

COUNCIL MONITOR

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Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, 4TH SESSION DAILY UPDATE, 19 MARCH 2007 1503 PROCEDURE (CLOSED SESSION) AND SPECIAL EVENT ON VIOLENCE AGAINST CHILDREN

Overview.....	1
Special Event on Violence against Children	2
Informal consultation on the universal periodic review mechanism	4
Other issues.....	6

Overview

The Human Rights Council (the Council) spent the whole morning session as well as the first hour of the afternoon session in closed meetings to consider situations in countries being examined under the 1503 procedure. The remaining two hours of the afternoon session was then devoted to a Special Event on Violence against Children. This was the first panel event held in a plenary session of the Council. It was devoted to the UN Study on Violence against Children carried out by Mr Sérgio Paulo Pinheiro, the Independent Expert appointed to conduct the study.¹ It was the first time the Council made use of the innovative new form of a panel discussion to treat a specific issue in detail. The panel was originally meant to be followed by the presentation of the annual report of the Working Group on Enforced or Involuntary Disappearances. Due to the delay in completing the discussions under the 1503 procedure and the importance attached to the new form of interaction in a panel, the presentation of the Working Group on Enforced Disappearance's report was postponed to Wednesday, 21 March 2007.

¹ See <http://violencestudy.org/> for more information.

During lunch time, the first of a series of informal consultations on the institution building working groups of the Council was held. The first informal consultation that took place this afternoon was dedicated to discussions on the universal periodic review (UPR) mechanism.² Other informal meetings held during the day included an NGO orientation session on the 4th Human Rights Council, a parallel event on “archives and human rights”, consultations on the 14th workshop on the regional cooperation in the Asia-Pacific region, a parallel event on violence against Children as well as an NGO event on the human rights situation in the Philippines.³

As demonstrated by the first special event, the new form of a ‘panel’ for discussing a substantial concern of the international human rights system could be an interesting innovation. It expands on the interactive nature of the debate already seen during interactive dialogues with special procedures, and can be a unique opportunity for the Council to consider pressing issues in a substantial manner. It has the potential to be a platform for all stakeholders to bring in their know-how and expertise on the topic discussed. The next special event on disabilities that will be held next week will offer another opportunity for testing this innovation.

The special event offered opportunities for substantive input from NGOs but also demonstrated the pressures of time-management that continue to pose a challenge to the work of the Council. Most NGOs who spoke at the special event exceeded the two minutes allowed per NGO statements. This had the effect that not all NGOs wishing to speak could be given the floor. As the pressures of time-management will increase during the course of this week, coordination may be needed amongst NGOs to ensure that time-limits are strictly adhered to and to facilitate as many speakers as possible to speak within the time allocated.

Special Event on Violence against Children

The Special Event on Violence against Children was the first panel event undertaken by the Council. Unlike informal or parallel events, which are held outside the plenary, this event was held during the plenary session with members of the Council, many observers, and a high number of NGO representatives present. As the Child Rights Information Network (CRIN) reports in detail on all children’s rights-related discussions at the Council, to avoid duplicating their work this *Daily Update* only provides a brief summary of the event.⁴

The President of the Council introduced the event by explaining he had called for that special event since the UN Study on Violence against Children (the UN Study) directs recommendations specifically to the Human Rights Council. The panellists included Ms Kyung-wha Kang, the Deputy High-Commissioner, Mr Paulo Sérgio Pinheiro, the Independent Expert for the UN Study on Violence against Children (the Independent Expert), Ms Roberta Cecchetti from the NGO Advisory Group on Violence against Children, as well as representatives from the WHO, UNICEF, OHCHR, and the ILO.

² The other informal meetings are: Tuesday 20 March from 8:30 to 10 am on Expert Advice and from 1:30 to 3 pm on the Complaint Procedure, Wednesday 21 March, 8:30 to 10 am on the Agenda and annual programme of work and from 1:30 to 3 pm on Methods of work and rules of procedure as well as Thursday 22 March from 8:30 to 10 am on the Review of Mandates. The informal negotiations are held in room XXIII and are public.

³ See *Bulletin of Informal Events*, 19 September 2006, available at <http://www.ohchr.org/english/bodies/hrcouncil/4session/bim.htm> for additional details.

⁴ For a full report on the special event, see www.crin.org/violence/search/closeup.asp?infoID=12832.

A welcome note by Ms Kang was followed by a short presentation by Mr Pinheiro. The Council was then shown a movie produced by Save the Children,⁵ as well a recorded message by Ms Moushira Khattab, a member of the Committee on the Rights of the Child. States and NGOs were given an opportunity to react to the presentations. The President then gave the floor to the other panellists from UNICEF, the WHO, the ILO and the NGO Advisory Group to answer questions.

Presentation by the Independent Expert

The Independent Expert presented the UN Study.⁶ Mr Pinheiro explained that the UN Study involved hundreds of organisations and had taken three years to complete.⁷ He stated that despite repeated commitments from governments, violence against children persisted in many places. He highlighted that the UN Study calls for an end to violence against children, and that there are ways to prevent such violence. In addition, the UN Study includes concrete recommendations and should be used as a tool for action. He placed particular attention on dissemination of and follow-up to the UN Study, which should include the development of a long-term follow-up strategy. He stated that this will require an active role to be played by relevant UN bodies and agencies.

