

# COUNCIL MONITOR

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**DAILY UPDATE  
HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION  
5 JUNE 2008**

## Overview

Day three of the 8<sup>th</sup> session began with the review, rationalisation and improvement of special procedures mandates on extrajudicial executions, migrants, transnational corporations and other business enterprises, and extreme poverty. While there was general support for the continuation of each mandate, the Special Rapporteur on extrajudicial executions was strongly criticised by a few States for not complying with the Code of Conduct for special procedures.

The second and third meetings of the Council consisted of panel discussions on violence against women and on maternal mortality. While this format of discussion is still novel in the Council there is a need to further improve the format of these discussions. In particular, it is not clear what the concrete outcome of these two discussions will be and how the Council will take up at least some of the interesting ideas and suggestions made.

Informal consultations also took place on the resolution to adopt the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The discussions on adopting a draft optional protocol to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) remain deadlocked following a 5 June informal meeting. The issue in dispute (the inclusion of Part I of ICESCR, on self-determination, in the scope of the optional protocol) has polarised the debate, with most States urging the consideration of the text of the optional protocol as it currently stands, while others insist on its 'adjustment' to ensure that a future complaints mechanism encompasses Part I of ICESCR. Informal consultations were also held on the renewal of the mandate on extrajudicial executions which focused more on the question of re-appointment of mandate holders that have only served one term of three years as some States are discontent with the work of the Special Rapporteur and would like to see him replaced. The issue of re-appointment has been appearing in several debates over the past days and it is clear that pressure is being mounted to find a comprehensive solution.

Other informal consultations that took place, but are not covered in this Daily Update, dealt with the renewal of the special procedures mandates on trafficking, torture, judges and lawyers, and education.

Review, rationalisation and improvement of  
special procedures mandates

The Council continued the review, rationalisation and improvement of special procedures mandates, a leftover from its institution-building tasks.<sup>1</sup> Most attention was given to the mandates on extrajudicial executions and business and human rights. As both mandate holders had exhausted their first terms, there was far more demand for the Special Rapporteur on extrajudicial executions not to be re-appointed than the Special Representative on business and human rights. This coincided with the fact that the Special Representative on business and human rights had provided a framework in his final report that met with broad support, whereas Mr Alston's report was considered by Algeria, the Philippines, Sri Lanka and others not to conform to the code of conduct of special procedures, either by way of working methods or style of presentation. The selectivity of this approach illustrated the politically motivated nature of the call for re-election of candidates.

### Extrajudicial, summary or arbitrary executions

Sweden opened as sponsor by stating that this was the first thematic mandate of the former Commission on Human Rights, dating back to 1982.<sup>2</sup> Since then, there have been strong views for and against the elements of the mandate, but as a whole it has maintained strong support. Sweden, as sponsor, mentioned the expansion of the mandate in 1996 to include particular attention to women, children and those participating in the peaceful defence of human rights, and the arbitrary application of the death penalty, among other elements. It then requested that the present Special Rapporteur, Mr Philip Alston, address how he has operationalised the mandate in the last four years.

Mr Alston stated that cases of extrajudicial, summary or arbitrary executions can arise in all countries, developed and developing, and that questions of international humanitarian law inevitably arise, as illustrated in his recent work on NATO and US forces in Afghanistan. He stated that he had moved away from country issues and given more attention to complex and often controversial legal issues, such as prisoners running prisons and commissions of inquiry. He also issued less communications with a concentration on better quality.

Pre-empting what was to come, Mr Alston followed that special procedures must be independent and be able to work 'without fear or favour'. He felt that the Code of Conduct of special procedures<sup>3</sup> was a workable document and that he had acted in accordance with it by providing impartial assessments 'free from extraneous influence'. This included, importantly, commenting on States that had not cooperated with his requests, as he observed an imbalance in criticising those who engage with special procedures while ignoring those who do not. He said that certain States are not likely to appreciate such independent advice, but if special procedures are seen as the friends of States then they are not doing their job.

There were a relatively high number of States that spoke up for the continuation of the mandate.<sup>4</sup> States pointed to country visits and communications (Slovenia, on behalf of the European Union (EU)), and the scope to focus on complex issues such as situations of armed conflict (Cuba, Egypt), and States' interpretation of 'most serious crimes' in relation to the death penalty (Amnesty International), as examples of the ongoing importance of the mandate. Egypt proposed that the mandate could be substantively improved by including **abortion** as a category of execution, and this is likely to be raised in the informal consultations on the renewal of the mandate. Singapore did not see why the mandate should focus on women in particular, and Egypt contended that the death penalty did not fall under the scope of the mandate.

