

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## DAILY UPDATE HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION 12 JUNE 2008

### Overview

The Human Rights Council (the Council) continued its consideration of UPR reports on 12 June.<sup>1</sup> There were noticeably low speaking lists on most countries, with some sessions lasting as little as twenty minutes. Those NGOs that took the floor were generally not interrupted, as on previous days, with the exception of several points of order by Egypt during the consideration of the report on Pakistan. The countries reviewed were:

- **Benin**, which consisted of African States taking the floor to praise Benin for its efforts, and one NGO speaking in relation to the practice of infanticide in the country.
- **Peru**, which consisted of a listing of efforts undertaken and planned by the State, as well as a request that States refrain from undue praise in the UPR;
- **Switzerland**, which chose to speak primarily on the recommendations that it had decided between the UPR and the present time that it could not accept (including legal provisions for protection from discrimination on the basis of sexual orientation), as well as voluntary commitments it was undertaking. Switzerland also made a point of noting the importance of NGO participation;
- **Republic of Korea**, where NGOs addressed in some detail the treatment of migrant workers in the country and limitations on freedom of assembly, to which the Ambassador of the Republic of Korea was unwilling to acknowledge that there was any problem in these areas.
- **Pakistan**, which attracted a lot of attention from States and NGOs with a marked difference in the nature of comments made with NGOs raising several concerns, in relation to fundamental freedoms, marital rape, and anti-terror measures.
- **Zambia**, which drew mainly very general and positive comments with one NGO expressing concern about the situation of children.
- **Japan**, which consisted of comments from five Asian States and NGOs underlining concerns in relation to discrimination, minorities, and women.
- **Ukraine**, which gave rise to very few substantive comments from three States and one NGO.

During the day informal consultations also took place on a draft resolution on the situation in Burma/Myanmar presented by the European Union.

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<sup>1</sup> All UPR reports are available on the OHCHR extranet, which can be accessed (fill out the form on the page to receive the user name and password) at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm). For a review of countries before the UPR, see ISHR's UPR page at [www.ishr.ch](http://www.ishr.ch) and [www.upr-info.org](http://www.upr-info.org). For a critical analysis of the first session of the UPR, see [www.ishr.ch/hrm/council/upr/upr\\_1st\\_session\\_2008/upr\\_1st\\_session\\_overview.pdf](http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_1st_session_overview.pdf).

## Item 6 – consideration of UPR reports

### **Benin**

#### ***State presentation***

Mr Thierry Alia, Director of Human Rights at the Ministry of Justice, spoke about measures undertaken by the Government of Benin since the UPR Working Group.<sup>2</sup> The list included a visit from the UN Subcommittee on the Prevention of Torture<sup>3</sup> and participation in a regional meeting in South Africa for directors and officials of prison administrations, leading to the signing of a cooperation agreement by the Minister of Justice, Legislation and Human Rights. Mr Alia stated that Benin committed itself to take necessary measures in implementing all 34 recommendations, with the exception of recommendation 6<sup>4</sup> concerning the decriminalising of homosexual activities, which he claimed had a ‘marginal’ existence in Benin and a lack of court action penalising such activity. Mr Alai concluded by noting existing challenges relating to poverty, women’s rights, and universal access to education.

#### ***Member and observer States***

Five African States<sup>5</sup> made solely positive remarks regarding actions taken by the Government of Benin. Algeria thanked Benin for accepting its recommendation to consider, with targeted international support, the extension of free education up to the secondary level. Senegal stressed Benin’s progress in granting rights to persons with disabilities and greater access to drinking water. Senegal, Nigeria and Djibouti urged members of the Council to provide Benin with needed assistance and Algeria reminded the Council of Benin’s limited resources.

#### ***Other stakeholders and closing remarks***

The only NGO to speak, Franciscans International, noted Benin’s recognition of the existence of infanticide and called on it to continue to implement the recommendations made by the Committee on the Rights of the Child, the Committee against Torture, and the Committee on Economic, Social and Cultural Rights. Franciscans International suggested awareness programs to inform the local population, authorities, midwives and women in rural areas on the dangers of giving birth at home.

Mr Alia concluded by confirming efforts in the eradication of infanticide and describing the dialogue as ‘fruitful.’ He thanked all who made the session possible.

The Council adopted the UPR report on Benin by consensus.

### **Peru**

#### ***State presentation***

Ambassador Jose Eduardo Ponce Vivanco, Permanent Representative to the UN, opened the discussion on Peru’s UPR report<sup>6</sup> by advising UPR Working Group members to ‘avoid politicisation’ and refrain from ‘disproportionate words of praise’. He added that references to objective actions and facts would be more beneficial for States under review. Mr Vivanco explained that Peru intends to submit its periodic reports to

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<sup>2</sup> A/HRC/8/39.

