

# COUNCIL MONITOR

International Service for Human Rights



## Human Rights Monitor Series

### **ANALYTICAL OVERVIEW HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 2 TO 19 JUNE 2009**

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## Introduction

The Human Rights Council's (The Council) 11<sup>th</sup> session was held from 2 to 19 June 2009. The session was expected to debate a large number of thematic and country specific issues. The following analysis highlights some of the main debates and decisions, including on the freedom of expression, maternal mortality, the human rights situation in the Sudan and the adoption of UPR reports on 16 countries, including China, Cuba and the Russian Federation.<sup>1</sup>

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<sup>1</sup> For a full coverage of the session, please refer to ISHR's Council Updates.

## Dialogue with the High Commissioner

The Council heard an update from the High Commissioner for Human Rights, Ms Navanethem Pillay. Since it was only an 'update' and not the annual 'interactive dialogue', the High Commissioner did not respond to the questions and comments by States and other stakeholders, although some remarks would have merited a reply.

In her presentation, Ms Pillay highlighted key thematic and country situations of concern to her, placing particular focus on the human rights of migrants. This issue is of concern to many States and has received increasing attention during recent sessions. Her assurance that this issue would also be one of the Office of the High Commissioner's (OHCHR) priorities for the biennium 2010-2011 confirmed the importance the High Commissioner has attached to this issue since taking office.

Using a thematic angle to discuss some country situations of concern, the High Commissioner underlined that the Council could draw attention to the situation of civilians in armed conflict in a variety of ways. In this context, Ms Pillay updated the Council in detail on a series of situations of armed conflict, including in Afghanistan, Pakistan, Iraq, the occupied Palestinian territories, Colombia, Somalia, the Democratic Republic of the Congo (DRC), the Sudan, Chad, Sri Lanka, and Nepal. It was welcome to see the High Commissioner exercising her strong and independent leadership at a time where the UN's main human rights body is increasingly reluctant to fulfil its mandate to address human rights violations in many countries around the world.

During the following debate, some States expressed disagreement with the comments made by the High Commissioner. Overall, the debate was positive and quite constructive, though, with the tone being much less aggressive than that which often characterised discussions with the former High Commissioner, Ms Louise Arbour. The period of grace that Ms Pillay seems to have been granted at the beginning of her term more than six months ago seems to be coming to an end. The High Commissioner's principled positions on human rights and her emphasis on the independent nature of OHCHR's country work is starting to lead to more open tensions and direct opposition from certain States. One example was the reactions to the High Commissioner's call for accountability for human rights violations in Sri Lanka. During the 11<sup>th</sup> special session on Sri Lanka held in May 2009, the Council decided against an independent inquiry, the majority of States seemingly endorsing the Government's argument that this would undermine the sovereignty of the State. Apparently regretting the High Commissioner's continued support for an independent investigation there, India lamented that it would be 'unfortunate' if the High Commissioner or OHCHR were to 'misinterpret or wilfully supersede' decisions by the Council at their 'convenience or in accordance with the agenda of some States or unrepresentative or unaccountable organisations, or to pursue their own agenda'.

A further example of States criticising the High Commissioner's independent and principled opinions was the regret expressed by Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), and Algeria about the High Commissioner's strong support for the protection of all human rights for all, regardless of a person's sexual orientation. Claiming that 'this issue does not enjoy universal agreement', these States seemed to imply that the High Commissioner is limited in her work to non-controversial issues. Nevertheless, the High Commissioner has continued to strongly support efforts to address human rights violations based on sexual orientation. During the session, she was the key note speaker at a high level parallel event on human rights, sexual orientation and gender identity attended by more than 200 persons and representatives of over 50 States. The proposition that the High Commissioner should not address these issues is clearly at odds with her mandate to 'play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world' as set out by the General Assembly.

Another familiar point of friction emerging from the debate was the controversial issue of the institutional relationship between the Council and OHCHR. Cuba, speaking on behalf of the Non- Aligned Movement (NAM), Egypt (on behalf of the African Group) and other States again called for a 'formal' discussion of this relationship. A new approach suggested by the Russian Federation would mean that the review of the Council's functioning in 2011 could be used to discuss the relationship between the Council and OHCHR and the role of States in setting priorities for OHCHR's work. While the Council is expected to review its own functioning in 2011, the General

Assembly will review the Council's status and receive the outcome of the Council's internal review. It was unclear whether the Russian Federation advocated for the General Assembly to redefine the relationship between OHCHR and the Council, or whether it encouraged the Council to consider this issue itself. The mandates of both OHCHR and the Council derive directly from General Assembly resolutions and any decisions that would affect their mutual relationship would have to be taken by the General Assembly.

While dialogue with the High Commissioner continues to hold the potential for difficult and somewhat confrontational debates, Ms Pillay manages well the political dimensions and pitfalls of interacting with the Council.

## Thematic debates

### Special procedures

During the session, the Council received the annual reports of the following thematic special procedures:<sup>2</sup>

- Special Representative on human rights and transnational corporations and other businesses<sup>3</sup>
- Special Rapporteur on the human rights of migrants<sup>4</sup>
- Special Rapporteur on the right to education<sup>5</sup>
- Special Rapporteur on the independence of judges and lawyers<sup>6</sup>
- Special Rapporteur on the right to freedom of opinion and expression<sup>7</sup>
- Special Rapporteur on the right to the highest attainable standard of health<sup>8</sup>
- Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>9</sup>
- Special Rapporteur on violence against women<sup>10</sup>
- Independent Expert on human rights and foreign debt<sup>11</sup>
- Independent Expert on extreme poverty<sup>12</sup>
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.<sup>13</sup>

### Freedom of expression

The Special Rapporteur on freedom of opinion and expression, Mr Frank La Rue, presented his first report and focused on explaining his approach to the mandate. He highlighted three thematic areas of future focus: the question of limitations on the right to freedom of expression; safety and protection of journalists and media professionals in armed conflict; and the right of access to information in situations of extreme poverty.

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<sup>2</sup> For a detailed overview of the debates on their reports, please see ISHR's *Council Updates*.

<sup>3</sup> A/HRC/11/13 (annual report), A/HRC/11/13/Add.1 (report on State obligation to provide access to remedy for human rights abuses by third parties, including business: An overview of international and regional provisions, commentary and decisions).

<sup>4</sup> A/HRC/11/7 (annual report), which dealt with the protection of the rights of child migrants.

<sup>5</sup> A/HRC/11/8. The report focused on the rights to education of persons in detention.

<sup>6</sup> A/HRC/11/41.

<sup>7</sup> A/HRC/11/4.

<sup>8</sup> A/HRC/11/12.