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<sup>1</sup> The only special procedures mandate to be discontinued so far was that of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC) at the 7<sup>th</sup> session.

<sup>2</sup> Commission on Human Rights *Resolution 1982/35*.

<sup>3</sup> Council *Resolution 5/2*.

<sup>4</sup> Slovenia (on behalf of the EU), Pakistan (on behalf of the OIC), Russian Federation, India, Egypt, Switzerland, Uruguay, Sri Lanka, Argentina, Norway, Belgium, Colombia, Austria, Algeria, Amnesty International.

Most of the comments, however, were aimed not so much at the mandate, but at the performance of the mandate holder himself. Singapore alleged that many thought Mr Alston was not doing his job properly, Sri Lanka complained that he had failed to understand the mandate's terms of reference, Philippines questioned the legitimacy of his sources and Pakistan, on behalf of the Organization of the Islamic Conference (OIC), claimed that 'personal biases should not affect the carrying out of functions'. Algeria even took objection to his style of presentation, and all called for the Rapporteur to adhere to the Code of Conduct. Austria forcefully pointed out that direct and honest reports does not mean a breach of the Code of Conduct and reaffirmed the obligation of States to also co-operate with special procedures under the code.

Several States argued that the position of mandate holder should be open to election and considered by the Consultative Group.<sup>5</sup> Egypt proposed that since the mandate was so broad it could be replaced by an expert Working Group. Amnesty International supported the recommendation by the Special Rapporteur in his previous report to establish a procedure to deal with persistent non-cooperation with mandate holders.

Mr Alston responded diplomatically that the diversity of opinions gave him some satisfaction and that the position of any such Rapporteur was destined to be unpopular with many States. He stated that 'I honestly and genuinely believe I have applied the mandate as it exists' and within the 'workable' Code of Conduct. He also welcomed comments on focusing on executions in times of armed conflict.

Sweden welcomed all contributions and claimed they would be taken on board in the renewal of the mandate.

## Migrants

Mexico, as sponsor of the mandate, began by detailing the terms of reference of the mandate, and listed amongst its successes the identification of migration trends, domestic best practice, and a concentration on the rights of migrant women, children and industrial workers.

The Special Rapporteur, Mr Jorge Bustamante, claimed that a strong narrative framework is first needed in order for the mandate on the human rights of migrants to be fully realised, followed by the full cooperation of States. While the *International Convention on the Protection of the Rights of all Migrant Workers* was a crucial component in the protection of migrant rights, its low level of ratification indicated that the Special Rapporteur and mandate on migrants remained of vital importance. Mr Bustamante explained that he had had focused on key issues such as the criminalisation of irregular immigration, the detention of migrants, the rights of domestic workers, and the rights of minors and women migrants. He concluded that as long as xenophobia against migrants exists and continues to increase, as is presently the case, there will be a need for the mandate to continue. This was later echoed by the Philippines and Senegal.

The five States that spoke during the review, including Chile, on behalf of the Group of Latin American and Caribbean Countries (GRULAC), all expressed satisfaction with the Special Rapporteur and support for the renewal of the mandate.<sup>6</sup> Slovenia and Senegal both commended the focus on the rights of female migrants and expressed their support for issue further investigation. The Philippines and Turkey also stated that best practices should be shared amongst nations, while NGOs<sup>7</sup> proposed the inclusion of issues such as the health of migrants and an investigation on the displacement of migrants due to poor living conditions in their home country as means to strengthen the mandate.

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<sup>5</sup> Singapore, Philippines, Sri Lanka, Bangladesh, Pakistan, Algeria.

<sup>6</sup> Chile (on behalf of GRULAC), Slovenia, Philippines, Senegal, Brazil, Turkey,

<sup>7</sup> Comision Jurdica Para El Autodesarrollo de Los Pueblos Originarios Andinos, Association of World Citizens

In his closing remarks the Special Rapporteur thanked member countries for allowing him to fulfil his mandate. Mexico thanked delegations for their positive contributions and was certain that the mandate would be renewed by consensus.

### **Business and human rights**

Norway introduced the mandate<sup>8</sup> as a cross-regional co-sponsor alongside Argentina, India, Nigeria, and the Russian Federation.<sup>9</sup> Norway explained the contents of the mandate created in 2005 and commended the mandate holder, Mr John Ruggie, for his constructive approach and very detailed work. This had resulted in identifying a framework of three broad principles: the States' duty to protect; the corporate responsibility to respect; and effective access to remedy. The key challenge was now to narrow and ultimately bridge the protection gap, and a new mandate based on the above framework would bring about a necessary normative operationalisation of the issue. Norway was seeking a two year extension of the mandate.

