

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 3 HUMAN RIGHTS COUNCIL, 10<sup>TH</sup> SESSION 6 MARCH 2009

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### Overview

The Chairperson of the Working Group on arbitrary detention engaged in the interactive dialogue with the Human Rights Council (Council) on the afternoon of 6 March 2009. Concerning country visits, Italy provided detailed responses to the majority of points raised by the Working Group, whereas Colombia was more inclined to regret that the Working Group had not incorporated its responses into its own draft report of its mission to the country, and it advised the Working Group to adhere to the Code of Conduct for special procedures. One notable aspect in relation to institutional issues was the rejection by Pakistan and others of the request from the Working Group to expand its mandate to cover the rights of all detainees. Other issues raised included immigrants in irregular situations, the link between deprivation of liberty and corruption, and criticism of the late preparation of reports by the Working Group.

### Item 3 – Working Group on arbitrary detention

#### Presentation by the Chairperson

The Chairperson for the Working Group on arbitrary detention (the Working Group), Ms Manuela Carmena Castrillo, summarised the Working Group's annual report and its four mission reports.<sup>1</sup> The reports provide an overview of the Working Group's activities during the past year, including 4 country visits, follow-up to previous country visits, and the submission of 46 opinions and 130 urgent appeals.

The Chairperson-Rapporteur drew attention to the Working Group's concern that there are gaps in the system of protecting the rights of persons deprived of their liberty. She recommended that the Working Group's mandate be extended to include monitoring State compliance with human rights obligations concerning all people detained. Remarking on a continuing increase in the number of allegations of deprivation of liberty in the context of the

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<sup>1</sup> A/HRC/10/21, 16 February 2009 (annual report), Add. 1, (Opinions adopted by the Working Group, not yet published), Add. 2, 21 November 2008 (Mission report to Mauritania), Add. 3, 16 February 2009 (Mission report to Colombia), Add. 4, 9 February (Mission report to Ukraine), Add. 5, 26 January 2009 (Mission report to Italy).

fight against terrorism,<sup>2</sup> the Chairperson explained that the Working Group had developed a set of principles to be used in relation to the deprivation of liberty of persons accused of acts of terrorism. The Working Group also proposed that the Council organize a forum to work on guaranteeing the respect for the right to be free from arbitrary detention in the context of counter-terrorism.

The Chairperson noted the link between arbitrary detention and corruption, and expressed that the Working Group urged all States to undertake various measures against corruption, including becoming party to the United Nations Convention against Corruption.<sup>3</sup> Concerning immigrants in irregular situations, she stressed that there was a tendency for them to be treated as criminals and subject to arbitrary detention. The Working Group recommended that detention should only be used as a last resort, and under very specific conditions. The Working Group also invited States to share experience and knowledge in the use of video and audio recording of criminal interrogations in order to assist the Working Group in studying the issue.

Reporting on the country visits, Ms Castrillo remarked on the development of democratic institutions in Mauritania, but expressed concern that not all people in authority were in favour of these changes. She commended Colombia for amending its penal system to include recent developments in international human rights law, but criticized it for the massive scale of detentions in the country, and the practice of administrative-preventive detention. Ms Castrillo applauded the Ukraine's moves to stop the practice of arbitrary detention, but warned that the country was only at the beginning of this process. Regarding Italy, Ms Castrillo drew attention to the fact that whilst there are structures in place to prevent arbitrary detention, the lengthy delays in criminal proceedings which result in large numbers of detainees is of concern, as is the practice of detaining immigrants in irregular situations.

The Chairperson requested that the Council consider increasing funding for the Working Group to permit it to carry out at least five country visits per year, in addition to follow-up visits to countries.

### Interactive Dialogue

The concerned States then took the floor to comment on the Working Group's reports. Each reaffirmed their support for the special procedures and repeated invitations to any of the special procedures mandate holders to visit. Mauritania reported on the various measures taken to strengthen the protection of human rights of detainees and immigrants, such as the creation of a specific detention centre for migrants. Colombia and Ukraine both expressed regret that the majority of their comments on the Working Group's draft reports had not been included in the final reports. Colombia refuted a number of the Working Group's conclusions and reminded it to adhere to the Code of Conduct for special procedures.<sup>4</sup> Colombia stated that the report will be discussed internally at a high-level meeting on the 30 April 2009 and any outcomes would be communicated to the Council. As an example of steps already taken in response to the Working Group's report, Ukraine cited a draft plan of action based on the Working Group's recommendations and the establishment of a national committee on the prevention of torture.

Italy drew attention to the fact that the Working Group did not find any case of arbitrary detention, and provided explanations and clarifications for each of the points on which the Working Group had been critical. These included the duration of judicial proceedings, the allegation of the existence of special detention regimes, and the juvenile justice system.

