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Overview

From 18 to 20 March 2009, the Human Rights Council (the Council) considered and adopted the reports of sixteen States under Item 6 that had been reviewed by the universal periodic review (UPR) Working Group at its third session in December 2008. This was followed by a general debate on the UPR under Item 6 on 20 March 2009. The adoption of reports was notable for the controversy surrounding the adoption of the report of Israel due to the

fact that it had not expressly declared its position on a number of outstanding recommendations. Israel was not the first country to have done this,¹ and it clarified during the consideration of its report that the additional recommendations to those it had explicitly accepted had been ‘noted’ in accordance with the requirements of the institution-building text. Palestine nonetheless requested that a break be taken before the adoption of the report to consider actions to be taken. This eventually resulted in a postponement until the following day for the adoption of Israel’s report and strong allegations of selectivity by a number of States. However, it also raised legitimate discussion around the status of outstanding recommendations and the need for the State under review to clearly state its position before the adoption of the report. In contrast, the adoption of the report of Botswana provided an example of best practice as the country provided a table listing positions related to all recommendations.

In other cases, the same small number of States tended to engage in providing comments before the adoption of reports,² with the notable new participation of the United States (US), which had not previously taken an active part in the UPR process, and Djibouti, which recently established a permanent mission after it became a member of the Council in 2006. It was particularly noteworthy that the US spoke during the adoption of many UPR reports, while it had not participated in the discussions during the Working Group. A recurrent theme throughout the adoption of reports was the need for the international community to provide technical assistance to developing countries in implementing the recommendations made to them. The United Kingdom later informed the Council that it had contributed to the UPR fund in this regard.

The general debate on Item 6 saw laudatory comments by the majority of States on the performance of the UPR to date, with a number identifying areas where the UPR needed to be cautious in its evolution, but with very few raising critical concerns in relation to shortcomings. The interventions of NGOs were particularly useful in providing some balance in this regard. Among the most notable aspects of the debate were suggestions to amend the modalities for speaking time so as to ensure that all inscribed speakers are heard, the use of the general debate under Item 6 as an opportunity to follow up on implementation of recommendations, the complementarity of the UPR with the treaty bodies and the system of special procedures, the question of the status of recommendations that are not accepted by States yet reflect international human rights obligations, the adoption of the report on Israel and the question of equal treatment, the balance of national and international NGOs in the submission of information to the UPR, and attempts to suggest that the UPR should replace country mandates and resolutions of the Council.

There were also no controversies under the adoption of reports and the general debate on Item 6 in relation to the content of statements by NGOs and other stakeholders, as had been the case in previous Council sessions.

Consideration and adoption of UPR reports

Bahamas

The Director-General of the Ministry of Foreign Affairs, Mr Joshua Sears, stressed the commitment of the Bahamas to the UPR and informed the Council that since its review in December the Bahamas had signed and ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) – with both due to enter into force on 29 March 2009. Further, Mr Sears explained that the *Police Act 2009* would be introduced to provide civilian oversight of State police and allay some concerns raised during the UPR. In relation to the Carmicheal Road Detention Centre, Mr Sears affirmed that the Government was cooperating with the UN High Commissioner for Refugees (UNHCR) with a view to improve conditions within the facility.

Comments by member and observer States

¹ See for example, South Africa, Pakistan, Czech Republic.

² Egypt, Algeria, Senegal, Brazil

Egypt, Cuba, France, Chile (speaking for GRULAC), Barbados, Algeria, Pakistan and Botswana commented on the consideration of the outcome document. Egypt praised the Director-General's presence in Geneva as positively reflecting their commitment to human rights. It noted that the situation 'shows that we need to do something else to provide for those countries without bases in Geneva', possibly earmarking the issue for further Council debate at a later stage. Though initially very few States had inscribed to comment, after Egypt's comments, a number of States sought to remark on the commitment shown by the Bahamas. Algeria and Pakistan both called for the international community to provide technical and financial assistance to the Bahamas.

General comments by other stakeholders

Amnesty International was the only NGO to take the floor. It welcomed the Bahamas' ratification of the ICCPR and ICESCR while noting with satisfaction its willingness to consider accession to the *Convention on the Rights of Migrant Workers* (CMW), the *Convention against Torture* (CAT) and its Optional Protocol. Amnesty International did however express disappointment that all recommendations pertaining to the death penalty had been ignored. It noted that though there had been no executions of late in the Bahamas, the death sentence continued to be passed and, alarmingly, the authorities had recently endorsed hanging. It expressed further concern with the Bahamas' rejection of the recommendation to criminalise marital rape, calling for the enforcement of a comprehensive law against domestic and sexual violence. To conclude, Amnesty International explained that there had been reports of continued abuse in the Carmicheal Road Detention Centre and urged a swift and independent investigation into these allegations. In response, Mr Sears directed the Council to review the addendum to the Bahamas' outcome report, asserting that doing so would address the questions raised by Amnesty International.³

Barbados

Mr C. Trevor Clarke, Ambassador of the Permanent Mission of Barbados to the UN in Geneva, presented the country's views on the UPR report.⁴ Barbados underlined that as 'a small island developing State' it 'has been an active participant and fervent supporter of international human rights'. It highlighted the need for international financial support and technical assistance from OHCHR, other international institutions and States and explicitly called on the international community to support Barbados (and other developing countries). Barbados stressed that it has approached the UPR process realistically and that it want to commit only to those actions which are within its ability to undertake and maintain. It went on to address the recommendations one by one. Of the 21 recommendations, Barbados accepted 12 recommendations and rejected six recommendations. Three recommendations were partly accepted. It underlined that Barbados is differentiating between short-term, mid-term and long-term measures. A more comprehensive response to the recommendations was also made available in an addendum to the report of the Working Group.⁵

In the final comments, Barbados assured that it will be taking all the necessary steps toward fulfilling its commitments while reiterating the need for support from the international community.

Comments by member and observer States

The following States participated in the dialogue on the adoption of the report: the United Kingdom, Bahamas, Mexico, Cuba, Japan and Algeria. All States commended Barbados on all the efforts made by it. The Bahamas, Cuba and Algeria called for financial assistance from the international community.

General comments by other stakeholders

Two stakeholders took the floor during the dialogue. The Canadian HIV/AIDS Legal Network specifically addressed the rejection of recommendation 17 on the decriminalisation of consensual sexual acts between adults of

³ A/HRC/10/70/Add. 1.

⁴ A/HRC/10/73, A/HRC/10/73/Add.1.

⁵ A/HRC/10/73/Add. 1.

the same sex. It referred to the comments made by Barbados on this recommendation – that significant sections of the population are opposed to such decriminalisation - and emphasised that human rights should not become the subject of a popularity contest. It urged Barbados to act upon this recommendation. On a positive note, it commended Barbados for its commitment to protecting all members of society from harassment, discrimination and violence regardless of sexual orientation.

Botswana

Secretary of Defence, Justice and Security, Mr Makgonatsotlhe, explained that he would use his presentation to provide additional information on recommendations to that already provided in the addendum to the UPR report, submitted by the State on 17 March.⁶ He stated that the discussions on the establishment of a national human rights institution had concluded and the recommendations were to be submitted to the cabinet for consideration. He stated that the *Children's Act* was still under review, but that corporal punishment remained lawful as it was viewed as a legitimate and acceptable form of punishment accounting for the restrictions on its use as provided by law. The Secretary stated that Botswana rejected the recommendations related to harmful practices against women and noted that polygamy is clearly prohibited.

Mr Makgonatsotlhe claimed that the language used by States in the UPR in relation to minorities implied that little had been done, which was not the case. He stated that the same rights applied to all and the Constitution protected all persons from discrimination, meaning that anyone could petition the High Court. Regarding sexual orientation, he claimed that this raised moral and religious issues, but that there was no recorded case of such discrimination in the country. Mr Makgonatsotlhe concluded that he did 'not want another review at this stage'.

Comments by member and observer States

Four States provided comments on the considerations of Botswana's UPR report. Algeria recommended that the international community provide technical assistance. Senegal was pleased that Botswana had accepted most recommendations and asked that it focus on the rights of children and women, education and health. The US commended Botswana's efforts, including investment in health, education enrolment, the role of women in society, the entry into force of the *Domestic Violence Act*, the opening of dialogue with minority groups, and efforts to address judicial delays. Djibouti acknowledged the severe challenges of poverty and HIV/AIDS in the country.

General comments by other stakeholders

The Canadian HIV/AIDS Legal Network was the only NGO to speak. It expressed that the clear table in Addendum 1 on recommendations was an 'excellent practice', although it was disappointed that the State had rejected recommendations 18 and 23. It urged the Government to repeal criminal code provisions that criminalise same sex conduct as a violation of the principle of non-discrimination and a cause of stigmatisation and marginalisation. It also runs counter to efforts to combat the spread of HIV/AIDS.

