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Overview	1
Follow-up to the special session on the global food crisis	2
Interaction with special procedures.....	3
Indigenous peoples (continued)	3
Toxic waste (continued).....	5
International solidarity.....	5
Contemporary forms of slavery	6
Sale of children.....	6
Informal consultations	7
Follow-up to the special session on the food crisis	7
Remembrance of the Holodomor	7
Address by the Minister of Foreign Affairs of Mauritania	8

Overview

The third day of the 9th session of the Human Rights Council (the Council) continued the interactive dialogues with two special procedures, and started dialogues with three other special procedures. Again, these were not concluded in time and will be pursued on 12 September 2008. The first report by the newly established Special Rapporteur on contemporary forms of slavery was welcomed by many delegations, but she was already criticised for the focus she intends to give her mandate. Ms Gulnara Shahinian, the mandate holder, chose to focus on forced labour, domestic labour and child labour, but did not include forced prostitution among her expressed priorities. As if to show that special procedures of the Council are to follow the Council's command, Egypt (on behalf of the African Group) asked her to 'correct that anomaly'.

The Council also held a long discussion on the follow-up to the special session on the right to food. The arguments brought forward were generally repetitive of those already heard during the special session. There appeared to be some fundamental differences in opinion about the best institutional responses to the global food crisis in general, and the Council's role in particular. The new Special Rapporteur on the right to food only assumed his function in May 2008, and it can be hoped that over time, he will be able to provide the Council with more conceptual clarity on how it can most effectively address this situation from a human rights perspective.

Follow-up to the special session on the global food crisis

In its follow-up to the special session held in May 2008,¹ the Council first heard an update from the Special Rapporteur on the right to food, Mr Olivier de Schutter, whom it had tasked with preparing a report ‘on the impact of the global food crisis on the protection of the right to food, and required remedies from a human rights perspective’.² Mr de Schutter drew attention to the continuing high food prices and gave an overview of his report.³ In his report, Mr de Schutter outlines action that should be taken at national and international levels to implement the right to food in the context of the crisis. He reiterated that the issue at hand is accessibility to food, not its availability. Mr de Schutter concluded by declaring that ‘solutions to the food crisis will only be sustainable if our strategies are grounded on human rights’.

States were unanimous in repeating their concern about the negative effect of the world food crisis on the realisation of the right to food, especially for the most vulnerable. As during the special session, the oft-repeated list of potential causes of the high food prices was debated by States. The most frequently mentioned were speculation,⁴ agricultural subsidies,⁵ and biofuels.⁶ Brazil defended its production of biofuels, arguing that ‘biofuels are not the villain that menaces the food security of poor countries’, pointing the finger instead at agricultural subsidies in developed countries.

There seemed to be some differences of opinion in relation to the scope of the human right to food. The United Kingdom (UK), disagreeing with the Special Rapporteur, rejected the idea that all public and private actors carry obligations under the international human rights framework. In his answers, Mr de Schutter assured the delegation that he shares the views of Mr John Ruggie, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, that States bear the primary responsibility.⁷

France, on behalf of the European Union (EU), emphasised the need to secure and strengthen the rights of farmers and women.⁸ It pointed out that it is first and foremost the responsibility of States, both nationally and through international cooperation, to take measures to meet the vital needs of peoples.⁹ El Salvador underscored the importance of ensuring land tenure for those using the land.¹⁰

Virtually all States and NGOs stressed the need to increase international cooperation. Egypt (on behalf of the African Group) referred to States’ ‘legally binding obligation to international cooperation and assistance’, while Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), described the current level of aid to developing countries as ‘seriously inadequate’.¹¹ There was general agreement on the need for greater coordination within the UN system and on the role of the Council in promoting a human rights perspective in

¹ ISHR’s report on the special session is available at www.ishr.ch/hrm/council/cmreports/specialsessions/7_special_session.pdf.

