate holders. Both the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions and that of the Special Rapporteur on the Independence of Judges and Lawyers will be reviewed under the Council's 'review, rationalisation and improvement' of special procedures mandate later in the week.<sup>1</sup>

Of particular note was the recommendation by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Philipp Alston, to establish of a new Special Rapporteur on the rights of detainees, deploring that detainees around the world 'are kept in conditions in which no representative in this Council would

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<sup>1</sup> The reviews are currently scheduled for Wednesday, 4 June 2008 in the morning, but are likely to be pushed back to the afternoon of that day.

knowingly permit his or her dog to be kept'. This recommendation was made by other special procedures mandate holders<sup>2</sup> before, and it seems clear that several mandate holders working on issues related to detention feel that the conditions of detention and the rights of detainees cannot be sufficiently covered by their work.

### Address by the President of Slovenia

The session opened with a statement from the President of Slovenia, Professor Danilo Türk.<sup>3</sup> Stating that he was pleased to see the Council tackling substantive issues whilst also finalising its working methods, Mr Türk called for the identification of basic principles in honouring the 60<sup>th</sup> anniversary of 'one of the greatest documents of the entire human history', the *Universal Declaration of Human Rights* (UDHR). This, he observed, required a removal of misinterpretation and realism in implementation. The latter had benefited from significant advancements in areas such as recognition of collective rights and the *Vienna Declaration's* proclamation of the right to development as an integral part of human rights.

Concerning the functioning of the Council, Mr Türk focused on the possibilities of the new UPR as an opportunity for dialogue that could lead to a more comprehensive interpretation of human rights standards, although this depended on meaningful preparation and follow-up by all stakeholders. He also cautioned that other UN mechanisms needed to take the initiative when faced with massive human rights violations, referring specifically to the principle of the 'responsibility to protect' as it applies to natural disasters, and adding that this 'may include, in extreme cases and as the last resort ... the use of military means'.

Fittingly, Mr Türk concluded by stating that the opening of the Office of the High Commissioner for Human Rights fifteen years ago was 'one of the wisest decisions of the UN' and that the effectiveness and objectivity of the work of Ms Louise Arbour had provided a firm basis for future progress. What was now required was 'more human rights work, not less'.

### Address by the UN High Commissioner for Human Rights

Presenting her final update to the Council, Ms Louise Arbour thanked all those who had assisted her in her work and in overseeing the transition from the former Commission on Human Rights to the Council. This included NGOs, who had made an 'enormous contribution' in bringing about institutional reform. Ms Arbour referred to the reform of the human rights machinery as the most tangible achievement of the UN renewal process so far. She considered that it would take two cycles of the UPR to be able to fully measure its added value in distinguishing the Council from the former Commission. While noting already the 'constructive linkages [...] with treaty bodies and special procedures', the High Commissioner expressed that the UPR could be further strengthened by the contributions of independent experts and follow-up mechanisms. She was also pleased with the bolstering of the system of special procedures and called for the creation of new mandates where protection gaps were identified.

However, Ms Arbour warned that 'scepticism has not been fully dispelled' and that the use of regional or 'communal' positions often 'eroded the clarity with which members [...] could and should speak on critical human rights protection issues.' She welcomed the recent special session on the food crisis as a move away from the historical practice of relegating economic, social and cultural rights. This, she urged, could be even further concretised by the adoption of the draft OPCESCR at the present session. Also related to standard

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<sup>2</sup> Including the Special Rapporteur on torture, and the chair of the Working Group on arbitrary detention.

<sup>3</sup> The President's address, and all other statements made at the Council session, can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive user name and password). An audiovisual archive of all public meetings of the Council ('webcast') is available at <http://www.un.org/webcast/unhrc/index.asp>.

setting, Ms Arbour reiterated her call for a mechanism to monitor the implementation of the *Convention on Genocide*, or supported as a possible alternative the creation of an early-warning optional protocol to the *International Convention on the Elimination of Racial Discrimination*, which may be considered by the forthcoming Durban Review Conference in 2009.