<sup>9</sup> A/HRC/11/2 (annual report which dealt with execution of juveniles, killings of persons accused of witchcraft, and use of force in the policing of assemblies).

<sup>10</sup> A/HRC/11/6. The report examines the political economy of women's human rights. She also presented a study on the last 15 years of work by the Special Rapporteur (A/HRC/11/Add.5).

<sup>11</sup> A/HRC/11/10.

<sup>12</sup> A/HRC/11/36.

<sup>13</sup> A/HRC/11/13. The report focuses on the relationship between poverty and racism

Many States addressed a joint declaration the Special Rapporteur had issued together with several regional mechanisms dealing with freedom of expression. In the declaration, referred to in the report of the Special Rapporteur, the mandate holders had expressed concern about the use of the concept of ‘defamation of religions’. Several members of the African Group and the Organisation of the Islamic Conference (OIC) questioned the suitability of the new mandate holder to carry out his mandate as set out in Council *Resolution 7/36* and alleged that Mr La Rue had violated the Code of Conduct for special procedures by questioning the decisions of the Council and calling on it to desist from adopting resolutions on ‘defamation of religions’. This was not surprising as many of these States had been critical of Mr La Rue’s appointment in June 2008. The same States had also pushed a controversial amendment to the above mentioned resolution requesting the Special Rapporteur to report on abuses of the right of freedom of expression that constitute racial or religious discrimination. Several States criticised the Special Rapporteur for not having given sufficient attention to this part of his mandate in his report.<sup>14</sup> They stated they would continue to watch the Special Rapporteur closely and take action against him under the Code of Conduct if he did not correct his behaviour. Many of these statements could be seen as an attempt at limiting the independence of the Special Rapporteur and even chastising him for expressing views that are at variance with the political views of some of the Council’s members. These States continue to question and seek to further restrict the interpretation of international human rights standards in this area.

Many other States and NGOs supported the approach of Mr La Rue and noted that it was unrealistic to expect the Special Rapporteur’s first report to deal with all issues within his mandate. These States, including the Czech Republic (on behalf of the EU), the US, the UK and several Latin American States highlighted that special procedures mandate holders are expected to carry out their work in an independent fashion, and that they are free to structure and prioritise their work.

The scope of the right to freedom of expression will undoubtedly continue to be a major area of contention between groupings of States within the Council. The Council is expected to adopt a resolution on freedom of expression at its next session in September 2009 one year after the controversial resolution adopted by vote for the first time last September. It can only be hoped that the Special Rapporteur continues to strongly assert his role as an independent and expert adviser on this issue.

### **Women’s rights**

During the session, the Council discussed the human rights of women on several occasions, including during two panel discussions, the dialogue with the Special Rapporteur on violence against women and in the context of follow up to the Vienna Declaration and Programme of Action. These debates demonstrated traditional divisions among States further discussed below.

The adoption by consensus of a resolution on gender integration throughout the UN system<sup>15</sup> has provided the Council with a strong basis for moving these issues forward and paying specific and focused attention to the human rights of women as well as integrating a gender perspective into all aspects of its work and that of its mechanisms. This issue enjoys broad cross regional support and has resulted in the creation of new working alliances among States from all regions, a very positive development that should be extended to other areas of the Council’s work.

### ***Laws that discriminate against women***

The panel discussion on laws that discriminate against women exposed different positions of States on gender equality. The High Commissioner, several panellists, many States and NGOs favoured the establishment of a new special procedure to address laws that discriminate against women.<sup>16</sup> Other States were open to further discussing

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<sup>14</sup> Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Saudi Arabia, Azerbaijan, United Arab Emirates.

<sup>15</sup> *Resolution 6/30*.

<sup>16</sup> Austria, Congo, Tunisia, Nigeria, Slovenia, Luxembourg, Iceland, Germany, FIDH.

the idea.<sup>17</sup> However, several States<sup>18</sup> expressed deep reservations but presented rather unconvincing arguments against, such as an overlap with the mandate of the Committee on the Elimination of Discrimination against Women; the mandate could be perceived as an ‘attack on certain cultures’; and would be a ‘waste of resources’. Egypt suggested that it would be impossible to find a mandate holder that would be knowledgeable about the laws of all countries in the world, which clearly unintentionally seemed to acknowledge that laws that discriminate against women is a vast problem that would merit being studied and addressed by an expert.

### ***Maternal mortality and human rights***

Following the panel discussion on maternal mortality at the 8<sup>th</sup> session of the Council in June 2008 and the joint statement by 84 States at the 10<sup>th</sup> session in March 2009, New Zealand and Columbia presented a resolution on ‘preventable maternal mortality and morbidity and human rights’ with the support of 53 States. The resolution was adopted without a vote.<sup>19</sup>

Prior to the adoption four open informal consultations were held, which were attended by a high number of delegations. At first the draft resolution seemed to be uncontroversial but during the second informal meeting it became clear that State views differed on various issues. The main sticking points were the recognition of maternal mortality and morbidity as a human rights issue in the preamble and of the high global rate of preventable mortality and morbidity as a potential human rights violation in the operational part of the resolution. In particular Pakistan, Egypt, China, South Africa and Indonesia argued that maternal morbidity and mortality is not a human rights issue but only a development issue. This argument is in line with the approach of many developing States to economic, social and cultural rights as development issues rather than rights as such, which is part of a broader pattern of attempts to write down human rights obligations, standards and the mechanisms that ensure their respect. Western States acknowledged that it is also a development issue but did not want to lose the reference to the human rights aspect and a proper balance between these two aspects.

During the informal discussions, New Zealand and Colombia sought to accommodate the above concerns and reflect both the human rights and development approach to maternal mortality. This regrettably resulted in a weakening of the text. The final text did not include the notion that the prevalence of maternal morbidity is potentially a human rights violation and accommodated the above mentioned concerns by stating that it is a health, development and human rights challenge.

### ***Violence against women***

The Special Rapporteur on violence against women, Ms Yakin Erturk, presented her final report to the Council. She has completed her six year term and will be succeeded by Ms Rashida Manjoo, who was appointed at the end of the session. Ms Erturk’s study on the achievements and challenges of the mandate over the last 15 years was criticised by some States that argued that she had exceeded her mandate in addressing sexual orientation, same sex relations, safe abortions, and extending the definition of ‘family’.<sup>20</sup> They even argued that she was interfering in domestic affairs, a claim that seems related to the tendency of some States to put forward sovereignty arguments when their national interests are at stake.

After four public informal consultations convened by Canada the resolution on ‘Accelerating Efforts to Eliminate all Forms of Violence against Women’ was adopted without a vote.<sup>21</sup> 55 States co-sponsored the resolution.

