

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## DAILY UPDATE HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION 3 JUNE 2008

### Overview

The morning meeting of the Human Rights Council (Council) was taken up by the three interactive dialogues carried on from the previous afternoon on internally displaced persons (IDPs), extrajudicial executions, and independence of judges and lawyers. The Council failed to regain any time during the morning, leading Egypt to suggest that the modalities of interactive dialogues be reviewed, as having three interlocutors together on the podium 'sometimes undermines the focus of discussions' and scheduling difficulties often resulted in a mandate holder not being present.<sup>1</sup>

The afternoon meeting consisted of the interactive dialogue with the Special Rapporteur on the right to education, the Independent Expert on extreme poverty, and the Special Representative of the Secretary-General on business and human rights. While the first two mandate holders offered a standard review of the contents of their respective reports, the latter presentation on business and human rights assumed added significance as it was the final report of the present mandate. The Special Representative therefore recommended that the extension of the mandate should move from the discussion of general principles towards 'greater operational detail' in accordance with the three principles outlined in his proposed conceptual framework of the State duty to protect, the corporate responsibility to respect, and the need for effective access to remedies.

### Item 3 – Interactive dialogues with special procedures

#### **Internally displaced persons**

Mr Walter Kälin, the Representative of the Secretary-General on the human rights of internally displaced persons (IDPs), was unable to attend the meeting due to scheduling problems. The President of the Council assured that he would forward comments and questions to Mr Kälin, and that the latter would respond in writing.

Sri Lanka first spoke as a concerned country. It expressed its gratitude to Mr Kälin for his visit and report.<sup>2</sup> It also commended Mr Kälin for his 'wonderful commitment'. Sri Lanka then updated the Council on the progress that it has made since the visit and emphasised that while the Government will not compromise on security, it will continue to work on resettlement 'with the least inconvenience possible'. At the same time, it acknowledged that more progress could be made in the area of livelihood development. As to Mr Kälin's recommendations, Sri Lanka informed the Council that it has already begun preparations for implementing

<sup>1</sup> From the intervention, it was unclear whether this statement was made on behalf of the African Group.

<sup>2</sup> A/HRC/8/6/Add.4, 21 May 2008, available at [www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm](http://www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm).

them. The delegation concluded by expressing the Government's gratitude for all the assistance that the UN has provided to it.

Slovenia (on behalf of the European Union (EU)) asked about the measures that should be adopted and the support that the UN could offer to the Government of Sri Lanka to help it protect and assist IDPs. Belgium asked Mr Kälin how he intends to ensure follow-up to his visit to the Democratic Republic of the Congo (DRC).

Numerous States<sup>3</sup> reiterated the importance of the *Guiding Principles on Internal Displacement*.<sup>4</sup> Norway enquired how they may be implemented more effectively to meet the recommendations made by Mr Kälin. Lichtenstein referred to Mr Kälin's elaboration of a manual for law makers and politicians for the implementation of the principles, and asked him to elaborate on the key themes therein.

Slovenia (on behalf of the EU) requested further information on the nature, functions, and role of the proposed monitoring mechanisms.<sup>5</sup> It also asked for best practices in the establishment of such mechanisms. Austria asked very similar questions with regard for the proposed establishment of mechanisms for the restitution of property to IDPs. The Russian Federation requested detailed clarifications as to the reasons for these mechanisms, as well as the level of interaction envisaged between them and governments.

Iraq referred to its own situation of IDPs resulting from conflict and violence, and called for assistance from the international community. Indonesia inquired about how the Representative's future work will contribute to effective protection of IDPs in times of conflict. Austria expressed its interest in the protection provided to IDPs during peace processes, and inquired specifically about the challenges involved. Switzerland reiterated the interdependence between strengthening peace and taking into account the rights of IDPs, and requested that Mr Kälin elaborate on the various instruments and practices which could be used in order to better involve IDPs in peace processes.<sup>6</sup>

Lichtenstein pointed to the systematic difficulties which humanitarian workers face, and suggested this as an example of an instance when the Inter-Agency Standing Committee's *Operational Guidelines on Human Rights and Natural Disasters*<sup>7</sup> were successfully used. Austria requested further explanation on how persons displaced because of natural disasters can be dealt with within the existing framework of IDP protection.