Moving to thematic areas, the High Commissioner demanded that all forms of intolerance be condemned, and that at the same time States must ‘expose abuse without fearing accusations of insensitivity to cultural diversity.’ She singled out ‘lower intensity discrimination’ against women, the rights of minorities, caste-based discrimination and prejudice on the basis of sexual orientation as examples of areas where human rights law ‘cannot be pigeon-holed to deny protection’. OHCHR will also host an expert consultation on the permissible limitations to freedom of expression in light of the prohibition of incitement to discrimination.

Ms Arbour included in her statement references to country situations to South Africa and the attacks on foreigners which ‘shocked and continue to alarm the international community’, Italy and the proposed criminalisation of illegal immigration, and the ongoing threat of a human rights and humanitarian disaster in Somalia. Offering condolences to Myanmar and China following the recent natural disasters, she reserved particularly strong words for the obstruction to relief efforts in Myanmar, which ‘illustrates the invidious effects of long-standing international tolerance for human rights violations that made such obstruction possible’.

The High Commissioner then offered her final parting words to the Council by reiterating the often heard but no less important warning that ‘the continued pursuit of narrow parochial political agendas [...] represents the greatest impediments to the full realisation of many rights which are, otherwise, clearly within our reach’.

### General comments

To little surprise, States then provided general comments that could, in certain cases, constitute the pursuit of ‘narrow parochial political agendas’, although this may have been toned down in light of the occasion. The majority of States who spoke commended the High Commissioner for her ‘courage and effectiveness’ (Pakistan, on behalf of the Organisation of the Islamic Conference (OIC)), ‘tireless work and exemplary leadership’ (Slovenia, on behalf of the European Union (EU)), ‘independence and impartiality’ (Canada), ‘dedication and objectivity’ (Mexico), and even her ‘intelligence, elegance and charm’ (Russian Federation). Egypt (on behalf of the African Group) stated that while its interactions with Ms Arbour had not always led to a convergence of views, this ‘in no way diminishes the high esteem’ Egypt holds for her.

Many States listed the general achievements of the High Commissioner during her term of office. Many States acknowledged the role of the High Commissioner in the transition from Commission to Council, and said it could not have taken place without the full support, commitment and hard work of the High Commissioner and OHCHR.<sup>4</sup> France commended the transparent process of dialogue Ms Arbour had undertaken with the Council. China stated that the High Commissioner still needed to play a pivotal role in removing selectivity from the Council. Switzerland and Slovenia (on behalf of the EU) paid credit to her integration of human rights throughout the UN system, including in placing human rights experts in UN country teams. Many States<sup>5</sup> saw the increase in regional OHCHR offices as her most notable achievement. Nepal, an example of OHCHR’s engagement, gave an impressive account on how OHCHR’s work has contributed to improvements, and pledged to continue to collaborate with the High Commissioner. Other States were critical of the High Commissioner’s opening of regional offices and claimed that this needed the full consent of States in the region and not just the host country.<sup>6</sup> Uzbekistan particularly complained about

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<sup>4</sup> Slovenia (on behalf of the EU), Canada, the Russian Federation, Tunisia.

<sup>5</sup> Slovenia, Senegal, Canada, France, Republic of Korea, Brazil, United Kingdom (UK), Nepal, Norway,

<sup>6</sup> Pakistan, Uzbekistan.

the recent opening of an OHCHR office for Central Asia in Bishkek, Kyrgyzstan, saying the region had not been consulted on this. Algeria went further, arguing that the Council should be consulted before the opening of a country office. The Russian Federation, pointed to the lack of geographic representation among staff as a remaining problem, an issue it raises every time the High Commissioner updates the Council. The Republic of Korea, while acknowledging the efforts made in this field, asked for more practical steps to improve the geographic representation of staff.

Concerning issues raised by the High Commissioner in her presentation, many States expressed satisfaction with the first two sessions of the UPR.<sup>7</sup> Pakistan (on behalf of the OIC) and Mexico shared the High Commissioner's evaluation that the assessment of human rights at the national level was 'no longer taboo' as all States had actively taken part in the first two sessions. Bangladesh pointed out the UPR has 'revealed some human rights violations in advanced countries which otherwise would have remained concealed'. Dampening the expectations raised by the High Commissioner's call for more expert involvement in the UPR, the Ambassador of Morocco said, while the UPR could be perfected, the Council should 'resist the temptation of going beyond the framework set in the institution-building text'. Overall, it seems that States have a more positive assessment of the first two cycles, in contrast to more mixed feelings expressed by many NGOs. Only the Maldives recalled that not the quality of the debate, but the level of implementation of recommendations on the ground would determine the success of the UPR. Mexico and Canada in particular commended the secretariat's role in providing technical support for the UPR. China suggested that the documents prepared for the UPR by OHCHR should focus more on 'achievements' and less on challenges. Burkina Faso, a least-developed country that will be reviewed during the December 2008 session of the UPR Working Group, urged OHCHR to continue providing support to States in the exercise. Egypt (on behalf of the African Group) sought further information on the status of the two UPR trust funds.