During the informal consultations, the main obstacles to reaching consensus were the efforts by Egypt, Pakistan and Singapore to weaken the resolution’s acknowledgement of the work of the previous mandate holder. They in

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<sup>17</sup> Norway, Switzerland, Czech Republic (on behalf of the EU).

<sup>18</sup> Pakistan (on behalf of the OIC), Egypt, Pakistan, Russian Federation.

<sup>19</sup> A/HRC/11/L.16.

<sup>20</sup> Pakistan (on behalf of the OIC), Egypt, Algeria, Holy See.

<sup>21</sup> A/HRC/11/L.5

particular opposed a reference to the report on the 15 years review of the work of the mandate as this had highlighted the above mentioned issues that remain controversial in many societies. The inclusion of reference to two Security Council resolutions on the impact of conflict on women's rights<sup>22</sup> and on rape as a weapon of war<sup>23</sup> was heavily disputed by Pakistan and Egypt. Additionally, Egypt opposed the inclusion of reference to multiple forms of discrimination as the concept could include discrimination on the basis of sexual orientation, an issue that it strongly opposes.

The adopted text maintained the reference to the Security Council resolutions as well as to the concept of multiple forms of discrimination. However the language regarding the work of the Special Rapporteur was significantly weakened. Her work was only 'noted with appreciation' rather than 'welcomed' and the reference to the 15 years review of mandate of the Special Rapporteur was deleted from the text. In response to the reference to multiple forms of discrimination, Egypt made an explanatory statement that this concept in its view does not include 'non-universally agreed forms of discrimination', implicitly referring to sexual orientation.

### Children's rights

Slovakia presented a draft resolution to establish an open-ended Working Group on the elaboration of an optional protocol to the *Convention on the Rights of the Child* (CRC) to set up a communications procedure.<sup>24</sup> This resolution follows a panel discussion held in May 2009 with States, experts from the Committee on the Rights of the Child (the Committee), representatives of OHCHR's Petitions Unit and from civil society. The idea of a complaint procedure under the CRC was initially brought up by the Committee itself ten years ago. Four informal meetings were held to negotiate the resolution at this session.

Although States agreed that it was high time to provide a more formal and transparent platform for this discussion through establishing a working group, there was little initial agreement on how quickly to proceed toward the drafting of an optional protocol. Some States wished to move quickly forward<sup>25</sup> while others favoured further discussions on the need for a complaint procedure.<sup>26</sup>

The major point of discussion was therefore the mandate of the working group. The UK, Singapore, the US and China opposed the idea of drafting a protocol at this time and argued that some points still needed to be debated before drafting could begin. Singapore's suggestion to change the first operational paragraph from 'elaborate an optional protocol' to 'explore the possibility of elaborating an optional protocol' was eventually adopted thus limiting the mandate of the Working Group. Some States argued that certain technical aspects of the complaint procedure would require deeper discussions, including its possible overlap with other complaint procedures; the meaning of the term 'best interest of the child'; harmonisation with domestic juvenile systems; and whether or not the full scope of the CRC should be covered by the procedure. In this regard the resolution does not include the earlier reference to the 'full range of rights'. The UK also questioned the legal expertise of the current members of the CRC to study these issues, an opinion shared by the US and Japan.

The Working Group will report back to the Council in March 2010.

### Traditional values

The Russian Federation introduced the concept of traditional values and human rights through the presentation of a draft resolution at this session.<sup>27</sup> This initiative met many reservations and even opposition from several States and NGOs that saw it as an attempt at undermining the universality of human rights. The Russian Federation argued

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<sup>22</sup> Resolution 1325.

<sup>23</sup> Resolution 1820.

<sup>24</sup> A/HRC/11/L.3.

<sup>25</sup> Serbia, Austria, Portugal, Republic of Korea, France, Argentina and Thailand.

<sup>26</sup> UK, US, Singapore and China.

<sup>27</sup> A/HRC/11/L.1. The draft resolution was only co-sponsored by non-members of the Council: Sri Lanka, Vietnam and Singapore.

that its initiative was aimed at strengthening human rights protection by building a more common and universal approach to human rights values. The Russian Federation held three informal consultations on its draft resolution. Despite support from several States such as the Sudan, Sri Lanka, Pakistan, Belarus, China, Algeria, Syria, South Africa, Egypt, and Vietnam, the initiative was questioned by many others and the Russian Federation in the end decided to postpone the adoption of the resolution to the next session in September. This was interesting as the Russian Federation had seemed determined to move ahead with the initiative regardless of the reservations of some States.

During the negotiations, one of the key topics of discussion was the meaning of ‘traditional values’, which the Russian Federation did at no point clearly and comprehensively explain. It was in no small part this uncertainty that gave rise to reservations and questions about the intentions of the Russian Federation in presenting this text. China argued that there should not be a specific definition of traditional values, whereas Switzerland, Italy (on behalf of the EU), Canada and Mexico (on behalf of Argentina and Brazil) argued that this concept was much too broad and could not be used if there was not a common understanding of its content. Liechtenstein suggested identifying specific values by reference to the *2005 World Summit Outcome*, such as freedom, equality, tolerance and solidarity. The Russian Federation underlined that the meaning of ‘traditional values’ went further than the *2005 World Summit Outcome* and included values of ‘work’, ‘care’ and ‘understanding that each human being is unique’.

The Russian Federation explained that the main purpose is to underscore that humanity shares a common sense of values coming from religions, philosophies, political opinion defined in ‘traditional values’. Some States also argued that traditional values were not always in line with human rights.<sup>28</sup> In this regard, the USA emphasised this concept might undermine human rights’ commitments. Additionally, the UK insisted that the term ‘traditional’ was mostly used in a negative context and should not be used in a resolution aiming at strengthening the respect of human rights. Mexico (on behalf of Argentina and Brazil) suggested replacing the term ‘traditional values’ by ‘common values’. It remains to be seen if the Russian Federation will take on board these suggestions.

## Racism

The new Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai, presented his first report to the Council focusing on the recent Durban Review Conference. Like the High Commissioner had done at the beginning of the session, he called on those States that had not participated in the Review Conference to subscribe to and implement the Outcome Document.

While States were generally supportive of his work, India rejected the Special Rapporteur’s attention to caste based discrimination as a form of racial discrimination. Mr Muigai refuted this argument by reference to General Recommendation 24 of the Committee on the Elimination of Racial Discrimination which reaffirms that caste-based discrimination is a form of racial discrimination and stated that he believed this topic to be squarely within his mandate.