² Para 8, A/HRC/S-7/1, available at www2.ohchr.org/english/bodies/hrcouncil/specialsession/7/index.htm.

³ A/HRC/9/23, available at www2.ohchr.org/english/bodies/hrcouncil/9session/reports.htm.

⁴ Cuba, Egypt (on behalf of the African Group), Luxemburg.

⁵ India, Pakistan (on behalf of the OIC), Venezuela, Algeria.

⁶ India, Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Yemen.

⁷ The United Kingdom (UK) used to be a co-sponsor of Mr Ruggie’s mandate, but has now withdrawn and was replaced by Norway.

⁸ Canada and the UK also pointed out the disproportionate impact of the crisis on women and girls.

⁹ Supported by the UK, Belgium.

¹⁰ Supported by Europe Third World Centre (CETIM).

¹¹ Supported by Saudi Arabia.

relation to the UN's response to the world food crisis.¹² Turkey noted the importance of the Council in raising public awareness of this issue.

Other States went further, calling for a system of global governance to better realise the human right to food, including through reassessing the international trade mechanisms.¹³ Algeria called for a 'code of conduct' to regulate trading in foodstuffs and limit the negative impact of speculation. Several States commented favourably on the 'global partnership for agriculture', a possible institutional response suggested by the Special Rapporteur.¹⁴ On the contrary, while recognising the value of such a partnership, the UK cautioned that the Special Rapporteur should avoid overlap with other entities in the UN, in particular the Secretary-General's High Level Task Force on the global food crisis. In his answers, Mr de Schutter defended his proposal. However, while he assured the UK of his close cooperation with the Task Force, there seems to be a more fundamental difference in views. In Mr de Schutter's opinion, it is the task of the Council to define the outside framework for any agreement found in other forums. In that sense, he said, human rights do not define what other actors should do, but they limit the playing ground and are essential in guiding international efforts.

Numerous States also took the opportunity to describe initiatives that they have taken in response to the global food crisis, such as increasing international aid contributions,¹⁵ technology transfer projects,¹⁶ national programmes to combat poverty and hunger.¹⁷ South Africa presented initiatives that are being taken at the regional level.

Interaction with special procedures

Under Item 3, 'promotion and protection of all human rights', the Council continued its interactive dialogues with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr James Anaya, and the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr Okechukwu Ibeanu.¹⁸ Chile, who was only able to make comments on the work of one of the two special procedures under discussion, protested that the amount of time spent on procedural matters in the Council makes it difficult to 'do justice' to the interaction with special procedures.

At the end of the afternoon, the Council commenced its interactive dialogues with the Independent Expert on human rights and international solidarity, Mr Rudi Muhammad Rizki, and the Special Rapporteur on contemporary forms of slavery, Ms Gulnara Shahinia, and the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms Najat M'jid Maala.

Indigenous peoples (continued)

The majority of States stressed the importance of the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration), while noting the role of different actors in its implementation.¹⁹ Algeria openly disagreed with Mr Anaya's assessment that the Declaration 'will become entrenched' in the universal periodic

¹² Cuba, India, France (on behalf of the EU), Republic of Korea, Brazil, Mexico, Senegal, United Kingdom.

¹³ Indonesia, Morocco, Chile.

¹⁴ Algeria, Senegal.

¹⁵ Canada, Japan, Saudi Arabia, United Kingdom, Italy.

¹⁶ Vietnam.

¹⁷ Brazil, Saudi Arabia, El Salvador, Dominican Republic, Senegal, Sudan, Bangladesh, Chile, Bolivia, Morocco, Philippines.

¹⁸ For the first part of the interactive dialogues, see ISHR's *Daily Update* of 9 September 2008, available at www.ishr.ch.