On special procedures, France referred to them as 'indispensable tools', while Switzerland applauded their 'outstanding work'. Egypt emphasised the need for all special procedures to adhere to the code of conduct. In relation to standard setting, support was also voiced by Egypt and Mexico for the OPICESCR to be adopted by the Council.<sup>8</sup> Several States commended the recent special session of the Council on the food crisis as highlighting the importance of moving towards addressing all rights in an equal manner, in accordance with the vision of the High Commissioner.<sup>9</sup>

Commenting on the recurring issue of 'strengthening' the relationship of OHCHR with the Council, several States commented on the strategic framework of OHCHR for 2009-2010 and called for a formal discussion of the strategic framework by the Council.<sup>10</sup> The Netherlands and Ireland affirmed the need for an independent OHCHR, rejecting the view that OHCHR 'should be accountable to the Council or follow its instructions'. Without entering into the substance, the Netherlands argued that questions of oversight of the Council could not be discussed in Geneva, but must be settled in New York. Any other course of action would undermine the authority of the UN Secretary-General. Questions around the Council's competencies vis-à-vis the High Commissioner have been raised repeatedly by many States in the Council, and the issue is yet to be resolved at the appropriate level.

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<sup>7</sup> Mexico, Canada, Pakistan, Republic of Korea, Sri Lanka, Philippines, Nigeria, Bangladesh, Brazil, Algeria, Chile, Tunisia, Morocco, Malaysia. India referred to its own review as an 'extremely positive and constructive engagement' and claimed that it looked forward to hearing the views of NGOs and national human rights institutions, who had contributed 'effectively albeit indirectly' to the process. However, it is not clear what India meant by 'indirectly', as the National Human Rights Commission of India authored India's national report to the UPR on behalf of the Government of India.

<sup>8</sup> Bangladesh, Brazil, Algeria, Morocco.

<sup>9</sup> Japan, Indonesia, China, Philippines, Nigeria, South Africa, Thailand.

<sup>10</sup> Malaysia, Philippines, Algeria, Uzbekistan.

Concerning thematic issues raised, Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group) responded favourably to the endorsement of the Durban Review process.<sup>11</sup> Algeria suggested that a full-time Secretary-General be appointed to lead the Durban Review Conference in 2009, replacing the High Commissioner. On the broader subject of discrimination, however, in a likely response to the High Commissioner's reference to sexual orientation, Egypt implored that it took strong exception to the discussion of 'behaviour outside international human rights law' and the 'imposition of the cultural values of others'.<sup>12</sup> Many States welcomed the High Commissioner's suggestion to convene an expert consultation to develop a better understanding of the permissible limitations to freedom of expression by taking into account the mandatory prohibition of advocacy of religious hatred, to ensure the fullest respect for freedom of expression.<sup>13</sup> However, some States seemed to take the outcome of the expert consultations for granted, by exclusively approaching the issue from the angle of limitations.

A final point of note was Italy's aggressive response to criticism by the High Commissioner in relation to criminalisation of illegal immigration. Deliberately avoiding any form of congratulation of her work, Italy accused the High Commissioner of being misinformed and used its entire intervention to state that such a law has not yet been passed and would in any case not be racially motivated but intended to fight crime. The tone of the response raised eyebrows about the supposed willingness of EU States to be subject to criticism, and did Italy a disservice on its national day. Similarly misplaced seemed Sri Lanka's declaration of 'support for the rebuttal by the Ambassador of Italy', as it stepped in to defend the Italian State's migration policies.

A joint NGO statement commended her for the work done.<sup>14</sup> The NGOs noted Ms Arbour's achievements in a number of areas, including in firmly upholding the principle of universality throughout her work, showing outstanding leadership in OHCHR's management and positioning within the wider UN system, and establishing and strengthening protection systems at national levels.