A few States also reiterated their support for complementary standards to fight racism and related intolerance, an issue that will be further discussed at the next session of the Ad Hoc Committee in October.<sup>29</sup>

## Climate change

A panel discussion on climate change and human rights was convened at the initiative of the Maldives and in implementation of the Council’s resolution on this topic.<sup>30</sup> States generally agreed that climate change affects the enjoyment of human rights, in particular the rights of the poorest and most vulnerable, and on the need to incorporate a human rights approach into the framework addressing climate change. The Maldives, Costa Rica and

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<sup>28</sup> Mexico (on behalf of Argentina and Brazil).

<sup>29</sup> Pakistan (on behalf of the OIC), Egypt, Cuba, China.

<sup>30</sup> *Resolution 10/4*. For more details on the discussion, please see ISHR’s Council Update, Item 3.

Bangladesh put forward the idea of creating a new special procedures mandate on human rights and climate change. It is not currently known whether they will pursue this idea.

### **Economic crisis**

Increasingly many developing States are referring to the world economic crisis as a factor impacting human rights protection with some seemingly arguing that it undermines their ability to protect human rights and requires greater international assistance, especially from those States that they believe are responsible for the crisis.

The impact of the financial crisis on human rights was acknowledged by several experts during the session, including the Special Rapporteur on the human rights of migrants, who stated during the interactive dialogue that migrants could face increased vulnerabilities as a result of the crisis. In this context he called on host countries to ratify the *Convention on the Rights of Migrant Workers and Members of their Families*. The Special Rapporteur on violence against women also noted that the world crises were creating new vulnerabilities for women increasing the risks of violence and exploitation. In discussing the report of the Special Representative on business and human rights, many States also noted that it was timely to discuss the human rights duties of businesses at this time of economic crisis.

During the debate on follow up to the Vienna Declaration and Programme of Action, Brazil called on all of the special procedures to pay attention to the economic crisis in their work.

### **Country situations**

#### **Country visits by special procedures**

Discussion of and action on situations of human rights violations in specific countries present one of the Council's major difficulties in fulfilling its mandate. States reluctant to see the Council scrutinise their own and their peer's human rights record have been quick to allege 'politicisation, selectivity and double-standards' at any attempt to address country situations. The new universal periodic review (UPR) has been used as an additional argument to prevent attention to country situations. This session provided several opportunities for the Council to improve its disappointing record on dealing with situations of human rights violations, including the interactive dialogue with the Independent Expert on Haiti, the interactive dialogue with and decisions on the future of the Special Rapporteur on the situation of human rights in the Sudan, and general debates on situations requiring the Council's attention (item 4), the human rights situation in Palestine and other occupied Arab territories (item 7) and on technical assistance and capacity building (item 10). As in the past, there were a large number of country specific reports presented by thematic special procedures, reports that regrettably received limited attention from States. The exception was the report of the Special Rapporteur on extrajudicial executions' visit to Kenya which received significant attention from a number of States. This may be related to the heavy press coverage the visit received as a result of the killing of two prominent human rights defenders that the Special Rapporteur had met with only a few days after the end of his visit and as a result of the far-reaching recommendations the Special Rapporteur made.

Mission reports were presented on:

#### **Asia**

- Afghanistan: Special Rapporteur on extrajudicial executions
- Malaysia: Special Rapporteur on the right to education<sup>31</sup>
- Maldives: Special Rapporteur on freedom of expression<sup>32</sup>
- Philippines: Special Rapporteur on extrajudicial executions (follow up)<sup>33</sup>

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<sup>31</sup> A/HRC/11/8/Add.2.

<sup>32</sup> A/HRC/11/4/Add.3.

<sup>33</sup> A/HRC/11/2/Add.8.



- Saudi Arabia: Special Rapporteur on violence against women<sup>34</sup>
- Tajikistan: Special Rapporteur on violence against women<sup>35</sup>

### **Latin America and the Caribbean**

- Brazil: Special Rapporteur on extrajudicial executions<sup>36</sup>
- Bolivia: Special Rapporteur on indigenous people<sup>37</sup>
- Ecuador: Independent Expert on extreme poverty<sup>38</sup>
- Guatemala: Special Rapporteur on migrants;<sup>39</sup> Special Rapporteur on the right to education,<sup>40</sup> Special Rapporteur on extrajudicial executions (follow up),<sup>41</sup> Special Rapporteur on the independence of judges and lawyers<sup>42</sup>
- Honduras: Special Rapporteur on freedom of expression<sup>43</sup>
- Mexico: Special Rapporteur on migrants<sup>44</sup>

### **Africa**

- Central African Republic: Special Rapporteur on extrajudicial executions<sup>45</sup>
- Kenya: Special Rapporteur on extrajudicial executions<sup>46</sup>
- Mauritania: Special Rapporteur on racism<sup>47</sup>
- Sudan: Special Rapporteur on the Sudan<sup>48</sup>

### **Eastern Europe**

- Republic of Moldova<sup>49</sup>
- Russian Federation: Special Rapporteur on the independence of judges and lawyers<sup>50</sup>

### **Western Europe and other States**

- United States: Special Rapporteur on racism,<sup>51</sup> Special Rapporteur on extrajudicial executions<sup>52</sup>

## **Debates and action on country situations**

Country specific special procedures mandates have been under severe pressure from the beginning of the Council's work, with the mandates on Cuba and Belarus being abolished in the Council's first year.<sup>53</sup> Since then,

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<sup>34</sup> A/HRC/11/6/Add.3.

<sup>35</sup> A/HRC/11/6/Add.2.

<sup>36</sup> A/HRC/11/2/Add.2.

<sup>37</sup> A/HRC/11/11.

<sup>38</sup> A/HRC/11/9/Add.1.

<sup>39</sup> A/HRC/11/7/Add.3.

<sup>40</sup> A/HRC/11/8/Add.3.

<sup>41</sup> A/HRC/11/2/Add.7.

<sup>42</sup> A/HRC/11/41/Add.3.

<sup>43</sup> A/HRC/11/4/Add.2.

<sup>44</sup> A/HRC/11/7/Add.2.

<sup>45</sup> A/HRC/11/2/Add.3.

<sup>46</sup> A/HRC/11/2/Add.6.

<sup>47</sup> A/HRC/11/36/Add.2.

<sup>48</sup> A/HRC/11/14.

<sup>49</sup> A/HRC/11/6/Add.4.

<sup>50</sup> A/HRC/11/41/Add.2.

<sup>51</sup> A/HRC/11/36/Add.3.

<sup>52</sup> A/HRC/11/2/Add.5.

