

# COUNCIL MONITOR

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## DAILY UPDATE HUMAN RIGHTS COUNCIL, 7<sup>TH</sup> SESSION 19 MARCH 2007

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### Overview

The morning session of the Human Rights Council (the Council) saw the opening of Item 9 on racism, racial discrimination, xenophobia and related forms of intolerance, and follow-up and implementation of the

*Durban Declaration and Programme of Action.* The Chairperson-Rapporteur of the Inter-Governmental Working Group for the effective implementation of the Durban Declaration and Programme of Action, Ambassador Jayatilleka, presented his report, and the President announced that the general debate on this issue would take place on Tuesday, 25 March. This was followed by the reports of the Special Rapporteur on contemporary forms of racism, Mr Doudou Diène, who was joined by Ms Gay McDougall, Independent Expert on minority issues, to report on their joint mission to the Dominican Republic. The final presentation of the morning meeting was the report of the President of the Working Group on people of African descent, Mr Peter Kasanda.

The major portion of the morning meeting was devoted to the replies of concerned States and the interactive dialogue on the reports of the Special Rapporteur on racism. The contentious issues of balancing freedom of expression and freedom of religion, and the defamation of religion and its relationship to racial hatred and Islamophobia resurfaced. Preparations for the Durban Review Conference and renewed commitments to the *Durban Declaration and Programme of Action* were also widely expressed. The unfortunate practice of attacking the whole system of special procedures by States whose human rights records have been critically examined by individual mandate holders also persisted during the dialogue.

The midday meeting of the Council began with a presentation of the report of the Ad Hoc Committee of the Durban Intergovernmental Working Group on the elaboration of complementary standards, although discussion on the matter was suspended until the general debate under Item 9 on Tuesday 25 March. The Council then took up the review, rationalisation and improvement of the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. All States and non-governmental organisations (NGOs) who took the floor supported the renewal of the mandate, although particular States and NGOs expressed opposition to the idea of incorporating religious discrimination and the defamation of religion into the mandate. Egypt, on behalf of the African Group, as sponsor of the mandate, referred to this opposition as a collective lack of political will to address new manifestations of discrimination.

The Council then moved to Item 10. Under this item, it considered the following reports:

- Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC);
- Special Representative of the Secretary-General on human rights in Cambodia;
- Independent Expert for technical cooperation and advisory services in Liberia;
- Voluntary Fund for Technical Cooperation.

The consideration of the report by the Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia was postponed to the following day.

Mr Titinga Frédéric Pacéré, the Independent Expert on the situation of human rights in the **Democratic Republic of the Congo** noted that considerable improvements had occurred in the country (a point that many States claimed was not given sufficient weight in his report) yet gross violations continue to occur in a climate of impunity, including sexual violence. Mr Yash Ghai, the Special Representative of the Secretary-General on human rights in **Cambodia**, highlighted the important positive effect the Extraordinary Chambers to the Court of Cambodia could have on the domestic court system, if the Government should accept the support of his mandate. He and a number of NGOs highlighted the widespread use of forced evictions and called for a moratorium on this practice. Cambodia was ‘disappointed’ about the negative focus of his report. Ms Charlotte Abaka, the Independent Expert for technical cooperation and advisory services in **Liberia**, and the States that intervened in the dialogue, welcomed the exemplary cooperation by the Government.

A member of the Board of Trustees (the Board) of the Voluntary Fund for Technical Cooperation (the Voluntary Fund) presented the Board’s report, and highlighted the Voluntary Fund’s possible complementarity with the fund established in the context of the upcoming universal periodic review (UPR).

Against all odds, the Council is back on schedule, and has even acquired half day's advance on its programme. Given that most of the original programme for 20 March 2008 is expected to be completed during the morning segment of that day, the afternoon will be spent in an informal meeting. The President announced that he would be holding an informal meeting at 3:00 p.m. with the 32 States that will be reviewed in the first two sessions of the UPR Working Group in April and May respectively. The meeting will be private.

## Item 9 – Racism, racial discrimination, xenophobia and related forms of intolerance

The Council began its consideration of Item 9 on racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the *Durban Declaration and Programme of Action*, with the oral report of the Chairman-Rapporteur of the Inter-Governmental Working Group for the effective implementation of the Durban Declaration and Programme of Action, Ambassador Jayatilleka of Sri Lanka. Ambassador Jayatilleka presented his report of the first part of the 6<sup>th</sup> session of the Working Group. The general debate on this report, in addition to the report of the Ad Hoc Committee on complementary standards will be held on Tuesday, 25 March 2008.

This was followed by the report of the Special Rapporteur on contemporary forms of racism, racial discrimination xenophobia and related intolerance, Mr Doudou Diène, after which the President of the Working Group on People of African descent, Mr Peter Kasanda, also presented his report.

### **Inter-governmental Working Group for the effective implementation of the Durban Declaration**

The Chairman-Rapporteur of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (the Working Group), Ambassador Jayatilleka, gave an oral statement on the report of the first part of the 6<sup>th</sup> session of the Working Group. He stressed that racism concerned all peoples and countries, and noted that there was also an individual responsibility to contribute to its eradication. He highlighted that racism had been at the root of many conflicts, and also posed a threat to international peace and security.

Ambassador Jayatilleka stated that the mandate of the Working Group provided a valuable opportunity for States to combat racism, and expressed his full commitment to achieving the goals of the Working Group. He informed the Council that the Working Group had held the first part of its 6<sup>th</sup> session in January 2008, where a new Chairman-Rapporteur was elected, and the agenda and the programme of work adopted by consensus. The Working Group had then commenced its substantive work by responding to the Council's request to assist the Preparatory Committee of the Durban Review by reviewing and submitting recommendations for the Durban Review Conference in 2009. The Working Group had agreed not to renegotiate the conclusions and recommendations adopted by consensus through its five sessions, and started a discussion on the review of its previous recommendations from sessions held between 2003 and 2007. The recommendations and conclusions were updated, deleted or italicised to indicate where irrelevant. Furthermore, the Working Group had decided to remove references to complementary international standards, as its mandate to do so had expired at its 5<sup>th</sup> session. All this had resulted in a document that will be submitted to the Preparatory Committee for the Durban Review. The first part of the 6<sup>th</sup> session ended with the adoption of the narrative part of the report on the future work of the Working Group.

Ambassador Jayatilleka concluded by informing the Council that the second part of the 6<sup>th</sup> meeting would take place later in 2008, and that the report of the 6<sup>th</sup> session would be submitted to the Council after its conclusion.

### Special Rapporteur on contemporary forms of racism

Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, presented his annual report in addition to reports on his missions to Latvia, Lithuania, and Estonia.<sup>1</sup> Mr Diène's presentation was accompanied by a shorter presentation by Ms Gay McDougall regarding their joint mission to the Dominican Republic.

Mr Diène began his presentation by drawing the attention of the Council to the key recommendations in his general report, and stated that there had been an increase in racism in the world, which posed the 'greatest threat to democracy'. He stated that any efforts to combat racism had to address the following challenges: erosion of the **political will** to combat racism, as exhibited by the non-implementation of the *Durban Declaration and Programme of Action*; the **rise in racist and xenophobic violence**, including violent attacks and killings of minority ethnic or religious groups; the '**political trivialisation**' of racism, as demonstrated by the spread of racist and xenophobic political platforms and the implementation of such views through governmental alliances and political parties; and the **ideological and scientific legitimization of racist and xenophobic discourse** and rhetoric by using them to explain social, economic and political problems, such as immigration. The Special Rapporteur expressed concern at the criminalisation of particular ethnic groups in addition to a 'security approach' to **immigration, asylum seekers, and refugees**. Mr Diène then proceeded to address the issue of the increase in manifestations of **religious intolerance** particularly with reference to Islam, and also stated that the **freedom of expression** was sometimes used to legitimate religious and racial hatred, an issue that received great attention during the interactive dialogue. The Special Rapporteur also raised the issue of multiculturalism due to globalisation, which he urged the international community to address with vigour.