It was somewhat surprising, that the High Commissioner did not respond to any of the comments made.

### Interactive dialogues with special procedures

The Council then opened Item 3 on the 'promotion and protection of all human rights' and started the first three of a total of six interactive dialogues with special procedures mandate holders. It was only able to hear from two concerned countries, and will continue the debate on this on 3 June 2008.

### Internally displaced persons

Mr Walter Kälin, Representative of the Secretary-General on **internally displaced persons (IDPs)** presented his annual report, as well as mission reports on visits to the Central African Republic, Azerbaijan, the Democratic Republic of the Congo (DRC), and Sri Lanka.<sup>15</sup> He mentioned that he had recently focused on displacement due to natural disasters, particularly in the wake of cyclone Nargis in Burma/Myanmar, and the earthquake in China. Mr Kälin is trying to work with authorities to develop guidance on how to react to natural disasters, and to promote a 'rights-based approach' to disaster relief. However, while attention to

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<sup>11</sup> South Africa, Brazil, Algeria.

<sup>12</sup> This was consistent with its reaction to references to sexual orientation during the first sessions of the UPR. See, for example, the adoption of the report of Ecuador, at [http://www.ishr.ch/hrm/council/upr/upr\\_1st\\_session\\_2008/upr\\_001\\_ecuador\\_final.pdf](http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf).

<sup>13</sup> Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Slovenia (on behalf of the EU), Indonesia, Malaysia, Nigeria, United Kingdom, Algeria, Maldives.

<sup>14</sup> The joint statement was signed by 32 organisations, of which 24 enjoy consultative status with ECOSOC. See [http://www.ishr.ch/lca/statements\\_council/isshr/joint\\_statement\\_item\\_2\\_session\\_8.pdf](http://www.ishr.ch/lca/statements_council/isshr/joint_statement_item_2_session_8.pdf).

<sup>15</sup> A/HRC/8/6 (annual report), Add.1 (Central African Republic), Add.2 (Azerbaijan), Add.3 (Democratic Republic of the Congo), Add.4 (Sri Lanka).

displacement due to natural disasters is growing, armed conflicts are still the major cause for displacement. He welcomed the efforts undertaken by the African Union (AU) to adopt a convention on internal displacement, in the hope that this would also improve the situations in the **DRC** and the **Central African Republic**. Mr Kälin described the situation in **Sri Lanka** as ‘complex and of high magnitude’, and said that while displacement continues, some opportunities for finding durable solutions exist. While acknowledging the positive steps taken by the Government of **Azerbaijan**, Mr Kälin urged it to pay particular attention to the livelihood of IDPs in urban settings. He concluded by expressing his hope to receive a positive reply to a request for a visit sent to the **Sudan** in January and March of 2008.

Both the DRC and Azerbaijan, speaking as concerned States, welcomed the report and pledged to take the recommendations seriously.

### **Extrajudicial, summary or arbitrary executions**

The Council also received the reports of the Special Rapporteur on **extrajudicial, summary or arbitrary executions**, Mr Philip Alston, who presented his annual report and reports on five country visits.<sup>16</sup> In his oral presentation he highlighted three issues of concern: the questionable role of commissions of inquiry in combating impunity for extrajudicial executions, governments allowing prisoners to run prisons, and the right to seek pardon or commutation of a death penalty. He expressed particular concern about the conditions of detainees in many places of detention, describing them as unfit even for dogs. He recommended that the Council mandate a Special Rapporteur on the rights of detainees to analyse the issue further.