Other issues raised during the interactive dialogue included: land and property rights of IDPs,<sup>8</sup> training courses on IDPs,<sup>9</sup> and access to justice by IDPs.<sup>10</sup> Armenia was especially grateful to Mr Kälin for his professional treatment of the situation in Nagorno-Karabakh.

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

Sri Lanka, as a concerned country, asserted that it is taking active measures to deal with extrajudicial killings. The delegation expressed strong criticism of the Special Rapporteur's work encouraging him to 'check his facts' and claimed that the Government had not been given an opportunity to comment on the report on the visit to Sri Lanka before it had been made public. It invited the Council to ensure that 'proper procedures' are followed in the future. Sri Lanka also accused the international system of being biased in the way it addresses the situation without taking into account the challenges linked to terrorism it faces like other countries, such

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<sup>3</sup> Qatar, Canada, Norway.

<sup>4</sup> E/CN.4/1998/53/Add.2, 11 February 1998, available at [www.unhcr.ch/html/menu2/7/b/principles.htm](http://www.unhcr.ch/html/menu2/7/b/principles.htm).

<sup>5</sup> Echoed by Italy, Ireland.

<sup>6</sup> Echoed by Canada.

<sup>7</sup> Available at

<http://ocha.unog.ch/drptoolkit/PreparednessTools/Normative%20and%20legal%20instruments/General%20normative%20guidance/IASC%20Guidelines%20HR%20and%20NDs.%202006.pdf>.

<sup>8</sup> Canada.

<sup>9</sup> International Organization of the Francophonie.

<sup>10</sup> Colombian Commission of Jurists.

as Afghanistan and Iraq. Nevertheless Sri Lanka expressed its willingness to work further with the Special Rapporteur.

Nigeria, another concerned country, strongly refuted Mr Alston's 'accusations' that executions based on Sharia law had been carried out in the country. The delegation labelled these as 'fabrications' and was 'amazed' by Mr Alston's sources of information. It explained that death penalty sentences are rare, and when imposed, are processed by secular courts.

The Philippines was the most openly hostile of the concerned countries, referring to Mr Alston's report and recommendations as 'inaccurate, highly selective and biased'. It gave its version of the cases reported by Mr Alston in an effort to demonstrate his 'partiality, selectivity and double-standards'. Canada, Japan, as well as the national commission on human rights of the Philippines supported Mr Alston's report and urged the Government to recognise and implement the recommendations therein.

The fourth concerned country, Afghanistan, expressed concern over Mr Alston's preliminary note, which characterises Afghanistan as not respecting international human rights standards. The delegation stressed that the security situation in the country has 'locked' citizens into a state where their rights are denied. One specific grievance was the scant reference made to the Taliban, and Mr Alston's naïve call on it to respect human rights. Afghanistan called for technical assistance from the international community.

One of the recommendations made by Mr Alston was the creation of a new special procedure, a Special Rapporteur on the rights of detainees. Chile and Norway supported this recommendation and asked for further details. In contrast, a number of States were against this proposal, pointing out that the rights of detainees are already covered by the mandate of other special procedures, such as the Working Group on arbitrary detention.<sup>11</sup>

Many countries<sup>12</sup> argued that Mr Alston's approach is not in accordance with the Code of Conduct.<sup>13</sup> They expressed concern about the lack of time that was provided for concerned countries to respond to the draft reports, and argued that issuing reports without input from the Government is not appropriate. A number of States rejected the 'convoluted link' made by Mr Alston between States that deny him a visit and States in which there are serious concerns about extrajudicial executions.<sup>14</sup> Singapore and Nigeria expressed their outright opposition to the Special Rapporteur's recommendation to abolish the death penalty, citing that the penalty is only applied in rare circumstances and Singapore claimed that the Special Rapporteur had exceeded his mandate in addressing this issue.