<sup>3</sup> Visit from the 8-26 May 2008.

<sup>4</sup> Recommendation 6 – ‘Benin consider decriminalizing homosexual activities between consenting adults’ (Belgium).

<sup>5</sup> Morocco, Algeria, Senegal, Nigeria, Djibouti.

<sup>6</sup> A/HRC/8/37.

the Committee for the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights in December 2008 and to the Human Rights Committee in June 2009. He stated that one or several national preventive mechanisms would be established in accordance with the *Optional Protocol on the Convention against Torture* (OPCAT) and added that round tables with public officials and civil society members would be established because ‘dialogue was Peru’s most effective tool.’

Mr Vivanco addressed recommendations 4(b)<sup>7</sup>, 17,<sup>8</sup> and 20<sup>9</sup> ‘as relevant to governmental commitments entered into during Peru’s review of the Working Group’. He stated that most recommendations ‘not linked to the State’s voluntary commitments’ would serve as guidance for Peru’s internal human rights agenda, with the exception of recommendation 3<sup>10</sup> concerning the application of the death penalty because of its incompatibility with Peru’s legislative framework. He recalled that the last execution in Peru took place over 30 years ago.

### **Member and Observer States**

No member or observer States spoke.

### **Other stakeholders and closing remarks**

Two NGOs<sup>11</sup> made statements concerning the human rights situation in Peru. Latin American Committee for the Defence of Women’s Rights (CLADEM) focused on the advancement of women and their protection from violence, noting the inadequate training of members of judiciary that give out light sentences to attackers and the budgetary weaknesses in institutions that carry out programmes addressing violence against women. Comision Juridica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ) insisted that the rights of indigenous people deserve constitutional status, and requested that follow-up efforts be undertaken in accordance with recommendation number 15 concerning the adverse effects of oil production and mining. It also urged that the Government stop the ‘uncontrolled pillaging of surface and subterranean water resources in the Tacna Andean Region’.

Mr Vivanco concluded by addressing all concerns raised by NGOs. He recognised the ‘reasonableness’ of CLADEM’s recommendations and stated they would receive due attention. When addressing CAPAJ, he recalled Peru’s decisive part in the drafting of the *Declaration on the Rights of Indigenous People* and informed the Council of the Government’s ‘rigorous consultations’ with the indigenous community in attempts to accommodate their evolving needs.

The Council adopted the UPR report on Peru by consensus.

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<sup>7</sup> Recommendation 4(b) - ‘[to] cooperate more closely with the Committee against Torture especially by setting up a national complaint registration and investigation system and a national preventive mechanism.’

<sup>8</sup> Recommendation 17 - ‘[to] report regularly to human rights treaty bodies and to respond to special procedures’ communications and questions.’

<sup>9</sup> Recommendation 20 - ‘[to] demonstrate its commitment to coordinating with civil society, including NGOs, academics, and research institutions, as it develops and implements domestic human rights policy and to involve them in the follow-up work to this review, as noted in the national report of Peru.’

<sup>10</sup> Recommendation 3 - ‘[to] ratify the second Optional Protocol to ICCPR to abolish the death penalty and to maintain the de facto moratorium on executions that has been in force since the 1970s.’

<sup>11</sup> Latin American Committee for the Defence of Women’s Rights (CLADEM) [jointly with Action Canada for Population and Development (ACPD), Federation for Women and Family Planning, International Women’s Rights Action Watch (IWRAP), Asia Pacific, Comision Juridica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)]

## Switzerland

### *State presentation*

Ambassador Paul Seger, Director of the International Law Department at the Ministry of Foreign Affairs, opened by stating that Switzerland had at the UPR Working Group stage accepted six and rejected two of the 28 recommendations contained in the UPR report. He stated that following due consideration, 14 recommendations had since been agreed to and six refused, while those remaining have been amended into voluntary commitments. His presentation was then used to explain why they could not accept six recommendations. Concerning recommendation 4,<sup>12</sup> Mr Seger explained that an elaboration of popular initiatives would require a change in procedure, giving the federal courts powers that they do not currently have. In any event, he claimed, the Swiss Government and Parliament ensure that popular initiatives in accordance with international law are incorporated. On recommendation 7<sup>13</sup>, he stated that racial and religious discrimination was adequately covered by articles 261bis of the criminal code and 171 (c) of the military code, and this applied equally to their rejection of recommendation 15 on Switzerland's reservation to Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination*. Concerning recommendation 11<sup>14</sup>, he stated that police operate under canton control and that any Swiss citizen, and depending on the canton, non-Swiss citizens, may apply to join if they meet set criteria. Finally, concerning recommendation 18<sup>15</sup>, Switzerland was of the view that having sexual orientation listed specifically as a grounds of discrimination was problematic, and pointed to the fact that under law same-sex partners can be recognised as couples but cannot adopt or have registered births.

