

Human Rights Council holds Interactive Dialogue on Arbitrary Detention and on Countering Terrorism

March 5, 2013

UN HRC

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13078&LangID=E>

The Human Rights Council at a midday meeting today held a clustered interactive dialogue with Mads Andenas, member of the Working Group on arbitrary detention, and Ben Emmerson, Special Rapporteur on the promotion and protection of human rights while countering terrorism.

Mr. Andenas said the Working Group on arbitrary detention had adopted its Deliberation N° 9 in which it concluded that the prohibition of all forms of arbitrary deprivation of liberty constituted part of customary international law and a peremptory norm. The Working Group had visited El Salvador in January 2012 and noted the general awareness by authorities and civil society on the need to respect human rights.

Mr. Emmerson said that the threats posed by groups that were inspired by the philosophy of Al Qaida were now ideologically, geographically and organizationally more diverse than at any time since 2001. The urgent and imperative need to develop an international consensus in favour of ethical counter-terrorism policies had given an added impetus to initiatives aimed at eradicating the legacy of impunity.

During the clustered interactive dialogue, concerning arbitrary detention, speakers said that the continuation of incidences of arbitrary detention made the mandate of the Working Group very important. Concerning the Deliberation N° 9 of the Working Group on arbitrary detention, some delegations considered that it was clearly within its mandate, whereas others recalled that it had not been requested by the Council and therefore should not appear in the report. Some speakers said that although the issue of extraordinary rendition had attracted worldwide attention, the tendency of some States to hide the truth caused serious concerns.

With regard to the promotion of human rights while countering terrorism, speakers condemned all acts of terrorism and underlined that human rights had to be guaranteed at all times in the context of measures to combat terrorism. Several speakers said that the question of secret detention centres should be addressed by the Council. All actions of States while countering terrorism must strictly comply with international law. In the fight

against terrorism, individuals should have the right to a fair trial so that the principle of lawfulness was respected at all times and the use of arbitrary criteria was avoided.

El Salvador spoke as a concerned country. Speaking in the interactive dialogue were France, Mexico, Cuba, Iraq, Venezuela, Pakistan on behalf of the Organization of the Islamic Cooperation, Egypt, Iran, United Kingdom, Greece, Gabon on behalf of the African Group, Bulgaria, Syria, China, the European Union, Poland, the Republic of Korea, Belarus, Lithuania, Algeria, Costa Rica, Malaysia, Burundi, Switzerland, United States, Indonesia, Morocco, Sri Lanka, Romania, Norway, Palestine, Pakistan, Democratic People's Republic of Korea, Brazil, Russia, Austria, Libya and Panama. The Organization of Islamic Cooperation also took the floor.

The following non-governmental organizations also addressed the Council: American Civil Liberties Union, Indian Council of South America, Canners International Permanent Committee, Reporters without Borders, the Open Society Institute, Human Rights House Foundation, Society for Threatened Peoples and Rencontre Africaine pour la Défense des Droits de l'Homme.

This afternoon, at 4 p.m., the Council will start a clustered interactive dialogue with the Working Group on enforced disappearances and the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt.

Documentation

The Council has before it the Report of the Working Group on Arbitrary Detention (A/HRC/22/44 and Add.1-3) on Opinions adopted by the Working Group and on its Mission to El Salvador (available in Spanish only).

The Council has before it the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/52).

Presentation of Reports by Working Group on Arbitrary Detention and Special Rapporteur on Human Rights and Counter-Terrorism

MADS ANDENAS, Member of the Working Group on Arbitrary Detention, presenting the report on the activities of the Working Group in 2012, said that the Working Group had held three sessions and visited El Salvador. It had adopted its Deliberation N° 9 in which it concluded that the prohibition of all forms of arbitrary deprivation of liberty constituted part of customary international law and a peremptory norm (jus cogens),

considered how it could contribute to the follow-up on the joint study on secret detention and, took further its work on the widespread arbitrary detention of migrants in an irregular situation. In the course of 2012, the Working Group had transmitted 104 urgent appeals to 44 Governments concerning 606 individuals, including 56 women, and had adopted 69 opinions regarding 198 persons in 37 countries. The Working Group welcomed the release of 21 prisoners who had been subject of those opinions and who had been detained in nine different States. The continued detention of Judge Maria Lourdes Afiuni Mora was a subject of continued concern; the Working Group considered actions against Judge Afiuni as an act of reprisal and called on the Government of Venezuela to immediately release the Judge and provide her with effective reparation.