Despite receiving harsh criticism from Sri Lanka and the Philippines, the Special Rapporteur expressed his satisfaction with the level of engagement of the two countries and regretted the delay in the publication of his reports.

### **Independence of judges and lawyers**

Many States expressed their satisfaction with Mr Despouy's focus on access to justice and highlighted their own concerns on the topic. Institutionalised discrimination<sup>15</sup> and lack of resources<sup>16</sup> were given as examples of impediments to justice. Other States remarked that justice is undermined by the victimisation of convicts<sup>17</sup> and the use of military courts in the fight against terrorism.<sup>18</sup>

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<sup>11</sup> Algeria, Egypt, Singapore.

<sup>12</sup> Algeria, India, Nigeria, Singapore, Sri Lanka, Sudan.

<sup>13</sup> 'Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council', *Human Rights Council Resolution 5/2*,

<sup>18</sup> June 2007, available at [www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct\\_EN.pdf](http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct_EN.pdf).

<sup>14</sup> India, Indonesia, Pakistan, Singapore.

<sup>15</sup> Russian Federation.

<sup>16</sup> Uruguay.

<sup>17</sup> Mexico.

<sup>18</sup> Cuba.

Argentina and Chile responded favourably to Mr Despouy's suggestion to create a database to help States develop and implement sound judicial practices. In his concluding remarks, Mr Despouy noted this support and said that the UN should compile such a catalogue of good practices and make it available to all sectors.

Some States requested that Mr Despouy investigate specific topics related to access to justice for his next report. These included the application of the death penalty,<sup>19</sup> the case of five Cubans tried in the United States on espionage and related charges in 2001,<sup>20</sup> and the necessity of making judicial proceedings available in minority languages.<sup>21</sup>

A number of States asked Mr Despouy to expand on his recommendations for the DRC, where he recently conducted a mission.<sup>22</sup> In particular, States were concerned about impunity for crimes such as sexual assault and access to justice for victims of such violence. They thus asked Mr Despouy to explain what steps the DRC might take to deal with these issues.<sup>23</sup> Other areas of interest included the prevalence of preventative detention,<sup>24</sup> the education of judges,<sup>25</sup> and the use of military courts to try members of the law enforcement bodies and armed forces.<sup>26</sup> Mr Despouy endorsed the concerns raised regarding crimes against women, pointing out that such violence is increasingly used as a weapon of war.

Having received a visit from the Special Rapporteur, the Maldives expressed gratitude for Mr Despouy's advice and indicated that it was trying to implement his recommendations. New Zealand, speaking also on behalf of Australia, inquired into Fiji's cooperation with the UN and with Mr Despouy. It expressed concern about Fiji's commitment to democracy, highlighting its doubts about judicial independence and pointing to alleged threats to the media, conditions which are not conducive to free and fair elections.

Other comments included Brazil's call for an investigation of the 2003 attack on the UN offices in Baghdad, and Mexico and Italy's interest regarding states of emergency. NGOs requested that special attention be paid to the justice systems of specific countries, including Sri Lanka,<sup>27</sup> Iraq,<sup>28</sup> China,<sup>29</sup> and Egypt.<sup>30</sup>

In his response to the interactive dialogue, Mr Despouy reiterated that regarding independence of lawyers and judges, international cooperation is indispensable.

### **Special Rapporteur on the right to education**

At the start of his presentation, the Special Rapporteur on the right to education, Mr Vernor Munoz, reiterated his report's focus on guaranteeing the right to education despite difficult circumstances.<sup>31</sup> Throughout his presentation, he drew attention to those dealing with the emergency situations of natural disasters and armed conflict. Mr Munoz also mentioned his official visits to Morocco,<sup>32</sup> Malaysia,<sup>33</sup> and Bosnia-Herzegovina.<sup>34</sup> He also commended the many governments, organisations, and individuals that contributed to his report.