Mr Diène also underscored some possible ways of addressing these challenges. He stated that greater political will to refrain from using politics and elections to promote racism, in addition to refraining from using racist platforms in politics was one possible way forward. He also highlighted the need for a renewed commitment to promote the *Durban Declaration and Programme of Action* at the Durban Review Conference to be held in 2009. Additionally, he stated that racism could be fought through **multiculturalism**, using two linked approaches. This could be achieved through a recognition and respect for diversity, and second, by respecting the balance and complementarity between all fundamental freedoms. With regards to the latter suggestion, Mr Diène cautioned that the Council should be vigilant that the right to freedom of expression remained protected while at the same time ensuring that it was not used to promote racism.

He invited the Council to reaffirm Durban as the 'most developed' response to these phenomena, and stressed that the **Durban Review Conference** provided an opportunity for firm political determination to be shown by the international community to assess the phenomenon of racism and address it through political, legal, and cultural measures. He cautioned that the failure of the Durban Review Conference would not only show the lack of political will of States towards addressing racism, but would give free reign for active and organised racial and religious hatred to spur further conflict. He reiterated the view that a world marked by rising tension due to differences between people and ideas and split by discrimination, called for an effective response by the United Nations.

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<sup>1</sup> A/HRC/7/19, 20 February 2008 (Report of the Special Rapporteur), A/HRC/7/19/Add.1, 21 February 2008 (Summary of cases transmitted to Governments and replies received), A/HRC/7/19/Add.2, 17 March 2008 (Mission to Estonia), A/HRC/7/19/Add.3, 5 March 2008 (Mission to Latvia), A/HRC/7/19/Add.4, 7 February 2008 (Mission to Lithuania), A/HRC/7/23/Add.3 (Mission to the Dominican Republic, joint report with the Independent Expert on Minority Issues). ISHR has prepared unofficial summaries of the reports by special procedures ('Reports in short'), available at [www.ishr.ch/hrm/council/reports\\_in\\_short](http://www.ishr.ch/hrm/council/reports_in_short).

He then briefly drew the attention of the Council to his key observations with regards to his **country missions** to Lithuania, Latvia, and Estonia. Mr Diène explained that the two reasons behind his visit to this region was that he wanted to see how these States dealt with their complex heritage of multiple occupations and antagonism between ethnic groups; and also how countries such as these who have not previously experienced large-scale migration were preparing for migrants and refugees who are not of European origin.

He also mentioned his visit to Mauritania, and commented that while the democratic context of the country provided a 'sound basis' for dealing with racism, he was struck by the 'deep-seated racism' that pervaded the country.

Mr Diène also drew the attention of the Council to his **joint mission** to the Dominican Republic with the Independent Expert on minority issues, Ms Gay McDougall. He highlighted the extent to which racism pervaded the country, and the non-acknowledgement of both the Government and civil society of racism as a serious problem because of the historical and cultural depth of racism due to colonialism and slavery. The Special Rapporteur also expressed his acute dismay at the 'violent campaign' against him and the Independent Expert and the hostility of the Government of the Dominican Republic towards his joint mission. He ended by saying that his recommendations were contained in his report, and that the Dominican Republic should acknowledge the reality of racism in this country and take immediate action to remedy the situation.

#### ***Presentation by Independent Expert on minority issues***

Ms Gay Mc Dougall, Independent Expert on minority issues, briefly took the floor to provide some comments on the joint mission to the Dominican Republic with the Special Rapporteur on racism. She stated that her focus had been the community of **people of Haitian descent** who had lived in the Dominican Republic for decades, including second and third generation citizens of the Dominican Republic who are of Haitian origin. She highlighted the Government's denial of birth certificates and identity documents to persons of Haitian origin, and refusal to regularise the legal status of such persons as some of the key issues affecting this community in the country. Additionally, she also said that discrimination due to national origin, skin colour, and racial origin afflicted persons of Haitian origin. She highlighted the important contribution made by Haitians and persons of Haitian origin to the economy of the Dominican Republic and also stated that the failure to make the distinction between citizens or residents of Haitian origin and illegal immigrants had led to the extreme vulnerability of persons of Haitian origin, the denial of their rights, and the denial of their legitimate expectations of citizenship. She emphasised that such discrimination was against the constitutional law of the Dominican Republic, which could result in the effective statelessness of persons of Haitian origin in the country. She ended by urging that the Dominican Republic implement one of the key recommendations of the joint report, which called for the urgent reform of the current immigration law to bring it in line with the Constitution. She ended by saying that the rights of all Haitians should be respected.

#### ***Concerned countries***

**Estonia** first took the floor to thank Mr Diène for his report and for his visit, which was the first visit of a special procedure of the Human Rights Council to the country since Estonia issued a standing invitation to all special procedures in 2001. Estonia highlighted the open and constructive dialogue that it had engaged in with Mr Diène, and reiterated that Estonia would attentively consider all recommendations. It then focussed on a few issues mentioned in the report. In response to the Special Rapporteur's reminder that fighting racism should be a 'constant commitment' and that a holistic approach be taken to addressing the issue, Estonia mentioned the new draft Equality Act, which aims at providing protection for all persons from discrimination. Secondly, Estonia mentioned the new 'strategy for integration of society', which it had adopted to promote 'democratic multiculturalism' and to involve minorities in Estonian society. Regarding Mr Diène's concerns over Estonia's naturalisation procedures, the delegate of Estonia highlighted the efforts of the Government to make acquisition of citizenship in the country an easier process. Estonia also assured that it promotes open

and public discourse on all issues of interest to the public, and ended by saying that it would carefully analyse the recommendations of the report and was ready to continue dialogue with the Special Rapporteur.

**Latvia** then took the floor to thank Mr Diène for his visit, and began by noting the extensive consultations that he had held with civil society, government officials, and minority groups in the country. The delegate of Latvia drew attention to the institutional and legal efforts of the Government to address racism and to provide redress to victims, and noted with appreciation the Special Rapporteur's recognition of the contribution of the Ombudsman in combating racism. Latvia affirmed the view of the Special Rapporteur that it was important to condemn racist behaviour and provided examples of government initiatives to address racism, such as through training of judges on legal provisions prohibiting discrimination. The delegation of Latvia also emphasised that the Government pays particular attention to the needs of the Roma community in the country, and that an action plan to tackle unemployment and access to education was developed in consultation with this community. It reaffirmed its commitment to fighting racism and assured that the Government would carefully study the recommendations made in the report. Latvia ended by saying that it hoped that the practice of cooperating with the special procedures of the Council through the extension of standing invitations would be followed by other States.

**Lithuania** next took the floor to comment on Mr Diène's visit, and also reinforced the statement of Latvia that all States should issue a standing invitation to special procedures and for mandate holders to have free access to discharge their mandates. Latvia emphasised that there had been a cooperative spirit before, during, and after the visit and that the Special Rapporteur had engaged in extensive consultations and had also travelled to remote parts of the country during his visit. Lithuania affirmed that all recommendations would be taken very seriously, and drew attention to the fact that some were already being implemented, such as the amendment of the *Criminal Code*, to address racist crimes more fully. The issue of integration of Roma people was also being addressed. Lithuania ended by saying that it viewed the report of the Special Rapporteur as a very useful tool to aid its efforts in combating racism and that it regarded the Special Rapporteur as a cooperative mechanism to enhance Lithuania's activities in fighting against racism.

**Mauritania** stated that it noted 'with interest' the report of Mr Diène, and was satisfied with his positive observations but would like to comment and provide clarifications on certain other issues raised in the report. Mauritania stated that racial discrimination had never been a part of its society, and that slavery had been prohibited since independence and was only practiced in remote parts of the country afflicted by acute poverty and destitution. It mentioned that the Government had set up a fund to abolish slavery and that the practice had been criminalised. Mauritania also claimed that it did not pursue any linguistic policy and that all ethnic communities were encouraged to speak their own languages. It also asserted that there was no discrimination in employment to public office, and that all Mauritaniens were encouraged to participate. It reiterated that it is in full compliance with all its human rights obligations and that it is committed to implementing the *Durban Declaration and Programme of Action*. Mauritania ended by saying that it would provide Mr Diène with extra reports and additional information to ensure that his report was 'exhaustive'.