Thematic issues on which the Working Group had focused in 2012 included the definition and scope of arbitrary deprivation of liberty under customary international law, which was incompatible with the principle of the Charter of the United Nations and the fundamental principles of the Universal Declaration of Human Rights. The use of “administrative detention” under public security legislation or migration laws resulting in deprivation of liberty for unlimited time without effective judicial oversight as a means to detain persons suspected of involvement in terrorism or other crimes, was not compatible with international human rights law and it applied in both times of peace and armed conflict. Recently, the Working Group had initiated preparations on the elaboration of the draft basic principle and guidelines on remedies and procedures on the right of anyone being deprived of his or her liberty, which aimed to assist States in fulfilling their obligations to avoid arbitrary deprivation of liberty.

The Working Group had visited El Salvador in January 2012 and noted the general awareness by authorities and civil society on the need to respect human rights. The country was confronting serious challenges due to activities of organized crime and the policies of “mano dura”, later declared unconstitutional, had resulted in a high number of arrests and detentions which continued to take place. The Working Group recalled that the right of security of the person and public security could not be pursued or achieved without due consideration to the rights to be free from arbitrary deprivation of liberty and to due process.

BEN EMMERSON, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, introducing his report, said that the issues set out in the report were not complicated and were of the highest importance. It was important to place the issues raised in the report in their political and security context. The threat posed by groups that were inspired by the philosophy of Al Qaida were now ideologically, geographically and organizationally more diverse than at any time since 2001. In understanding and meeting those new threats, local knowledge

and the support of Islamic civil society in the Middle East and North Africa region was essential. Specialist advisers to the Security Council and senior politicians in the West had spoken publicly of the need for international capacity building and confidence-building initiatives to address this changing profile of extremist violence, which in turn depended upon the building of trust among the peoples of that region that were most immediately and directly affected by these phenomena, and persuading Islamic civil society in these regions that the West was genuinely committed to upholding the rule of the law and respecting human rights.

It would take time for Western democracies to restore the confidence that was shattered among Muslim communities by the Central Intelligence Agency policy of secret detention, rendition and torture, and the decade of impunity that had followed, in the face of a steady stream of official Parliamentary inquiries, reliably sourced non-governmental reports, and court judgments that contained shocking details of the systematic violation of human dignity committed by the Bush-era Central Intelligence Agency in the name of democracy. The recent judgment of the European Court of Human Rights in *El-Masri versus the former Yugoslav Republic of Macedonia* was a good example. This was just the first of a series of cases currently pending in the European Court of Human Rights. The urgent and imperative need to develop an international consensus in favour of ethical counter-terrorism policies had given an added impetus to initiatives aimed at eradicating the legacy of impunity.

The link between ethical counter-terrorism initiatives and the eradication of impunity was underlined by the current British Foreign Secretary in an important speech on ethical counter-terrorism delivered recently at the Royal United Services Institute in London. Official stonewalling or filibustering at this critical juncture was a dangerous course and threatened the success of collaborative initiatives whilst at the same time it provided a distorted argument to those that sought to recruit others to violent extremism. The failure to address the past inevitably generated the misperception that the perpetrators remained as beneficiaries of official toleration or collusion. However inaccurate some of those perceptions might be, they would endure until decisive action was taken. Holding those responsible to account was now the only way of genuinely drawing a line under the past.

Statements by Concerned Country

El Salvador, speaking as a concerned country, thanked the Chairman of the Working Group on arbitrary detention for presenting the report and coming to El Salvador. Now more than ever, El Salvador was convinced that human rights had to be protected by all States. The new Government had committed to guarantee all human rights to all and a standing invitation had been sent to the Special Procedures of the Council. The general

directorates for prisons and various administrative bodies had the mandate to verify that human rights were respected. Respecting human rights in detention facilities was a priority. The situation would be cured in the long term. Police repression had a negative result in terms of respect of human rights. The Government had adopted a general policy against insecurity and the violence unleashed by criminal activities. In addition, several judicial bodies had been strengthened and improved. A balance between the rights of defendants and victims had to be found and the human rights of both should be respected. The Catholic Church had put in place a dialogue with civil society as part of a broader peace process.

Interactive Dialogue on Arbitrary Detention and Human Rights and Counter-Terrorism

France said that the continuation of incidents of arbitrary detention made the mandate of the Working Group very important and France called on States to refrain from reprisals against persons cooperating with the Working Group or applying its opinions. The Special Rapporteur on human rights and counter-terrorism stated that the fight against impunity did not correspond to the requirements of international law, which were comprehensive and universal. The International Convention for the Protection of All Persons from Enforced Disappearance was fundamental in the fight against impunity and all States which had not yet done so should ratify this important instrument.