<sup>53</sup> See Council *Resolution 5/1*.

almost all other country specific mandate have been questioned. Some prominent voices in the Council, including Egypt (on behalf of the African Group) and Cuba, have repeatedly underlined their principled opposition to country specific mandates in general. In March 2008, the mandate on the Democratic Republic of the Congo (DRC) was abolished despite evidence of continuing and severe human rights violations, which were the subject of a special session focusing on the situation in the east of the country in November 2008. In September 2008, the mandate on Liberia was discontinued and the mandate on Burundi was renewed on the questionable condition of the establishment of an independent national human rights institution. At the same session, the Special Rapporteur on the Sudan was renewed for six months despite the requirement of the institution-building text (*Resolution 5/I*) of one-year extensions for all country specific mandates. It is against this backdrop that this session considered whether or not to continue specific and focused attention to and monitoring of the human rights situation in the Sudan.

## **Sudan**

It was expected from the outset that the Sudan, and Egypt with the support of a large part of the African Group, were determined to end the mandate of the Special Rapporteur. The mandate has in the past divided States within the African Group. Already at the 4<sup>th</sup> special session on the situation of human rights in Darfur in 2006, many sub-Saharan African States expressed their concern about the human rights violations taking place in the country, while others resisted debate and action on this situation.

Both Egypt (on behalf of the African Group) and the Czech Republic (on behalf of the EU) announced prior to the session that they intended to ‘work’ on the mandate on the Sudan. Despite some closed negotiations and one open informal meeting convened by Egypt, the two groups each submitted their competing draft resolutions at the last moment in the session.<sup>54</sup> Expectedly, the two drafts were miles apart. The African Group draft did not include a continued mandate for an international monitoring mechanism but relied entirely on national institutions to monitor parts of the country. It was also rather complimentary of the Government’s efforts to guarantee human rights for its population. The EU draft, by contrast, was much shorter and of a more procedural nature. In an attempt to reach compromise, it suggested replacing the ‘Special Rapporteur’ on the Sudan with an ‘Independent Expert’ tasked with the same monitoring and reporting functions.

Egypt convened one set of informal consultations on 17 June, one day after tabling its resolution, leaving very little room for substantive negotiations. The meeting confirmed rumours of divisions within the African Group regarding the draft resolution when Egypt explained that ‘some within the [African] Group had dissociated themselves from the text, and others had reserved their position’. There was also clear disagreement on the content of the resolution between Egypt, the Sudan, the Russian Federation, Pakistan (on behalf of the OIC) and Cuba on one side, and the EU, the United States, Sweden, Norway, Switzerland, Canada and Chile on the other. The former States, opposed to an extension of the mandate, mainly argued that it requires the support of the Sudan as the concerned country. The Sudan also argued that there would be significant overlap between the work of the Special Rapporteur and other existing mechanisms including UNMIS and UNAMID.

The consultations also clearly showed how the above mentioned negative decisions of the past have established precedents for the consideration of country mandates despite explanations at the time that they would not. Referring to the renewal of the mandate on Burundi, which was extended until the establishment of a national human rights institution, the Sudan claimed that since it already has such an institution, a special procedure mandate on the Sudan was not justified.

Although the EU accepted the African Group draft as a basis for negotiations, it introduced significant amendments to the draft. While maintaining the positive tone of the African Group draft, these amendments provided for the creation of an Independent Expert.<sup>55</sup> The amendments were already introduced during the

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<sup>54</sup> L.17 (African Group draft) and L.18 (EU draft) were both tabled at 18:00 on 16 June 2009, which was the deadline for tabling proposals at the 11<sup>th</sup> session.

<sup>55</sup> See A/HRC/11/L.19, available on the OHCHR extranet at <http://portal.ohchr.org>.

informal consultations but were neither substantively discussed nor taken on board by Egypt. It seems that the divergence of views between the two sides was too important and could not be resolved through compromise. The future of a mandate on the Sudan remained suspenseful until the last day of the session.

The Council decided by a very narrow margin in two nerve-racking votes to create a new Independent Expert on the Sudan for one year. The Council first accepted the EU amendments to the African Group draft resolution by a margin of one vote.<sup>56</sup> This result was made possible, among other things, by the courageous support for sustained Council engagement in the Sudan from some African States including Uganda, Ghana, Mauritius, Senegal and Zambia, defying the usually unchallenged leadership of Egypt within the African Group. The Ugandan representative, at the end of the session, even openly criticised the Egyptian coordination of the African Group, expressing his hope for a more faithful reflection of the African Group's position by the future coordinator of the group.<sup>57</sup>

Looking more closely at the voting pattern on the amendments, which were voted upon first, and the subsequent vote on the amended draft resolution reveals an interesting, albeit somewhat ambiguous picture. The Latin American and Caribbean Group, with the exception of Bolivia and Nicaragua, which abstained, and Cuba, which voted against, supported both the amendments and the final text. Of note was in particular the position of Brazil, which voted in favour of the creation of the Independent Expert despite often opposing country mandates. States of the Asian Group voted in a familiar way, with India abstaining and Japan and the Republic of Korea supporting the amendments and final text. Of most interest was certainly the behaviour of African States. Burkina Faso, Ghana, Nigeria and Senegal abstained on the amendments. Mauritius and Zambia voted in favour of both the amendments and the final text. The positions of Madagascar and Angola are worth noting. While they voted against the EU amendments and therefore against the creation of an Independent Expert, they later abstained when voting on the final text. Their somewhat contradictory position seemed to indicate a reluctance to see focused attention to the situation in the Sudan disappear from the Council's agenda and a willingness to not stand in the way of a monitoring mechanism. A curious position was taken by Azerbaijan and Nigeria, who both abstained on the amendments, but then voted against the amended text.

Despite the apparent downgrading in the title of the mandate, and the heavy focus on cooperation between the new mandate holder and the Government of the Sudan, the continuation for one year of a country specific mandate is a small beacon of hope in the Council's otherwise often disappointing record on addressing human rights violations. Because the mandate, technically, is newly created, the new President of the Council will have to appoint a new mandate holder in September 2009, thus replacing Ms Sima Samar. Given the importance of the mandate, and the very narrow victory of those in favour of continued monitoring of the human rights situation, the search for and appointment of a widely supported candidate is likely to be challenging. It will be an important first test for the new Belgian President of the Council, Ambassador Alex Van Meeuwen to engage in consultations across all regions and with all stakeholders to find a strong candidate who can fulfil this demanding mandate.

### ***Haiti***

On 17 June 2009, the Council discussed the annual report of the Independent Expert on the situation of human rights in **Haiti**. Mr Michel Forst presented his report to the Council on the situation of human rights in Haiti and on the implementation of previous recommendations. The interactive dialogue showed that the relations between the Independent Expert and the Government are very positive and the Government's willingness to cooperate.

### ***Situations requiring attention***

On 8 and 9 June 2009, the Council held a general debate on human rights situations that require its attention (Item 4).<sup>58</sup> The debate was little different from previous ones, with a small number of States taking the floor, the

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<sup>56</sup> 20 in favour, eight abstentions and 19 against.