The **Dominican Republic** stated that it welcomed the work of the special procedures and to having an open and frank dialogue, but that it called for the attention of the Council to the *Code of Conduct for special procedures mandate holders* (the code of conduct).<sup>2</sup> It stated that the objectives of the code of conduct are undermined when the work of a special rapporteur is conducted without allowing the State party to participate sufficiently. It then stated that it had tried to contribute to the joint report of Mr Diène and Ms McDougall despite limited time available, and called on the Council to 'take necessary measures' to ensure that this was not reproduced in the future. It then proceeded to recount the 'inaccuracies' in the joint report, with particular reference to the documentation of legal status, denial of Dominican nationality and statelessness of persons of Haitian origin. It stated that it was in compliance with the *Convention on the Reduction of Statelessness*

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<sup>2</sup> Resolution 5/2, adopted on 18 June 2007.

(1961) with regards to the issue of statelessness, and also said that when children of Haitian descent were born in the Dominican Republic they could acquire Haitian nationality, and that nationality was only an issue when children were born of unknown parents. It also addressed the case of sugar plantations in San Pedro de Macorís visited by the joint mission, and asserted that both Dominicans and Haitians are entitled to equal treatment, healthcare, and education. With regards to education in general, the Dominican Republic stated that all minors were entitled to primary education whether or not their parents had Dominican citizenship. It ended by saying that no other Government or people had provided as much support to the nationals of Haiti as the Dominican Republic, and that it could not continue to shoulder these responsibilities without the cooperation of the international community.

### **Interactive dialogue**

The interactive dialogue that followed the presentations of the special procedures proceeded with comments on many different aspects of the issue at hand. Many countries directly addressed the issues outlined in the report of Mr Diène, such as the lack of political will to address racism,<sup>3</sup> the use of political platforms to incite racism,<sup>4</sup> the ideological legitimization of racism,<sup>5</sup> and racism against migrants.<sup>6</sup>

Many speakers also expressed their support for implementation of the *Durban Declaration and Programme of Action* and looked forward to the **Durban Review Conference** in 2009.<sup>7</sup> Brazil delivered a strong statement calling for financial and personnel support from the Office of the High Commissioner for Human Rights (OHCHR) to hold a regional conference in preparation for the Durban Review Conference, and also to facilitate the participation of civil society organisations in this regional conference that would be hosted by Brazil in June 2008. Several NGOs expressed their grave concern that the Durban Review Conference in 2009 should not be tainted by the anti-Semitism and racism that afflicted the first Durban World Conference Against Racism.<sup>8</sup>

The earlier statement of the Dominican Republic that special procedures mandate holders comply with the **code of conduct** was raised yet again.<sup>9</sup> Cuba, on behalf of the Non-Aligned Movement (NAM), stated that it supported the view of the Dominican Republic that States should be granted enough time to elaborate their responses to draft reports of results of country visits by special procedures mandate holders, and urged that OHCHR ensure that all future reports are in compliance with *Resolutions 5/1* and *5/2*.<sup>10</sup> Uruguay endorsed the complaint of the Dominican Republic and said that timelines had not been respected with reference to the Government's input and that this should be done before making reports public. It also stated that it hoped that the code of conduct would be respected in the future.

One issue that was repeatedly raised during the course of the morning by many speakers was the balance between **freedom of expression** and the **freedom to practice one's religion**.<sup>11</sup> Slovenia, on behalf of the European Union (EU), posed a question to Mr Diène regarding his assertion in the report that there should be a defining point when freedom of expression could be legitimately limited to protect the freedom of religion,

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<sup>3</sup> Pakistan (on behalf of the OIC), Djibouti, Republic of Korea, Egypt (on behalf of the African Group).

<sup>4</sup> Pakistan (on behalf of the OIC), Djibouti, Egypt (on behalf of the African Group), Algeria, Cameroon.

<sup>5</sup> Pakistan (on behalf of the OIC), Bangladesh.

<sup>6</sup> China, Republic of Korea, Bangladesh, Cameroon, Association of World Citizens.

<sup>7</sup> Cuba (on behalf of NAM), Holy See, Brazil, China, Djibouti, Republic of Korea, Algeria, Cameroon, Palestine (on behalf of the Arab Group).

<sup>8</sup> European Union of Jewish Students, World Jewish Conference.

<sup>9</sup> Cuba (on behalf of NAM), Uruguay.

<sup>10</sup> *Resolutions 5/1* and *5/2* refer to the institution-building package of the Council and the code of conduct respectively, adopted by the Council on 18 June 2007.

<sup>11</sup> Slovenia (on behalf of the EU), Indonesia, Pakistan (on behalf of the OIC), Bangladesh, Algeria, Morocco.

and also mentioned the drafting of a General Comment<sup>12</sup> by the Human Rights Committee on Article 20<sup>13</sup> of the *International Covenant on Civil and Political Rights* (ICCPR) in this regard. Slovenia asked if members of the Council could be involved in a seminar<sup>14</sup> that was being convened on the relationship between the freedom of expression, freedom of religion, and non-incitement to racial hatred. Indonesia asked Mr Diène if identifying a threshold for limiting the freedom of expression would not prove controversial, and said that different standards applied in different countries. Pakistan, on behalf of the Organization of Islamic Conference (OIC), stated that the abuse of the freedom of expression and political association promoted the trends identified by the Special Rapporteur as contributing to the growth of racism. Pakistan added that States should institute legitimate limitations on the exercise of freedom of expression to address ‘racist agendas’. Bangladesh supported this view by saying that the media played a role in stereotyping Muslims as terrorists and that hurting religious sentiments under the pretext of the freedom of expression was not conducive to an appropriate environment to fight racism. Morocco called for a balance between freedom of expression as enshrined in the ICCPR and respect for different cultures and religions. Algeria supported the view of Pakistan and commended the work of the Ad Hoc Committee on the elaboration of complementary standards<sup>15</sup> to strengthen and update international instruments against racism, and welcomed addressing protection gaps such as religious intolerance, as exhibited by the phenomena of Islamophobia and Christianophobia.

The related issues of **defamation of religions**<sup>16</sup> and growth of **Islamophobia**<sup>17</sup> also were subjects of statements by many countries that took the floor. Pakistan called for OHCHR to take the lead in holding consultations to examine the possibility of drafting a convention to combat defamation of religions and to promote religious tolerance, in order to address the current ‘juridical vacuum’ on this topic. Egypt (on behalf of the African Group) also expressed its concern regarding the defamation of religions and asserted that it was the obligation of the international community to criminalise this sooner rather than later. Indonesia advocated that defamation of religion be addressed through intercultural dialogue. The Republic of Korea stated that while defamation of religions was an issue, international law provided both for protection of the religious beliefs of individuals as well as for professing different religious beliefs. Defamation of religions was mainly raised in relation to the negative stereotyping of Muslims and Islam, in particular in the fight against terrorism, which was addressed as a ‘new form of racism’.<sup>18</sup>

The inclusion of the issue of discrimination on the grounds of **caste** in the report of the Special Rapporteur predictably elicited strong responses from India and Nepal.<sup>19</sup> India stated that it did not consider discrimination on the grounds of caste as falling within the scope of Mr Diène’s mandate, and that it completely rejected his approach as caste was not racial in origin and that ‘descent’ as referred to in Article 1 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) only applied to racial descent. Nepal supported this view and stated that the caste system was peculiar to South Asia and was a product of a ‘social division of labour’ rather than race, and that there was no ‘scientific evidence’ to show that caste had anything to do with race. It also rejected that this issue fell within the mandate of the Special Rapporteur.

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<sup>12</sup> Also raised by the Holy See.

<sup>13</sup> Article 20(2) of the ICCPR states that: ‘Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’.

<sup>14</sup> Egypt (on behalf of the African Group) welcomed the convening of this seminar.

<sup>15</sup> Also raised by China as an ‘effective measure to tackle racism’ and Cuba (on behalf of NAM).

<sup>16</sup> Indonesia, Republic of Korea, Egypt (on behalf of the African Group).

<sup>17</sup> China, Djibouti, Bangladesh, Algeria, Morocco.