¹⁹ Guatemala, Russian Federation, Philippines, Botswana. Also New Zealand Human Rights Commission, Indian Council of South America (CISA).

review (UPR) process.²⁰ It argued that the basis of the review, as enumerated in Council *Resolution 5/1*,²¹ does not include non-binding resolutions such as this one. The Indian Council of South America (CISA) emphasised that the Declaration must not be interpreted to undermine the existing rights of indigenous peoples.

Areas of particular concern to States and non-governmental organisations (NGOs) were violence against indigenous women and protection of indigenous children.²² Canada and Denmark were interested in the thematic work envisaged by the Special Rapporteur. In response, Mr Anaya stressed the importance he places on paying particular attention to the views of indigenous women. He listed indigenous languages, transnational corporations, and recognition of legal systems as three areas of particular interest. In relation to a brief dispute between the Society for Threatened Peoples and the delegation of China over the appropriateness of mentioning the situation in Tibet under the present Item,²³ Mr Anaya encouraged a general human rights approach to the concept of indigenous peoples.

Several States took the opportunity to highlight the progress they have made in improving the situation of indigenous peoples. This included national programmes for improving the social and living conditions of indigenous peoples,²⁴ legal and political changes,²⁵ ratification of International Labour Organization (ILO) *Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*,²⁶ and cooperation with the Special Rapporteur.²⁷ Several statements by NGOs contradicted States' positive self-assessment of the progress made in protecting the rights of indigenous peoples.²⁸

States also inquired about the cooperation between the Special Rapporteur and other UN bodies, in particular the newly established Expert Mechanism on the rights of indigenous peoples.²⁹ Indonesia asked whether and how Mr Anaya envisages greater cooperation with the World Intellectual Property Organization (WIPO). Georgia enquired about the relationship between the Special Rapporteur and the Committee on the Elimination of Racial Discrimination (CERD). In his concluding comments, Mr Anaya assured that he has refrained from developing concrete plan of action specifically with a view to avoid any overlap. Mr Anaya informed the Council that he will be attending the session of the Expert Mechanism next month.

In his closing comments, Mr Anaya declared that all relevant international instruments for the advancement of the rights of indigenous peoples should be implemented. He stressed again that his primary role as Special Rapporteur is to focus on specific situations and promote the inclusion of indigenous peoples locally. He stated his intention to promote constructive dialogue between governments and indigenous peoples and encourage recognition of indigenous legal systems in the process. Mr Anaya expressed his hope that the Council would encourage States to respond to communications and to be flexible in their engagement with

²⁰ Para 63, A/HRC/9/9, available at www2.ohchr.org/english/bodies/hrcouncil/9session/reports.htm.

²¹ A/HRC/RES/5/1, available at www2.ohchr.org/english/bodies/hrcouncil/5session/resolutions.htm.

²² Canada, Guatemala, Kenya, New Zealand Human Rights Commission, International Federation of Human Rights Leagues (FIDH).

²³ China attempted to prevent the non-governmental organisation (NGO) from making its statement, declaring that China has no indigenous groups, only ethnic groups. In its view, the Tibetan people are an ethnic group, and thus their situation should not be raised during the present discussion on indigenous peoples. The President pointed out that the NGO statement was 'very neatly crafted' and ruled that it was in order.

²⁴ Nepal, Chile, Russian Federation.

²⁵ Chile, Russian Federation, Nepal, Philippines, Colombia.

²⁶ Nepal, Chile, Finland.

²⁷ Nepal, Peru, Botswana, Kenya, Colombia, Denmark.

²⁸ Colombian Commission of Jurists (CJC), Centre on Housing Rights and Evictions (COHRE), Commission of the Churches on International Affairs of the World Council of Churches (CCIA/WCC).

²⁹ Canada, Philippines, Peru.

him. Mr Anaya concluded by reminding States of their responsibility to be open to the voices of indigenous peoples.