Burkina Faso

The Minister for the Promotion of Human Rights, Ms S. Sawadogo, presented the country's views on the UPR report.⁷ In her short presentation, she thanked all States and members of the troika who took part in the interactive dialogue in December 2008. Recalling that Burkina Faso accepted most recommendations at the Working Group and stated clearly which recommendations it accepted and rejected,⁸ she commented on some of them.

⁶ A/HRC/10/69/Add.1.

⁷ A/HRC/10/80 available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>

⁸ Burkina Faso accepted 27 recommendations, rejected 17, and took one under consideration (on the abolition of the death penalty).

The comments focused on the recommendations that Burkina Faso rejected such as on extrajudicial executions, violence against women, and the prohibition of polygamy. Concerning the recommendation to abolish the death penalty and the ratification of the second Optional Protocol to the *International Covenant on Civil and Political Rights*, Burkina Faso announced its intention to sensitise parliamentarians to ensure their support for abolition. Regarding the accepted recommendations, Burkina Faso provided additional information on the following issues: the adoption of a law to ensure that the National Commission on Human Rights complies with the Paris Principles adding that the relevant legislation is being reviewed; the participation of women in decision-making processes; and the on the rights of indigenous peoples it asserted that there are no marginalised ethnic group in Burkina Faso. Finally, Burkina Faso reaffirmed that despite multiple economic constraints and the influence of traditions and customs that sometimes contradict human rights, the Government has made the protection of human rights a constant fight. In this regard, it would appreciate any help from the international community.

Comments by member and observer States

The following States participated in the dialogue on the adoption of the report: Algeria, the US, Senegal, Nigeria, Cameroon, Brazil, Cote d'Ivoire and Djibouti. All States without exceptions paid tribute to Burkina Faso for its efforts in promoting and protecting human rights. The US and Senegal especially commended the arrest and conviction of several female genital mutilation practitioners and accomplices, the new anti-trafficking laws⁹ and the educational campaigns. Most States called upon the international community to come to the help of Burkina Faso to implement the recommendations with technical assistance on the ground.¹⁰

General comments by other stakeholders

Four NGOs took the floor during the dialogue. They expressed different concerns compared with the comments made by States. Recognising the efforts made and encouraging the State to do more, Action Canada for Population and Development mainly focused on the conditions of detainees, the importance of increasing civil society participation in the areas of HIV/AIDS and female genital mutilation, and human rights education. Franciscans International referred to human trafficking, commending Burkina Faso for accepting recommendations on this issue. It recommended Burkina Faso invite the Special Rapporteur on trafficking in persons for a visit¹¹. The International Federation of Human Rights Leagues (FIDH) drew a serious picture of the human rights situation stating that the recommendations not agreed by Burkina Faso were areas of concern, in particular the independence of the judiciary, the freedom of press and the death penalty. *Le Cercle de Recherche sur les Droits et les Devoirs de la Personne* (Research Society on the Rights and Duties of Mankind) congratulated Burkina Faso on the review and encouraged it to support the drafting of a declaration on the duty of people.

Burkina Faso reiterated its willingness to implement the recommendations. In response to the comments made by States and NGOs, Burkina Faso stated that it has always collaborated with the special procedures; that the food crisis is being tackled by the Government; and that freedom of the press is fully recognised. It promised that by the next review it will have abolished the death penalty. Finally, it reiterated the commitment to promote and protect human rights and called upon the international community to provide technical assistance in several areas.¹²

Burundi

Ms Rose Nduwayo, the Minister for Human Rights and Gender addressed the following issues in her opening remarks: Burundi was still considering the ratification of the *Convention Against Enforced Disappearances* but could assure the Council that, in the interim, all measures would be taken to prosecute offenders; a parliamentary

⁹ Senegal did not refer to this.

¹⁰ US.

¹¹ They also referred to the food crisis and suggested the creation of a National Body to analyse the causes and the impact of the food crisis.

¹² Education, health, housing, information to vulnerable groups, prison conditions, women and children rights and rights of people with disabilities.

committee has been established to review the country's legal framework to end discrimination on the basis of sexual discrimination; sexual violence is comprehensively criminalised in a new Criminal Code which will soon come into effect; and Burundi has reached an agreement with the UN to establish a dual transitional justice system incorporating a tribunal and a truth and reconciliation commission. In relation to the new Criminal Code, Ms Nduwayo further explained that the new legislation would criminalise torture and provide for reparation for victims, criminalise rape, and give effect to the Second Optional Protocol to ICCPR by abolishing the death penalty.

Ms Nduwayo concluded by briefly outlining some new human rights developments in Burundi, including: the dismantling of a criminal network responsible for killing albinos; growing public support for a national human rights institution; the establishment of a parliamentary committee to counter domestic violence; the growth of civil society; and the establishment of a National Electoral Commission.

Comments by member and observer States

Algeria claimed that the Burundi's support for a high number of recommendations showed its firm commitment, and, along with Nigeria, Senegal and Burkina Faso, Algeria appealed for the international community to increase its support. Senegal commended the acceptance of recommendations related to the rights of vulnerable groups. The US declared its support for the recommendations to disarm and reintegrate children into society, and to promote education and school enrolment. It also hoped that impunity would continue to be addressed, as well as improved protection for independent journalists and human rights defenders in ensuring free elections in 2010. It also stated, interestingly, that it looked forward to the creation of a national human rights institution. Djibouti also broadly welcomed efforts made, while Burkina Faso noted a continued improvement in primary education and healthcare in Burundi.

General comments by other stakeholders

Amnesty International and *Federation Internationale des Droits de l'Homme* (FIDH) welcomed support for a national human rights commission in Burundi, but was concerned that the present draft bill would create a commission that would fall far short of the Paris Principles. Both therefore requested that the Government return to the previous draft. It regretted Burundi's lack of support for recommendations on freedom of expression and assembly, and provided to cases of prisoners of conscience that it called for to be immediately and unconditionally released. Accept France called for a ban on all secret places of detention, and called into question the independence of the judiciary.

Amnesty International, Human Rights Watch and Action Canada for Population and Development requested that Burundi reconsider its move to criminalise same sex relations, which the latter characterised as a violation of both international human rights and the *African Charter on Human and Peoples' Rights*. Human Rights Watch added that this would hinder Burundi's fight against HIV/AIDS. FIDH also called on Burundi to amend the laws on inheritance and to adopt a national policy on orphans and children.

Ms Nduwayo took the floor to thank Burundian civil society for its support to the country and stated that the Government would now study how to implement the recommendations.

Cape Verde

Mr Alcides Barros, Chargé d'Affaires of the Permanent Mission of Cape Verde to the UN in Geneva, presented the country's views on the UPR report.¹³ Cape Verde reiterated its full commitment to the UPR process. It stated that it had found the Working Group's recommendations very useful and that these recommendations made it possible to carry out a more in-depth analysis of human rights issues in Cape Verde. Mr Barros continued by summarising the rights enshrined in the Constitution and the international conventions Cape Verde has ratified. Of

¹³ A/HRC/10/81.

the 50 recommendations, Cape Verde accepted 11 without any comments. It accepted another 34 recommendations while making additional comments. For three recommendations, Cape Verde did not express a position, stating there was no need to accept these recommendations since they were already implemented. Cape Verde rejected two recommendations, stating that those two will continue to be analysed by the Government. Unfortunately, a more comprehensive response to the recommendations was not made available in an addendum to the report of the Working Group.¹⁴

In its final comments, Cape Verde underlined that it had not been able to do more than it already had due to the lack of financial resources. It asked for the support and cooperation of all States that submitted recommendations to help Cape Verde in the implementation of those recommendations.

Comments by member and observer States

Algeria, Senegal and Brazil participated in the dialogue on the adoption of the report. All States commended Cape Verde on the efforts made in participating in the UPR. Senegal urged the international community to provide support to Cape Verde in its difficult task to improve its human rights situation. Brazil reiterated its recommendations and its readiness to cooperate with Cape Verde as deemed necessary.