<sup>18</sup> China, International Committee for the Respect and Application of the African Charter on Human and People’s Rights (CIRAC).

<sup>19</sup> Also addressed by the National Human Rights Commission of India. The International Movement against All Forms of Discrimination and Racism also raised the issue of caste with reference to Japan.



Chile questioned the Special Rapporteur about the connection in his report between proselytism<sup>20</sup> and Christianophobia in parts of Africa, Asia, and Latin America and asked if the former was directly related to the latter.

France addressed a portion of the report relating to DNA tests of asylum seekers in France. It stated that Mr Diène was misrepresenting them, and that the tests were in fact aimed at accelerating the procedure of reconciling asylum seekers with their families if they had a parent resident in France. It also stated that it did not have any procedures for governmental approval of agents of worship, and asserted that France severely punished any act aimed at individuals due to their religion.

The Russian Federation expressed its extreme dissatisfaction at the country visits of the Special Rapporteur to Latvia, Lithuania, and Estonia, and criticised what it called his ‘wilful interpretation of historical events’. It expressed its hope that the next mandate holder would better meet the requirements of the post and would refrain from reaching ‘hasty conclusions’ about sensitive points in history.

Israel raised the issue of anti-Semitism, and commended the Special Rapporteur for criticising the ‘diatribes’ and hate speech of the President of the Republic of Iran against Jews and the Jewish faith. It also expressed its wish that the mandate not be diluted during the process of the review, rationalisation and improvement of mandates.

Haiti ‘applauded’ the proposal of Austria to extend the mandate of the Independent Expert on minorities, and then focussed on the denial of nationality of children of Haitian descent in the Dominican Republic. It reiterated that Dominican law was not in line with its Constitution, and called for both parties to work together to resolve this issue.

Palestine (on behalf of the Arab Group) raised the issue of Israeli discrimination against Arabs in the occupied territories.

### ***Reply of the Special Rapporteur on racism***

Mr Diène took the floor at the end of the interactive dialogue to address some of the comments. He began by stating that there was a need to revisit the **Durban** process, and took note that the final document at the first Durban Conference had been adopted unanimously and did not express discrimination in any way.

He also stated that the complexity of balancing the **freedom of expression** with other rights had been well-addressed by the ‘safety-barrier’ in the ICCPR, which prohibited the incitement of hatred, despite the fact that the freedom of expression had been used to incite hatred and genocide. He affirmed the importance of freedom of expression and stated that action had to be taken to prevent organised groups such as political parties from using racist discourse. He highlighted that political parties were using national identity as a way to oppose multiculturalism, and that the international community should at all costs avoid the ‘ghettoisation’ of different groups on the basis of their identity.

The Special Rapporteur reiterated his view that **caste-based discrimination** was one of the oldest types of discrimination and that it was extremely destructive in nature. He called for this form of discrimination to be addressed in accordance with the views of the Committee on the Elimination of All Forms of Racial Discrimination.

He clarified the relationship between **proselytism and Christianophobia** and stated that certain aggressive evangelical groups were responsible for this, such as in the case of Brazil.

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<sup>20</sup> Conversion.

Mr Diène ended on an urgent note, saying that the international community needed to remobilise and address the issue of racism in order to avoid serious situations such as that of Kenya or Srebrenica.

### ***Reply of the Independent Expert on minority issues***

Ms McDougall briefly took the floor to state that there was ample evidence to support the views expressed in the joint mission report to the Dominican Republic, and that both herself and the Special Rapporteur on racism recognised the complexity of sharing a border between the Dominican Republic and Haiti and also the need for international support for the mutually beneficial development of both countries.

### ***Working Group on people of African descent***

The Chairperson of the Working Group of Experts on People of African Descent, Mr Peter Lesa Kasanda, presented the report of the 7<sup>th</sup> session of the Working Group. During the 7<sup>th</sup> session, the Working Group reviewed and analysed the observations and conclusions adopted in previous sessions, in response to requests by the Preparatory Committee for the Durban Review Conference for the Working Group and other relevant mechanisms to assist the Preparatory Committee by submitting recommendations.

Mr Kasanda stated that the report highlights issues of racial discrimination against people of African descent in various areas. He noted that racism was about victims, and that the issue of reparation would be dealt with in the context of the Durban Review Conference. Mr Kasanda pointed out that people of African descent are the most vulnerable and discriminated against in the administration of justice, and expressed the need for specific legal mechanisms to protect their rights in this area. Mr Kasanda also stressed that access to education was a major issue, and noted the failure of schools to include the important contribution of people of African descent to world history and civilisation in their curricula. With regard to health, he noted the importance of addressing the issue of violent deaths amongst African youths as a public health problem, and not just as a law-and-order matter. Furthermore, he stressed the need to address the multiple forms of discrimination against women of African descent. Mr Kasanda also suggested that the United Nations Development Programme (UNDP) could establish a racial equality index as part of its human development index. He also stressed the powerful role the media in shaping public opinion, and stated that the Working Group had felt that a voluntary code of conduct be set up to regulate the portrayal of racist stereotypes by the media, which could be monitored by the International Federation of Journalists. Finally, Mr Kasanda emphasised that involving people of African descent in political, social and cultural activities was not to be viewed as a favour, but as an entitlement of their human rights.

To conclude his presentation, Mr Kasanda informed the Council that the Working Group had formulated 17 practical and concrete recommendations, which would be forwarded to the Preparatory Committee for the Durban Review Conference.

### ***Interactive dialogue***

Several speakers thanked the Working Group for its work.<sup>21</sup> Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group) and Algeria agreed with the Working Group that the negative portrayal of Africa and of people of African descent in the media needed to be addressed, and that internationally recognised media standards were needed to eliminate these prejudices. Egypt highlighted Mr Kasanda's high level of expertise, and together with Algeria, fully endorsed the recommendations made by the Working Group.

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<sup>21</sup> Pakistan (on behalf of the OIC), Algeria, Egypt (on behalf of the African Group), Association of World Citizens.

### **Reply of the President of the Working Group**

In his concluding remarks, Mr Kasanda thanked the delegations for their support and encouragement, and stated that the recommendations made by the Working Group were condensed, concrete, and could be readily implemented. He stressed the need for States to create national institutions to advance the rights of people of African descent. These institutions should draw on the input of people of African descent to devise national action plans. He concluded by thanking the African Group for its continued support and commitment.

### **Report of the Ad-Hoc Committee on the elaboration of complementary standards**

Before suspending Item 9 until Tuesday 25 March, the acting President gave the floor to Mr Idriss Jazairy as Chairperson-Rapporteur of the Ad-Hoc Committee on the elaboration of complementary standards to provide the an oral summary of the report of the first part of its first session, which took place from 11-21 February 2008. Mr Jazairy first explained the process of the session, which began with a request to States to begin work on an overview of all contributions on the issue, including the conclusions and recommendations on the Intergovernmental Working Group to follow up on the Durban Declaration and Programme of Action.<sup>22</sup> The Ad Hoc Committee also considered the ‘Report on the study by the five experts’,<sup>23</sup> and the study by the Committee on the Elimination of Racial Discrimination (the Committee).<sup>24</sup> Regarding the former, the Ad Hoc Committee noted its recognition of the existence of a normative gap in human rights education, and recalled Council *Resolution 6/10* in requesting that the Human Rights Council Advisory Committee prepare a draft declaration on human rights education and training. It referred back to its own report and recognised that while the Ad-Hoc Committee was best placed to make suggestions in relation to improving procedures, the Ad Hoc Committee ‘was the appropriate body to elaborate complementary standards’.

The Chairperson stated that the next meeting of the Ad-Hoc Committee would be sometime in 2008, and the hope was that disagreements on the need for complementary standards could be overcome so that concrete proposals could be made in time for the next session.