Toxic waste (continued)

Speakers expressed their concern about the disproportionate effect that illicit movement and dumping of toxic waste have on the environment and on the enjoyment of human rights, particularly the right to health, in developing countries.³⁰ China called on the UN and the Office of the High Commissioner for Human Rights (OHCHR) to organise campaigns to raise awareness about these issues. States generally supported the renewal and expansion of the mandate of the Special Rapporteur to cover the licit movement of toxic waste,³¹ and also called for more resources to be made available to this mandate.³² This mandate will be reviewed later at this session.³³

Several States focused on the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*. Nigeria regretted that many countries, particularly developed countries, have yet to ratify the *Basel Convention* or other international treaties on this matter. Ghana stressed the importance of environmentally sound management and adherence to the *Basel Convention* in minimising the adverse effects of toxic waste.

In his response to these comments, Mr Ibeanu first referred to his proposal to expand his mandate to cover licit movements of toxic waste, explaining that such activities ‘can be veritable source of violations of human rights’ and thus need to be closely monitored. Mr Ibeanu highlighted three points upon which there is general consensus. First, the widespread and extensive nature of the problem of toxic waste and its impact on human rights. Second, the necessity of concerted cooperation at the international level to tackle this problem. Third, the importance of information and public awareness. In relation to the last point, Mr Ibeanu urged States to invest increasingly in, for instance, labelling toxic materials and products in local languages.

International solidarity

Mr Rudi Muhammad Rizki, the Independent Expert on human rights and international solidarity, was unable to present his report to the Council.³⁴ Ms Gulnara Shahinian, the Special Rapporteur on contemporary forms of slavery, read a statement on his behalf.³⁵ The Independent Expert as previously identified the same key areas for his mandate.³⁶ In his statement, Mr Rizki, urged States not to ‘conflate international cooperation with international development assistance’, as the latter is just one part of the former. The Independent Expert recalled that he had been mandated to prepare a draft declaration on the rights of peoples and individuals to international solidarity. To this effect, the report presented to the Council contains also a ‘draft questionnaire’ for States, international organisations and NGOs with which the Independent Expert intends to identify ‘basic parameters of the principle of international solidarity and human rights’.

Due to time constraints, only a handful of States were able to comment on the report. They welcomed the elaboration of a draft declaration, and encouraged the Independent Expert to pursue his efforts in this regard. Pakistan (on behalf of the OIC) requested that the Independent Expert provide more clarity about the

³⁰ Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), Bangladesh, Nigeria, Ghana, Kenya, FIDH.

³¹ Bangladesh, Algeria. Also FIDH.

³² Pakistan (on behalf of the OIC), Bangladesh. Also FIDH.

³³ For the latest programme of work, see www2.ohchr.org/english/bodies/hrcouncil/9session.

³⁴ A/HRC/9/10.

³⁵ Oral statements made at the Council are available on the OHCHR extranet.

³⁶ International cooperation, global response to natural disasters, agricultural pests and diseases and third generation rights, see for instance ISHR’s *Daily Update* of 13 September 2007 available at www.ishr.ch.

questionnaire attached to his report, and suggested the Council should have a dialogue on this issue to ensure a common understanding of the issues involved.

Contemporary forms of slavery

Ms Gulnara Shahinian, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, presented her first report to the Council.³⁷ The mandate was established during the 6th session of the Council, and Ms Shahinian has taken up her mandate in May 2008. She stressed that slavery is a problem that impacts both genders and all age groups. She felt it is almost ‘unbelievable’ in this day and age that slavery still persists. She presented three main areas on which she intends to focus: forced labour, domestic labour, and child labour. Ms Shahinian stressed that cooperation is key to effective development of strategies to combat slavery at national, regional and international levels, in conjunction with raising awareness and enhancing knowledge of the modern forms of slavery.

Ms Shahinian also commented on the importance of country visits as a ‘unique opportunity’ to engage in direct dialogue with different stakeholders. She has requested such visits to Uzbekistan, Brazil and Bangladesh. Additionally she recommended ‘stronger political will’ from governments to enforce laws, and to develop rehabilitation programmes for victims of modern day slavery.