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<sup>19</sup> Mexico encouraged Mr Despouy to work with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

<sup>20</sup> Cuba.

<sup>21</sup> Russian Federation.

<sup>22</sup> Slovenia (on behalf of the EU), Hungary, Belgium, Netherlands.

<sup>23</sup> Slovenia (on behalf of the EU), Belgium, Netherlands.

<sup>24</sup> Hungary.

<sup>25</sup> Netherlands.

<sup>26</sup> Slovenia (on behalf of the EU).

<sup>27</sup> Asian Legal Resource Centre.

<sup>28</sup> North South XXI.

<sup>29</sup> Society for Threatened Peoples.

<sup>30</sup> Amnesty International.

<sup>31</sup> A/HRC/8/10.

<sup>32</sup> A/HRC/8/10/Add.2.

<sup>33</sup> A/HRC/8/10/Add.3.

<sup>34</sup> A/HRC/8/10/Add.4.

In his statement, he acknowledged the need to double all efforts towards realising the right to education, particularly by States. He suggested that the responsibility to implement effective protective measures in emergency situations lies with national authorities. He asserted the urgency of this implementation by explaining the stability schools provide for children and the resultant physical, emotional, and psychological protection. He also drew attention to the international community's toleration of violations of the right to education. Specifically, Mr Munoz spoke about the weak response to the recent increase in attacks on education, including the murders of teachers and students along with the destruction of school buildings in the last four years. He mentioned the relatively low funding for education in relation to other international humanitarian responses in emergency situations and strongly encouraged donors, particularly States, to allocate additional funding to education.

Finally, the Special Rapporteur discussed additional recommendations such as the use of the Inter-Agency Network for Education in Emergencies'<sup>35</sup> (INEE's) minimum standards as a measurement for adequate efforts and the enforcement of Articles 4 and 28 of the *Convention on the Rights of the Child* regarding State responsibility to undertake all appropriate measures for the implementation of the right to education and the duty to make education compulsory and free for all.<sup>36</sup>

After the Special Rapporteur's conclusion of his presentation, Morocco, Malaysia, and Bosnia-Herzegovina responded as concerned countries. Morocco thanked Mr Munoz for his recent visit and illustrated their respect for a free public education system. Bosnia-Herzegovina, after showing appreciation for the work done by Mr Munoz, requested additional visits and expressed a desire for open dialogue. Malaysia thanked the Special Rapporteur but regretted that he was not able to report on his mission to Malaysia as his report was unavailable due to 'technical constraints'.

The majority of States expressed their full support for the work undertaken by Mr Munoz.<sup>37</sup> The interactive dialogues that followed the presentation of the Special Rapporteur on the right to education centred on appreciation for the need to pay greater attention to this right.<sup>38</sup> Portugal, Thailand, Chile, and Italy asked the Special Rapporteur for more practical methods in guaranteeing the right to education, while Slovenia (on behalf of the EU) sought additional information on the responsibility of national authorities in emergency situations, particularly in seeking and channelling international aid. Many States drew attention to the interrelation of education and poverty and how this relationship calls for the eradication of poverty in general.<sup>39</sup>

Portugal asked for elaboration of the measures to be taken in order to enhance coordination by multiple actors in response to emergency situations. They also requested clarification on the role of national authorities in the fulfilment of the right to education, particularly with vulnerable groups like girls, teenagers, and persons with disabilities.

Egypt (on behalf of the African Group) complained that the report of the Special Rapporteur was presently only available in Spanish, and so they could not engage in dialogue. It noted that this was a recurrent problem.