Mr Ruggie stated that he was gratified with the broad support shown for his report and the framework provided therein. He cautioned however that this did 'not foreclose any long term conclusions' and stated that it was now time to move to more 'practical solutions'. He stated that he would be happy to continue as Special Representative and would continue to involve all stakeholders in the process.

All States and NGOs that spoke favoured the continuation of the mandate. Notably, South Africa expressed the view that Mr Ruggie should seek re-election. Others praised his 'remarkable' (Nigeria) and 'exemplary' (Egypt) work and his achievement in establishing a 'consensual climate' around the issue. Slovenia (on behalf of the EU) claimed that the present mandate would enable the Special Representative to manageably continue his work. Cuba and Centre Europe-Tiers Monde, however, stressed that the mandate needed to draw on the work of the former Sub-Commission on Human Rights, which had spent years on the issue, and South Africa recommended strengthening the mandate by including a communications mechanism. Egypt proposed that the Special Representative consider expanding his reach to cover private military companies in his assessments. The International Commission of Jurists (ICJ) proposed that the mandate should address and comment on particular situations of human rights violations by corporations. Pakistan, Egypt, Nigeria, South Africa, and Belgium all declared that a more coherent normative framework was needed.

Mr Ruggie's one regret, he claimed was that it would not be possible to take on new tasks as he was 'one person with a day job'. Responding to the urge to move quickly to the drafting of international norms, he stated that premature legalisation could also have adverse impacts. He finally favoured the proposal of Egypt that they might request a one or two day consultation during a Council session to discuss issues around business and human rights, although he appeared to misinterpret what Egypt had suggested, as he mentioned that NGOs could bring victims of violations by TNCs to present their experiences. Egypt did not follow up on this very promising misinterpretation.

Norway informed the Council that informal consultations on the renewal of the mandate would take place on Friday 6 June from 11am – 1pm.

### **Extreme poverty**

The review of the mandate<sup>10</sup> on human rights and extreme poverty was very short, with five States and two NGOs speaking. France, as sponsor of the mandate, asserted that poverty was an attack on human dignity and on all human rights. It stated that it would like the mandate to be renewed in order to better understand the phenomenon, to define policies and practices to combat extreme poverty, and to ensure that those living in

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<sup>8</sup> Commission on Human Rights *Resolution 2005/69*.

<sup>9</sup> The UK has ceased to be a co-sponsor of the resolution, as it was in the past.

<sup>10</sup> Commission on Human Rights *Resolution 1998/25*.

extreme poverty can play a decision-making role in the shaping of policies that affect them. The Independent Expert, Ms Maria Sepulveda, added that last year the Secretary-General estimated that 1 billion persons were living in poverty, and that the current food crisis may generate a further 100 million persons. She stated that her predecessors had brought important developments, but it was time to capitalise on these achievements and intensify the search for solutions. The participation of people in this process was crucial.

All States that spoke favoured the continuation of the mandate,<sup>11</sup> with Algeria thanking the Independent Expert for her ‘realistic approach’. Pakistan (on behalf of the OIC) stated that it was essential to address the root causes of poverty and that it was time to move to practical actions. Turkey stated that women and children make up the majority affected by poverty in all regions of the world. The Movement against Racism and for Friendship between Peoples recommended, however, that the mandate not be limited to extreme poverty but expanded to encompass all poverty, and be extended to include the rights to development and self-determination.

Ms Sepulveda concluded that the mandate must focus on women and children, and continue to address the issue of international cooperation. She urged all to disseminate what has been achieved and to build upon it. France very quickly thanked all who participated and looked forward to continuing consultations.

### Discussions on human rights of women

In implementation of Council *Resolution 6/30* a full day was set aside to discuss the human rights of women. The discussion was organised as two panel debates, one on violence against women and another on maternal mortality. The panel on violence against women was in follow-up to General Assembly *Resolution 61/143* and was aimed at setting priorities for the Council in addressing the issue.

The High Commissioner for Human Rights, Ms Louise Arbour, opened the discussion and underlined that the outcome of the discussion should not be ‘more talk and more venting of frustration’ about the lack of progress in overcoming discrimination against women and girls. Rather it should ‘inspire and embolden’ the Council to accelerate its action for gender equality and equal rights for women and girls. While the panel discussions were interesting and continued a welcome new practice of more interactive debates, it is fair to say that they did not live up to the expectations outlined by the High Commissioner as it remained unclear what the concrete outcome of the discussions would be.