Switzerland then listed three additional voluntary commitments that it had assumed: to 'consider the possibility of establishing a national human rights institution in accordance with the Paris Principles', as they do not want to 'prejudge decisions'; 'to consider acceding to the First Optional Protocol of the *International Covenant on Civil and Political Rights*'; and to commit to ratifying the Optional Protocol to the *Convention on the Elimination of Discrimination against Women*.

Mr Seger concluded that Switzerland looked forward to receiving the comments of NGOs as it highly valued their involvement.

### *Member and observer States*

Belgium expressed its appreciation to answers provided on immigration and the reference to the international obligations of the State in relation to migrants, and the fact that individual can refer to these in court. It hoped that Switzerland would continue to dialogue with civil society and the Council, and commended the rigour of its replies. The UK also referred to the 'constructive and considered approach' as evidence of the possibilities of a 'detailed' and 'honest' assessment under the UPR. It also recognized the importance Switzerland has placed on the role of NGOs. The UK and Azerbaijan noted with satisfaction the possibility of creating a national institution and hoped that it would come about, while the latter credited Switzerland for seriously taking into account the recommendations presented to it.

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<sup>12</sup> A/HRC/8/41, Recommendation 4 - 'adopt legislatives or other measures so that human rights are taken into account upstream by the judiciary, in particular during the elaboration of popular initiatives to ensure their compliance with international obligations' (Belgium).

<sup>13</sup> Recommendation 7 - '[to] adopt a specific law prohibiting incitement to racial and religious hatred, in accordance with article 20, paragraph 2, of the International Covenant of Civil and Political Rights' (Egypt).

<sup>14</sup> Recommendation 11- '[to] recruit minorities in the police and establish a body tasked to carry out inquiries into cases of police brutality' (Canada).

<sup>15</sup> Recommendation 18 – 'that federal legislation be strived for to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity' (the Netherlands).

### **Other stakeholders and closing remarks**

Indian Movement Tupaj Amaru and the Centre for Housing Rights and Evictions (COHRE) addressed the forced closure of the Rhino association in Geneva and the arbitrary seizure of its assets, as well as listing other evictions that take place in Geneva ‘on a daily basis’. The representative of Tupaj Amaru, who spoke as an evictee of the Rhino association, appreciated the opportunity for dialogue but stated that should not be limited to 20 minutes every four years and that he had been refused the opportunity to meet with people consistently. COHRE, Tupaj Amaru and Amnesty International also addressed the broader question of the Switzerland’s statement during the UPR review that economic, social and cultural rights are not fundamental rights, affirming that Switzerland’s position was inconsistent with their obligations under the *International Covenant on Economic, Social and Cultural Rights*.

COHRE and the Canadian HIV/AIDS Legal Network also addressed Switzerland’s position on not listing sexual orientation as a grounds for discrimination. The Canadian HIV/AIDS Legal Network noted that while the State had no problem with the ‘tenor’ of the issue, it found its argument unconvincing as Switzerland had no difficulty in recognising the particular situations faced by women (recommendation 5), those affected by racial discrimination (6), and persons with disabilities (12). COHRE added that the State’s position on adoption by same-sex couples was no longer sustainable following the ruling of the European Court of Human Rights in the case of *E.B. v. France* of 22 January 2008.

Prison Fellowship International commended the work of the Swiss Development Agency, while the Canadian HIV/AIDS Legal Network welcomed the move toward the creation of a national human rights institution. Amnesty International stated that it would have preferred a stronger commitment in this regard.

Mr Seger responded that the position on economic, social, and cultural rights was a misunderstanding, and that Switzerland knows that ‘these are full obligations.’ The question, he stated, related to internal legal issues, and whether it would be the courts or federal authorities that address these obligations. He believed that economic, social, and cultural rights belong in the hands of legislators and/or government policy. In relation to sexual orientation, he simply stated that there are a number of laws and policies to protect from discrimination on these grounds, as mentioned in his opening statement.

He concluded that he had been impressed by the number of delegations that had shown a great interest in Switzerland and he stated that it was not a question of talking for 20 minutes every four years. Instead they wanted sustained dialogue and the UPR had helped to remove barriers to working with NGOs.

The Council adopted the UPR report on Switzerland by consensus.