### **Independent Expert on extreme poverty**

The new Independent Expert on the question of human rights and extreme poverty, Ms Magdalena Sepulveda, presented the report of the former Independent Expert on extreme poverty, Mr. Arjun Sengupta, which was due to be presented at the 7<sup>th</sup> session of the Council.<sup>40</sup> Mr Sengupta's report found that an effective assessment of extreme poverty required that it be defined from a human rights perspective, which means recognising extreme poverty as a debilitating combination of income poverty, human development poverty,

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<sup>35</sup> The minimum standards of the INEE can be accessed at <http://www.ineesite.org/page.asp?pid=1429>

<sup>36</sup> Articles 4 and 28 can be accessed at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

<sup>37</sup> Slovenia, Luxembourg, Italy, Portugal (all on behalf of the European Union), Malaysia, Thailand, Peru.

<sup>38</sup> Slovenia, Luxembourg, Italy, Portugal (all on behalf of the European Union).

<sup>39</sup> Luxembourg, Pakistan, China, Qatar, Venezuela

<sup>40</sup> A/HRC/7/15

and social exclusion, and not just a purely economic phenomenon. It was also stated that any instrument that intends to alleviate extreme poverty needs to address the various types of discrimination that leads to social exclusion, which is a major contributor to the persistence of extreme poverty in the world. Stressing the need for international assistance and cooperation, the Independent Expert affirmed that the draft guiding principles on human rights and extreme poverty provided a strong mechanism to bring attention to the multidimensional nature of poverty and the need to adopt a comprehensive approach that addresses the issue at the social, political, and economic levels.

The majority of States that addressed the Independent Expert during the interactive dialogue thanked Mr Sengupta for his work and praised Ms Sepulveda for having taken over the role. Slovenia and Peru inquired whether Ms Sepulveda would continue to work in the same direction as Mr Sengupta, for instance in continuing her predecessor's programme of visits. The majority of States also praised the multidimensional definition of poverty provided in the Independent Expert's report. France noted that in many cases poverty is inter-generational, and efforts should be taken by States to break these trends, while Thailand declared that the elimination of extreme poverty needs to be part of a global agenda, with international cooperation in areas such as technical assistance, human resource development, and financial aid. Luxembourg noted a discrepancy between the definitions of poverty as stated in the report and that used in the Millennium Development Goals, and asked for suggestions on how to reconcile the two. Venezuela also cautioned against getting too involved in definitions and neglecting real action.

Many States echoed the request made by both Independent Experts calling for a human rights approach to the elimination of extreme poverty. The Russian Federation asserted that extreme poverty is in itself a breeding ground for human rights violations. Incorporating a human rights framework into local and international policies to eradicate poverty would ensure that proposed actions actively address unjust social hierarchies that generate and sustain poverty, and strengthen the legitimacy and legal force behind the effort for its eradication.

The interactive dialogue, including interventions by NGOs, will conclude on the morning of Wednesday 4 June 2008.

### **Special Representative of the Secretary-General on business and human rights**

In presenting a summary of his report<sup>41</sup> to the Council, the Special Representative, Mr John Ruggie, first presented methodologies used in fulfilling his mandate, including the analysis of 400 public allegations against companies, following 'dozens of court cases', meetings with various stakeholders, and conducting 14 multi-stakeholder consultations in five regions. He referred to his previous report as a mapping of current standards and practices, ranging from the evolving nature of international criminal law to the evolution of voluntary initiatives. Yet he noted that the overall problem was a lack of a systemic response and that a common framework on which thinking and action could be built was required.

As a result, Mr Ruggie announced that the current report identified a conceptual and policy framework consisting of three principles or pillars: the State duty to protect against human rights abuses by third parties; the corporate responsibility to respect human rights; and the need for effective remedies. It was stressed that this framework did not provide a solution but simply a common baseline from which to move forward. He urged that his sole recommendation to the Council was that it 'welcomes the framework, invites its operationalization, and fosters its uptake by all relevant actors'. Mr Ruggie concluded that he looked to the Council for guidance on 'moving the discussion from the level of general principles to greater operational detail'.

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<sup>41</sup> A/HRC/8/5 available at [www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm](http://www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm).