Mexico recognized the importance of transparency, accountability and combating impunity for grave human rights violations in the context of counter-terrorism and said that the information about human rights violations must be made public and must be accessible. Mexico stressed the importance of principles of accountability and combating impunity, which were both well developed in international law, and asked how the Human Rights Council and its organs could contribute to preventing human rights violations in the context of counter-terrorism?

Cuba referred to the arbitrary imprisonment of five Cubans by the United States and noted that the terrorists the United States had been monitoring continued to live unharmed. The violation of the right of liberty was an instrument for the violation of the right to life. Cuba would not lose hope that one day justice would be reflected in international institutions and it would continue to ask for the freedom of those persons. One day the world would look with surprise at these dark ages where one power could mock others, under the world's gaze.

Iraq said that it would like to continue its cooperation with the Working Group and Mr. Emmerson in the framework of the fight against terrorism and it was hoped he would be able to make a visit to Baghdad to share his experience. The fight against terrorism and

the efforts undertaken to ensure national reconciliation in Iraq were extremely important for the stability of the situation in the country, especially since its society was composed of different ethnic and religious groups. The role that could be played by the Special Rapporteur was highlighted.

Venezuela said that the Working Group had once again devoted section five of the report solely to Venezuela and expressed concern about the detention of Judge Maria Lourdes Afiuni Mora, despite her fraudulent activities and her refusal to appear before the court. Venezuela emphasised the replies it had already provided on this case, which were proven and grounded in applicable law. It regretted that it had not seen corrections made by the Working Group. The Working Group was urged to make these corrections and rest assured that the Judge was guaranteed the right to defence and due process.

Pakistan, speaking on behalf of the Organization of Islamic Cooperation, said that the recommendations of the Working Group on arbitrary detention to States were very useful. The Organization of Islamic Cooperation noted that the report contained a study, which had not been requested by the Council. Therefore, it should not appear in the report. The report of the Special Rapporteur on counter-terrorism should be further discussed by the Council in the future.

Egypt reaffirmed its commitment to fight impunity. Egypt noted that States needed to build their capacity to protect human rights in the context of the fight against terrorism. There had been no mandate from the Council for a follow-up to the joint study.

Iran said that the failure of the international community to secure full accountability for the country responsible for torture, rendition and secret detention was a failure and setback for the United Nations human rights machinery. Although the issue of extraordinary rendition had attracted worldwide attention, the tendency of some States to hide the truth caused serious concerns. What solution existed to ensure that those who participated in the secret detention would be held accountable? Addressing the rights of victims of counter-terrorism must be an essential component of remedy and assistance to victims.

United Kingdom agreed with the Special Rapporteur on the importance of promoting and protecting human rights while countering terrorism. The rule of law, including accountability and compliance with human rights obligations, was a fundamental part of an effective counter terrorism strategy. The United Kingdom did not agree with the concerns expressed by some about the terms of reference for the Gibson Enquiry but was willing to engage in a constructive dialogue and looked forward to working with the Special Rapporteur as he fulfilled the terms of his mandate.

Greece welcomed the comprehensive report of the Working Group on arbitrary detention. Greece would do its utmost to ensure a successful follow-up to the Working Group's recent visit. Greece was facing disproportionate pressure on its migration management system because it had extensive land and sea borders and was in close proximity with countries of migrant origin and transit. A National Action Plan had been put in place in close cooperation with the European Commission, Greece's European partners, and several international organizations and, among other things, it was aimed at improving facilities in reception centres for asylum seekers, improving legal aid support, and providing translation services.

Gabon, speaking on behalf of the African Group, said that the rule of law and judiciary procedures had to prevail. The African Group welcomed the report by the Special Rapporteur despite not having had sufficient time to consider it carefully. The African Group condemned terrorism in all its forms and said that assistance to the victims of terrorism should not be provided only within State borders but also as an expression of common political will and effective cooperation based on the universal principles of human rights. The right to truth was a new issue in international law and the question of truth and the effective practice of States showed that it was a relevant issue. However, the right to truth in the fight against terrorism should be put into context.

Bulgaria said that all actions of States, while countering terrorism, must strictly comply with international law. Counter-terrorism assistance measures designed to further strengthen the rule of law and strict respect of universal human rights deserved special attention. Concerted efforts of the entire international community, which included different forms of cooperation at the global and regional levels, were needed.