<sup>57</sup> Nigeria has taken over the coordination of the African Group from Egypt.

<sup>58</sup> See [www.ishr.ch/council\\_updates](http://www.ishr.ch/council_updates) for a more detailed report on this debate.

majority being from the Western Group.<sup>59</sup> A large number of NGOs took the opportunity to participate although some expressed regret at the reduction of their speaking time due to poor time management earlier in the session.<sup>60</sup>

Several States made general comments about the consideration of country situations by the Council.<sup>61</sup> They generally argued in favour of a ‘robust dialogue’<sup>62</sup> on any situation of human rights violations. Many insisted the legitimacy and credibility of the Council rests on its ability to address serious human rights violations. In this context, the US expressed disappointment at the recent no-action motion, which was used to block consideration of draft amendments at the recent special session on Sri Lanka. Cuba, unsurprisingly, took an opposing view arguing that Item 4 should not only be used to discuss country specific situations, but instead thematic ‘situations’ such as the world financial crisis and what it called ‘a crisis of ethics’.

The situation in **Myanmar** received considerable attention from States and NGOs, with many expressing continued concern at the detention of Ms Aung San Suu Kyi and other political prisoners, and the undermining of the political process before the 2010 elections.

The **Sudan** was another situation of concern during the debate. The Czech Republic (on behalf of the EU) argued that in light of the widespread use of torture and impunity for sexual violence against women, the extension of the mandate of the Special Rapporteur was a priority. The US also strongly urged the Council to extend the mandate. Ireland expressed its support for the work of the International Criminal Court (ICC), emphasised the need for accountability, and called on the Government of the Sudan to reverse its decision to expel international humanitarian aid organisations. The Sudan highlighted the cooperation of the Government which led to the two peace agreements and argued that the improved security situation renders the appeals for the renewal of the Special Rapporteur’s mandate unnecessary. It further claimed that such appeals were flagrantly political in nature. The United Arab Emirates, on behalf of the Arab Group, praised the Sudan and urged the Council to support the country’s efforts.

The Czech Republic (on behalf of the EU) reiterated its call for an independent and credible investigation into violations of international human rights and humanitarian law in **Sri Lanka**. France, Sweden and Ireland echoed this call in their national capacities. In a strong statement, Ireland explained that its conviction stems from historical experience and also expressed its regret that the Council was unable to reach a meaningful outcome at the special session. Human Rights Watch drew attention to the continuing threats and dangers confronting journalists and doctors in Sri Lanka.

Regarding **Iran**, the execution of juveniles was a cause of particular concern for Canada, the Netherlands, France, Germany and Belgium. The Czech Republic (on behalf of the EU) raised concerns about intimidation of human rights defenders and restrictions on freedom of expression and association in Iran. Canada, Germany and the UK referred to the arbitrary detention of Bahai’s, and France drew attention to the detention of people for their sexual orientation or gender identity. Israel highlighted the violations of women’s rights.

### ***Technical assistance and advisory services***

The Council also held a **general debate on technical assistance and advisory services** (Item 10), which drew very little interest from States and NGOs. Only the Czech Republic (on behalf of the EU), Brazil and the United States took part in the discussion. Unsurprisingly, Brazil underlined the need for the Council to focus more on providing assistance to countries and less on identifying human rights challenges or condemning violations. The Czech Republic (on behalf of the EU) and the US highlighted the important work done by the field presences of the Office of the High Commissioner for Human Rights (OHCHR). In particular, the EU drew attention to the

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<sup>59</sup> The following States took the floor: Czech Republic (on behalf of the EU), Canada, Netherlands, UK, Switzerland, Italy, France, Germany, Japan, Argentina, Cuba, Israel, United Arab Emirates, Sweden, Australia, Ireland, Sudan, Belgium, US, Libya.

<sup>60</sup> Asian Legal Resource Centre (ALRC) and Human Rights Watch (HRW).

<sup>61</sup> Switzerland, Sweden, Italy, Belgium, US.

<sup>62</sup> US.

work done in Nepal acknowledging the willingness of the Government to extend OHCHR's mandate there for three months and called for more sustained and longer-term collaboration. The US highlighted OHCHR's contributions in Burundi, Ethiopia, Mexico, Cambodia, Kyrgyzstan, Uganda, Colombia and the Democratic Republic of the Congo. The US called for OHCHR's independence of to be preserved to allow it to effectively carry out its work.

### **Sovereignty arguments**

A disturbing new development in the Council's work is the resurfacing of old and anachronistic arguments based on non-interference in the affairs of States and the sovereignty of States. At the special session on Sri Lanka immediately prior to the 11<sup>th</sup> session, and during this session, some States claimed that action on or even discussion of a particular situation of human rights violations by the Council would infringe the sovereignty of the State concerned.

Although some States have continuously attempted to block discussions on issues touching their sensitivities, including China in relation to Tibet and the Democratic People's Republic of Korea (DPRK) and Myanmar in relation to special procedures mandates on their own countries, these arguments were primarily mounted by the States concerned and were limited to these cases. It is worrying that these arguments are now brought forward by other States as well. Nevertheless it remains firmly established that human rights violations are a legitimate concern of the international community wherever they occur. The Vienna Declaration and Programme of Action affirms that 'the promotion and protection of human rights is a legitimate concern of the international community'. It is based on the shared conviction of States that the international community in general and the UN in particular have a responsibility to discuss and react to human rights violations wherever they occur. Hiding behind State sovereignty was not, and should never be, an excuse to fail in the discharge of this duty.

### **UPR**

During the session the Council adopted the outcomes on the reviews of Azerbaijan, Bangladesh, Cameroon, Canada, China, Cuba, Djibouti, Germany, Jordan, Malaysia, Mauritius, Mexico, Nigeria, the Russian Federation, Saudi Arabia, and Senegal.<sup>63</sup> Most of these reports were adopted without many comments or any controversy, although the reports on China, Cuba and the Russian Federation attracted a lot of interest. While some countries continued the good practice of circulating in advance written detailed answers to the recommendations (Germany, Canada, Russian Federation, Cameroon, Cuba, Saudi Arabia), others failed to provide comprehensive replies (China, Djibouti, Nigeria). The good practice by some can still be improved by States circulating their responses well in advance to allow for a more meaningful debate before the adoption, and it should be followed by all States.