Mr Pinheiro identified five key recommendations for follow-up in 2007. These call for integration of measures to prevent and respond to violence against children in national action plans; strengthening legal frameworks so they are in conformity with the *Convention on the Rights of the Child*; prevention; promotion of participation of children in the follow-up processes; and strengthening of data protection. The Independent Expert felt that the special event showed that the Council was ready to prioritise children in its work, and was pleased by this development.

Interventions by States, NGOs and panellists

The special event was well received by States and NGOs. A number of States expressed their view that the subject justified a special event. Many agreed with the main conclusion of the UN Study that violence against children is never justifiable, but preventable. Most States affirmed their commitments to the protection of the rights of the child and asked Mr Pinheiro how the UN Study could be implemented most effectively. Specific issues brought up by States and NGOs included children in armed conflicts or in situations of occupation,⁸ the execution of juvenile offenders,⁹ child trafficking,¹⁰ child marriages, female genital mutilation (FGM),¹¹ children in institutional care, and children with disabilities.¹²

Uruguay stressed that the growing violence against children has led to a substantial gap in protection through the UN human rights system. This point was also raised by Ms Cecchetti on behalf of the NGO Advisory Group on Violence Against Children. She said that the review of special procedures that was currently underway was of special significance to assure children the protection they deserve. More

⁵ <http://savethechildren.net/alliance/index.html>.

⁶ A/61/299, 29 August 2006.

⁷ Oral statements made during the Council's sessions are available on the OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

⁸ Azerbaijan, Australia (they specifically referred to the difficult plight of children in armed conflict in Sri Lanka), Japan and Pakistan (on behalf of the OIC). This point was also raised by a number of NGOs.

⁹ Human Rights Advocate.

¹⁰ China.

¹¹ The Association of World Education.

¹² Malaysia.

generally, she pointed out that the UN Study process had been one of the most participatory processes to locate and close substantive gaps in the protection of human rights

Save the Children Alliance highlighted the need to have children participation in decision-making initiatives addressing violence. Ms Cecchetti stressed that participation of children in the UN system should not rest entirely on the shoulders of NGOs, but should be institutionalised. She also highlighted the role of all UN mechanisms including special procedures and treaty bodies in that regard.

Replies by the Independent Expert

In his replies, Mr Pinheiro thanked the President of the Council for focusing on the issue of violence against children as the topic of the first special event of the Council. He stated that a consensus was emerging on the need to implement the recommendations of the report. In terms of how the Council could help in the process, the Independent Expert stated that the members should work with partner agencies. He also explained that involvement at the country level was very important, and that States need to allocate adequate resources and political will necessary to combat violence against children and to achieve the goals of the UN Study. He also felt that child participation needed to begin to be implemented at the UN level, and that pilot projects should be implemented to associate children to follow-up. Mr Pinheiro reiterated the need for the Council to adopt and implement the recommendations from the UN Study.

Informal consultation on the Universal Periodic Review mechanism

The Facilitator of the Working Group to develop the modalities of the Universal Periodic Review mechanism convened an informal consultation from 1.30 to 3 pm to discuss the status of the non-paper on the UPR,¹³ and to clarify States' positions on outstanding elements that require further consideration. The Facilitator was clear at the outset that he sought focused statements on the elements in the non-paper, and that if States had anything written, that they would submit it directly to the Secretariat.

The discussion was then divided by statements relevant to sections one and two of the non-paper, followed by sections three and four. This included, in order of discussion: the inclusion of international humanitarian law (IHL), where applicable, and the use of commitments undertaken in UN conferences and summits, as a basis for review; that the UPR not 'be overly burdensome to the reporting State'; the question of 'the participation of all stakeholders'; accounting for the level of development and specificities of countries; the periodicity and duration of the UPR; the documents upon which the review would be based; and whether the review is conducted in the plenary or the Working Groups. Statements generally constituted a reaffirmation of positions taken at the Working Group,¹⁴ with the notable exception of two interventions by Switzerland.

Many States that spoke on the inclusion of IHL did not favour a broad inclusion, or even the compromise as presented by the Facilitator that it be applied 'as and where applicable' on the grounds that international

¹³The Facilitator's new non-paper and other background documents related to the discussions on the UPR, including oral statements made at the Working Group, are available on OHCHR extranet which can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

¹⁴For the *Council Monitor* report of the last session of the Working Group, see http://www.ishr.ch/hrm/council/wg/wg_reports/wg_upr_feb_07.pdf

human rights law and IHL are separate bodies of law, that General Assembly *Resolution 60/251* speaks only of human rights obligations, and that the Council has neither the capacity nor the expertise to address the issue.¹⁵ Others expressed general support for the language as presented by the Facilitator, although added that they would like to see the removal of the term ‘as applicable’, as this might lead to selectivity in its application.¹⁶