In her introductory statement, the High Commissioner called attention to the study by the Secretary-General on violence against women which described the phenomenon as a ‘pandemic’. She described the magnitude, brutality, and savagery of the types of violence perpetrated against women, including in conflict and post-conflict situations. The High Commissioner emphasised that bringing perpetrators to account must be a priority for all governments and recalled that it has finally been recognised that **violence against women is punishable as a war crime, crime against humanity, and at times genocide**. However this should not lead governments to lose sight of other forms of violence and abuse, including those that take place in the private sphere. She asserted that the root causes of the problem are ‘deep-seated inequalities and discrimination’ that exist in all countries. Turning to maternal mortality, the High Commissioner stated that discriminatory laws are often at the root of cases of maternal mortality. She underlined that the Council could play a ‘ground-breaking role’ in clearly defining maternal mortality as a human rights issue. Finally, she proposed that the universal periodic review (UPR) should play greater attention to the issue than it had in the first two rounds of review.

### Violence against women

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<sup>11</sup> Slovenia (on behalf of the EU), Pakistan (on behalf of the OIC), Senegal, Turkey, Algeria.

The panel was moderated by Ambassador Mr Peteris Elferts of Latvia who introduced the four panellists.

Ms Pauline Veloso, the representative of Chile to the 4<sup>th</sup> World Conference on Women held in Beijing, acknowledged that confronting violence against women was a complex task. That States do not violate women's rights, criminalise violence against women or provide aid and compensation to victims is insufficient without an active policy geared toward changing socio-cultural norms Ms Veloso urged all States to ratify the *Convention on the Elimination of all forms of Discrimination against Women (CEDAW)* and its optional protocol and recommended the development of a new international treaty on gender violence. She further suggested that all Council documents and reports include a gender perspective. Unless it adequately addresses the issues connected to violence against women, she warned, the Council will lose credibility.

Ms Kathleen Cravero, Assistant Administrator and Director of the Bureau of Crisis Prevention and Recovery in UNDP, focused her presentation on violence against women in conflict situations. Today, she said, sexual violence is increasingly used as a tool of war. She drew specific attention to human rights abuses in the Democratic Republic of Congo (DRC) and Darfur and listed a number of steps needed to address systematic sexual violence during wartime. These steps included prevention through empowering women, ending impunity, and providing redress and restitution to victims. She asserted that the Council must prioritise its work on sexual violence by addressing its causes, not accepting 'so-called cultural practices', and monitoring violence.

Ms Isabelle Martinez Lozano, Secretary General for Equality Policies in Spain, presented a detailed account of the measures being taken to address violence against women in her home country. She underscored the need for a database for the development of effective State policies and inter-State. She suggested that the Council could address the need for better information and indicators accompanied by clear definitions.

Ms Alejandra Sarda, member of the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), outlined a number of specific measures the Council could take to help States implement effective policies. She recommended that the Council create a special group to act as a focal point in guaranteeing the integration of a gender perspective in the Council's work. She envisioned this group containing three to ten State representatives, with the Office of the High Commissioner for Human Rights (OHCHR) providing technical support and assistance. She also urged the Council to "commit itself fully" to employing a gender perspective in the UPR and underlined that recommendations must be 'specific and action-oriented'.

In a point of order at the beginning of the debate, Egypt complained that the panellists did not come from Arab, African or Islamic cultural backgrounds and asserted that it was 'difficult to accept' them for a discussion of a 'cultural issue'.<sup>12</sup> Chile, as the main organiser of the panel, assisted the President in explaining that persons from different cultural backgrounds had been invited but 'due to time constraints' it had not been possible to have broader cultural representation.

The interactive debate that followed, with the participation of States and NGOs, was divided into two segments to allow for more interactivity. The discussion was welcomed by the majority of speakers. Notably, many ambassadors were present to take part in the debate although the room seemed rather empty. Only few delegations addressed questions to the panellists, which detracted from the idea of an interactive debate.

Many countries limited their statements to describing their national efforts, policies and programmes for eliminating violence and discrimination against women.<sup>13</sup> Some speakers used the opportunity to call attention to violence against women and other human rights violations in particular countries. Echoing the

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<sup>12</sup> Qatar also expressed concern about this issue during the debate.

<sup>13</sup> Maldives, Argentina, India, Brazil, Algeria, Malaysia, Italy, Ireland, Tunisia.

comments made by one of the panellists, concern was expressed about the prevalence of sexual violence and impunity in the DRC<sup>14</sup> and Darfur.<sup>15</sup> NGOs also addressed the serious human rights situation in Zimbabwe - calling for an end to the violence and for the Special Rapporteur on violence against women to visit the country<sup>16</sup> - and violence against indigenous peoples and migrants in Canada and the US.<sup>17</sup>

Some States and NGOs posed a wide range of questions to the panellists demonstrating the many issues at stake in addressing violence against women.