Egypt (on behalf of the African Group) expressed its support for the new mandate. However, it seemed to express some disappointment with the way the Special Rapporteur has set her priorities. In particular, it stressed that child labour was a priority, but questioned why forced prostitution has not been included as a focus area. It urged Ms Shahinian to include prostitution in her focal areas and demanded that she ‘redress this anomaly’.³⁸ Morocco highlighted the need to give particular attention to education and sensitisation of children, and to create a greater awareness of risk situations. Armenia, of which the Special Rapporteur is a national, suggested that Ms Shahinian needs to find ways to not duplicate existing mandates and welcomed the proposed cooperation with mandates of a similar nature. The interactive dialogue will continue on 12 September 2008.

Sale of children

Ms Najat M’jid Maala, the Special Rapporteur on the sale of children, child prostitution and child pornography, presented her first report to the Council.³⁹ She highlighted the methodology that will guide her work, explaining that it builds on the analysis of her predecessors,⁴⁰ the work of the Committee on the Rights of the Child, the UN Study on Violence against Children and her dialogues with non-governmental organisations, UN agencies, treaty bodies, and other special procedures mandate holders.⁴¹ Ms Maala emphasised the importance of the participation of child victims in carrying out her mandate. She declared that in accordance with the *Convention on the Rights of the Child (CRC)* and *Resolution 2001/51* of the Commission of Human Rights, she would integrate a gender and HIV/AIDS dimension into her work. Ms Maala insisted on the importance of integrating a transnational, international and national dimension in her mandate. She also highlighted the need to consider socio-economic, cultural and environmental factors that may contribute to the sale of children, child prostitution and child pornography. Ms Maala then presented the

³⁷ A/HRC/9/20.

³⁸ Pakistan (on behalf of the OIC) aligned itself with Egypt in supporting the inclusion of sexual exploitation as a focal area of the mandate.

³⁹ A/HRC/9/20. Ms Maala was appointed in May 2008.

⁴⁰ Juan Miguel Petit, Ofelia Calcetas-Santos and Vítit Muntarbhorn.

⁴¹ In particular, she hoped to be able to undertake joint work with the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the fundamental rights of victims of human trafficking especially women and children.

three thematic studies she will undertake, namely child pornography, the sale of children's organs, and the sale of children for the purpose of adoption.

Ms Maala urged the signature and ratification by all states of the Optional Protocol to the CRC, which concerns the sale of children, child prostitution and child pornography. She called for the non-criminalisation of child victims in national laws. She also stated that the follow-up of recommendations made by herself, her predecessors, reports by the UPR, final observations by the Committee on the Rights of the Child and the UN Study on Violence against Children, was a priority.

Due to the limited time available, only few States took part in the interactive dialogue. Chile, on behalf of the Latin American and Caribbean Group (GRULAC), reaffirmed its commitment to the CRC and recommended that cultural factors be examined closely in relation to the sale of children, child prostitution and child pornography. A number of States emphasised their domestic efforts at preventing the sale of children. Pakistan (on behalf of the OIC) asked for the Special Rapporteur's views on areas of bilateral and multilateral cooperation to prevent sex tourism and child pornography.

Informal consultations

Follow-up to the special session on the food crisis

Cuba hosted open-ended informal consultations on the follow-up to the special session on the world food crisis. States generally welcomed Cuba's draft resolution, but were uncomfortable with its broad endorsement of the recommendations contained in the latest report of the Special Rapporteur on the right to food,⁴² especially since the report had only been published the day before.⁴³

Another key discussion surrounded the tasks to be entrusted to the Special Rapporteur. The draft resolution lists specific areas that the Special Rapporteur should consider, including 'non-commercial speculation on the futures markets of primary agricultural commodities' and 'the feasibility of establishing a global reinsurance fund'. Many States were of the view that these tasks go beyond the mandate of the Special Rapporteur and thus preferred the use of more general wording.⁴⁴

Other comments included calling on States to incorporate a human rights perspective into their national strategies,⁴⁵ incorporating follow-up to the special session into the mandate of the Special Rapporteur,⁴⁶ and softening the language 'regretting' the absence of a human rights perspective in the outcome of the High-Level Conference on World Food Security and the Challenges of Climate Change and Bioenergy.⁴⁷ Notably, Switzerland opposed the paragraph encouraging 'all States to invest more in agriculture and rural infrastructure'.