### Review, rationalisation and improvement of special procedures mandate

The Council continued the review, rationalisation and improvement of all special procedures mandates. Based on the institution-building package contained in *Resolution 5/1* adopted in June 2007, the Council has set out to review each special procedures mandate over the course of its second cycle. The Council started this review at its 6<sup>th</sup> session in September 2007. So far, it has reviewed 12 mandates, and all of them have been renewed.<sup>25</sup> During its 7<sup>th</sup> session, the Council is asked to review 14 mandates.<sup>26</sup>

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<sup>22</sup> A/HRC/AC.1/1/CRP.2

<sup>23</sup> Report on the study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance, A/HRC/4/WG.3/6

<sup>24</sup> Study by the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures, A/HRC/4/WG.3/7

<sup>25</sup> Four country-specific mandates (those on Haiti, Burundi, Liberia and the Sudan) and eight thematic mandates (on food, international solidarity, arbitrary detention, indigenous peoples, internally displaced persons, housing, health and human rights while countering terrorism) were renewed. See ISHR’s overview of the first part of the 6th session as well as the *Daily Updates* of the resumed 6<sup>th</sup> session held in December 2007, available at [www.ishr.ch](http://www.ishr.ch).

<sup>26</sup> See the latest version of the programme of work, available at [www2.ohchr.org/english/bodies/hrcouncil/docs/7session/PoW170308.doc](http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/PoW170308.doc)

## Special Rapporteur on contemporary forms of racism

Egypt first took the floor, on behalf of the African Group and as sponsor of the mandate on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to state that the mandate proved to be instrumental in directly addressing those who suffer from contemporary forms of racism since its inception. It pointed out that the phenomenon is taking on new forms, and hence a periodic discussion was required to deal with this. It cited that initially the key feature of the mandate included the ability to conduct country visits and receive communications, which was supplemented in successive resolutions to address all forms of religious discrimination. Egypt stated, however, that challenges must be overcome before the fulfilment of this mandate, such as the lack of political will of States, weak legislation and policy measures, and the erosion of existing international and national legal frameworks. The rationale for the extension of the mandate is self-evident in that studies show that racism is increasing in a systematic manner, directly impacting billions of lives. It concluded by arguing that serious efforts must be made to address this.

Next, Mr Diène addressed the Council by identifying two challenges facing the mandate. The first is that the world context is too complex for a simplistic understanding of the meaning of the mandate. The second challenge is the wording and concept of the mandate itself. Mr Diène took the term 'contemporary forms of racism' as an example, observing that although many States use it as a basis of criticism, upon reflection we can realise that no form of racism is actually 'contemporary'. Every manifestation is a result of historical construct, and the concept of historical rootedness is necessary to capture the entirety of the phenomenon.

The complexity of the concept of racism is also a challenge, of which Mr Diène identified three areas. The first is the argument presented by Nepal and India that caste is not a form of racism, which the Special Rapporteur refuted with reference to the Committee's General Recommendation no. 29 regarding descent.<sup>27</sup> The second is the interpretation of racism after 11 September 2001, which had led to whole communities being singled out as terrorists, and a 'clash of civilisations' worldview, which has become a political reality. The third area is the break of dialogue between the victims of racial discrimination, which results in an absence of solidarity and mutual comprehension. Mr Diène stressed that racism cannot be fought only through legal means and must be constantly combated through the necessary political will.

### *Interactive dialogue*

The President of the Council thanked Mr Diène for his 'unusual presentation'. Most of the ensuing speakers expressed their gratitude to Mr Diène for raising the profile of the mandate and all stated their support for the renewal of the mandate.

Slovenia (on behalf of the EU) highlighted that a challenge remains weak domestic legislation on the part of States, and proposed that mandates include monitoring the establishment of national and regional bodies to deal with this. It also stressed the need for an early warning mechanism component to the mandate, citing the positive case of the Rapporteur's recent intervention in relation to Kenya. Kenya later expressed its support towards this early-warning mechanism, along with its political will to strengthen the mandate.

Pakistan (on behalf of the OIC) highlighted the need to tackle new manifestations of racism with a heads-on approach. It thanked the Special Rapporteur for tackling Islamophobia and its relation to freedom of expression, stressing that States must ensure that freedom of expression is not used as a justification for incitement to hatred, and asked him to coordinate with his successor the progress made on this subject. This point was also echoed by Azerbaijan. The Islamic Human Rights Commission observed that racism has been on the increase under the guise of legitimate debate and has permeated mainstream politics, which should be addressed by the mandate.

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<sup>27</sup> See [www2.ohchr.org/english/bodies/cerd/comments.htm](http://www2.ohchr.org/english/bodies/cerd/comments.htm)

A few States expressed their concerns regarding the content of the mandate. Switzerland stated that the Rapporteur might continue to conduct joint studies with other relevant special procedures, keeping within the boundaries of their respective mandates. The Russian Federation expressed that the Special Rapporteur should focus on the contemporary world and stay away from historical discourses. India restated that it believes that caste is beyond the scope of the mandate of the Special Rapporteur, and recalled that it does not agree with the Committee's reading of caste-based descent as falling under the definition of racial discrimination. Senegal stressed that there is a need to address invisible forms of racism as well as the salient ones. Nigeria requested that the distinction between the concept of freedom of religion and the promotion of that right be clarified.

The NGOs that spoke, for the most part, expressed their opinions regarding the mandate of the Special Rapporteur. The Beckett Fund for Religious Liberty argued that consideration of religion should be excluded from the mandate, as it does not fall under the definition of racism by virtue of the fact that it is immutable. The International Network for the Prevention of Elder Abuse called for the consideration of the concept of 'agism', or discrimination based on age, by the Council. The Comisión Jurídica Para El Autodesarrollo de Los Pueblos Originarios Andinos argued that the mandate of the Special Rapporteur should be expanded so that s/he can examine how racism has distorted the interpretation of history and present an accurate portrayal of civilizations. The International Movement against All Forms of Discrimination and Racism expressed its thanks to the Special Rapporteur for his work and sought a continuation of the mandate. UN Watch stated that 'words that kill' that have the potential to quickly morph into acts of genocide, referring to Rwanda, Darfur, and Iran in its statement. It was interrupted by Egypt and Iran on points of order, requesting that it address the subject at hand.

Mr Diène then took the floor to give his final comments. He first highlighted the need to look at the link between relevant mandates as to avoid overlap. He also pointed out that the fight against racism is a global exercise, and there needs to be a formal link with the Committee. This would streamline the Special Rapporteur's job when he visits a new country. Lastly, Mr Diène expressed his wish that measures be taken to strengthen follow-up to his recommendations. The President thanked Mr Diène for all his contributions as mandate holder.

Egypt also took the floor for its concluding statement. It recognised the complexity and cross-cutting nature of the mandate, and the need for consultation and cooperation. It stated that it would do its best to revise the renewed mandate so that it will gain maximum support, and expressed its hopes that all parties involved will send their support to the necessary revisions. It cautioned however, that reluctance to incorporate new elements would be symptomatic of a lack of political will by certain member States to effectively address the issue.

## Item 10 – Technical assistance and capacity building

### **Independent Expert on the situation of human rights in the Democratic Republic of the Congo**

Presenting his annual report to the Council, the Independent Expert on the situation of human rights in the Democratic Republic of the Congo, Mr Titinga Frédéric Pacéré began by stating the he had visited the country twice since his last appearance before the Council in September 2007 to follow recent developments in the country. He noted that while there were notable improvements, the situation remains a major concern, with systematic violations being perpetrated by all forces involved in the conflict, especially in the eastern

part of the country. Mr Pacere further expressed his concern with the escalating violence in the lower DRC due to confrontations between the army and political and religious groups.

He noted that a climate of impunity remained despite promises made to address the situation. The failure of the Government to sanction perpetrators and the promotion of perpetrators in the army has raised serious doubts around the credibility of the justice system. He stressed the need to clarify the line between the military and the civilian jurisdiction in strengthening the judicial system and facilitating measures dealing with sexual violence. In addition, the Independent Expert referred to the mapping exercise of OHCHR on grave humanitarian and human rights violations committed from 1993 to 2003, and stated that this would be an important tool for the Government in drafting its strategies for transitional justice. Finally, he stressed that economic, social and cultural rights remained remote for the majority of the population.

The Independent Expert commended the Government for convening the Goma Conference on Peace, Security and Development in January 2008, which sought to put an end to the conflicts in the north and south Kivu and led to the signing of an Act of Commitment by all parties of the conflict. He also drew attention to the signing of an Act of Commitment on 23 November to fight impunity for sexual violence, which continues to be perpetrated with alarming intensity.

