

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – ITEM 3 – INDEPENDENCE OF JUDGES AND LAWYERS HUMAN RIGHTS COUNCIL, 11TH SESSION 2 AND 3 JUNE 2009

Overview	1
Presentation by the Special Rapporteur	1
Interactive dialogue	2
Further information.....	3

Overview

On 2 and 3 June 2009, the Human Rights Council (the Council) held an interactive dialogue with the Special Rapporteur on the independence of judges and lawyers, Mr Leandro Despouy. Mr Despouy presented his annual report and reports on his missions to the Russian Federation and to Guatemala.¹ The Special Rapporteur also expressed alarm at the situation of human rights in Fiji, and suggested the holding of a special session should the situation not improve and the country not accept special procedures visits.

Presentation by the Special Rapporteur

The Special Rapporteur on the independence of judges and lawyers, Mr Leandro Despouy outlined some of his activities carried out since the last report, giving details on the factors affecting the conduct of judges. He noted in his report that some progress had been made in the development of international justice, but that there were still some problems and in particular a lack of cooperation by some States. He also highlighted aspects that could strengthen the independence of judges such as sufficient funding for judicial authorities.

Mr Despouy also gave a brief summary of his visits to the Russian Federation and to Guatemala. Concerning his mission to the **Russian Federation**, the Special Rapporteur noted that the main goal had been to examine the progress of judicial reform since 1993. However, Mr Despouy highlighted the fact that there was a low level of transparency in the selection process of judges because the Soviet system of appointing judges was still in use. In addition, it was no longer the Prosecutor that was responsible for investigations but a State Ministry. The Special Rapporteur thus regretted that there had been a number of interferences of the executive in the judiciary. The Special Rapporteur had asked the authorities of the Russian Federation to carry out a rapid investigation of many grave human rights violations, including on killings of lawyers and human rights defenders.

¹ A/HRC/11/41 (annual report), Add.2 (Russian Federation) and Add.3 (Guatemala) available at <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>

Regarding the visit to **Guatemala**, Mr Despouy noted that there was still a high level of violence and poverty despite the peace accords of 1996. He drew particular attention to the fact that officials linked to organised crime often hamper criminal investigations.

The Special Rapporteur also made brief remarks on **Fiji**, where the President had declared a state of emergency, all Courts had been dissolved and all their decisions repealed. Mr Despouy urged the international community to pay attention to the absence of the rule of law in the country, which has led to a serious deterioration of the situation in Fiji.

Interactive dialogue

Guatemala, as a concerned country, welcomed Mr Despouy's visits in January and May 2009 and discussed the suggestions made by the Special Rapporteur on the independence of judges and lawyers. It noted that certain paragraphs in the report should be changed to prevent 'politicisation' and the influence of external factors, including those paragraphs dealing with selection and appointment in the judicial body. The delegation of Guatemala also highlighted that recently the national agreement for security by the three branches of the State authorities, including the Prosecutor for Human Rights had been signed.

The delegation of the Russian Federation updated the Council on recent developments, including a mechanism for the implementation of court decisions that was being established and a number of measures to combat corruption presented by the President. In relation to the situation in Chechnya, the Russian Federation assured the Council that an administrative court had been established and a jury court would soon be set up as well. This would strengthen the judicial system in the region.

The States that took the floor expressed support for mandate and underscored the importance of the independence of judges and lawyers. Among concerns taken up by States were the importance of independent judges and lawyers in achieving a proper balance of the powers of the State to strengthen democracy, the work of international tribunals and the representation of women and ethnic minorities in the judiciary. Among the issues raised were the following:

- Cuba expressed some disappointment at the report, saying it had hoped to see that the Special Rapporteur would include 'certain factors', which it claimed have an impact on the impartial functioning of tribunals, such as a '**manipulative press inciting hatred**'.
- The Czech Republic (on behalf of the EU) welcomed the elaboration of parameters necessary to ensure the effective guarantees for the independence of judges. Interestingly, it suggested the use of such parameters as a **check-list in the UPR**. Austria appreciated the Special Rapporteur's efforts to identify obstacles to an independent judicial system.
- Several NGOs drew attention to the fact that many States had adopted sweeping extra-legal powers to violate human rights, claiming emergency measures in the context of the so-called **war on terror**.
- Cuba supported the conclusions of the Special Rapporteur on the issues of **extreme poverty**.
- In a joint statement several NGOs raised concerns about the subject of **military tribunals**. In the context of the UPR in February 2009, Mexico had been recommended to limit the use of military jurisdiction. However, the Government did not accept these recommendations. In this context, the International Commission of Jurists (ICJ) questioned the Special Rapporteur what measures, including a possible country visit to Mexico, he would consider to follow-up to these recommendations.

Picking up the Special Rapporteur's comments on the **lack of State cooperation**, some States raised concerns about the absence of official replies to communication sent by the Special Rapporteur to the concerned States.² In his response, Mr Despouy stressed that while he had received a number of invitations he was not able to undertake all visits he was invited to. However, in some cases the Special Rapporteur had requested visits and had not received invitations.

² Hungary.

Several States and NGOs raised **situations of human rights violations** of particular concern to them. The Czech Republic (on behalf of the EU) expressed its concerns about the situation in **Myanmar**. Amnesty International expressed concern about the ongoing human rights violations in the **Russian Federation**, in light of the killing of human rights lawyer Stanislav Markelov. It noted that the international community should closely monitor the investigation related to this crime. The Society for Threatened People underlined that 30 per cent of communications by the Special Rapporteur were interventions in Asia and that the majority of the cases in **China** concerned the situation of defence lawyers and other human rights defenders.

In his concluding remarks, Mr Despouy highlighted that **Guatemala** had initiated an intensive cooperation and he hoped his mandate, under a future mandate holder, would be able to carry out a follow-up visit to that country. In relation to the **Russian Federation**, the Special Rapporteur noted that they had established great cooperation and he also hoped that his successor would be able to visit the country, especially the North Caucasus region. Mr Despouy again said he was ‘very deeply alarmed’ about the situation in **Fiji**. If the country did not accept a visit, and that the situation would not improve, he said the Council should consider the holding of a special session.

Further information

For further information on the Human Rights 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.
- Oral statements made at the Council, as well as other 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’.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

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

Rachel Breen, intern
Joelle Dek, Intern
Dmitry Foryy, Intern
Mabel Kirabo, Intern
Ladina Knapp, Intern
Clara Martino, Intern
Isabella Ries, Intern
Peter Tubman, Intern

ABOUT THE PUBLICATION

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch.

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr.ch with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT, DISTRIBUTION AND USE

Copyright © 2009 International Service for Human Rights. Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders. ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.