General comments by other stakeholders

Three stakeholders took the floor during the dialogue. Conectas Direitos Humanos regretted that there was no written report, no broad national consultation process, and that only two relevant stakeholders submitted information to OHCHR for the review. It recognised the efforts made by Cape Verde, especially regarding the decrease in illiteracy and child mortality rates and the improvement in the protection of women's rights. It urged, however, that Cape Verde take action and accept recommendations with regard to domestic violence. It also urged Cape Verde to accept all 50 recommendations. The Canadian HIV/AIDS Legal Network welcomed the comments made and expressed its appreciation for the acceptance of recommendation 49, on the consideration of strengthening programmes to fight and prevent HIV/AIDS, with special attention to women and children. Furthermore, it welcomed the fact that Cape Verde joined the joint General Assembly statement on human rights and sexual orientation and gender identity of December 2008. In this regard, it recalled the High Commissioner's assertion that it is time, in relation to issues of sexual orientation and gender identity, to move beyond the discussion on whether all human beings have rights and start implementing them.

Colombia

Mrs Adriana Mejía Hernández, Vice- Minister of Colombia for Multilateral Affaires, presented the country's view on the UPR report.¹⁵ She thanked all involved for the opportunity of submitting Colombia's report to the UPR and added that the preparation of the report was a great opportunity to hear the voices of social organisations and local authorities, to strengthen the coordination between different State institutions, and generally review the State's practices. Mrs Hernández highlighted that the Government undertook a detailed review of Colombia's voluntary commitments and of recommendations accepted by it. She informed that by June 2009, a report on follow-up to the implementation of recommendations and commitments will be available on the webpage of the Presidential Programme for Human Rights, and will be updated every four months.

Colombia provided written replies to all the questions and recommendations made during the review, which are available as an addendum to the report.¹⁶ Mrs Hernández gave a brief overview of the efforts undertaken by Colombia since the Working Group meeting in December 2008. Among the positive steps, Colombia extended official invitations to the Special Rapporteur on extrajudicial executions, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the independence of

¹⁴ Cape Verde did also not submit a written national report for consideration by the Working Group.

¹⁵ A/HRC/10/82.

¹⁶ A/HRC/10/82/Add.1.

judges and lawyers and to the Special Rapporteur on the situation of human rights defenders. Following up to the remarks made by the Vice President of Colombia, Mr Francisco Santos Calderón, also raised the murder of the husband of a human rights defender after the review of Colombia by the Working Group in December 2008, and reiterated that the State is currently investigating the killing. Ms Hernández also touched on concerns about the situation of internally displaced persons (IDPs) in Colombia, which was raised by many States in the Working Group as a persistent problem. She indicated that national institutions have been reviewing the prevention and protection strategies to resolve this ‘difficult’ situation. A further concern was the situation of indigenous communities and their enjoyment of the right to life, physical integrity and their territory. On this note, she referred to the massacre of 18 indigenous communities by the FARC.

Finally, she raised the concern of human rights defenders and pledged that the Government was committed to investigate all harassments of and attacks on human rights defenders, and identify and punish those responsible. Mrs Hernández reiterated Colombia’s conviction that dialogue with civil society and participation of civil society will strengthen enjoyment of human rights in Colombia.

It is notable that the Government of Colombia has been making big efforts at raising a positive impression in the Council. On various occasions during the session, including at the adoption of UPR reports, it provided additional information. The early publishing of the addendum to the Working Group report containing the State’s views on the recommendations made is part of that effort, and could serve as a best practice for other States under review.

Comments by member and observer States

The following States participated in the dialogue on the adoption of the report: the Russian Federation, Brazil, Netherlands, Spain, the US, Switzerland, Belgium, France, the UK, Guatemala, China, and Panama.

While most States only welcomed efforts made by Colombia, many made additional comments relating to the protection of human rights defenders. Switzerland and the UK both drew attention to the murder of Mr Edwin Legarda Vazquez, the husband of the indigenous rights defender Ms Aída Quilcué, on 18 December 2009 and urged that a full investigation be undertaken to ensure that those responsible for this killing are brought to justice. The UK stressed that threats and violence against trade unionists are still occurring and there are already reports of murders in 2009. It added that ‘human rights defenders need to be seen as part of the solution and should not be stigmatised’. The UK also condemned the massacre of 27 members of the Awa indigenous community by the FARC.

France urged Colombia to reconsider its refusal to ratify the optional protocol to the *Convention against Torture*. France also suggested that Colombia should reconsider its refusal to accept a recommendation relating to the acceptance of the competence of the International Criminal Court regarding war crimes.¹⁷

General comments by other stakeholders

Ten stakeholders took the floor during the dialogue to make general comments.¹⁸ While being linked to the report of the Working Group as required by the Council’s practice, the comments were detailed and substantive and added a welcome different perspective to that presented by States and the Government concerned. In addition to substantive concerns, comments by stakeholders also highlighted some key institutional questions about States’ responses to recommendations, and in particular on the complementarity of the UPR process with the treaty body system and other aspect of the UN human rights machinery. Conscience and Peace Tax International questioned the rejection of a recommendation concerning the recognition of the right to conscientious objection. Colombia, had argued that under the Colombian Constitution ‘all citizens have the obligation to enroll in the military

¹⁷ Recommendation 23 (b). See A/HRC/10/82/Add.1 for Colombia’s position on this recommendation.

¹⁸ Colombian Commission of Jurists, World Organization against Torture, World Federation of Trade Unions, Social Service Agency of the Protestant Church in Germany, International Pen and World Press Freedom Committee, Conscience and Peace Tax International, Action Canada for Population and development, Amnesty International, International Federation of Human Rights Leagues and SOS Kinderdorf International.

service’ and that this has been upheld by the Constitutional Court. However, Conscience and Peace Tax International pointed out that the Human Rights Committee had recognised the right to conscientious objection guaranteed under the *International Covenant on Civil and Political Rights* (ICCPR). In the case of Colombia, it argued, no domestic legislation could override the obligations under international treaties to which the State is a party because the Colombian Constitution establishes that ‘international treaties and agreements [...] prevail in the national law’.¹⁹ Conscience and Peace Tax International therefore urged Colombia to reconsider the rejection of the recommendation in this light. On a similar note, SOS Kinderdorf requested clarification on the rejection of a recommendation to abolish the ‘Soldier for a day’ programme, which was based on a recommendation by the Committee on the Rights of the Child calling for an end to the participation of children in military training activities and school study visits to military bases.²⁰ Finally, Amnesty International pointed out that several rejected key recommendations were substantively the same as recommendations made by the High Commissioner, with which Colombia had pledged to cooperate closely.

The Colombian Commission of Jurists, on behalf of 1200 Colombian organisations, and the World Organization against Torture both condemned the murder of Mr Edwin Legarda Vazquez by the army. The Colombian Commission of Jurists added that there are still grave and systematic violations of human rights in Colombia, including extrajudicial executions,²¹ enforced disappearances, torture, sexual violence, recruitment of children and forced displacements. It urged the Council to not remain silent about these issues. In clear disagreement with the Government’s position, the Colombian Commission of Jurists highlighted that many paramilitaries linked to the authorities have not been dismantled and there is continuing impunity, increased harassments of unionist,²² human right defenders, and journalists by high-ranking officials. The issue of impunity enjoyed by paramilitary groups was also raised by the International Federation of Human Rights Leagues (FIDH).

The World Organization against Torture urged Colombia to immediately release human rights defenders detained for no justified reason.²³ It recommended that the Prosecutor General pass ‘a resolution enabling his human rights unit to review all criminal investigations against human rights defenders’, and requested Government officials to stop ‘falsely labelling peaceful human rights defenders as terrorists.’

International Pen (PEN) and World Press Freedom Committee (WFPC) pointed out the danger and threats that journalists encounter, and urged the Government to take measures, including to provide adequate guarantees for the safety of threatened and attacked journalists and to ensure that ‘prompt, independent, thorough and impartial investigations’ take place to provide justice to victims.

SOS Kinderdorf welcomed that Colombia has accepted Security Council *Resolution 1612* on the prevention and punishment of those who recruit children into armed forces and called for immediate action on recommendation 19 requesting measures to address underlying exclusion which makes rural, indigenous, and other minority children vulnerable to recruitment.

Among other issues raised by stakeholders were the need for the Council to establish a new mechanism that would enable follow-up to recommendations before the next cycle of the UPR,²⁴ discrimination against gays and lesbians in Colombia,²⁵ the issue of telephone tapping by Colombian information services against magistrates of the Supreme Court,²⁶ the need for right to food, education and housing to be guaranteed by the State,²⁷ reintegration of child soldiers.²⁸

¹⁹ Article 93.

²⁰ Slovenia made this recommendation (37 c), and the recommendation was rejected at the time of the Working Group.

²¹ Social Service Agency of the Protestant Church in Germany.

²² World Federation of Trade Unionist.

²³ Among other, Martín Sandoval, Carmelo Agámez, Andres Gil and Miguel Gonzalez.