Speaking as a State concerned, the DRC regretted that the Independent Expert had limited his report to highlighting certain cases of human rights violations rather than formulating concrete proposals to improve the situation of human rights in the country through technical assistance programmes. It reminded the Council that technical assistance was one of the main aspects of the mandate and that two projects on institutional and operational capacity building, which did not benefit from the attention or support of the Independent Expert, were sent to OHCHR.

### ***Interactive dialogue***

The DRC stressed that the situation of human rights had improved since the end of the hostilities arising from transparent and democratic elections followed by the international community, and the establishment of new political institutions. It noted that residual human rights violations identified in the Goma Conference concerned only two out of the 47 territories. Regarding sexual violence, the DRC explained that it was determined to more harshly punish perpetrators under recently enacted penalties for sexual crimes. It also noted that after a campaign against sexual violence launched by the Ministry of Justice and Human Rights and human rights NGOs, the number of violations committed by armed forces and the national police officials had decreased. It stated that concerning the recruitment of children to combat, the *Goma Agreement* addressed the issue, and the President's proposed programme, entitled 'five actions to change the Congo', addresses concerns related to health, education, water, electricity, labour, and basic infrastructure.

Most State thanked the Special Rapporteur for his report and for sharing his concerns. Nevertheless, Tunisia and Algeria re-iterated the DRC's criticism that positive developments were not duly reflected in the report. Tunisia asked Mr Pacéré's what his contributions were in terms of technical assistance in this instance, and Algeria pointedly asked what the Independent Expert had contributed in terms of technical assistance during the term of his mandate.

Many States and the International Commission of Jurists (ICJ) voiced their concern with the widespread practice of violence against women.<sup>28</sup> Belgium noted that the practice was not restricted to armed groups but was widespread. Slovenia (on behalf of the EU) asked what measures should be undertaken by the Government to prevent these actions and requested further elaboration on Mr Pacéré's assessment of the

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<sup>28</sup> Slovenia, Canada, Belgium

situation. Belgium questioned Mr Pacéré on what role the mandate holder could play to prevent sexual violence.

Many States and the ICJ expressed their concern with the scenario of impunity in the country. Belgium noted that despite the *Goma Agreement*, warlords continued to be active in perpetrating human rights violations.<sup>29</sup> The ICJ requested the Independent Expert to indicate the obstacles faced so as to resolve the problem and questioned what further assistance the mandate holder could give to the Government so as to hold perpetrators accountable. Belgium stated that one of the main priorities of the mandate should be to improve the capacity of the judicial system.

Regarding the role of the international community, Tunisia stressed the need to encourage and follow the efforts made by the DRC. Slovenia wondered what the international community could do to better support the efforts of the Government, in particular regarding women and children in Kivu. Belgium wondered what could be done to prevent the recruitment of children to fight in the conflict.

Finally, many delegations expressed their support to the renewal of the mandate.<sup>30</sup> Slovenia (on behalf of the EU) and Belgium noted that the Independent Expert was a vital instrument in the reestablishment of democracy in the Congo. Slovenia added that the Independent Expert played a key role in engaging with donors to highlight the need for on-going and further assistance and questioned Mr Pacéré on what he thought could be improved in the mandate.

The Independent Expert thanked the States for the many recommendations given so as to develop the mandate. He explained that throughout the mandate he took a comprehensive approach and stressed the importance of issuing a clear report. Regarding the situation of sexual violence in the lower DRC, he said he did not have enough time to fully interpret the events and its causes. However, he stated that the situation was serious and requires the attention of the international community. Furthermore, he voiced the need to train armed forces officials on human rights, civic conduct and morals. To improve the mandate, he noted that there was a lack of secretarial assistance from OHCHR, which resulted in an overload of work. Finally, he stressed the need to facilitate the follow up process of the *Goma Agreement* and stated that the international community must do its utmost to ensure justice and fight impunity.

### **Special Representative of the Secretary-General on human rights in Cambodia**

Mr Yash Ghai, the Special Representative of the Secretary-General on human rights in Cambodia, presented his annual report to the Council.<sup>31</sup> In his oral presentation, he focused on the rule of law in Cambodia, the Extraordinary Chambers in the Courts of Cambodia for trial of Khmer Rouge leaders (Extraordinary Chambers), and the electoral law in place in Cambodia.<sup>32</sup> Mr Ghai affirmed that there has been some progress towards the rule of law in the country since the adoption of the Constitution, but it has been slow. He welcomed the enactment of the *Code of Civil Procedure* and the *Penal Procedure Code*, but he regretted that other laws promised by the Government have still to be adopted. He mentioned the slow progress in defining a framework to protect and register rights of indigenous people to their land and the delay in adopting a law against corruption and a law on the status of judiciary.

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<sup>29</sup> Slovenia, Canada, United States of America (US), Belgium, International Commission of Jurists (ICJ).

<sup>30</sup> Slovenia, Canada, US, Belgium, ICJ.

<sup>31</sup> A/HRC/7/42, 29 February 2008 (annual report). ISHR has prepared unofficial summaries of the reports by special procedures ('Reports in short'), available at [www.ishr.ch/hrm/council/reports\\_in\\_short](http://www.ishr.ch/hrm/council/reports_in_short).

<sup>32</sup> Oral statements made at the Council can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive user name and password). An audiovisual archive of all public meetings of the Council ('webcast') is available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).



The Special Representative claimed that the lack of independence of the judiciary remains a major obstacle to the rule of law. He commented that despite the legal and judicial reform process, the primary function of the courts continue to be the persecution of political opponents, the perpetuation of impunity, and the promotion of economic interests of rich people. Turning to the functioning of the Extraordinary Chambers, he recalled that a UN audit team had found numerous infractions of the rules and that the Extraordinary Chambers are at the risk of being contaminated by the corruption present in the general court system. He insisted that the impacts of the international tribunals would be marginal, unless the Government takes steps to end impunity for gross violations of human rights.

On the issue of elections, he appreciated that the electoral legislation has been carefully revised to ensure free and fair elections. However, he cautioned that inefficiency within the administration could undermine the next parliamentary elections.

Mr Ghai reiterated some of the recommendations contained in his report, including that ‘the Government must do all it can to stop forced evictions’, and he called for a moratorium on such evictions. Concluding, Mr Ghai highlighted the progress made by the Government and with the participation of civil society in establishing a human rights commission. He hoped that such an institution would be in compliance with the *Paris Principles*.<sup>33</sup>

Finally, he said that the international community ‘makes huge grants and loans which sustain the Government and its anti-human rights policies’. In this context, he called upon the international community to assume the ‘moral responsibility’ of ensuring that the funds it provides to Cambodia do not promote the violations of rights.

### ***Interactive dialogue***

Cambodia, as the concerned country, expressed its ‘disappointment’ with Mr Ghai’s report, saying it does not fairly reflect the situation. It added that the Special Representative ignored the progress and the efforts made by the Government. The Cambodian delegation denounced that many cases and issued described in the report are selectively included for ‘sensational purposes’ and are ‘overly exaggerated’.

In its detailed statement, the delegation tried to clarify several points of the report. On the failure of the Cambodian judicial system to maintain the rule of law, the delegation argued that the overall development process of Cambodia as a post-conflict country has not been adequately taken into consideration. In the area of legal and judicial reform, it was affirmed that the Government has made a significant progress by adopting key legislations over the last five years. Regarding the democratic transition, the delegation proudly assured that the country is moving towards the establishment of democracy. On the delicate economic situation, the Government was said to be fully aware of the complicated challenges the country is facing. The delegation reminded that a coherent and constructive report should cover all recent developments, bearing in mind that human rights are interrelated with others as a cross-cutting issue.

Several States and NGOs expressed their respect and appreciation for the efforts undertaken by the Special Representative and warmly welcomed his report on the situation of human rights in Cambodia.<sup>34</sup> Many of

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<sup>33</sup> The *Paris Principles* were adopted by the General Assembly as an Annex to *Resolution 48/134*. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: [www.un.org/Depts/dhl/res/resa48.htm](http://www.un.org/Depts/dhl/res/resa48.htm).