Slovenia (on behalf of the EU) asked what role the Council could play and in which specific areas and how it could support the Secretary-General's campaign to end violence against women. It also wondered how the Council could contribute to closing implementation gaps in relation to States' international obligations and thus further the implementation of the Secretary-General's study. New Zealand, also on behalf of Canada, asked the panellists' comments on the proposal that the Council develop an action plan on combating violence against women as follow up to the study. The Netherlands asked how the Council could contribute to the collection of data on violence against women for inclusion in a UN database set up by the Secretary-General. Norway asked how the Council could drive implementation and innovation, how the human rights machinery could work in a coherent manner, and how the Council's work could be complementary to that of other UN bodies, and contribute to strengthen the capacity, effectiveness and accountability of these efforts. Amnesty International and Human Rights Watch asked how the Council could make use of information from UN country teams, and how it could overcome obstacles to prosecution and adjudication of sexual violence. The Coalition against Trafficking in Women asked how the Council could address human rights violations that take place in the private sphere and more effectively handle trafficking and prostitution. Brazil asked how the Council could integrate the link between the rights of women and the right to development in its work. The Netherlands asked how the Council could facilitate inclusion of measures to counteract customs, traditions or religious considerations in national policies. On the other hand, Qatar argued that violence against women is not linked to cultural or religious factors and asserted that rights of women are 'legitimate'. Egypt asked for the panellists' views on 'so-called crimes of passion'; the link between legalising prostitution and trafficking; and the link between alcoholism and violence against women. Colombia asked for more information about the suggestion made by Ms Sarada for a gender focal point within the Council. Ireland queried how the discussion could be translated into practical work at the national level.

Interesting recommendations were also proposed for how the Council and its mechanisms could continue efforts to address this issue. However, it was not clear how these recommendations would be taken up to fulfil the objective of the discussion, which was to prioritise the work of the Council in relation to violence against women.

Notably, France proposed the creation of a new Special Rapporteur on discrimination against women. Some speakers also endorsed the High Commissioner's proposal that the UPR should address violence against women more systematically.<sup>18</sup> Amnesty International and Human Rights Watch rightly queried how the Council could use the UPR to stop violence against women. Mexico also recommended that the special procedures should include a gender perspective in their work. Canada and New Zealand, in a joint statement, suggested that the Council could identify ways to overcome obstacles to effective State exercise of due diligence; prioritise a regular assessment of the extent to which its mechanisms and procedures have addressed the issue; and consider how to advance the Special Rapporteur on violence against women's work

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<sup>14</sup> France, International Action for Peace and Development in the Region of the Great Lakes, Centre international pour le respect et l'application de la charte africaine des droits de l'homme et des peuples.

<sup>15</sup> France.

<sup>16</sup> World Young Women's Christian Association in a joint statement.

<sup>17</sup> International Indian Treaty Council in a joint statement.

<sup>18</sup> France, Mexico, International Federation of University Women.

on indicators. On the other hand, the Russian Federation reiterated that such indicators should be in accordance with General Assembly *Resolution 61/143* and that the work mandated by that resolution has not yet been carried out, making work on other indicators premature. Sweden and Indonesia, in a joint statement, encouraged the OHCHR Gender Unit to continue its efforts to raise awareness and promote universal ratification of CEDAW and its optional protocol. One NGO suggested that the Council set up a new agenda item on violence against women, which was welcomed by one of the panellists.<sup>19</sup>

In their replies to questions and comments, the panellists underlined the need for a holistic approach to ending violence against women. They highlighted the need for legislative change and reform of cultural norms that are the basis for discrimination against women and underlined that the best response is to promote equality. It was also proposed that States should prioritise prevention and then address accountability. One panellist emphasised that the unique contribution of the Council would be to link this issue with other human rights issues. It was underlined that the Council should make use of all of its mechanisms and work with other UN bodies in addressing the issue.

### **Maternal mortality**

The moderator, Mr Francis Songane, Secretariat for the Partnership for Maternal, Newborn and Child Health, called maternal mortality one of the world's most 'profound injustices'. He pointed to statistics that demonstrated the 'shocking scale of the problem', and highlighted disparities between the effects of maternal mortality on the world's rich and poor. In particular, Mr Songane identified the main challenges as strategic, organisational and political, and stated that there was a new opportunity for building accountability.

Mr Monir Islam, director of the 'Making Pregnancy Safer programme' at the World Health Organization, declared that a discussion on maternal mortality was 'a long-due item' on the Council's agenda. He referred to the deaths of women due to pregnancy as 'gross injustices' and violations of human rights, in particular the right to life. He underlined that access to information, family planning, and obstetric care are essential.