Member and observer States largely responded to the thematic considerations and recommendations identified by the Working Group. States were divided concerning the extension of the Working Group's mandate to include all persons deprived of liberty. Pakistan argued that the Working Group was mandated to specifically look at arbitrary detention, and not the rights of detainees in general, which do not differ from the rights of normal citizens and are

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<sup>2</sup> The Working Group had noted this in previous reports. See A/HRC/10/21 at 20.

<sup>3</sup> United Nations *Convention against Corruption*, General Assembly *Resolution 58/4*, 31 October 2003

<sup>4</sup> Council *Resolution 5/2*.

part of every government's responsibility.<sup>5</sup> Algeria reminded the Working Group that if their mandate was to be changed, this should happen within the context of the normal review process, next due in three years. Questions were also raised by the Czech Republic, France and Malaysia as to how the Working Group could consider extending its mandate whilst at the same time requesting increased funding to be able to carry out its current mandate. However, a number of States acknowledged that there were possibly gaps in the protection of human rights of people deprived of liberty and alternative means of addressing these should be explored.<sup>6</sup>

Several States supported the Working Group's recommendations concerning immigrants in irregular situations,<sup>7</sup> the link between deprivation of liberty and corruption,<sup>8</sup> and the usefulness of holding a forum and developing principles on detention relating to terrorism.<sup>9</sup> On the latter, Algeria argued against the necessity for such a forum given the existence already of a Special Procedure on counter-terrorism.

Pakistan (on behalf of the OIC), Saudi Arabia, Norway and Malaysia criticised the reporting done by the Working Group, citing late submissions and lack of translation of reports as limiting States' abilities to interact with the Working Group. Saudi Arabia also charged the Working Group with submitting incomplete and incorrect requests for information to the State and encouraged the Working Group to pursue all means of possible contact with a State before developing an opinion.

A few specific issues were also raised that went beyond the scope of the Chairperson's presentation. Both States and NGOs called on the Working Group to be attentive to specific situations, including in Colombia,<sup>10</sup> Zimbabwe,<sup>11</sup> China,<sup>12</sup> Syria,<sup>13</sup> Tibet,<sup>14</sup> Iraq<sup>15</sup> and Iran.<sup>16</sup> Pakistan (on behalf of the OIC), requested the Working Group's views on secret detentions. Cuba drew attention to the Working Group's opinion 19/2005 concerning five Cuban nationals held in US prisons and expressed hope that this case would be resolved by the new US administration. Algeria proposed that the transmission of urgent appeals should be in accordance with the Code of Conduct for special procedures.

In concluding the session, the Chairperson-Rapporteur commented again on the four country visits undertaken, reminding Colombia that although its legal framework was exemplary the reality was very different, and repeating the Working Group's concern with the high number of detainees on remand in Italy. Ms Catrillo announced that the Working Group would follow-up on how to hold a forum on arbitrary detention linked to counter-terrorism, and to explore further the extension of its mandate.

### **Other issues**

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<sup>5</sup> Pakistan (on behalf of the Organisation of the Islamic Conference), Saudi Arabia, Algeria and Mexico.

<sup>6</sup> Czech Republic (on behalf of the European Union), France, Malaysia, Mexico and Switzerland.

<sup>7</sup> Peru, Algeria, Nigeria, Mexico and Brazil.

<sup>8</sup> Mexico, Canada, Brazil and Malaysia.

<sup>9</sup> Russian Federation, Nigeria and Brazil.

<sup>10</sup> Norway, the Colombian Commission of Jurists

<sup>11</sup> The Czech Republic (on behalf of the European Union) asked how the Working Group was following up on its five urgent appeals.

<sup>12</sup> The Czech Republic (on behalf of the European Union) asked whether the Working Group had received a response to its request for a visit.

<sup>13</sup> The Czech Republic (on behalf of the European Union) asked whether the Working Group had received a response to its request for a visit.

<sup>14</sup> The Society for Threatened Peoples

<sup>15</sup> Nord-Sud XXI

<sup>16</sup> The Czech Republic (on behalf of the European Union) asked whether the Working Group had received a response to its request for a visit.

At the end of the session Iraq exercised the right of reply to a statement made by the NGO Nord-Sud 21 on the unknown whereabouts of an Iraqi Member of Parliament. Iraq stated that the Government itself was searching for this man as he was suspected of links to a bomb attack on the Parliament.

### Further information

For further information on the Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

## **COUNCIL MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer  
**Michael Ineichen**, Human Rights Officer  
**Gareth Sweeney**, Deputy Manager  
**Katrine Thomasen**, Manager International Programme

## **CONTRIBUTORS**

**Jessika Croizat**, Intern  
**Joelle Dek**, Intern  
**Surya Gopalan**, Intern  
**Ladina Knapp**, Intern  
**Beth Lehner**, Intern  
**Clara Martino**, Intern  
**Patriani P. Mulia**, Intern  
**Isabella Ries**, Intern

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