### **Republic of Korea**

#### **State presentation**

Ambassador Sung-joo Lee, Permanent Representative to the UN, expressed the Republic of Korea’s full support for the UPR, citing that the ‘bonds of cooperation’ created through the reviews will be beneficial for the UPR process as a whole. He stressed the need for all stakeholders to work together and drew attention to the usefulness of the UPR in helping reaffirm human rights issues in the Republic of Korea.

Ambassador Lee cited the Republic of Korea’s full support for the majority of recommendations, in full or in part. He expressed Korea’s willingness to accept all recommendations based on the rights of women<sup>16</sup> and its continued efforts to protect the rights of disabled persons and foreign workers. Furthermore, the Republic of

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<sup>16</sup> A/HRC/8/20, recommendation 8, 14, 15, 18, 21, 28, 31.

Korea acknowledged the need for further study of recommendations concerning its *National Security Law*, the death penalty, accession to international treaties such as the *Optional Protocol to the Convention against Torture* and the withdrawal of the reservation on Article 22 of the *International Covenant on Civil and Political Rights*. Despite accepting the majority of recommendations, the Republic of Korea expressed its disapproval of recommendation 7, which requests the Republic of Korea to accede to the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, asserting that many of the Convention's provisions are not in line with domestic laws and therefore cannot be accepted.

Ambassador Lee concluded by expressing the need for effective follow-up instruments to the UPR process and recommended the Council create a mechanism to address issues raised during the UPR process.

### **Member and observer States**

Only two States expressed their views in relation to the Republic of Korea. Malaysia commended the Republic of Korea for promptly responding to its questions during the interactive dialogue and noted its responses to the UPR Working Group recommendations as a reflection of its 'positive engagement' in the UPR process. Malaysia noted improvements made by the Republic of Korea on issues related to women, children, and disabled persons, as a reflection of the effectiveness of the UPR process. In contrast, the Democratic People's Republic of Korea (DPRK) cited its disappointment with the Republic of Korea for not fully addressing the recommendations put forth by its delegation, in particular the recommendation requesting the abolition of the *National Security Law*.<sup>17</sup> Further, DPRK requested the Republic of Korea elaborate on the 'practical and detailed measures' being used to implement the Working Group recommendations.

### **Other stakeholders and concluding comments**

Of the five NGOs that took the floor, several called upon the Republic of Korea to abolish the *National Security Law*<sup>18</sup>, ratify the *Convention on the Protection of the Rights of All Migrant Workers*<sup>19</sup> and amend the *Freedom of Assembly and Demonstration Act*.<sup>20</sup> Amnesty International requested the Government to also ratify the *Optional Protocol to the Convention on Torture* and protect the rights of migrants, the majority of which are female.

The Canadian HIV/AIDS Legal Network provided a joint statement on behalf of 86 grassroots human and cultural rights organisations in the Republic of Korea, who expressed concern over the exclusion of numerous categories from the draft *Anti-Discrimination Bill*, which were originally included in the drafting process.<sup>21</sup> The Canadian HIV/AIDS Legal Network requested the categories be reincorporated into the Bill and noted concern over the widening communication gap between civil society and the Government.

In his final remarks Mr Lee thanked all participating members for their constructive comments. Responding to allegations and questions raised by the DPRK and NGOs surrounding the rights of migrants and the abolition of the *National Security Law*, the Ambassador noted that these issues had already been addressed during the Working Group, and which could be found in the written response. With regard to concerns raised about freedom of assembly, the Ambassador asserted that the Republic of Korea has always guaranteed the peaceful exercise of freedom of assembly.

Following these statements the Council adopted the report of the Working Group by consensus.

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<sup>17</sup> Recommendation 4.

<sup>18</sup> National Human Rights Commission of Korea, Amnesty International, Lawyers for a Democratic Society (MINBYUN)

<sup>19</sup> Amnesty International, Forum-Asia.

<sup>20</sup> National Human Rights Commission of Korea, Forum-Asia.

<sup>21</sup> The excluded categories were sexual orientation, family status, educational status, military status, nationality, language and criminal detention record.

## **Pakistan**

### ***State presentation***

Ambassador Masood Khan stressed that the ‘strength of the UPR lies in the equitable and transparent examination of human rights record of all states, without distinction.’ He emphasised Pakistan’s willingness to engage with civil society and drew attention to the ‘daunting challenges’ the country faces as a ‘full-fledged’ democracy. Due to time constraints, ‘only preliminary feedback’ has been received from the concerned Government departments regarding the UPR recommendations.

Pakistan focused heavily on religious freedom and women’s rights in its statement. Although Pakistan agreed ‘that more needed to be done’ to protect religious minorities, it pointed out that the country’s constitution guarantees freedom of religion. It stated that discrimination on the basis of caste was prohibited under its laws, but encouraged NGOs ‘to highlight the issues of scheduled castes to seek to redress their grievances.’ It noted that women in Pakistan had ‘risen to the highest offices and gave a detailed account of measures taken to advance women’s rights, including a 2004 law that declared honour killings to be murder and a 2006 act that amended the Hudood Ordinances to protect rape victims. Specifically, it said that it was ‘fully conscious that it has to implement CEDAW.’