Syria said that the nature of the involvement of some States in the so-called war on terror, especially secret prisons, amounted to acts of torture. It was a lie to say that citizens were subjected to acts of torture in Syria. For two years, terrorists who were financed and controlled by Western countries had been active in Syria with devastating consequences. The civilian effects of the use of drones in the war on terror should be studied by the Special Rapporteur.

China said that China was ruled by law. Citizens were free and a national plan for human rights was currently under discussion. The principles contained in the United Nations Charter, including sovereignty and non-interference in internal affairs, should be respected in the context of the fight against terrorism. Dialogues and exchanges among different civilizations and all peaceful means should be used to address the root causes of terrorism.

European Union was concerned by the lack of engagement from a number of States, which had failed to respond favourably to requests for country visits by the Working Group or to urgent appeals. The European Union had taken note of the conclusions of the Working Group relating to the definition and scope of the application of arbitrary detention in customary international law, and supported the Working Group in its efforts to shed light on instances of secret detention and on reprisals against persons which had collaborated with it. What considerations of national security did the Working Group consider legitimate and valid?

Poland said that it was one of the few countries which had responded to allegations raised at the international level that it had hosted secret Central Intelligence Agency detention centres. In response to those allegations, an official investigation had been launched. The preparatory proceedings were conducted by the Appellate Prosecutor's Office, which was fully independent of the executive. The secrecy of the investigation had to be respected fully so as not to jeopardize the procedure and the investigation should be allowed to run its full course and accomplish its objectives before any relevant information could be made public.

Republic of Korea appreciated the efforts made by the Working Group despite its limited human resources. The Republic of Korea expressed serious concern at the findings of the Working Group regarding Shin Sook Ja and her two daughters and Kang Mi-ho, that those persons had been detained for guilt by association within political prison camps for a long period. The Republic of Korea joined the Working Group in calling upon the Democratic People's Republic of Korea to take all necessary steps to release those detainees immediately and to provide compensation to them.

Belarus said that the Working Group had taken a decision regarding the so-called human rights defender, Mr. Bialiatski. The latter had committed crimes and his guilt was confirmed by information received from other countries. The conclusions of the Working Group in this case constituted interference in the internal affairs of a sovereign country. The activities of the highly politically biased Working Group and its Chairman should be reviewed by the Council.

Lithuania thanked the Working Group on arbitrary detention and the Special Rapporteur on the promotion and protection of human rights while countering terrorism for their reports. Lithuania had initiated and conducted a thorough investigation concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency. The parliamentary inquiry had established that certain conditions existed for containing the detainees. However, there was no legally proven evidence that detainees

had actually been held there. Lithuania was open to fully cooperate with the international community on this issue.

Algeria hoped that the recommendation recently adopted by the Working Group would contribute to a better understanding of arbitrary detention, taking into account the diversity of the legal systems. The delegation was particularly interested in the question of the right to truth and would contribute to the reflection on this issue. Concerning the joint study, Algeria deemed that the study referred to unreliable sources, in contradiction with article 8 of the Code of Conduct for Special Procedures.

Costa Rica strongly supported respect of the principle of lawfulness and the rule of law, adding that arbitrary detention was entirely incompatible with the Universal Declaration of Human Rights. The right of all individuals to resort to court to seek redress for arbitrary imprisonment should be upheld. The protection of human rights and of fundamental freedoms in the fight against terrorism was a priority for Costa Rica. There was need for a transparent system based on clear criteria and on standards which were clearly defined and explicit. In the fight against terrorism individuals had the right to a fair trial so that the principle of lawfulness was respected at all times and the use of arbitrary criteria was avoided.

Malaysia acknowledged the work carried out by the Working Group in accordance with its mandate. It also acknowledged the request by the Working Group for information on the initiatives which had been undertaken by Malaysia as a follow-up to the recommendations made following the recent visit of the Working Group to the country. Malaysia had undertaken legislative reforms in line with its intention to realize a mature, modern, and functioning democracy. Those included, among other things, the repeals of the Internal Security Act 1960 and the Emergency Ordinance 1969.

Burundi said that Burundi had studied with great interest the report of the Working Group and had taken note of the recommendations relating to Burundi. Burundi informed the Working Group that the third person mentioned in the report had been released today. Burundi had set up a special programme aimed at relieving the situation in prisons. It had also taken measures to reduce overcrowding and had released a number of prisoners under specific conditions. Forty-five per cent of the inmate population had benefited from new measures recently introduced. Special measures had also been taken in relation to local justice, and the implementation of those measures was being monitored.