Remembrance of the Holodomor

During the day Ukraine convened informal consultations on a draft resolution on 'remembrance of the Holodomor⁴⁸ of 1932-1933 in Ukraine'.

⁴² A/HRC/9/23, available at www2.ohchr.org/english/bodies/hrcouncil/9session/reports.htm.

⁴³ India, Canada, Norway, Brazil, Switzerland, Egypt, Mexico, Germany (on behalf of the EU).

⁴⁴ Germany (on behalf of the EU), Switzerland, Mexico, Canada.

⁴⁵ Germany (on behalf of the EU), Switzerland.

⁴⁶ Germany (on behalf of the EU). Cuba, Switzerland, Mexico were hesitant to accept this approach.

⁴⁷ Brazil, Switzerland, Canada, India.

⁴⁸ The Holodomor refers to the massive famine in the Soviet Union in 1932-1933. The reasons for the famine are contested.

In introducing the draft resolution, Ukraine went to great efforts to underline that this was merely a commemorative resolution and that it would not in any way deal with genocide, as concerns had been expressed about this. It explained that the draft resolution is aimed at ensuring that information about this event is made public and that history is not repeated. Despite assurances from Ukraine that the draft resolution was not aimed at any particular country, it drew strong negative comments from the Russian Federation. The Russian Federation argued that the Holodomor is equated with genocide in Ukrainian law and called the draft resolution ‘one-sided and politically motivated’ and ‘an attempt at re-writing history’. Many other countries also expressed reservations about the resolution and its implications with many suggesting that it would ‘open a Pandora’s box’.⁴⁹ These States urged Ukraine to reconsider tabling the draft resolution. While all countries expressed their condolences, Poland was the only country to support the tabling of the draft resolution.

Address by the Minister of Foreign Affairs of
Mauritania

Mr Mohammad-Mahmoud Ould Mohamedou, Minister of Foreign Affairs and Cooperation of Mauritania, addressed the Council.⁵⁰ The Minister recalled that since August 2008, Mauritania was in a ‘phase of rectification’ after the military had removed the elected president of the country. The Foreign Minister explained that the country was currently headed by the ‘High Council of State’ led by General Mohamed Ould Abdelaziz. General Abdelaziz was dismissed as head of the presidential guard immediately prior to the removal of the former president.⁵¹ Mr Mohamedou pledged that the High Council of State is committed to organise ‘at the earliest possible, free, fair, and transparent presidential elections’ and that it is convinced that the ‘promotion and protection of human rights in Mauritania, in the context of a viable rule of law, are essential conditions of progress and development’.

⁴⁹ Belarus, Pakistan, Palestine, Syria, Algeria, South Africa.

⁵⁰ The statement is available on the OHCHR extranet at <http://portal.ohchr.org>.

⁵¹ See for instance: <http://news.bbc.co.uk/2/hi/africa/7544834.stm> and <http://english.aljazeera.net/news/africa/2008/08/20088695834599264.html>.

COUNCIL MONITOR STAFF

Paul Dziatkowiec, Human Rights Officer
Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Yuri Saito, Fellow
Gareth Sweeney, Deputy Manager
Katrine Thomassen, Manager International Programme

Contributors

David Björnhage, Intern
Lauren Gecuk, Intern
Birte Mackeprang, Intern
Marita Swain, Intern
Rebecca Whelan, Intern

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