Pakistan only briefly mentioned issues related to the rule of law and independence of the judiciary, insisting that ‘all fundamental freedoms have been restored’ since the November 2007 state of emergency. It called its media ‘one of the freest’ in the world, and said social development was a priority for its Government. It also reiterated its commitment to fighting terrorism, declaring that ‘the scourge of terrorism must be rooted out by military means as well as by redressing poverty and extremism.’ Finally, it assured the Council that ‘the coalition government has initiated a review of all questions related to capital punishment.’

Other topics touched upon by Pakistan included measures taken in human rights training, the protection human rights defenders, the promotion of the rights of children, the reform of its lawless tribal areas, and the ratification of international instruments.

### ***Member and observer States***

Positive comments, delivered mostly by States belonging to the Organisation of the Islamic Conference (OIC), with the exception of China, dominated the discussion.<sup>22</sup> These States praised Pakistan, inter alia, for its constructive engagement in the UPR process,<sup>23</sup> its success in promoting women’s rights,<sup>24</sup> and its sacrifices in combating terrorism.<sup>25</sup> Canada, however, stated that paragraph 106 of the UPR report did not ‘accurately reflect’ its suggestion that Pakistan take steps to end discrimination against minorities, as the paragraph omitted a list of specific groups in need of protection. It also expressed disappointment that Pakistan had rejected recommendations that it decriminalise non-marital sex and recognise marital rape as a crime, and noted that Pakistan’s blasphemy laws criminalise freedom of expression. This remark drew a heated reaction from Algeria, which stated that it ‘strongly rejects equalising incitement of religious hatred to freedom of speech.’ India took the floor to maintain that Kashmir is a part of Indian territory and is ‘under illegal occupation by Pakistan.’

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<sup>22</sup> Only eight States out of 24 States inscribed on the list of speakers, of which only five did not belong to the OIC, made comments.

<sup>23</sup> China, Bahrain, Morocco, Kuwait, Algeria, Indonesia.

<sup>24</sup> China, Bahrain, Morocco, Algeria, Indonesia.

<sup>25</sup> China, Morocco, Algeria.

### **Other stakeholders and concluding comments**

Many NGOs expressed concern over Pakistan's rejection in paragraph 108 of a number of recommendations,<sup>26</sup> based on the 'erroneous grounds',<sup>27</sup> that these recommendations were not in line with universally recognised human rights principles.<sup>28</sup> Amnesty International, for example, called Pakistan's stance 'perplexing,' pointing out that many of the recommendations rejected are addressed in UN human rights instruments ratified by Pakistan. International Women's Rights Action Watch – Asia Pacific said Pakistan's rejection of these recommendations contradicted its commitments under CEDAW.

NGOs were also troubled by restriction on freedom of expression<sup>29</sup> and religion<sup>30</sup> in Pakistan, as well as by the continuing denial of other freedoms since the November 2007 state of emergency. In particular, many called on Pakistan to reinstate the dismissed members of its judiciary and guarantee judicial independence.<sup>31</sup> Other concerns included the death penalty,<sup>32</sup> anti-terror measures like secret detentions and forced disappearances,<sup>33</sup> and caste-based discrimination.<sup>34</sup> The Asian Legal Resource Centre declared that Pakistan was 'undermining' and attempting to 'sabotage' the UPR process.

During the NGO statements, Egypt raised a number of points of order, claiming that the speakers were straying outside of their permitted scope and that it was not enough to 'simply mention the word recommendation' and trying to create an artificial link to the outcome. Egypt vowed to continue interrupting in this manner until the end of the consideration of UPR reports, and advised NGOs to 'use their time wisely.' Slovenia and Canada argued that the comments were in fact 'within the limits of general comments allowed by NGOs.' Egypt and Slovenia agreed, however, that interjections by the States should in no way detract from the NGOs' allotted time. China supported the points made by Egypt and stated that everyone 'should abide by the rules'. The President defender individual NGO statements by recalling that the speaker was referring to relevant parts of the outcome and that the report covered statements made during the Working Group.