Mr Vincent Fauveau, senior maternal mortality adviser, UNFPA, warned that the 5<sup>th</sup> Millennium Development Goal - to lower maternal mortality rates by 75% by 2015 - was unlikely to be met in any country. Mr Fauveau noted the disparities between the rich and poor and blamed high maternal mortality rates on lack of empowerment and the denial of women's rights to make their own decisions about health care and childbearing.

Ms Jashodhara Desgupta, coordinator of SAHAYOG, suggested that a global call to action be issued through this discussion. She underlined that the knowledge, skills, and means exist but that there is a lack of collective will to prevent this 'catastrophe'. She sought an institutional commitment from the Council to recognise women's rights and prevent maternal deaths. She urged Council members to build the political will to combat this 'global human rights emergency.'

Mr Paul Hunt, the Special Rapporteur on health, highlighted that maternal mortality was not part of the 'human rights landscape' ten years ago and that recognition of it as a human rights issue demanded other changes and new forms of cooperation, including across all branches of the UN. He commented that all of the panellists had used human rights language and analysis. However, this assertion seemed overly positive, and at least the speakers all used different language and analysis demonstrating that there is still a need for common standards - a role the Council could perhaps fulfil. Mr Hunt underlined the need for effective, transparent, and accessible mechanisms of accountability to ensure human rights. He asked the Council to ensure that the UPR routinely encompasses maternal mortality, and suggested that the special procedures and the treaty bodies also take up the topic. Specifically, he called for the creation of an interdisciplinary working

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<sup>19</sup> International Federation of University Women.



group of five independent experts to study the problem, provide technical assistance and issue ‘sensible, practical’ recommendations to States. He recognised that such a mechanism may be uncomfortable and inconvenient but that it could save lives.

In the discussion that followed the recurrent question was what the Council could do to address this issue.<sup>20</sup> It appeared that most of the panellists, with the exception of Mr Hunt, had few concrete and relevant proposals for what the Council could do. One panellist suggested that the Council could play a role in relation to accountability and highlighted the need for indicators and data collection. Another panellist proposed that the Council could take up the outcomes of relevant world conferences and recommended that human rights principles such as inclusion, participation, and non-discrimination guide the efforts. Mr Hunt explained that the technical experts are WHO, UNFPA, the Partnership for Maternal, Newborn and Child Health and others and that they know what needs to be done to reduce maternal mortality. However, he argued that these entities are not well-positioned to step back and make independent judgments about what States and others are doing. This, he said, is the historical role of the UN human rights system and in particular of the Council. He cautioned that the Council should not create another initiative that is disconnected from the important work being done elsewhere. However, what was missing is a mechanism of effective international accountability, and the Council could have a ‘comparative advantage’ in setting up such a ‘simple mechanism to work hand in glove with existing mechanisms’.

While the moderator kept returning to this question in keeping the discussion’s focus, the discussion regrettably failed to contextualise this important issue with the Council’s work. The panellists mainly spoke about existing initiatives in the UN system and about the key actions that States should take to address maternal mortality but not how these could be linked to the Council’s mechanisms or procedures. Overall the panel discussion seemed to expose the degree of connection between various UN bodies and the perhaps limited knowledge among UN agencies about the work of the Council. Luxembourg suggested that the Council strengthen its cooperation with UN agencies and in particular with WHO.

As with the previous panel, some States highlighted their domestic measures and policies.<sup>21</sup> Other issues and questions raised during the debate included: which human rights obligations could be incorporated in existing measures;<sup>22</sup> how maternal mortality undermines other rights, such as food, education, work;<sup>23</sup> how NGOs and special procedures could give information to the UPR and the treaty bodies to reduce maternal mortality;<sup>24</sup> whether the UPR could be an effective mechanism to address maternal mortality;<sup>25</sup> to what extent best practices compiled are available to inform the Council;<sup>26</sup> practical and feasible ways of ensuring cooperation between NGOs and health service providers;<sup>27</sup> structural and systemic failures that lead to maternal deaths.<sup>28</sup> The Holy See and one NGO<sup>29</sup> commented on abortions and their link to maternal mortality asserting that abortion is not a human rights issue, an issue not otherwise addressed by other speakers. Ms Dasgupta in response asserted that the Council should uphold the outcomes of world conferences that affirm that access to safe abortions must be guaranteed where abortion is not illegal. Mr Hunt also stated that to overcome maternal mortality ‘we need to need to talk about reproduction and sexuality, contraception, and we have to address unsafe abortion’ issues that must be tackled with sensitivity.

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<sup>20</sup> Slovenia (on behalf of the EU), Canada, Norway, New Zealand, Switzerland, Chile,

<sup>21</sup> Singapore, Cuba.