Germany (on behalf of the EU) expressed that IHL should not form a basis of review for each country, but could be applied where relevant and applicable in the context of human rights obligations convergent with IHL in situations of armed conflict. Switzerland then proposed that new wording be introduced accordingly: “In situations where IHL is applicable, human rights law shall be applied in light of relevant IHL”. A member of the International Committee of the Red Cross supported this formulation. Many States then expressed an interest in better studying this proposal, and the Facilitator also shared his willingness to consider its inclusion in a revised options paper.¹⁷

The question of commitments from UN conferences and summits received the same lukewarm response it has received at the Working Group, with the majority of States insisting that there are too many of these conferences, that the outcomes are often aspirational, and often States sign on so as not to block consensus.¹⁸ However, the possibility of listing particular important conferences and their outcomes, such as the *Vienna* and *Durban Declarations*, was raised.¹⁹

The question of consideration of levels of development and specificities remained divided amongst those who wished to see this as an element of consideration during the process of the review,²⁰ and those who wished to apply specificities only in the drafting of the final conclusions and recommendations of the UPR.²¹ Cuba requested that the language on particularities be expanded to include the terminology employed in the *Vienna Declaration*, so that “national and regional particularities and various historical, cultural and religious backgrounds” be included. The UK delegate was quick to point out, however, that the *Vienna Declaration* in fact read that, whilst these particularities “must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” This, in fact, went against the thrust of what Cuba was implying.

Little was said on the question of the participation of NGOs under the element on ‘other stakeholders’. Algeria (on behalf of the African Group) reiterated its view that NGOs should only contribute at the national level. Belgium was clear that this position was unacceptable. India and Pakistan (on behalf of the OIC) both suggested that this required further discussion in the Working Group.

The question of independent experts, either as providing input at the compilation, or as a ‘country rapporteur’ on drafting the conclusions of the process, received much more discussion, with some of the issues relating also to the potential future role of NGOs. Germany (on behalf of the EU), the UK and Norway emphasised that independent experts would aid in avoiding politicisation and would remain focused and objective in their work.²² Germany also reminded the audience that it was the Council, in any case, that would adopt the final decisions. Cuba, on the other extreme, argued that the very appointment process of

¹⁵ The USA, Norway, Switzerland, India, the Russian Federation, Australia, and Turkey.

¹⁶ Also in general support were China, Algeria (in behalf of the African Group), Pakistan (on behalf of the OIC), Uruguay, Bangladesh and Iran.

¹⁷ Turkey, Pakistan (OIC), Russia, Bangladesh, New Zealand, Mexico, Japan, Iran, Australia, and France.

¹⁸ China, Malaysia, India, and the USA.

¹⁹ Mexico and China.

²⁰ Cuba, Iran, Algeria (on behalf of the African Group), Bangladesh, China, Guatemala

²¹ Germany (on behalf of the EU), Switzerland, Uruguay, Japan, New Zealand, Netherlands, Ecuador, France, Australia, Belgium proposed that the language of Chapter III be accepted but moved to Chapter V under ‘Outcome of the UPR’.

²² Supported generally by Mexico, Switzerland, New Zealand, Norway, and Uruguay.

independent experts was politicised, and all independent experts, particularly those addressing countries, were inherently politicised. This was also claimed by Bangladesh. Others merely insisted that the UPR was a State-driven peer review process, and this meant there was no role for independent experts. Norway accepted this premise, instead referring to the role of independent experts as ‘inputting’ into the process.

The other area of clear divergence was whether the UPR should operate through a system of Working Group(s) or directly before the plenary. States generally reasserted the reasoning provided at the Working Group, except for Switzerland, which now proposed that instead of multiple working groups, there should be one working group comprised of 25 members – five from each regional group – so as to satisfy equitable geographic representation. Only the USA expressed any immediate interest in this notion, as they were also the only State to favour a single working group proposal during the last session of the Working Group.²³

These constituted the most notable new contributions to the debate surrounding the establishment of the modalities for the UPR. One notable regression was the suggestion by the Russian Federation and Malaysia that reference to ‘other UN documents’ be removed so that the documents on which the review would be based would be limited.²⁴ Otherwise, discussions on periodicity, duration and the question of State reporting did not deviate from the positions of States already laid down in the discussions of the Working Group. The Facilitator indicated at 3 pm that he had not exhausted the list of speakers, and would resume the discussion where he had left at the next meeting on the UPR. The time for this meeting has yet to be scheduled.

Other issues

The schedule for informal consultations by the Facilitators on the institution-building process was modified slightly yesterday so that consultations in the morning will now be held from 8.30 to 10 am and at lunchtimes from 1.30 – 3 pm. The new schedule is as follows:

Date	Morning (8.30 – 10 am)	Lunchtime(1.30 – 3 pm)
19 March		Universal periodic review
20 March	Expert advice	Complaint procedure
21 March	Agenda and annual programme of work	Methods of work and rules of procedure
22 March	Review of special procedure	

²³ The single working group proposed by the USA, however, would comprise of all UN member States, and would be administered by a core group of ten States, who would draft the outcome document.

²⁴ The relevant section of Chapter IV reads: ‘Compilation by OHCHR (information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents)’.

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