²⁴ Amnesty International, Social Service Agency of the Protestant Church in Germany, the Colombian Commission of Jurists and World Organization

²⁵ Action Canada for Population and Development.

²⁶ Social Service Agency of the Protestant Church in Germany

Response by the Government

Mr Carlos France, Director of the Presidential Program of Human Rights of Colombia, provided brief answers to some questions and made some general comments at the end of the session.

With regard to the position of unionists, he reported that Colombia established a special unit enabling it to carry out a large number of trials. Currently 216 cases of the murders of unionists have been brought to the Justice and Peace Commission and in some of the cases the perpetrators have been arrested. On murders committed by law enforcement officials, he claimed that the Government has taken steps to dismiss involved law enforcement officials. Mr France also underscored that the Government regrets the death of Mr Legarda and declared that the situation had ‘led to confusion’ because the events happened at 5 in the morning.

Responding to comments about the general human rights situation by NGOs, harassments against human rights defenders and the presence of paramilitaries, Mr France admitted that there are different assessments whether the situation has improved and whether sufficient efforts have been undertaken by the State. He stated that the Government has done its best to improve the human rights situation, although he ‘feels that NGOs do not share that view’. He sought to illustrate his point by stating that whereas ‘some years ago, there were 200 massacres a year’ committed by the paramilitary groups and ‘the State stood back’, now the leaders of these groups are in high security prisons and are being tried for their crimes. Mr France concluded by stating that all challenges could be met if Colombia continues to work together with the international community and human rights bodies in a constructive positive spirit, rejecting all forms of violence and strengthening its institutions. He added that just as Colombia has participated voluntarily in the review, it has now voluntarily committed to regular public accounting on the implementation of recommendation and commitments.

Israel

Mr Aharon Leshno Yaar, the Permanent Representative of Israel to the UN in Geneva, emphasised Israel’s view that the primary value of the UPR lies in countries being self-critical about their own human rights situation. He stated that Israel had decided to adopt the Working Group’s recommendations number 14 (investigation of allegations of violence and killings by the police), 18 (enforcing the law against polygamy), and 28 (protection of the rights of minorities).²⁹ Mr Yaar also provided a detailed account of 11 other elements of the Working Group’s recommendations that Israel had decided to ‘promote’.³⁰ Responding to recommendation number three, ‘to accelerate the process of bringing Israel’s national legislation into compliance with the provisions of the main international instruments to which it is party’, Mr Yaar explained that while international treaties are not directly incorporated into domestic legislation, Israel is committed to ensuring that its domestic legislation complies with its international commitments. Regarding recommendation number two on the death penalty, Mr Yaar reminded the Council that while Israel is not in a position to ratify the second optional protocol to the ICCPR,³¹ it applies a *de-facto* moratorium on executions. Mr Yaar stated that Israel ‘noted’ recommendation 30 and the challenges of respecting human rights in the fight against terrorism. He made a commitment to engage Israeli civil society in the consideration of follow-up to the recommendations.

Comments by member and observer States

The majority of the comments made by member and observer States were focused on Israel’s perceived lack of cooperation with the Council and the UPR. Before the debate even started, Egypt raised a point of order, claiming that Israel had violated paragraph 32 of the institution-building text by not indicating clearly which

²⁷ Colombian Commission of Jurists.

²⁸ SOS Kinderdorf.

²⁹ A/HRC/10/76, 8 January 2009.

³⁰ For detailed account see oral statement by Mr Yaar, 19 March 2009.

³¹ General Assembly Resolution 44/128, 15 December 1989.

recommendations it accepted and rejected.³² Various other States also objected that Israel had not responded to the recommendations in the Working Group's report.³³ A number of States strongly accused Israel of not complying with its international humanitarian and human rights obligations,³⁴ with Iran claiming that the UPR mechanism was not appropriate to deal with Israel's 'gross and systematic violations', and Syria dismissing Israel's engagement in the UPR as 'a waste of time'. Despite a point of order by Germany that States should comment on the Working Group's report and not re-open the UPR debate, Iran, Malaysia, and Egypt called on Israel to end its occupation of Palestine.

In the debate Cuba was the only State to remark in a diplomatic manner on the occupied Palestinian territories (OPT), stating that as the occupying power a review of Israel's human rights record must include the situation in the OPT.³⁵ Despite expressing its regret at the politicised nature of many of the comments in the debate, the US reaffirmed its commitment to a two-State solution for Palestine and Israel. The majority of its comments however focused on commending Israel's work on issues such as improving the status of women, and narrowing the gaps between different communities in Israeli society. The US urged Israel to ensure civil society engagement in the follow-up to the UPR.

General comments by other stakeholders

Rather than focusing on the Working Group report, a large number of the statements made by other stakeholders focused mainly on accusing Israel of human rights violations in the OPT.³⁶ More specifically linked to the report, the Cairo Institute for Human Rights Studies (CIHRS) expressed concern that the issue of settlements as a human rights violation was not addressed in the UPR and questioned what steps Israel was taking to end and dismantle settlements. Expressing its positive surprise, Conscience and Peace Tax International welcomed Israel's plan to introduce an alternative civilian service for conscientious objectors to military service, and encouraged the State to follow *Resolution 98/77* of the Commission on Human Rights and the jurisprudence of the Human Rights Committee in establishing this. Similarly, the Women's International Zionist Organisation welcomed Israel's progress on human rights for women, whilst urging the State to remove its reservation to the *Convention on the Elimination of Discrimination Against Women*.

Amnesty International regretted that the UPR had not taken a more direct approach and made several detailed suggestions intended to strengthen certain Working Group recommendations.³⁷ It also asked Israel to clarify which recommendations it supported, and which ones it rejected. The Arab Commission for Human Rights suggested that the Council should not adopt the Working Group's report given Israel's lack of response to the recommendations.

Due to lack of time, a number of stakeholders could not make their statements.³⁸

Adoption of the report

Before Israel took the floor at the conclusion of the session, the President read out paragraph 32 of the institution-building text and reminded Israel that it did need to clarify whether it 'supported' or 'noted' specific recommendations. In response to this, Mr Yaar stated that he had already referred to the recommendations that

³² Paragraph 32 of Council *Resolution 5/1* states that 'Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.'

³³ Palestine, Cuba, Syria, Yemen, and Malaysia.

³⁴ Palestine, Syria, Egypt, and Yemen.

³⁵ In its report submitted to the UPR Working Group, Israel did not provide information about the situation in the OPT. See ISHR's report on the examination of Israel by the Working Group, available at www.ishr.ch/upr_monitor.

³⁶ Charitable Institute for Protecting Social Victims, Arab Commission for Human Rights, World Federation of United Nations Institutions (speaking for Iran), Society Studies Centre, and Organisation for Defending Victims of Violence.

³⁷ For detailed account see oral statement by Amnesty International, 19 March 2009.

³⁸ Hawa Society for Women, Nord-Sud XXI, and *Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine*.

Israel ‘supported’ and that all other recommendations were ‘noted’. He thanked all participants for their comments, and added with a touch of sarcasm that he had noted with particular interest the remarks of States from Israel’s region who were known for their ‘distinguished and unimpeachable records on human rights’.

The President then proposed that the Working Group’s report be adopted. However, in departure from usual practice Palestine claimed that Israel’s behaviour was not in line with the UPR procedures and proposed a five-minute break for consultations. This proposal was supported by Egypt and Yemen. Despite a protest from the UK that Israel had followed procedure, the President granted the Council a 30 minutes recess, which turned into a postponement of the decision making for the next day. Procedurally, it seems questionable whether Palestine, as an observer of the Council, would be entitled to raise such a point of order at the time of the imminent adoption of a decision by Council members.

When the Council reconvened the next day, Palestine and Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), expressed their reservations on the adoption of the Working Group’s report given Israel’s lack of response to the recommendations and its lack of respect for international humanitarian and human rights law in the OPT. The US and Australia objected that the procedural criticisms were raised only against Israel and no other State, given that other reviewed States have in the past not responded clearly to all recommendations. Cuba repeated its disappointment that Israel had not responded to all recommendations.

The report was then adopted by consensus. However, the statements of Palestine and Pakistan will be noted in the outcome.