<sup>22</sup> Norway, New Zealand.

<sup>23</sup> Norway, New Zealand.

<sup>24</sup> Canada.

<sup>25</sup> Amnesty International.

<sup>26</sup> Switzerland.

<sup>27</sup> Ireland.

<sup>28</sup> Australia.

<sup>29</sup> Society for the protection of unborn children.

In concluding comments, Dr Islam stated that the real challenge is to ‘win the political battle’, that investment by individual countries is necessary, and that accountability must be ensured. Notably, he proposed that the General Assembly should take up the issue, perhaps reflecting a lack of trust in the Council’s ability to have any real impact. Ms Dasgupta echoed the High Commissioner’s comments that maternal mortality should be given greater attention in the UPR and further suggested that the Council could help develop indicators and monitoring. Mr Hunt concluded by reiterating the need for ensuring State accountability and that this is the role of the Council. With some realism and perhaps scepticism he recognised that the Council may not yet feel ready to undertake that role, and encouraged other parts of the international system to act should the Council not do so.

The moderator, Mr Songane, summed up the main outcomes of the discussion as: a recognition that maternal mortality is a human rights issue; a call for greater political will; the need for mainstreaming human rights in the UN system; the need for accountability at the national and international level; availability of data; encouragement of and support to community participation and gender equality; the need for maternal death audits; need for the UPR to routinely encompass maternal mortality; encouragement to special procedures to address maternal mortality; strong recommendation by the Special Rapporteur on health for an accountability mechanism; need to define rights-based elements to be integrated into maternal health policies; and need to strengthen international cooperation.

#### Informal consultations

#### **Extrajudicial executions**

Sweden convened the first round of informal consultations on a draft resolution on the renewal of the mandate on extrajudicial, summary or arbitrary executions. The most contentious issues during the informal consultations were the application of the Code of Conduct for special procedures and, linked to this, a bid by some States to reopen the question of term limits for mandate holders.<sup>30</sup>

At the outset, it appeared that all States support the continuation of the mandate. However, States seem to be loosely split in three groups on the question of term limits. Some view the renewal of the mandate as being linked the mandate holder, and these same States clearly oppose the current mandate holder.<sup>31</sup> While some appear to oppose Mr Alston in particular, others seem to view this as an opportunity to push the broader argument on the need for reappointing mandate holders that have served their first term. India announced a possible amendment to the draft resolution, which would ask the President of the Council to initiate the process of appointing a new mandate holder.

A second group of States, while agreeing that mandate holders in general should have to pass the test of reappointment after their first term, argued that the negotiation of this particular resolution was not the place to settle the broader issue.<sup>32</sup> The third group of States stressed that the resolution under consideration was about the mandate, and therefore all considerations of the mandate holder should not be debated.<sup>33</sup> Implicit in the views expressed by the third group was the overall rejection of the need for reappointment after one term.

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<sup>30</sup> The institution-building text specifies that ‘a mandate-holder’s tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders)’. There is no mention of the need to reappoint mandate holder after a first term, and the practice of the Commission was that mandate holders automatically continued to serve a second term.

<sup>31</sup> Singapore, India, Philippines.

<sup>32</sup> Russian Federation, South Africa, Egypt.

<sup>33</sup> Mexico, Austria, Netherlands, Czech Republic, United Kingdom, Germany, Ireland, Canada, Slovenia

In spring 2007, the Code of Conduct was one of the most contested parts of the institution-building texts.<sup>34</sup> The general comments on the draft resolution renewing the mandate of the Special Rapporteur on extrajudicial executions created an atmosphere reminiscent of the time of these negotiations. Following repeated expressions of discontent with the work of the Mr Alston, Egypt recalled that ‘the Code of Conduct was adopted to be implemented’. It went even further and warned that the Council had ‘not yet’ established an ‘ethics committee’, seemingly threatening to revive this negative proposal which had been discarded at the time of negotiation of the Code of Conduct.<sup>35</sup> Egypt claimed that its concern was not linked to Mr Alston, but was an institutional issue that should be resolved either in the Council or within the current text.

### **Informal consultations on the resolution to adopt the Optional Protocol to the International Covenant of Economic, Social and Cultural Rights**

Discussions on a suitable resolution on the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are still deadlocked. A second informal meeting, convened by Portugal on 5 June, was used by most delegations to reaffirm their well-established positions.

Portugal presented a second version of its draft resolution. This contained some minor amendments, including a new reference to a signing ceremony for the optional protocol. Pakistan’s proposals, which aimed to broaden the scope of the draft optional protocol to include Part I of ICESCR on self-determination, were appended separately to the document circulated for discussion. These included three suggestions for an amendment to Article 2 of the optional protocol, as well as an additional preambular paragraph to the resolution reaffirming the right to self-determination.