Switzerland welcomed the efforts of the Working Group to put in place guiding principles to ensure the right to truth. Switzerland noted that the report urged States to cooperate with the Special Rapporteur and to review their domestic legislation to make sure that

they were pursuant to their obligations under international law. What measures could States take to strengthen human rights while countering terrorism?

United States noted with interest the new online database of communications. Regarding the Working Group's deliberations number 9, the United States doubted that there was a peremptory norm against arbitrary detention. However, the lawfulness of detention should be respected. There was no need to rewrite or reinterpret the provision of international conventions. The United States encouraged the Working Group to concentrate on specific cases rather than to attempt to summarize the legal obligations of States.

Indonesia said that anyone deprived of his or her liberty had the right to challenge the legality of their detention. The Indonesian law recognized equality of all before the law. No one should be subjected to arbitrary detention. In the context of the promotion and protection of human rights while countering terrorism, Indonesia committed that any allegation of human rights violations would be subjected to an impartial process. Taking into account the extraordinary nature of acts of terrorism, could the Special Rapporteur elaborate on how the pursuit of the right to truth could deter terrorism?

Morocco said, concerning the fight against terrorism, that Morocco was aware of the terrorist threat and worked to ensure that the necessary legal instruments were in place to counter terrorist incidents. Particular attention was given to security services personnel to ensure that they operated with transparency, which was one of Morocco's priorities. The Moroccan authorities had no knowledge of the facts mentioned in the report and relating to Morocco, and refuted them categorically. Morocco thanked the Working Group for its report and reiterated its invitation extended to the Special Rapporteur to visit the country.

Sri Lanka condemned terrorism in all its forms and manifestations. Today the country was in the process of bringing lasting peace to its people, but recognized that the reconciliation process was complex. Sri Lanka was implementing a National Action Plan with specific time lines and was striving to ensure for the people of the North and East of Sri Lanka that they could live with dignity and without fear of discriminatory or ruthless attacks. Sri Lanka reaffirmed its commitment to the Global Counter-Terrorism Strategy which presented a common strategic and operational framework to fight terrorism and protect the right to life.

Romania said that, regarding the allegations that secret CIA detention centres existed in the country, Romania had approached the subject with attachment to the rule of law and to democratic institutions. Until now no credible evidence had been found to suggest that

such centres existed in Romania or that Romanian airports had been used to transfer terrorism suspects. The Commission which had investigated the matter had concluded that there were no secret foreign bases and no detention facilities in Romania other than those of the regular penitentiary system. The civilian foreign flights could not have taken persons assimilated to detainees in the custody of Romanian authorities.

Organization of Islamic Cooperation strongly condemned the use of torture, ill treatment and secret detention and the massive violations of human rights and said that it would strengthen anti-terrorist measures including through adopting a definition of terrorism. The Organization of Islamic Cooperation condemned all acts of extremism and attempts to violate human rights in the name of the fight against terrorism and said the international community should deal with acts that dealt with racism and xenophobia and deal with causes at the heart of terrorism.

Norway said that the production of the Deliberation N° 9 by the Working Group on arbitrary detention was one of the important parts of its mandate and concurred with the conclusion that the prohibition of all forms of arbitrary detention was a part of customary international law and was non-derogable. Norway reiterated its support for the Working Group's ongoing work on investigation and action on individual cases and the making of recommendations to States. This work was essential as the experience of the past year had demonstrated that the world could not afford losing focus on the issue of arbitrary detention.

Palestine said that Israeli military used administrative detention to hold prisoners indefinitely on secret information without charging them or allowing them to stand trial, which violated numerous international standards. The International Court of Justice had ruled that in addition to the Fourth Geneva Convention, many other legal instruments applied to the Occupied State of Palestine, including the International Covenant on Civil and Political Rights. Israel the occupying power should free all detained arbitrarily arrested, guarantee all their rights and compensate them for the damage caused during their detention.

Pakistan said that exclusive reliance on the indiscriminate use of force exacerbated the root causes of terrorism. The use of illegal weapons and drones, among others, was not in line with human rights and with the principle of the sovereignty of States. The question of secret detention centres should be addressed by the Council and those who were responsible for human rights violations in this context should be held accountable.