In its concluding remarks, Pakistan thanked all States that had expressed kind words about Ms Bhutto and had congratulated its Government. The Ambassador sharply criticised Canada, asserting that it did not meet the deadline for submission of its correction regarding paragraph 106, and requested that it be 'more respectful to the Council by admitting this.' He also emphatically maintained that Pakistan could not legalise consensual sex, due to cultural norms and urged States not to impose you're their views on Pakistan. He said Pakistan was trying to reform its laws on defamation and on Zina, and accused NGOs of relying on 'outdated' information, without monitoring the developments in Pakistan since March 2008. In response to the Indian delegation's comment, he claimed that Kashmir was neither part of India nor Pakistan, but was a 'disputed territory.' In conclusion, he assured the members of civil society that 'all the points brought to the table will be faithfully transmitted'.

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<sup>26</sup> The rejected recommendations include the repeal of provisions of the Haddood Ordinances that criminalize non-marital consensual sex and fail to recognize marital rape, the decriminalization of defamation, the repeal of the death penalty, the decriminalization of adultery and the prohibition of honour killings.

<sup>27</sup> International Women's Rights Action Watch

<sup>28</sup> International Federation of Human Rights Leagues, Human Rights Watch, International Commission of Jurists, Amnesty International, Asian Legal Resource Centre, Women's Rights Action Watch.

<sup>29</sup> Int fed of hr leagues, ICJ, Euro Centre for Law and Justice

<sup>30</sup> Euro Centre for Law and Justice, Interfaith

<sup>31</sup> HRW, ICJ, AI, ALRC, Interfaith

<sup>32</sup> Int fed of hr leagues, HRW, AI

<sup>33</sup> AI, HRW, ALRC

<sup>34</sup> Asian Forum, ALRC



## **Zambia**

### **State Presentation**

Ms Gertrude Imbwae, Permanent Secretary of the Ministry of Justice, thanked the Working Group for the report.<sup>35</sup> She said that Zambia had made progress in the promotion and protection of human rights, through the national consultations in the preparation of the State report. Responses to the 11 recommendations that the Government had undertaken to examine further had been submitted to OHCHR for inclusion in the outcome. Ms Imbwae announced that the Government had signed the *Convention on the Rights of Persons with Disabilities* in May 2008.

### **Member and observer States**

Seven States commented on the outcome.<sup>36</sup> Some States noted positive progress<sup>37</sup> and others recognised the challenges faced by Zambia.<sup>38</sup> Botswana acknowledged Zambia's 'positive and constructive commitment' to the UPR process demonstrated through the provision of additional information in response to questions raised and willingness to accept some of the recommendations. Algeria commended Zambia for accepting to strengthen its efforts on gender issues.

Ireland commended Zambia for the broad consultations held with civil society.<sup>39</sup> It further welcomed the standing invitation issued to special procedures, efforts to address prison conditions, and progress in incorporating the *Convention on the Elimination of Discrimination against Women* into domestic law and urged its full implementation.<sup>40</sup> Ireland was encouraged by the Government's willingness to reform laws on freedom of expression and the criminal code in relation to prosecution of journalists. Ireland also hoped that Zambia would abolish the death penalty. Switzerland, one of the members of the troika, welcomed that many of the accepted recommendations dealt with the situation of women and children and that a gender perspective would be incorporated into the follow up to the UPR. Uganda addressed challenges related to gender based violence and the need to reduce maternal and child mortality. It noted that HIV has compounded the problem of child labour and that children made orphans re deprived education.

Nigeria called on the international community to complement the efforts made to promote and protect human rights.<sup>41</sup>

### **Other stakeholders and concluding comments**

Only one NGO took the floor. Franciscans International called on the Government to strengthen efforts to provide free and compulsory education and access to education for girl children. It expressed concern about street children and urged that a prevention and protection strategy be put in place. It also encouraged the Government to follow up to the Committee on the Rights of the Child's recommendations. Franciscans International recognised that HIV/AIDS is one of the main challenges facing Zambia and underlined the need for protection programme for orphans.

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<sup>35</sup> A/HRC/8/43.

<sup>36</sup> China, Algeria, Ireland, Nigeria, Switzerland, Uganda, Botswana.

<sup>37</sup> China.

<sup>38</sup> Nigeria, Botswana, Switzerland.

<sup>39</sup> Botswana.

<sup>40</sup> This was also urged by Switzerland.

<sup>41</sup> Botswana also encouraged the international community to provide support to Zambia.

Zambia in closing expressed appreciation for the involvement of all States in the review. It stated that dialogue is an effective tool for dealing with human rights and called on the international community to ‘play a positive role’ in the fulfilment of the objective of the UPR.