<sup>34</sup> Japan, Slovenia (on behalf of the EU), US, United Kingdom (UK), Malaysia, Sweden, International Federation of Human Rights Leagues (FIDH) in a joint statement with the Center on Housing Rights and Evictions and Human Rights Watch, Amnesty International.



them recognised the progresses made by Cambodia and its spirit of cooperation with the international community.<sup>35</sup>

Japan commended the development within the judicial system. Slovenia (on behalf of the EU) inquired about the impact of the Extraordinary Chambers on the judiciary system in Cambodia, and sought clarification on the steps taken by the Government for the establishment of an independent experts commission for reviewing the legal system. In his replies, the Special Representative affirmed that the procedure adopted by the Extraordinary Chamber could have a positive effect on the national judiciary system. Slovenia (on behalf of the EU) also identified impunity as major obstacle for the protection and promotion of human rights.<sup>36</sup> The US reminded that the establishment of the rule of law is a fundamental element for an independent, efficient, and fair judicial system.<sup>37</sup>

Japan hoped that the elections to be held later in 2008 would be free and fair, and could be a signal of democracy.<sup>38</sup> Japan also highlighted its own efforts in contributing to the development of the country and called upon the United Nations to continue its efforts in building country's capacity building.<sup>39</sup>

Amnesty International highlighted the link drawn by the Special Representative between the lack of rule of law and violations of human rights relating to land and housing. It stressed that this led to the situation where evicted persons have no procedural safeguard to protect themselves. Slovenia (on behalf of the EU) stressed that forced evictions usually involve an excessive use of force.<sup>40</sup> The International Federation of Human Rights Leagues (FIDH), in a joint statement,<sup>41</sup> stressed that forced evictions represent the most pervasive human rights violation in Cambodia and that 150,000 citizens, especially human rights defenders, community leaders, and land activists, are victims of intimidation and evictions. The NGOs supported the Special Representative's call for a moratorium on all involuntary evictions. Slovenia (on behalf of the EU) asked the Special Representative which measures should be taken to deal with forced evictions that are affecting Cambodians both in rural and urban areas,<sup>42</sup> while Amnesty International enquired how resettlement policies could be improved.

In his replies, the Special Representative affirmed that there should be a moratorium on further evictions. He said that the land legislation should be properly applied, by allowing sufficient time for the courts to evaluate land-titles. Mr Ghai noted that the Government should ensure that the army is not involved in evictions, and drew attention to the guidelines developed by the Special Rapporteur on housing in this respect.

The cooperation of the Government with the Special Representative was touched on by a number of speakers. The US regretted the impossibility for the Special Representative to meet, during his last visit, some governmental representatives.<sup>43</sup> The United Kingdom (UK) asked the Special Representative to assess the level of his dialogue and cooperation with Cambodia. In his replies, the Special Representative said cooperation had been limited, as he was not able to meet senior officials or ministers during his last mission.

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<sup>35</sup> Japan, Malaysia, Sweden, Slovenia (on behalf of the EU), US.

<sup>36</sup> FIDH (joint statement), Sweden.

<sup>37</sup> FIDH (joint statement).

<sup>38</sup> Malaysia.

<sup>39</sup> Malaysia.

<sup>40</sup> FIDH (joint statement).

<sup>41</sup> FIDH, Center on Housing Rights and Evictions and Human Rights Watch.

<sup>42</sup> Amnesty International, FIDH (joint statement) also sought more suggestions on this.

<sup>43</sup> Amnesty International.

Sweden called upon Cambodia to ‘trust’ the UN and to acknowledge the benefits of the presence of OHCHR in the country.<sup>44</sup> In his replies, the Special Representative again stressed the importance of OHCHR’s presences, and suggested it could help disseminating information about the mission of the Extraordinary Chambers.

The interactive dialogue concluded with the Special Representative affirming his desire to go back to Cambodia and deepen the dialogue on human rights with the Government.

### **Independent Expert for technical cooperation and advisory services in Liberia**

Ms Charlotte Abaka, the Independent Expert for technical cooperation and advisory services in Liberia, was invited to present her annual report to the Council.<sup>45</sup> She explained that she had undertaken a mission in September 2007, as well as a short follow-up mission more recently. In her oral presentation,<sup>46</sup> Ms Abaka noted some positive developments, and a number of ‘serious areas of concern’. On the positive side, she said that since her mission in September, efforts had been undertaken, and the situation had been improved slightly. She in particular noted the participative approach followed for the elaboration of a poverty reduction strategy document, the hearings held by the Truth and Reconciliation Commission, and important legislative developments.

However, the Independent Expert noted major challenges, including the severe delay in the establishment of an independent human rights commission in compliance with the *Paris Principles*,<sup>47</sup> and the failure to establish a Law Reform Commission and a Land Reform Commission. She also expressed grave concern about the increasing incidence of gender-based violence and in particular cases of rape, and urged the Government to address this through new laws. In relation to children’s rights, the Independent Expert called for a strengthening of adoption laws to better protect children from trafficking. Finally, she expressed ‘alarm’ at the information received about a ‘witchcraft court’ as a serious violation of domestic and international human rights standards.

### **Interactive dialogue**

Liberia could not take part in the interactive dialogue.<sup>48</sup> Instead, the President of the Council noted that information about the dialogue would be transmitted to Liberia by the Secretariat. The main points raised were:

- All States that took part in the dialogue commended the Independent Expert for her work as well as the ‘cooperative’ attitude and ‘demonstrated will’ of Liberia to improve the human rights situation in the country.<sup>49</sup> Ghana underlined that ‘considerable progress’ had been made in ensuring security and

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<sup>44</sup> Slovenia (on behalf of the EU) and the United Kingdom also emphasised the importance of OHCHR’s presence.

<sup>45</sup> A/HRC/7/67, 14 February 2008. ISHR has prepared unofficial summaries of the reports by special procedures (‘Reports in short’), available at [www.ishr.ch/hrm/council/reports\\_in\\_short](http://www.ishr.ch/hrm/council/reports_in_short).

<sup>46</sup> Oral statements made at the Council can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive user name and password). An audiovisual archive of all public meetings of the Council (‘webcast’) is available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>47</sup> The legislation for the Independent National Human Rights Commission was signed into law already in March 2005, but has so far not been operational (see A/HRC/4/6, 28 February 2007). The ‘Paris Principles’ were adopted by the United Nations General Assembly as an Annex to *Resolution 48/134*. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: [www.un.org/Depts/dhl/res/resa48.htm](http://www.un.org/Depts/dhl/res/resa48.htm).

<sup>48</sup> Liberia does not have a permanent mission to the UN in Geneva.

<sup>49</sup> Egypt (on behalf of the African Group), Ghana, Slovenia (on behalf of the EU), US.

the enjoyment of civil, political, economic, social and cultural rights. The US saw the willingness of Liberia to promote and protect human rights as an ‘inspiration’ for other countries.