Liechtenstein

Ambassador Norbert Frick of Liechtenstein provided the Council with an update on the steps taken by the Government since the UPR. In the Working Group Liechtenstein accepted 17 recommendations and committed to examine a further 26 recommendations. Liechtenstein provided detailed written replies to each of the outstanding 26 recommendations.³⁹ The written replies make it clear that Liechtenstein rejects recommendations to ratify the *Convention on the Rights of all Migrant Workers and Members of their Families*; set up a national human rights institution; to ratify ILO conventions; ex-officio prosecution of domestic violence; include sexual orientation in equality laws; voting rights for long-term non-citizens; citizenship; and discrimination against foreigners based on national origin. Liechtenstein informed the Council that it has taken steps to ratify the Convention on Inter Country Adoption. This will allow Liechtenstein to ratify the optional protocol to the *Convention on the Rights of the Child* on the sale of children and child pornography. Liechtenstein has also set up a working group to examine legislative and other measures to implement the Convention on the Rights of Persons with Disability and its optional protocol. Regarding the recommendations on the rights of women, it announced that the Government could accept all recommendations and would ‘convert’ some of them into ‘voluntary commitments’. However, it could not accept the recommendation to ensure *ex officio* prosecution of all acts of domestic violence as this would render ineffective a new provision criminalising stalking. Liechtenstein announced that it would follow up on its commitments to provide international cooperation and detailed the support it has already provided to UNRWA and the International Committee of the Red Cross. Finally, it recalled that its remaining replies had already been circulated in advance of the session.

Comments by member and observer States

The only State that took the floor was Germany to simply welcome the detailed replies provided by Liechtenstein to all recommendations including the ones it did not accept. Germany underlined that such replies are very important for this ‘exercise of dialogue’.

General comments by other stakeholders

³⁹ A/HRC/10/77/Add.1.

Only two NGOs commented on the report. Amnesty International welcomed several of the recommendations including on elimination of discrimination, same sex partnerships, and to implement a national action plan against racism. It expressed regret at Liechtenstein's rejection of a recommendation to establish an independent national human rights institution. It expressed concern about the integration of foreigners and encouraged Liechtenstein to amend a new naturalisation act and not create new groups of non-citizens. Amnesty International also encouraged Liechtenstein to ensure regular follow up to the recommendations of the treaty bodies, including regular training for public servants. The *Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine* expressed concern about violence.

Liechtenstein, in its closing remarks, stated that the dialogue with the Council would not end here but needed to be continued. It stated that Liechtenstein will concentrate on follow up and implementation of its commitments. Finally, it noted that the Government will continue its national level dialogue and will meet regularly with all stakeholders that contributed to report.

Luxembourg

Mr Jean Feyder, Ambassador of the Permanent Mission of Luxembourg to the UN in Geneva presented an update to the Council on the recommendations from the UPR process. Initially, Luxembourg underlined that it was a great supporter of the UPR process from its inception because it believed that it would lead to greater discipline and efficiency in the human rights system. Mr Feyder then proceeded to the recommendations addressing each of them one by one. Of the 18 recommendations, Luxembourg rejected three and accepted 15 although two of the fifteen were denied as being problems. A more comprehensive response to the recommendations was also made available in an addendum to the report of the Working Group.⁴⁰

In his final comments, Luxembourg stated that like all member States, it is not above criticism and its international undertakings do not release it of obligations within its national sphere. It concluded by saying that the UPR has established an important roadmap for meeting goals and that the Government will continue to confront challenges and make progress.

No member of observer States made any comments at the adoption of the report.

General comments by other stakeholders

Four stakeholders took the floor following the State presentation. The Consultative Commission of the Grand Duchy of Luxembourg saw the recommendations by the Council to Luxembourg as running parallel to its own recommendations to the State. The Commission emphasised as the major shortcoming in human rights: prison conditions for juveniles, the failure of Luxembourg to ratify the *Convention on the Rights of Persons with Disabilities*, the Optional Protocol to the *Convention against Torture*, and the *Convention on the Protection of All Migrant Workers and Members of Their Families*, and the lack of legislation governing immigration. The Commission further promised to monitor the implementation of the recommendations by Luxembourg. The Arab Commission for Human Rights recommended that Luxembourg establish an institutional framework for following up on recommendations and to report back to the Council on its progress within one year. The *Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine* expressed concern that the recommendation by France to create an overall strategy to eliminate violence against women⁴¹ is discriminatory because it does not address the problem of violence against men by women. The International Federation of Action by Christians for the Abolition of Torture (ACAT) took note of Luxembourg's commitment to the construction of a closed centre for the detention of minors in 2010 but also emphasised that it viewed placing minors in detention as a regressive step. ACAT also invited Luxembourg to ratify the *International Convention for the Protection of All Persons from Enforced Disappearances*.

⁴⁰ A/HRC/10/72/Add.1.

⁴¹ A/HRC/10/72 II. 53.6.

Other Issues

The Arab Commission for Human Rights used most of its speaking time to address a matter unrelated to the UPR. Instead, ACHR was very critical of Luxembourg's role as the president of the United Nations Economic and Social Council (ECOSOC) and its subsidiary the Committee on Non-Governmental Organisations. Some decisions made by the NGO Committee are made with too much haste, it asserted, and the Committee makes decisions without hearing the NGO's concerned. The Arab Commission for Human Rights argued that this practice undermines the work of ECOSOC and affects the whole UN system.

Montenegro

Mr Miras Radovic, the Minister of Justice for Montenegro, stated that Montenegro had already responded in writing⁴² to all the recommendations in the Working Group's report⁴³ and provided the Council with a detailed account of the activities undertaken since it appeared before the UPR in December 2008. These activities included ratifying the Optional Protocol to the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment*.⁴⁴

Comments by member and observer States

The US welcomed the creation of an ombudsman institution and the Judicial Council, and commended Montenegro on its work to combat trafficking in persons. The US supported the Working Group's recommendations concerning the protection of minorities, in particular the Roma. Reiterating the concern expressed in the Working Group's report about attacks on journalists the USA encouraged Montenegro to investigate such incidents. Albania and China made interventions congratulating Montenegro on its cooperation with the UPR and applauded the progressive steps already undertaken since the review.

General comments by other stakeholders

Amnesty International called on Montenegro to indicate clearly which of the Working Group's recommendations it supported, and made further recommendations concerning the protection of minorities (in particular the Roma, Ashkali and Egyptian communities), and the situation of Kosovo refugees. The *Cercle de la Recherche sur les Droits et les Devoirs de la Personne Humaine* (CRED) proposed that the Working Group's recommendations include protection against discrimination based on political choices.

In conclusion, Mr Radovic stated that Montenegro did not reject any of the Working Group's recommendations. He reaffirmed Montenegro's commitment to the social inclusion of Roma, the strengthening of the media, and to the clarification of the status of refugees.

Serbia

Mr M. Karadzic, State Secretary in the Ministry for Human Rights and Minority Rights of the Republic of Serbia, presented the country's views on the UPR report.⁴⁵ Serbia stressed its willingness to implement the recommendations it has accepted despite the challenges it faced, including and constraining public expenditure. Serbia highlighted the steps it has already taken to fulfil its obligations since the review.⁴⁶

⁴² A/HRC/10/74/Add.1, 25 February 2009.

⁴³ A/HRC/10/74, 6 January 2009.

⁴⁴ General Assembly Resolution A/RES/57/199

⁴⁵ A/HRC/10/68 available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>

⁴⁶ Namely preparations for the ratification of the *Convention on the Rights of Persons with Disabilities* and its Optional Protocol and for the Initial Report on applying the *Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). It has also elaborated a Draft Law on Prohibiting Discrimination and adopted a National Strategy for Improvement of the Status of Women and Gender Equality.

Serbia also commented on eleven recommendations that it has accepted. Many of the recommendations were only briefly mentioned. Serbia provided further explanations on the recommendation related to the advancement of the position of persons with disability; the State's commitments to human rights protection and raising public awareness regarding human rights; and on the recommendations regarding the role of women in decision-making processes.

At the Working Group Serbia reserved its position on the recommendations. Out of the 24 recommendations in the UPR outcome Serbia accepted 16 recommendations at the adoption, is still considering two of them, and rejected three recommendations.⁴⁷ It did not provide any response to two of the recommendations.⁴⁸ One recommendation was partly accepted.⁴⁹ A more comprehensive response to the recommendations was also made available in an addendum to the outcome report.⁵⁰

Finally, Mr Karadzic stated that the next UPR will be a real test to his country's fulfilment of its commitments. The report was then adopted.

Comments by member and observer States

The following States participated in the dialogue on the adoption of the report: Cuba, the Russian Federation, Algeria, Ukraine and the US. All States but the US commended Serbia for its efforts and its determination to protect human rights, and in particular for banning direct and indirect discrimination and promoting freedom of religion. Only the US expressed concern about discrimination against minorities in the field of education, employment, housing and health, regarding corruption, trafficking and restrictions on the independence of media. Finally, commenting on the controversial issue of the independence of Kosovo, the US wished that the next UPR would focus only on the situation in Serbia.