State responses to the report were largely appreciative and the framework was well received, with many of the participating States offering support for the continuation of the mandate<sup>42</sup> Norway, Slovenia, and India referred to the issue as ‘important and complex’, requiring a great level of international and domestic cooperation. Indonesia and Norway also viewed the need to close the protection gap between human rights and business as imperative. Slovenia (on behalf of the EU) stated that the responsibility for human rights protection should not be fully placed on business as it is the State that has primary responsibility for domestic protection.

There were several questions and requests for further information, including a request by Norway and India for further clarity on the application of due diligence, by Cuba on how States of origin can play a more active role, and by Egypt on how the proposed framework would be applied in conflict situations, particularly in view of reported killings by private forces linked to transnational corporations (TNCs). Peru asked if it would be possible to establish an early warning system toward violations or possible violations of any of the three pillars and supported the comment by France in asking how a complaints mechanism could be established. The Russian Federation recognised that due to the interdependence of economies many TNCs become ‘a state within a state’, and can violate all human rights with effective impunity as they are not bound by the same obligations that apply to States. They suggested that the responsibility of non-State actors requires further study. The Republic of Korea wished to know how Mr Ruggie viewed the role that civil society organisations have within the process, particularly in light of the growing influence of pressure groups on businesses and society as a whole. The United Kingdom, as a co-sponsor of the mandate, wished for further comment on Mr Ruggie’s reasons for not recommending the elaboration of a binding international instrument at this stage, although they stated that they agree with this approach. On the other hand Nigeria, also a co-sponsor, stated that it endorsed the Special Representative’s call for the Council to support the framework and that it supports the elaboration of a binding instrument that guides corporate responsibility.

The interactive dialogue, including interventions by NGOs, will conclude on the morning of Wednesday 4 June.

### Rights of reply

The meeting concluded with the exercise of rights of reply by five States, of which only Azerbaijan responded to a previous statement by a State, namely Armenia. Sri Lanka took particular offence to ‘emotional and misleading statements’ by Pax Romana and Interfaith International from the previous day, while Iraq, Columbia, and Thailand responded to previous statements by Nord Sud XXI, the Colombian Commission of Jurists, and the Asian Legal Resource Centre respectively, all refuting the allegations levelled against them.

### Informal meeting with the Special Rapporteur on extrajudicial executions

During the lunch break, Sweden convened an informal meeting with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Philip Alston. Sweden explained that it intends to hold no more than three informal consultations on the draft resolution renewing the mandate, and that the first meeting will take place on Thursday 5 June at 2:00 pm.

The Special Rapporteur, perhaps commenting on the criticism addressed to him earlier in the day in the Council plenary, stated that anyone monitoring extrajudicial executions would never be popular. He recalled that extrajudicial executions take place in all countries and that his work had often been welcomed privately by government officials who would subsequently criticise him publicly. Mr Alston clarified his views on the death penalty as he would not have sufficient time in the plenary to offer clarification in this regard. He explained that the Special Rapporteur is not an ‘abolitionist mandate’ and that he has gone to great efforts to only focus on cases where due process has not been respected, of execution of juveniles, and of crimes that

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<sup>42</sup> India, Norway, Slovenia (on behalf of the EU), France, Luxembourg, India, Russian Federation, Pakistan (on behalf of OIC), China, Egypt, Italy, Argentina, Republic of Korea, Portugal, Peru, Bangladesh, Cuba, United Kingdom of Great Britain and Northern Ireland, Venezuela, Nigeria.

are not among the most serious. Mr Alston also described some of the achievements of the mandate, including the focus on analysis of themes, the tailoring of communications, the reduced number of recommendations, the absence of criticism about the conduct of the Special Rapporteur during country visits, and the lack of refusals by governments of requests for visits. In his concluding comments, Mr Alston paid tribute to the entire system of special procedures, which he believed 'functions effectively' and 'brings great credit to the Council' which is often much criticised.

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