- Several States highlighted the need to support Liberia with technical and financial assistance. Egypt (on behalf of the African Group) recognised that a number of the challenges that Liberia faced could be attributed to poor organisation and a lack of resources and capacity. It shared the Independent Expert’s view that there is a close relationship between poverty and human rights violations, and urged the international community to continue to provide technical assistance in line with Liberian priorities. The US promised to offer technical support to Liberia’s legal sector, and Ghana proffered its assistance with regard to the Law and Land Reform Commissions.
- Several States were concerned about the lack of capacity of the national judicial system.<sup>50</sup> The US reiterated its appreciation for Liberia’s efforts to strengthen the judicial system and the progress made by the Truth and Reconciliation Commission despite the lack of trained legal personnel.
- The weak implementation of the amended rape law and concerns about frequent reports of rape were particularly highlighted. Slovenia (on behalf of the EU) regretted the lack of official data on rape. In her replies, the Independent Expert stressed that gender-based violence is not always properly understood. She pointed out that even many women believe that they are the property of men, and violations against them are thus seen as a normal part of their lives. According to the Independent Expert, lawyers and magistrates do sometimes share this view. On a related point, the Independent Expert stated that Liberia needs to build its capacity to create a law on domestic violence.
- Slovenia (on behalf of the EU) welcomed the progress made in a number of areas, particularly in the education sector, where free schooling significantly improved the enrolment in primary schools. It remained concerned, however, that access to secondary school for girls had not improved and inquired about the status of the planned schools for pregnant girls. At the end of the interactive dialogue, the Independent Expert replied that the school for pregnant girls is operational, and stressed the importance of raising awareness among parents to send their pregnant girls to the school. She agreed that the enrolment rate in primary schools was indeed high but cautioned that the drop-out rate was very high as well.
- Slovenia (on behalf of the EU) raised the issue of harmful cultural practices in the form of female genital mutilation and out-of-court settlements in rape cases, and asked the Independent Expert on the progress made with regard to eradicating such practices.
- Slovenia (on behalf of the EU) briefly inquired about medical assistance and how the international community could best support Liberia in this matter. In her replies, the Independent Expert agreed with Slovenia (on behalf of the EU) that it was a serious issue and stated that it was ‘not healthy’ that the international community was solely responsible for healthcare in Liberia. In this respect, she noted the high infant and mortality rates in the country,<sup>51</sup> and recommended that midwifery schools that had been closed should be immediately reopened. She said it was important to train more midwives, and called for assistance to reopen these schools.

The Independent Expert in her answers thanked both the African Union and the EU for their ‘tremendous support’ both to her and to Liberia in terms of resources and capacity building.<sup>52</sup> She explained that the Truth and Reconciliation Commission had been successful thanks to the international support it had received.

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<sup>50</sup> Slovenia (on behalf of the EU), the US.

<sup>51</sup> Liberia’s infant and mortality rates are the second highest in the world.

<sup>52</sup> The Independent Expert also urged the Economic Community for West African States (ECOWAS) to nominate two members to the Section International Technical Advisory Committee (ITAC). The Committee is established through the act establishing the Truth and Reconciliation Commission. The act says ‘ECOWAS shall nominate two individuals for membership in the Committee and the United Nations High Commissioner for Human Rights shall nominate one individual for membership in the Committee. All advisors shall be individuals of international distinction and repute’ (see <https://www.trcofliberia.org/about/trc-mandate> for more information). Ms Abaka said the nomination from the OHCHR would be done in a few days. She urged both offices to make this matter a priority.

In closing her statement, the Independent Expert once more stressed that the independent human rights commission was not yet established, and urged for further progress in that regard.

### Voluntary Fund for Technical Cooperation

Mr William A. Schabas, the acting chairperson of the last session of the Board of Trustees (the Board) of the Voluntary Fund for Technical Cooperation in the Field of Human Rights (the Voluntary Fund), presented an update on the work of the Board.<sup>53</sup> He thanked Mr Vitit Muntarbhorn, a former member of the Board, for his work. Mr Muntarbhorn holds the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK), and has resigned from the Board due to the rule on the non-accumulation of human rights mandates.<sup>54</sup>

Mr Schabas explained that the Board has focused in recent years on advising OHCHR on 'policy orientation and strategy in strengthening its country engagement'. He went on to note the Board's appreciation of the recent efforts of OHCHR to contribute to the process of mainstreaming human rights in the UN's work, and of its development of a strategy to bring human rights advisors 'to the forefront of UN operations on the ground' in the context of the 'One UN' approach.

Mr Schabas also highlighted that the Board has followed the institution-building process of the Council closely, in particular the establishment of the UPR. In that regard, he said the Board would follow with interest the new UPR trust fund established to facilitate the participation of developing countries to implement resolutions of the UPR. He also recalled that the Board had discussed if the Voluntary Fund could be used to that effect.

In relation to the recent adoption of the *Convention on the Rights of Persons with Disabilities* and its optional protocol, he reported that the Board had recommended mainstreaming this crosscutting theme into the work of all UN country teams.

Finally, turning to the High Commissioner's *Strategic Management Plan*, Mr Schabas said the board had identified potential areas for technical cooperation in the plan, including transitional justice, and capacity building for the judiciary, prosecutors and security forces.

The Board will meet with States and civil society organisations at its next session, scheduled from 19 to 22 May 2008 in Geneva.

Comments on the report by the Board of the Voluntary Fund will be made during the segment of general debate under Item 10, currently scheduled for Wednesday, 26 March 2008.

### Rights of reply

Iran replied to a statement made by Israel during the morning meeting, claiming it had made 'some baseless assertions about the Iran'. It recalled a report by the Special Rapporteur on the situation of human rights in the

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<sup>53</sup> 'Advisory Services and Technical Cooperation in the Field of Human Rights', A/HRC/7/47. Documents for the 7<sup>th</sup> session are available at [www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm](http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm). Oral statements made at the Council can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive user name and password). An audiovisual archive of all public meetings of the Council ('webcast') is available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>54</sup> In its institution-building text, *Resolution 5/1*, the Council has decided that special procedures mandate holders can only hold one UN mandate related to human rights.

Palestinian territories occupied since 1967, which said the Israeli policies contain elements of an apartheid regime. Iran said the Council should not permit representatives of such a regime to take the floor.

Regarding a statement by the NGO Baha'i international, Iran said that the persons mentioned by the NGO had been tried before a court for corruption and forging of documents, and stressed that 'being a member of a sect does not bring immunity' if these persons commits crimes.

Lithuania referred to the report of Mr Diène earlier today and the statement of 'one particular country', saying that it rejects all allegations of institutional discrimination based on racial, national or other differences.

The Dominican Republic said it regretted the statement by Haiti earlier in the day, assured its neighbour of its solidarity and expressed its hope to keep an open dialogue with Haiti.

### Informal consultations

#### **Draft resolution on the mandate of the Special Representative of the Secretary-General on human rights defenders**

At the outset Norway explained that it had tabled a draft resolution on the renewal of the mandate of the Special Representative. It underlined that this text would not be the final compromise and that it would continue consultations. Norway further explained that four paragraphs had been omitted from the text it had tabled since these were 'difficult'.

Norway then opened the floor for general comments on the draft resolution.

- A few delegations welcomed the text<sup>55</sup> and some noted that it was a good basis for reaching consensus.<sup>56</sup> However, many others expressed their disappointment with the draft since it did not reflect their proposals and wishes.<sup>57</sup> Some States noted that the resolution did not adequately reflect the challenges facing human rights defenders on the ground.<sup>58</sup> It seemed that most delegations could accept the compromise proposals suggested in the draft resolution.
- The discussion again focused on the operative paragraph that noted 'with appreciation the significant work' of the Special Representative. Several delegations argued that this was the bare minimum they could accept since they believed that the Council should welcome the significant work.<sup>59</sup> Others argued that since they could not endorse all aspects of the Special Representative's work, the Council should simply take note of this work.<sup>60</sup>
- On the paragraph dealing with State cooperation and country visits, Egypt stated that it could only accept the compromise formulation in the draft if agreement was reached on the entire text.

The remaining discussion centred on the issues that have yet to be resolved.

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<sup>55</sup> Indonesia, Ecuador.

<sup>56</sup> Russian Federation.

<sup>57</sup> Ireland (on behalf of the EU), UK, New Zealand

<sup>58</sup> Ireland (on behalf of the EU).

<sup>59</sup> New Zealand, Mexico, Netherlands, Ireland (on behalf of the EU).

<sup>60</sup> Egypt, Algeria, Russian Federation, China, Bangladesh.

- Egypt stated that it was willing to suggest a new formulation of the paragraph that would ask the Special Representative to further clarify the concept of human rights defenders. It suggested a slight revision that would add ‘to seek’ to clarify. The Netherlands commented that this amended paragraph was still not acceptable.
- On the paragraph on the independence of human rights defenders, Egypt stated its willingness to remove the reference to funding.
- Regarding the title of the Special Representative, Ecuador stated that it could not accept any change. Mexico suggested that consideration should be given to maintaining the title and to recalling the appointment procedure in *Resolution 5/1*. Egypt stated that the African Group could be flexible on the title as long as the institution-building text was fully respected.

Norway announced at the end of the meeting that consultations would continue.

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