General comments by other stakeholders

Four NGOs took the floor during the dialogue. The *Federatie Van Netherlandse Verenigingen* specifically addressed the discrepancy between the Serbian Constitution that guarantee equal legal protection and non-discrimination to all citizens and the violations of the rights of lesbian, gay, bisexual, and transgender persons⁵¹ as sexual orientation is not explicitly mentioned in the Constitution. It recalled that Serbia does not yet have an anti-discriminatory law and that discrimination based on sexual orientation is not prohibited in the criminal code although attacks and threats against LGBT persons are common. It recommended the criminalisation of hate crimes. This recommendation was also made by another NGO, the *Cercle de Recherche sur les Droits et les Devoirs de la Personne* (Research Society on the Rights and Duties of Mankind). In this regard it asked Serbia to submit data on the composition of ethnic groups. Interfaith International focused on the precarious situation of retirees in Kosovo and called for an investigation and reparation to be provided to them. Amnesty International welcomed the cooperation of Serbia with the International Criminal Tribunal for the former Yugoslavia. However, it expressed concern regarding the low number of trials⁵² completed since the creation of the Special War Crimes Chamber at Belgrade District Court and urged Serbia to strengthen the Court's authority and capacities. It also expressed concern about the lack of investigation into violations committed by the police and the long-standing failure of Serbia to address impunity in cases of torture and other ill-treatment. Finally, Amnesty International called on Serbia to clearly indicate which of the recommendations made during the review it supports.

⁴⁷ They deal with the acknowledge climate of impunity of criminal acts and perpetrators of racially motivated attacks against minority, concerning conscientious objections and related to the protection and promotion of religious freedom.

⁴⁸ They are related to ensuring full cooperation with the ICTY and the rights of minorities.

⁴⁹ Serbia conditionally accepted the recommendation regarding priorities defined by the TS with the goal of protecting and advancing human rights on the national and international level and accepted the recommendation related to the ratification of three conventions.

⁵⁰ A/HRC/10/78/Add. 1, available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>

⁵¹ This issue is among those that Serbia will consider.

⁵² A fact denied by the State in its comment to the recommendation 7.

Serbia reiterated its commitment to the UPR process. In response to the US comment regarding Kosovo, it declared that the statement was not in order and that the Council was not the forum to discuss the status of Kosovo. It asserted that Kosovo is a part of Serbia.

Turkmenistan

The Director of the Institute for Human Rights of Turkmenistan presented the Government's reactions to the UPR outcome. At the Working Group, Turkmenistan accepted 19 recommendations, committed to examining 13 recommendations and rejected 11 recommendations. During the adoption of the UPR outcome in the Council, Turkmenistan stated that it would carry out further reforms and that it would report to the treaty bodies. In relation to the outstanding recommendations it provided responses both in writing⁵³ and orally. In relation to recommendations on its cooperation with international human rights mechanisms, Turkmenistan stated that it is studying accession to the Rome Statute of the International Criminal Court; that it will hold a seminar on the Optional Protocol to the *Convention against Torture* (CAT) and will submit its report to the Committee against Torture in September 2009; and that ratification of the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) was recently proposed to the Parliament. With regard to issuing a standing invitation to the special procedures, Turkmenistan stated that it would consider issuing invitations to specific mandate holders. On the establishment of an independent national human rights institution, it stated that it will study the necessary legislation. Turkmenistan noted that it is undertaking prison reforms to ensure humane treatment of prisoners and that it has stepped up cooperation with the International Committee of the Red Cross (ICRC). It assured that specific information would be provided to the Human Rights Committee and the Committee against Torture on the issue of impunity for acts of torture. Furthermore, it asserted that the rights of journalists and human rights defenders are protected under existing law, including the constitution, and that it is undertaking training courses and study tours to ensure media pluralism. In this regard, Turkmenistan also noted that it is working to improve the legislation on civil society and associations. Finally, on the question of conscientious objection to military service it explained that it is possible to carry out military service in non-military structures such as medical fields or construction.

Comments by member and observer States

Only a few States commented on the outcome of the UPR of Turkmenistan, including the Russian Federation, Algeria, the US, Azerbaijan and Pakistan.

The US welcomed the new constitution but highlighted that the judicial system does not guarantee the right to a fair trial. It urged Turkmenistan to support the recommendations on freedom of assembly, freedom of association and freedom of religion. The US also stated that focus on education and access to the media would advance the current reforms. The Russian Federation noted that Turkmenistan had accepted a majority of the recommendations. Algeria was encouraged by Turkmenistan's efforts to promote human rights. Azerbaijan encouraged Turkmenistan to engage in a dialogue with the international human rights system and expressed its hope that Turkmenistan could present a better human rights record at the next UPR. Pakistan simply welcomed the recent visit by the Special Rapporteur on freedom of religion or belief.

General comments by other stakeholders

Action Canada for Population and Development urged Turkmenistan to report in more detail on the health situation in the country by providing data and information on the prevalence of HIV and to provide services to those infected. It also urged the Government to review its policy on infectious diseases and to de-criminalise same-sex consensual conduct among adults. Finally, it stated that NGOs must be allowed to register freely and to operate without interference or fear of reprisals.

⁵³ A/HRC/10/79/Add.1.

Amnesty International welcomed the Government's support for recommendations on freedom of association, assembly and expression. It urged Turkmenistan to end harassment of journalists and give immediate effect to recommendations on these issues. It expressed concern about human rights violations against human rights defenders and journalists. Amnesty International and Human Rights Watch urged Turkmenistan to indicate its full support for the recommendations on human rights defenders, impunity and freedom of the press.

Human Rights Watch noted that it was encouraged by some positive changes by 'one of the most repressive governments' in the world. It called on Turkmenistan to urgently provide access for special procedures to the country. It welcomed the Government's commitment to cooperate with the ICRC. Finally, it stated that the rejection of recommendations on unfair trials and freedom of movement were difficult to reconcile with the Government's stated commitment to human rights.

Conscience and Peace Tax International noted that the Government's response to the recommendation on conscientious objection had not been provided in advance. It welcomed Turkmenistan's earlier announcement (during the interactive dialogue with the Special Rapporteur on freedom of religion or belief) that the Government is preparing new legislation. It encouraged Turkmenistan to study the relevant international standards and ensure that its new complies with them.

In its final comments, Turkmenistan, in response to Action Canada for Population and Development, noted that the new constitution recognises the right to access the health system. It also stated that all recommendations will be borne in mind to progressively develop the human rights system.

Tuvalu

Ms Filiga Niko, Crown Counsel in the Office of the Attorney General, expressed her appreciation to those who supported Tuvalu from the preparatory stage to the session itself and for making it possible to attend the present consideration of the report, in the face of limited technical and expert resources as a small island State. She claimed that the UPR had given Tuvalu the opportunity to speak of its compliance with international human rights obligations at the national level, and also to 'know where it stands in fulfilment as a UN member State'.

Concerning outstanding recommendations, Ms Niko informed the Council that Tuvalu had decided to accept all ten recommendations left pending. She stated that the incorporation into domestic law of the *Convention on the Rights of the Child* and the *Convention on the Elimination of Discrimination against Women* require consideration and consultation at the national level. Further, non-parental care and asylum were not considered relevant in Tuvalu, but the State would stand ready to consider them if the situation were to change. Finally, Ms Niko indicated that Tuvalu required financial and technical support to fulfil all recommendations.

Comments by member and observer States

The UK and New Zealand were the only two States to speak. The UK spoke only to commend that fact Tuvalu was able to be present at the review in view of its capacity constraints. New Zealand noted that Tuvalu was the second country in the region to go through the UPR and that it had given high priority to the UPR in its serious report and NGO consultation. This in turn resulted in wide ranging discussion during the UPR. New Zealand also commended its acceptance of a large number of recommendations. New Zealand informed the Council that it had convened a seminar in February 2009 to assist island States in preparing for the UPR and Tuvalu had provided valuable insights based on its experience.

General comments by other stakeholders

Three NGOs provided general comments. Amnesty International commended the decision to create a national human rights institution, the development of a domestic strategy to reduce domestic violence, and urged that underlying factors for such violence should be understood. Both Amnesty International and Earthjustice applauded Tuvalu's plans to ratify outstanding human rights treaties. Earthjustice pointed to Tuvalu as an example of the effects of climate change on the enjoyment of human rights, and emphasised the clear obligation of the

international community to provide emergency assistance. The Canadian HIV/AIDS Legal Network appreciated the openness shown by Tuvalu in being willing to hold open discussions on the issue of same sex relations, and sought clarification on whether such discussions would take place in relation to the revision of laws criminalising same sex relations. Ms Niko did not answer this question in her concluding remarks, but again called for international assistance in implementing the recommendations.