It quickly emerged that there would be no universal agreement on resolving the self-determination issue through a mere alteration to the resolution. Pakistan, Algeria and Syria were among those that opposed this option, and stressed their preference to have this issue addressed through an amendment to the text of the optional protocol.

Given the lack of agreement on resolving this issue through the resolution text, discussion turned to the possibility of altering the draft optional protocol itself. The Chair reiterated that any amendments considered should enjoy the same level of support that the text had in the Working Group, and should not open a ‘Pandora’s box’ of other claims. Predictably, many states (including the United Kingdom, Australia, Russia, India, and Canada) opposed the inclusion of Pakistan’s proposals in the text of the draft optional protocol. Canada recalled that the current formulation of Article 2 of the text had been part of a carefully crafted compromise. While Syria stressed that the text merely required ‘surgical adjustment’, Canada countered that it would be impossible to reopen one issue without touching various others.

Pakistan emphasised that this was not a case of ‘reopening’ the text, which had been assumed ‘open’ all along. Algeria and Syria concurred, with the latter recalling that it had made clear its reservations to the text during the Working Group. Algeria explicitly warned that although it was not a Council member, it would work with its ‘friends’ in the Council and the UN General Assembly should it be faced with an undesirable outcome.

Syria noted that the Arab Group would ‘very possibly’ soon establish a common position regarding reservations to Article 2, and was open to proposals ‘to accommodate our concern’. Syria conceded that it did not genuinely expect the Committee receiving communications to ever be in a position to implement what

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<sup>34</sup> The Code of Conduct is contained in *Resolution 5/2*. See ISHR’s *Human Rights Monitor* for a discussion of these debates. Available at: [http://www.ishr.ch/hrm/hrm2007/ISHRmonitor\\_07\\_Councils\\_institution.pdf](http://www.ishr.ch/hrm/hrm2007/ISHRmonitor_07_Councils_institution.pdf).

<sup>35</sup> The ‘ethics committee’ was among the most negative proposals made, but was discarded in the final text of the Code of Conduct.

was stipulated in Part I of ICESCR. In response, Mexico suggested that if no genuine expectation existed of the practical impact of including Part I in the scope, there appeared to be room for flexibility. It suggested, for example, considering language in the resolution to clarify that nothing in the optional protocol could be interpreted as modifying any provisions of the ICESCR, in particular the right to self-determination.

Questioning why well-intentioned States would oppose a broader reference to ‘all’ economic, social and cultural rights, Syria opined that some delegates were not convinced of the legitimacy of their own positions. In similar terms, Egypt observed that many delegations had clearly never been keen on the optional protocol, and had consistently worked to undermine it. Its view was that many defenders of the current text clearly had no intention of signing on to it. Algeria diagnosed that nearly all those who were objecting to adjusting the text had ‘a severe allergy to economic, social and cultural rights’. Egypt stressed that this issue was easily solvable, subject to adequate political will. Given prevailing attitudes, however, Egypt predicted a prolonged deadlock in the Council and in the UN General Assembly. It threatened that, absent an improved ‘mood’ in the informal meetings, it would not participate further in consultations on the text.

Arriving perhaps at the crux of the debate, Syria stressed that it did not wish to institutionalise a precedent through the overt omission of a reference to self-determination, which could risk future ‘cherry picking’ of rights in similar scenarios.

Belgium challenged delegations unhappy with the current text to offer a legal analysis demonstrating that people under foreign occupation would not, under the current formulation, be able to make claims pertaining to their economic, social and cultural rights. Similarly, Slovenia questioned whether one could realistically lodge a complaint solely relating to self-determination, when in practice any self-determination-related complaint should logically be linked to other articles contained in parts II and III of ICESCR. The exclusion of Part I from the scope of the optional protocol would thus not, in practice, deprive people of lodging complaints. States could, in any case, make interpretative declarations when adopting the instrument. Slovenia and Mexico stressed that the optional protocol could not diminish the validity of Article 1 of ICESCR, as the former was merely procedural.

In light of the deadlock, Portugal announced its intention to table the text on Friday 6 June, and to convene a meeting of co-sponsors early next week to review options. Informal meetings would then be scheduled for later next week. Portugal appeared to signal that it wished to discount the option of returning the draft optional protocol to the Working Group for reconsideration; and, instead, to force a compromise during the current Council session. A final exchange comprised an official Algerian proposal to extend the mandate of the Working Group, and a polite acknowledgment of this idea by Portugal, who did not appear impressed.

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