## Japan

### **State presentation**

The consideration of the outcome report for Japan<sup>42</sup> began with a presentation by Ambassador Makio Miyagawa, Deputy Representative of Japan to the UN. Mr Miyagawa stated that Japan was gratified at the Council’s interest in its human rights situation. He also noted that more than 40 States had made comments and recommendations and that the Government’s response to the 26 recommendations submitted to Japan had been distributed in writing. He addressed some of specific comments and recommendations from several countries<sup>43</sup> although much of the presentation was not new and merely reiterated Japan’s initial presentation and their stance on specific issues addressed during the UPR process in May. He noted, in response to Albania, the UK and Brazil, which had called for the ratification of outstanding international instruments, that most human rights treaties had been ratified and that in April 2008 Japan had presented its 3<sup>rd</sup> report to the CRC and 6<sup>th</sup> report to CEDAW and that Japan was proceeding to ratify others, including the *Convention on the Rights of Persons with Disabilities*. He stated that the Government would consider issuing a standing invitation to special procedures, and that Japan is willing to work with them as time permits. In response to Canada’s recommendation on eliminating discrimination, including on the basis of sexual orientation, Mr Miyagawa stated that the ‘human rights organs of the Ministry of Justice’ are conducting awareness-raising activities. He also addressed questions related to discrimination against minorities by stating that this was prohibited by international instruments to which Japan is a party. In addressing the death penalty, the Ambassador stressed that Japan’s position remains unchanged and that they are not in a position to grant a moratorium on execution or abolish the death penalty. He concluded by stating that Japan continues to promote sympathy to the so-called ‘comfort women’ and maintains a dialogue in this regard with the treaty bodies.

### **Member and observer States**

There were five States<sup>44</sup> who responded to Japan all of whom expressed appreciation for Japan’s responses and acknowledged Japan’s openness and commitment to human rights. However, the DPRK stated that Japan had made some misleading statements particularly in relation to military slavery. The DPRK noted that the treaty bodies have continued to urge Japan to cease this practice and requested that Japan adopt practical measures on this matter and have the commitment to implement them. Indonesia commended Japan for signing the *Convention on the Rights of Persons with Disability* and the *Convention on the Protection of All Persons from Enforced Disappearances* and being a party to the *Rome Statute on the International Criminal Court*. Malaysia stated that Japan is one of leading countries providing assistance to developing countries. Notably, Thailand recommended that Japan establishment relevant institutions and eliminate all forms of discrimination, including on grounds of sexual orientation and gender identity. The Philippines welcomed the acceptance of recommendations to eliminate discrimination, including against women and minorities.

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<sup>42</sup> A/HRC/8/44.

<sup>43</sup> Including: Qatar, Mexico, Albania, Brazil, Canada, Italy, Poland, Sri Lanka, Slovakia, Guatemala

<sup>44</sup> Indonesia, Malaysia, Thailand, Philippines, DPRK.

### **Other stakeholders and concluding comments**

Following State comments responses came from four stakeholders.<sup>45</sup> The International Movement Against All forms of Discrimination and Racism (IMADR) welcomed the acceptance of recommendations on minority women and combating trafficking but regretted that Japan had only repeated its established position on certain issues, including comfort women, the death penalty, the indigenous Ainu people, lack of a national human rights institutions and legislation prohibiting discrimination. IMADR also supported the UK recommendation that civil society be fully involved in follow up to the UPR process, and regretted the lack of consultations in preparation of the national report. The World Organisation Against Torture urged Japan to address gross and systematic violations of women's rights and noted the failure to act on recommendations in this regard from the treaty bodies. It argued that failure to do so would call into question Japan's seriousness as a Council member.

Ambassador Miyagawa made a final statement noting Japan's appreciation for comments received and re-affirmed its commitment to maintaining human rights standards at the international, regional and national levels. He underlined that the UPR should be a 'cooperative and effective mechanism' and expressed the hope that it would contribute to the improvement of human rights while taking into account the culture and history of the country and the principles of dialogue and cooperation.

The outcome was then adopted by consensus.

## **Ukraine**

### **State presentation**

Mr Yevhen Korniiichuk, the First Deputy Minister of Justice of Ukraine presented the Government's views on the report of the Working Group.<sup>46</sup> During the Working Group, Ukraine had accepted the large majority of recommendations made, namely 32 of a total of 37. It had reserved its position on the remaining five, and now provided information on those. Ukraine accepted a further two recommendations dealing with the signing and ratifying of the *Convention on the Rights of Persons with Disabilities* (CRPD) and the safety and proper treatment of persons detained by police. It rejected the remaining three recommendations on the recognition of the right to self-identification of all ethnic groups, on considering to use the Yogyakarta Principles on the Application of International Human Rights Law in relation to sexual orientation and gender identity as a guide in policy development, and the recommendation to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW).