United Arab Emirates

Dr Anwar Muhammad Gargash, Minister of State for Foreign Affairs presented the views of the Government on the report of the Working Group. Mr Gargash had already led the delegation during the review of the United Arab Emirates (UAE) in December 2008. The UAE had accepted 36 of the 74 recommendations, and had kept 17 pending until the adoption of the report. The balance of recommendations was rejected at the time of the Working Group and had focused mainly on the promotion of gender equality, the abolition of the death penalty, and improving the situation of migrant workers.

Before the adoption of the report, Mr Gargash gave a fairly detailed response to the remaining recommendations and outlined the follow-up efforts the Government had undertaken since the review. In particular, he drew attention to the ‘UAE’s Action Plan to Implement Voluntary Commitments and Accepted UPR Recommendations on Human Rights Issues’. The Action Plan had been established in dialogue with various parts of Government and civil society organisations. Among the steps taken since December 2008 are the signing of the *Convention on the Rights of Persons with Disabilities* (CRPD) and its optional protocol, and the initiation of a study in view of establishing a national human rights institution in accordance with the Paris Principles. Mr Gargash then provided further information on the Government’s efforts to implement accepted recommendations in the areas of strengthening national human rights mechanisms, human rights education, dialogue with civil society, the situation of temporary contractual workers, human trafficking, women’s and children’s rights, and freedom of the media.

In relation to the recommendations that the UAE had kept pending in the Working Group, the responses were slightly less detailed. The delegations simply mentioned that a number of recommendations were found to be ‘in direct contradiction with the UAE’s constitution, religious code, traditional values and national interest’ and could therefore not be supported. The recommendations rejected on these grounds included recommendations to ratify all of the most important international human rights instruments, to protect and respect freedom of expression and association of human rights defenders, and to consider issuing a standing invitation to special procedures. A similarly disappointing answer was given in relation to another group of recommendations that had been left pending, which was said to ‘continue to be under study’. It is questionable whether this complies with the requirements of the institution-building text, which specifies that recommendations that do not enjoy the express support of the State under review ‘will be noted’.⁵⁴

Comments by member and observer States

12 States took the floor to comment on the report. Notably, aside from Cuba, these were exclusively members of the Organisation of the Islamic Conference (OIC), and most were the UAE’s direct geographical neighbours.⁵⁵ The comments by States were exclusively complimentary of the Government’s efforts. Of note was Pakistan’s appreciation of the ‘appropriate responses’ by the UAE to address the situation of migrant workers. The UAE had pledged to ‘proactively cooperate with labour-exporting countries and sign MoUs (Memorandums of Understanding, red) that enhance [their] welfare’. On the other hand, it had rejected a recommendation ‘to step up efforts to ensure that economic, social and cultural rights of migrant workers are fully respected’.

General comments by other stakeholders

⁵⁴ Paragraph 32 of *Resolution 5/1*.

⁵⁵ Algeria, Bahrain, Cuba, Pakistan, Syria, Egypt, Saudi Arabia, Morocco, Oman, Kuwait, Yemen, Qatar.

11 non-governmental organisations (NGOs) took the floor. Many were fairly uncritical of the UAE. However, some more controversial issues were raised in a respectful way by several civil society speakers.

As during the review in the Working Group, several interventions focused on the situation of migrant workers. The World Federation of Trade Unions hoped that the UAE would soon ratify the two International Covenants as this would further the protection of migrant workers. In particular, it hoped that the UAE would reconsider its non-acceptance of recommendations dealing with the right to form trade unions, collective bargaining and the right to strike. On a related issue, the Geneva Infant Feeding Association called on the UAE to make laws on maternity protection non-discriminatory in relation to migrant women.

Another area discussed by other stakeholders was freedom of expression,⁵⁶ in particular the fact that the work on the new media law was frozen.⁵⁷ The Cairo Institute for Human Rights Studies called on the UAE to ratify the ICCPR and the *Convention against Torture* (CAT) in a timely manner. The Indian Council of South America suggested that the ratification of further instruments should be done in cooperation with civil society. The Indian Council of South America also expressed its appreciation in relation to the announcement that the UAE will conduct a study on the possible establishment of a national human rights institution.

In its final comments, the UAE reaffirmed how important a credible UPR is, and that it aims at engaging in the process without politicising it. The UAE sees the UPR as an opportunity for every State to accept both praise and criticism. While it admitted that it still needs to change some norms in its society, it again claimed to have an ‘excellent human rights record’.

Uzbekistan

On 20 March 2009, Dr Akmal Saidov, Chairman of the National Centre for Human Rights in Uzbekistan, presented an update to the Council on the recommendations contained in the Working Group report on Uzbekistan.⁵⁸ Mr Saidov outlined Uzbekistan’s achievements since the review in December 2008 and stressed that the review process has been useful for Uzbekistan as it has provided the impetus for the State to evaluate its compliance with international human rights obligations and to strengthen coordination among State bodies and civil society. During the review, Uzbekistan had accepted 31 recommendations, left 12 to be examined for their compliance with Uzbek national law, indicated that 27 were redundant as relevant measures were already relevant being implemented, and rejected 11 on the grounds that they were either factually wrong or not part of the State’s international human rights obligations.

Mr Saidov did not address the specific responses to individual recommendations in his statement but indicated that they had been carefully studied and that the recommendations Uzbekistan has accepted were already being implemented. Detailed responses to the deferred recommendations were circulated as an addendum to the report.⁵⁹ However, even in the addendum, most of the recommendations are insufficiently addressed. The responses largely reject the basis for the recommendations citing laws and policies as evidence that the problems addressed by the recommendations do not exist. Few are clearly accepted or rejected. Despite appearing cooperative, by simply denying the legal or factual basis for most of the recommendations addressed to it instead, Uzbekistan seemed to display a certain disregard for the spirit and purpose of the UPR process. Mr Saidov did state that Uzbekistan intends to cooperate with the special procedures of the Council, and that it had submitted information to the Human Rights Council Advisory Committee. However, his statement remained vague, and there was no clear commitment as to what level of cooperation the State seeks to achieve.

⁵⁶ Cairo Institute for Human Rights Studies, Arab Commission for Human Rights, *Cercle de recherche sur les droits et les devoirs de la personne humaine*.

⁵⁷ Arab Commission for Human Rights.

⁵⁸ A/HRC/10/83

⁵⁹ A/HRC/10/83/Add.1

Comments by member and observer States

There seemed to be a concerted effort to ‘filibuster’ the adoption of Uzbekistan’s report by many States commending the State under review for its exemplary conduct. Azerbaijan, the Russian Federation, Indonesia, Ukraine, Kazakhstan, Cuba, Belarus, Malaysia, the Philippines, Bahrain, and Algeria spoke in the limited time available.⁶⁰ None of the State comments were critical of Uzbekistan.⁶¹ It is therefore unsurprising that there was a marked difference between the States’ segment of the dialogue and the general comments by other stakeholders.

The States that spoke were all congratulatory of Uzbekistan and spoke of the State’s achievements including its comprehensive cooperation with treaty bodies,⁶² the considerable improvements the State has made and its success in protecting and promoting civil, political, economic, social, and cultural rights,⁶³ the commitment shown to improving protections for children’s rights,⁶⁴ and the progress achieved in democratic renewal.⁶⁵ The unclear response to some of the recommendations was not questioned by any State, in contrast to the adoption of other reports earlier in the week.⁶⁶

General comments by other stakeholders

In contrast, the NGOs that took the floor were critical. The major issues they addressed included detention of human rights defenders,⁶⁷ restrictions on civil society,⁶⁸ women’s rights, particularly reproductive health rights,⁶⁹ the need to investigate the events surrounding the massacre in Andijan,⁷⁰ the forcible return of Uzbek asylum seekers,⁷¹ the lack of religious and political freedoms,⁷² and the decriminalisation of same-sex activity between consenting adults.⁷³ Human Rights Watch was outraged at what it called Uzbekistan’s ‘lack of political will to engage in a good faith effort to improve its atrocious human rights record’. In an apt criticism of Uzbekistan’s response to the Working Group’s recommendations, the Canadian HIV/AIDS Legal Network declared that it was unclear from the responses which recommendations were accepted and which were not. It further criticised the State’s approach of seeking conformity with national standards⁷⁴ when the objective is conformity with international standards.

Despite these concerns, the report was adopted without objection.

General debate under Item 6

⁶⁰ China, Nicaragua, Qatar, Pakistan, Netherlands, the United States, the United Arab Emirates, Singapore, Syria, Cameroon, the United Kingdom, Turkey, and Tunisia were the remaining States on the list but could not speak due to time constraints.