The adoption of reports often reflects the same dynamics as during the review of the States and the tendency to treat States differently depending on political alliances and regional dynamics. At this session it was notable that Germany and Canada received harsh criticism of their human rights record by some States,<sup>64</sup> while China, the Russian Federation, Malaysia, Cameroon, Saudi Arabia were praised for their efforts to promote and protect human rights by many supportive States.<sup>65</sup> The apparent difference in treatment has led some Western States to warn that questions and recommendations are sometimes subject to 'politicisation' without further explanation. At the same time, during the general debate on the UPR, Pakistan (on behalf of the OIC) and Egypt also raised allegations of 'politicisation' of the UPR process by States seeking to address extraneous issues or imposing 'regional standards'. It seems that these allegations refer to the recommendations on eliminating discrimination on the basis of sexual orientation and de-criminalisation of same sex consensual conduct between adults.

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<sup>63</sup> For a full analysis of each adoption, please see ISHR's *Council Update* on Item 6.

<sup>64</sup> Qatar, Algeria, Saudi Arabia, Iran.

<sup>65</sup> Including United Arab Emirates, Egypt, Qatar, Thailand, Viet Nam, Pakistan, Venezuela, Algeria, Uzbekistan, Sri Lanka, Nigeria, China, Djibouti, Burkina Faso, Chad.

Some States are making great efforts to ensure that they get to speak during the adoption of reports. With the limited time for discussion (one hour per report) this precludes many others from being able to participate in the debate. This has become a significant issue for many States and NGOs that have expressed concerns about the modalities for the unwieldy lists of speakers for States.<sup>66</sup> However, States did not agree on the scope of the problem with the speakers' list nor on whether a solution should be found urgently or not. Notably, the Russian Federation, Cuba and China only expressed mild concerns about the 'technical difficulties' with the list of speakers with China acknowledging that it 'could be improved'. Cuba stated that it was willing to consider a short term solution but would prefer if any changes only be made after the end of the first four-year cycle, as it did not see a real need to change the current system. On the other hand, Azerbaijan stated that a solution could not wait until the end of the first cycle. Various suggestions were made regarding how to deal with the statements of the many States that are not able to speak due to the limited time, including expanding the time for consideration of reports, reducing the length of statements, circulation of statements in the room, and reflection of their content in the outcome even when the statements could not be read out.

The Czech Republic (on behalf of the EU) and the UK were also concerned about efforts to manipulate the review process by 'artificially loading' the speakers' list to ensure a 'too positive picture' of the situation in the country under review. The US was 'deeply troubled' that some States were successfully avoiding any criticism of their human rights record by encouraging friendly governments and government sponsored NGOs to take part in the review, and thereby effectively silencing others that wanted to address areas for improvement. The adoptions of the reports on Cuba and China were particular examples of this.

Cuba lashed out at international NGOs during the general debate on the UPR arguing some had misused the influence they have as a result of the support and funding they receive from 'powerful sources'. It provocatively asked who could claim that international NGOs legitimise the UPR process through their participation. Cuba also queried who had given these NGOs that see human rights as a 'lucrative business' the right to 'insult governments and national NGOs', perhaps indirectly referring to the critical comments made by Human Rights Watch and Amnesty International on the efforts by some States to manipulate the NGO speakers list with government funded NGOs. Cuba then argued that national NGOs with a direct experience of the situation in the country under review should be given priority during UPR debates. Sri Lanka also criticised 'well-funded' NGOs for repeating themselves and argued that there was a need for a mechanism to keep these NGOs out of the room unless they had 'something new to say'.

NGO participation in the UPR process became an issue when the time allocated for NGOs was not respected during the adoption of the reports on Canada and Saudi Arabia. During the general debate, the Czech Republic (on behalf of the EU) stated that the time allocated for NGOs should be strictly respected, a point also made by the UK. Australia underlined that NGOs should continue to have a meaningful opportunity to contribute to the UPR. On the other hand, the Russian Federation stated that it was 'unacceptable' that some statements by NGOs that had not been made in the room (due to a lack of time), had been included in the outcome. ISHR expressed concern about lack of respect for the allocated time for NGOs. Amnesty International stated that the difficulties with the list of speakers for States 'paled' in comparison to the difficulties faced by NGOs in seeking an opportunity to speak. It explained that some Governments had supported NGOs they favour in gaining an opportunity to speak.

It is worrying that States continue to reject recommendations on the basis that they are not in line with the 'country's reality or situation', as in the case of China and Djibouti, or that they do not 'comply with domestic law' as stated by Djibouti. The UPR is aimed at enhancing human rights promotion and protection and 'cultural relativism' or domestic law cannot be put forward as arguments against complying with international obligations.

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<sup>66</sup> Czech Republic (on behalf of the EU), Brazil, Republic of Korea, Azerbaijan, China, Denmark, Chad, Pakistan (on behalf of the OIC), Cuba, Japan, Slovenia, Armenia, Morocco.

Several States and NGOs also again complained about the lack of timely translation of documents.<sup>67</sup> The Czech Republic (on behalf of the EU) underlined that the outcomes must be translated before they can be adopted. Pakistan (on behalf of the OIC) made a similar point. At the initiative of Mexico the Council adopted without a vote a resolution on the ‘issuance of the reports of the Working Group on the Universal Periodic Review in all official languages of the United Nations’ requesting the Secretary-General to provide the necessary support to ensure timely distribution of these report.<sup>68</sup>

Several States also used the general debate on the UPR to provide an update on their implementation of the UPR outcomes, including Bahrain (by its Minister of State for Foreign Affairs), the United Arab Emirates, Switzerland and Colombia. The Arab Commission for Human Rights welcomed this practice and called on all States to support it. It also suggested the establishment of a database on follow up by OHCHR.

### **Institutional issues**

The session reaffirmed several continuing institutional challenges in the Council’s work, and the emergence of some new issues. The pressure on independent voices in the Council continued both in relation to the High Commissioner, the special procedures and the participation of NGOs, mainly in the context of the UPR (discussed above).

### **Special procedures**

Although heavy criticism of the work of the Council’s special procedures has become a regrettably common feature of every Council session, these attacks rose to unprecedented levels during this session. The heaviest criticisms were levelled against the Special Rapporteur on the right to freedom of expression, Mr Franck La Rue, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Philipp Alston. Both Special Rapporteurs were said to have violated the Code of Conduct for special procedures mandate holders, which was adopted a part of the Council’s ‘institution-building package’ in 2007.<sup>69</sup> These allegations, in particular those levelled against Mr La Rue, were based on a fundamental disagreement about the Special Rapporteur’s interpretation of international law, as he was mainly reproached for questioning the Council’s decisions on the controversial issue of ‘defamation of religions’.

Mr Philipp Alston was ferociously attacked by Brazil, which claimed that Mr Alston had said at a press conference after the interactive dialogue that the official data on killings in the country was not credible. Brazil argued that in doing so he had showed prejudice and had violated the Code of Conduct for special procedures. It invited him to ‘revisit his prejudice and retire stereotypes’.