### **Member and observer States**

Azerbaijan was full of praise for Ukraine's 'great progress since the end of the Soviet Union', particularly in the areas of law and prison reform and children's rights. Guatemala felt confident that the Ukraine would implement its commitments. The only slightly critical remark was made by the Russian Federation, which had seen its recommendation on the protection of the rights of ethnic, linguistic and religious minorities and on the status of the Russian language rejected already at the Working Group-stage. It expressed disappointment at the refusal by the Ukraine to provide conditions for minorities to be able to enjoy education in their own language.

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<sup>45</sup> IMADR, World Organisation against Torture, International Association of Democratic Lawyers, Japan Federation of Bar Associations

<sup>46</sup> A/HRC/8/45.

### **Other stakeholders and concluding comments**

Only one NGO, the Prison Fellowship International, took the floor. It expressed satisfaction about the way the Ukrainian prison system<sup>47</sup> was being reformed, including increasing cooperation with civil society, access without discrimination to moral support by religious councillors, vocational training for juvenile prisoners and post penitentiary centres for released prisoners. However, it urged the Government to simplify the procedure for receiving humanitarian assistance.

In its concluding comments, the Deputy Minister responded that the Russian recommendation would have run counter to the Ukrainian Constitution. Following these comments, outcome document on the Ukraine was adopted by consensus.

### Informal consultations

#### **Mandate of the Special Rapporteur on human rights of migrants**

Mexico, the main sponsor of the draft resolution, held informal consultations before tabling the resolution. The discussions centred on two key issues – the reference to international norms and standards, and the reference to specific groups of migrants. Spain (on behalf of the EU) wished to see the wording in the preambular paragraph changed to further weaken the link with the *International Convention on the Protection of Migrant Workers and Members of their Families* (ICRMW). Mexico indicated that it would prefer to maintain the existing language, but promised to discuss it with the co-sponsors. On the listing of particularly vulnerable groups of migrants (women, children, those undocumented, or in an irregular situation), the Russian Federation voiced its preference for deleting this reference. Again, Mexico stated that it would examine the proposal with the co-sponsors. Some minor changes to the wording of other paragraphs were suggested and immediately accepted.

#### **Draft resolution on Burma/Myanmar**

Slovenia (on behalf of the EU) convened informal consultations on a draft resolution on the situation of human rights in Burma/Myanmar. The draft resolution was tabled later in the day. Among other things, the draft expresses concern about the non-implementation of previous resolutions and the failure of the Government of Myanmar to invite the Special Rapporteur, and deplores that the constitutional referendum was held in an atmosphere of intimidation. It also expresses concern about the violations of human rights and humanitarian law in the eastern parts of the country. No African or Latin American delegations expressed their views on the draft.

A number of delegations, including India, China, and the Russian Federation expressed their disappointment about these ‘last-minute consultations’. Overall, the reactions to the draft resolution mirrored the divisions observed in the Council plenary during the consideration of the follow-up to the special session on Burma/Myanmar.<sup>48</sup> One group of States felt that there had been sufficient resolutions on the situation in Burma/Myanmar recently, and that the authorities should be given more time to improve the situation.<sup>49</sup> India, for instance, expressed its ‘surprise’ at seeing another draft resolution on Burma/Myanmar, and said it got ‘a sense that we are trying to do things too quickly’. The same States also felt that the recent natural disaster that had hit Burma/Myanmar was a valid reason to give the authorities more time to implement

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<sup>47</sup> It was reported to be the second biggest in Europe.

<sup>48</sup> See ISHR’s *Daily Update* of 6 June 2008.

<sup>49</sup> India, China, Russian Federation, Philippines, Thailand, Vietnam.

previous resolutions. Vietnam urged colleagues to take into account efforts by ASEAN to encourage cooperation by the Government of Myanmar.

Countering the arguments about the allegedly bad timing of the draft resolution, other States felt that the initiative was taken at the right moment.<sup>50</sup> Australia reflected these concerns stating that the situation on the ground had not improved, that the Government of Myanmar had not shown any good faith attempt to improve the situation, that both the Constitution and the referendum held on the Constitution were flawed, and that the continued detention of Aung San Suu Kyi all merited continued attention by the Council. Finally, several delegations argued that the cyclone Nargis should not be used as an excuse for tolerating human rights violations.<sup>51</sup>

There still seems to be a wide gap between views on the situation in Burma/Myanmar, and on the appropriate form of attention or action by the Council. This gap is not new, but it was narrowed somewhat during the special session on Burma/Myanmar in October 2007 where broad support from States from all regions led to a consensus outcome. However, it seems that the momentum of the special session is wearing off.

Slovenia (on behalf of the EU) announced that it would convene further informal consultations on the EU draft.

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<sup>50</sup> Australia, Slovenia, Switzerland, United Kingdom, Canada, Germany, Italy.

<sup>51</sup> Canada, Australia.

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