In reference to his final report on the **Philippines**, he acknowledged the decrease in extrajudicial killings since his visit. However he was concerned with the continued governmentally sanctioned death squad killings and the ineffectiveness in convicting soldiers and providing justice for victims. On his visit to **Brazil** Mr Alston expressed grave concern regarding the increase in police-sanctioned killings in the state of Rio de Janeiro, and deplored that the ‘strategy based on State-sanctioned extrajudicial killings has failed miserably by any appropriate criterion’. He reported that extrajudicial killings in **Sri Lanka** had increased dramatically since his visit at the end of 2005, and accountability mechanisms are being dismantled. In reference to his visit to the **Central African Republic** he acknowledged the recent ceasefire agreement, which has decreased the number of government-sanctioned killings. However, he encouraged the Government to prosecute State officials who are responsible for mass killings. In relation to his follow-up visit to **Nigeria**, he said the Government had failed to make sufficient progress, and no steps have been taken to remove adultery and sodomy from the list of capital crimes. Turning to his recent visit to **Afghanistan**, he expressed concern regarding the increase in civilian deaths at the hands of international forces. He expressed his displeasure with NATO’s hostile reception of his report. He noted that armed conflict should not allow for the toleration of civilian killings and encouraged the prosecution of international forces in civilian killings. The Special Rapporteur drew attention to the continued escalation of violence against women in Afghanistan and the lack of recourse available to them. He also expressed his support for Afghan police reform and encouraged international human rights NGOs to develop contacts with the Taliban and other insurgents in an effort to decrease civilian deaths and violence against women.

Overall, Mr Alston’s statement stood out from normal practice in the Council by its open criticism of the situations he has encountered. Clearly, Mr Alston is not afraid to voice direct criticisms at the address of States in the interest of fulfilling his mandate.

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<sup>16</sup> A/HRC/8/3 (annual report), Corr.1 (corrigendum), Add.1 (communications to and from governments), Add.2 (Philippines), Add.3 (Sri Lanka and Nigeria follow-up country recommendations), Add.4, (preliminary note on Brazil), Add.5 (preliminary note on Central African Republic), Add.6 (preliminary note on Afghanistan).

## Independence of judges and Lawyers

Mr Leandro Despouy, Special Rapporteur on the **independence of judges and lawyers**, focused on access to justice in his annual report and a mission report on the DRC to the Council.<sup>17</sup> He identified impediments to access to justice, including economic, cultural, and physical barriers and a lack of knowledge and trust of the system.

Mr Despouy expressed concern over the execution of Iraqi Awraz Abdel Aziz Mahmoud Sa'eed in connection with the 2003 attack on the UN offices in Baghdad. He called for the creation of a commission of experts to investigate the events surrounding the attack. He also generally deplored the use of the death penalty in trials that deal with violations of international human rights law.

On his mission to the DRC, he listed a number of areas that need improvement, including combating corruption and improving access to justice by increasing the number of courts. He also pointed out that police and armed forces commit the majority of human rights violations in the DRC, and the perpetrators are tried in military rather than civilian courts.

Due to time constraints, the only concerned country to respond was the DRC. It gave a detailed account of measures taken to improve the justice system. It stated it was 'aware of the shortcomings' but reminded the Council that the country faces many challenges as it recovers from the long conflict that only recently came to an end.

### Informal consultations on the draft resolution on OPICESCR

Portugal convened informal consultations on 2 June to discuss its procedural draft resolution on transmitting the text of the draft OPICESCR to the Council. Portugal reiterated that not all delegations had been completely satisfied with the draft optional protocol.

The meeting evolved into a debate on the text of the optional protocol itself, with Algeria, Pakistan, Syria, and Palestine expressing their dissatisfaction with the current text of the draft optional protocol, which they characterised as selective, given its non-inclusion of the right to self-determination as a basis for complaints. These delegations argued that consensus had not been achieved, and that the current version of the draft optional protocol required further consideration. Canada, the United Kingdom, and others suggested that the optional protocol text should not be renegotiated – it represented a 'delicate compromise' following five years of careful negotiation, and any attempt to 're-open' the text at this stage would endanger the adoption of the draft optional protocol. Canada, Australia, Denmark and others argued that if some delegations wished to 'pick out' a single element of the text for reconsideration, others (who had, at the Working Group, acquiesced to a consensus document despite their own misgivings about the text) would also have the right to renegotiate other aspects.

Portugal and Finland suggested that an adjustment to the procedural resolution (rather than the text of the draft optional protocol) might meet delegations' concerns. During substantive discussions on the elements of Portugal's draft procedural resolution, Pakistan made the noteworthy suggestion of adding a preambular paragraph reaffirming the right to self-determination. The next informal session is scheduled for Thursday 4 June. The Chair appealed to delegations to consult before then.

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<sup>17</sup> A/HRC/8/4 (annual report), Add.1 (communications from governments), A/HRC/8 (Democratic Republic of the Congo).

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