Mostly, these attacks came from well-known quarters, including Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Cuba (on behalf of NAM) and Sri Lanka. However, it also included States that are usually less openly critical, and have so far – while at times disagreeing with their findings – respected the integrity of the mandate holders, including Brazil, Malaysia, Indonesia and Qatar. It was therefore particularly disturbing to see Brazil question the legitimacy and expertise of the Special Rapporteur on extrajudicial executions. In the same vein, and somewhat representative of the misrepresentation of the purpose and functions of the special procedures system, Indonesia’s claim that it was ‘incompatible with the role of a Special Rapporteur as an elected position by the Council to question decisions by that same Council’ and that special procedures should ‘represent Council views’ was equally inappropriate.

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<sup>67</sup> Egypt (on behalf of the African Group), United Arab Emirates (on behalf of the Arab Group), Czech Republic (on behalf of the EU), Pakistan (on behalf of the OIC), Cuba, UK, Switzerland, Japan, Azerbaijan, Organisation Internationale de la Francophonie, Arab Commission for Human Rights.

<sup>68</sup> A/HRC/11/L.2.

<sup>69</sup> Resolution 5/1 and 5/2.

These virulent attacks in the Council plenary were used as an incentive for a draft resolution introduced by Cuba aiming at ‘enhancing the system of special procedures’. While Cuba introduced the text on behalf of the Non-Aligned Movement, it transpired that not all members of the NAM agreed on the initiative with Chile openly disassociating itself. Although Cuba claimed that the purpose of its text was to strengthen the system of special procedures and express confidence in the work of mandate holders, it appeared that the opposite was the case. By selectively quoting from the Code of Conduct and not making reference to the obligations of States to cooperate in good faith with mandate holders, the resolution seemed aimed at restraining the behaviour of special procedures rather than enhancing the functioning of the system.

Cuba held only one public informal consultation on its draft, which revealed significant divergence of views among States. While Cuba received support from Sri Lanka, Algeria, Syria, the Russian Federation, Indonesia, the Philippines and Vietnam, many other States including Norway, the US, Denmark (on behalf of the EU), Switzerland, Argentina, Chile, Canada, Australia and Mexico where fundamentally opposed to the initiative.

Arguments advanced in favour of the resolution included the suggestion that by increasing State confidence in the system of special procedures, it would contribute to the issuance of more standing invitations. The main concerns expressed by States centred on the negative message that the draft resolution conveyed to mandate holders, the undesired reopening of the delicate balance found in the institution-building package, and the reference to OHCHR which would have given it a substantive role in the implementation of the Code of Conduct. The US pointed out that a tendency has developed among some States to refer to breaches of the Code of Conduct when governments are simply unhappy with the findings of special procedures. Canada recalled that the Council already has mechanisms in place to deal with any concerns about mandate holders’ conduct. It seems that Cuba only very late in the session engaged with these concerns and sought a compromise on its draft.

On the last day of the session, Cuba introduced several key amendments requested during the negotiations including on the obligation of States to cooperate with mandate holders. These significant changes, which essentially altered the originally very negative thrust of the draft, enabled its consensual adoption. Nevertheless, several explanatory statements were made, expressing reservations about the resolution. Canada, after expressing its view that this resolution was a ‘deeply regrettable and inappropriate attempt to stifle and intimidate the system of special procedures’, disassociated itself from consensus on the resolution.

During the negotiation of the ‘institution-building text’ in 2006-2007, Cuba had been among the most vocal critics of the special procedures, undoubtedly mainly due to the existence of a Special Rapporteur on Cuba. Since the political compromise to abolish the mandate on Cuba, it has played a much more constructive role in the Council. However, its handling of the negotiations on this resolution may be intended as a signal to existing and incoming members of the Council that Cuba is ready to fight and has a large supportive base, should there be renewed criticism of its own human rights record in the future.

### **NGO participation**

Aside from the difficulties in participating in the UPR adoptions outlined above, NGOs continued to face some obstacles to their effective participation. Although there seemed to be a much lower number of NGO participants compared to the 10<sup>th</sup> session in March 2009, time management continued to be extremely unsatisfactory during the session, particularly for NGOs. Due to the delay accumulated early in the session, as it is the case at almost every session, speaking time for observers, including NGOs, was again reduced to 2 minutes for virtually all debates. The limited time available is very challenging for NGOs. It can only be hoped that the Council secretariat and the incoming President will take this issue seriously, to avoid these problems in the future.

Compared to the June 2008 session, the right of NGOs to deliver their statements without being interrupted by States was better respected. Thailand set a positive standard for responding to NGO statements in its right of reply to Human Rights Watch, which substantively clarified its position relating to the situation of migrants. In the past, States often resorted to points of order during the NGO statements, arguing that they were exceeding the permissible scope for debate under an agenda item. By using a right of reply, Thailand showed that diverging views do not exclude respectful dialogue on the issues. However, other States continued to attack the space for



NGOs whose views they do not share. Sri Lanka raised a point of order asking that there be more transparency as to where NGOs 'come from' and from whom they get their funding. Morocco tried to prevent an NGO from even taking the floor, claiming that the person about to deliver the statement was accredited in the name of two different organisations. Morocco demanded that the rules of procedure for NGO participation in the Council be properly drafted and distributed in writing before the next session in September. Regardless of the content of any NGO's statement, it is of concern that States attempt to prevent NGOs from taking the floor and to interfere with the internal process for NGOs to designate their speakers.

### Conclusions and next steps

While the Council's members continue to be divided on many human rights issues, the session concluded with important decisions on maternal mortality and the situation in the Sudan. The latter decision may have positive repercussions for the future as it marked a first breakthrough for a minority of States that are strong supporters of country specific action. This was much needed after the disappointing outcome at the special session on Sri Lanka.

The 4<sup>th</sup> cycle of the Council will commence on 19 June 2009. It is notable that the US has been elected as a member of the Council and it will be interesting to see how it will position itself as an active member. Norway has also become a member and it is hoped that its constructive approach to multilateral diplomacy can have a positive impact.

It is also noteworthy that Egypt has passed the coordination role of the African Group to Nigeria. This may be linked to role of the Ambassador of Egypt, Mr Hisham Badr, as one of the Vice-Presidents for the next year. The other Vice-Presidents are Ambassadors Mr Andrej Logar of Slovenia; Ambassador Mrs Dyan T. Djani, of Indonesia; Ambassador Mr Carlos Portales, of Chile. The regional coordinators for 2009 and 2010 are Nigeria (African Group), India (Asian Group), Azerbaijan (Eastern European Group), Colombia (GRULAC) and Norway (Western European and Others Group).

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