⁶¹ The United Kingdom, prior to the adoption of the report raised a point of clarification regarding the numbering of recommendations in the Working Group Report, expressing its concern over the treatment of human rights defenders in Uzbekistan and the failure of the State to take the recommendations seriously.

⁶² Kazakhstan

⁶³ Cuba

⁶⁴ Phillipines, Bahrain

⁶⁵ Russian Federation

⁶⁶ See for instance the adoption of the report on Israel, above.

⁶⁷ Civicus, Amnesty International, International Commission of Jurists, Human rights Watch.

⁶⁸ Action Canada for Population and Development, Human Rights Watch

⁶⁹ Action Canada for Population and Development.

⁷⁰ International Commission of Jurists, Human Rights Watch.

⁷¹ Human Rights Watch

⁷² Civicus, International Commission of Jurists.

⁷³ Action Canada for Population and Development, Canada HIV/AIDS Legal Network.

⁷⁴ Paragraph 105, A/HRC/10/83.

Once again, as with the adoption of reports, the President presented the general debate under Item 6 by stressing that States and other stakeholders were not to reopen discussions on the UPR review, but to discuss the entire UPR process in general terms.

The vast majority of States made **general comments** congratulating the progress of the UPR so far.⁷⁵ Malaysia in particular called upon States under review to address all observations and recommendations in a constructive manner, and ‘not to be in denial or cynical’. Poland was the only State to expressly note the negative practice of ‘uncritical praise’ by friendly States, and asked that all States accept and recognise challenges, as well as recommendations related to them. Chile also noted that the UPR must not become a ‘ritual exercise lacking continuity’ and Germany added that without critical elements the UPR would be ‘sterile’. Switzerland called for high level delegations and high level debate, drawing on civil society, to assure constructive and open exchanges.

Following from the experience of the 4th session of the UPR in February 2009, when a high number of States were inscribed on the speakers list but were unable to provide comments and recommendations due to time restrictions,⁷⁶ a recurrent issue during the general debate was **the need to revise the modalities on participation** in order to ensure that the recommendations of all States inscribed on the speakers list are included.⁷⁷ Anticipating this discussion, Cuba dismissed all organisational changes it perceived as being pursued for ‘dramatic effect’, which Egypt (on behalf of the African Group) described as ‘unfounded and illegal’. Portugal rebutted this by pinpointing that the rules of procedure provide that all States on the list take part in the review. Others also wished for this to be respected and proposed working solutions. The Republic of Korea proposed that once the speaker’s list is closed, the secretariat could divide 120 minutes by the number of speakers and stick to that time limit. It also urged that States should be encouraged to ‘get to the point’. Portugal recommended that all written statements not delivered should be collected and the recommendations included in the draft Working Group report. Bhutan, however, raised the question of whether a change in practice at this stage would constitute equal treatment for those States already reviewed.

One of the notable successes of the general debate was the initiation of the use of Item 6 to **update the Council on national implementation of UPR recommendations**. The Czech Republic (on behalf of the EU) stated that it was only through the use of the general debate to inform the Council of national achievements that the Council would be able to say that the UPR was a success. The most impressive example in this regard was Tunisia, which provided a detailed list of efforts undertaken to implement recommendations, including bringing its national human rights institution in line with the Paris Principles, promulgating new laws on women’s rights, acceding to the *Convention on the Rights of Persons with Disabilities* and the Optional Protocol to the *Convention on the Elimination of Discrimination against Women*, agreeing that Human Rights Watch may visit prisons, and the need for written authorisation for prolonged custody. The UK reminded the Council that it had made a voluntary commitment to submit a mid-term evaluation report on implementation, but it wished to inform the Council in advance of this that it had removed two reservations to the *Convention on the Rights of the Child* (a recommendation it had originally rejected from Indonesia). Again, Egypt (on behalf of the African Group) referred to such midterm reports as ‘illegal’, despite the fact that these reports are voluntarily undertaken. Elsewhere, the Czech Republic and Poland updated the Council on changes in national legislation, Switzerland declared that it would update the Council at its June session, and China explained that it was in the process of drafting a national action plan on the basis of its UPR report and that it would report back to the Council on a voluntary and regular basis.

Often without directly referencing Israel, a number of States drew attention to the UPR’s principles of **equal treatment and cooperation of all States** in response to the critical treatment directed against Israel in relation to

⁷⁵ Czech Republic (on behalf of the EU), Egypt (on behalf of the African Group), Chile, Russian Federation, Austria, Bhutan

⁷⁶ See for example the reviews of Cuba and China, at http://www.ishr.ch/index.php?option=com_content&task=view&id=170&Itemid=240

⁷⁷ Czech Republic (on behalf of the EU), Chile, Morocco, Poland, Japan, Republic of Korea, Portugal, Bhutan, Egypt (on behalf of the African Group), Cuba, Algeria.

the adoption of its UPR report (see above).⁷⁸ Canada used its very brief statement to refer to this as ‘objectionable and unacceptable’. The Czech Republic (on the behalf of the EU) and Switzerland also noted, however, that it was important that States declare their position on all recommendations. The Canadian HIV/AIDS Network also acknowledged that a legitimate concern of not responding to recommendations had been identified, and yet it was unfortunate that one State had been singled out in this regard as many previously had done the same. The International Service for Human Rights (ISHR) further noted that that specification on recommendations was critically important in assessing implementation and follow-up. Germany also stated that serious consideration needed to be given to those recommendations not accepted by States yet which were clearly international human rights law obligations. The same concern was raised by Human Rights Watch and ISHR, among others.

The Russian Federation was alone in proposing that the UPR was a ‘worthy **alternative to country resolutions**’ of the Council. It was convinced that the constructive atmosphere of the UPR had shown that country resolutions were no longer required. As a procedure for international cooperation, it stressed that it was ‘not a forum for settling political accounts’, that it should continue to be intergovernmental, and that most attention must be given to ‘genuine and objective’ material. Poland categorically responded that the UPR was no replacement for country mandates.

Egypt noted that the complementarity and input of the work of **special procedures and treaty bodies** was important and appreciated. Austria was convinced that to date the UPR had complemented and not duplicated these other mechanisms.⁷⁹ Algeria, however, felt that OHCHR’s compilations of UN material should better reflect progress made and the challenges faced by States. Algeria and Cuba also argued that **local stakeholders should be better reflected** in the summary of stakeholders’ information, based on credible and reliable sources. Cuba proceeded to claim that ‘Geneva cronyism’ resulted in international NGOs being given priority over national NGOs by OHCHR, and that the Council must ‘address this legal void’. More specifically, Cuba intended to bring about a system to address the matter. OCAPROCE International also noted the scarce number of reports by NGOs in Africa, although they took the view that this would change with greater awareness raising at the national level.

Nonetheless, many States commended the **important role played by civil society**, both national and international, and their important contribution to date.⁸⁰ Germany claimed that any assessment cannot be complete without States under review looking at civil society’s contribution, and it wished that the same ‘tremendous’ momentum and support by civil society be sustained throughout the first cycle of the UPR. France and Switzerland linked this to the value of holding broad **national consultations** with civil society as an integral part of the process, although Human Rights Watch regretted that these were not always happening, while Poland explained how it would continue to interact with civil society as an **essential part of the follow-up process**. Australia also warned that any procedural amendments should not affect NGO speaking time under Item 6.

NGOs and other stakeholders were more critical in drawing attention to uneven practice in the UPR under the general debate. Amnesty International regretted double standards and politicisation and while it wished to have seen a clearer statement from Israel on its outstanding recommendation, it declared that it was not the first State to do so. The Canadian HIV/AIDS Network referred to best practice by Botswana and Colombia that all recommendations should be addressed in full, in writing and in advance. ISHR also called on all States to provide a clear position on all recommendations as soon as possible after its review. Human Rights Watch noted the open and self-critical reviews of Mexico and Germany, but it and Amnesty International noted continued efforts by some States to praise their allies. OCAPROCE International criticised the effect of the time gap between deadlines for submissions by the State and NGOs, and it claimed that recommendations deriving from NGO submissions were relatively low.

Rights of reply

⁷⁸ Czech Republic (on behalf of the EU), Germany, Austria

⁷⁹ Also France and Poland

⁸⁰ Czech Republic (on behalf of the EU), Switzerland

The general debate on Item 6 concluded with Guatemala exercising its right of reply to reject Amnesty International's allegation that it had not responded to a number of outstanding recommendations. It clarified that it had accepted all recommendations made to it.

Further information

For further information on the UPR, 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 UPR Working Group and Human Rights 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.
- Website of the UPR at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10th 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 'UPR extranet' and '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.

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