Democratic People's Republic of Korea rejected the Working Group's opinion regarding specific cases that had nothing to do with arbitrary detention. The cases were only the

extension of the stereotyped heinous anti-Democratic People's Republic of Korea political plots by hostile forces and were not worthy of consideration. The delegation asked the Working Group to take a fair and critical attitude toward the ill-minded attempts by the forces hostile to the Democratic People's Republic of Korea to abuse the Working Group.

Brazil said that a broad interpretation of the concept of arbitrary detention comprised detentions of migrants and asylum seekers. It included the recognition of the customary and peremptory nature of the prohibition of all forms of arbitrary deprivation of liberty. The prolonged administrative detention of immigrants or refugees without a possibility of appeal must be considered as contrary to the rule of law.

Russian Federation said that extrajudicial killings of civilians could not be tolerated. The Russian Federation wanted to know what measures should be taken to ensure access to compensation and to protect the right of investigation for the victims of attacks, and how the issue of the use of drones should be dealt with.

Austria said that it took note with appreciation of Deliberation 9 in the report of the Working Group on arbitrary detention presented before the Council. Austria believed that human rights had to be guaranteed at all times in the context of measures to combat terrorism. The mandate of the Special Rapporteur on the promotion and protection of human rights played an important role in monitoring compliance and in drawing attention to shortcomings. How could the Council contribute to the further dissemination of information and to the application of framework principles to enhance the protection of every person's human rights while countering terrorism?

Libya said that the complaint filed by a citizen against the Libyan authorities claiming that he had been detained because he was one of the cousins of the defunct Libyan dictator had been investigated. The response of Libya was delivered within the time limit of 60 days and a justification for the detention had been included in the response but the Working Group had failed to take the justification into account. The citizen had been detained because he was occupying a military post and had been promoted to General during the Libyan revolution. While legal proceedings were underway, he was receiving medical care and was allowed visits by members of his family.

Panama referred to a report presented by the Working Group in December 2012 which referred to Panama and mentioned that the Government had not responded to a particular case of Mr. Angel de la Cruz Soto, which the Working Group had classified as category three of arbitrary detention. Panama regretted that it seemed the Working Group had not taken into account the information that had been provided. It would be appreciative if the

Working Group could reconsider its decision on this case and take into account the report of its Attorney General.

American Civil Liberties Union said that although the current United States Administration had disavowed torture, it had protected senior Government officials who authorised torture and abuse from accountability, civil liability and public scrutiny. The United States had much to gain from rejecting impunity, returning to the rule of law and providing adequate redress to the dozens and dozens of people brutally abused.

Indian Council of South America said that indigenous peoples were a national security issue in the United States where the original relationship considered them of foreign nationality, outside of the community of the United States. They were arbitrarily detained in countries in Latin or North America, targeted and marginalised, and found themselves in an unlawful legal straight-jacket by existing policies.

The Open Society Institute called on Governments to ensure accountability for human rights violations associated with the Central Intelligence Agency's (CIA's) secret detention and extraordinary rendition operations. The CIA had reportedly conspired with 54 countries in Africa, Asia, Australia, Europe and North America to operate this global programme and in many instances facilitating torture. The Governments should disclose information on human rights violations associated with secret detention and rendition operations.

Reporters without Borders was increasingly concerned about the increasing practice of adopting legislation containing a very wide definition of terrorist actions, which were used to justify arbitrary detention by authorities and to curb freedom of expression. Were there any plans to develop a much more precise definition of constituted acts of terrorism and monitor the use of anti-terrorist legislation and measures against news providers and human rights defenders?

Canners International Permanent Committee said that arbitrary detention of women and girls and their inability to seek education or employment in Afghanistan was used in the name of religious beliefs. The Taliban and the warlords must not be allowed to rule Afghanistan, otherwise a decade from now the world would be confronted with the arbitrary confinement of women and girls by a Government brought to Afghanistan by the democratic liberal west.

Rencontre Africaine pour la Défense des Droits de l'Homme said that the respect of international instruments relating to human rights was of major importance for taking effective counter-terrorism measures at the national, regional, and international levels,

and urged Member States to enhance their engagement with all pertinent international instruments. The measures taken by several States to fight terrorism and the establishment of secret detention centres should take into account the suffering caused to the families of detainees. What did Mr. Emerson think about the adoption of the code of ethical conduct by authorities and the police at various detention centres?

Society for Threatened Peoples said that the opinions of the Working Group on China were not available and so the Society for Threatened Peoples could not quote them. Since the 2008 uprising on the Tibetan plateau, thousands of Tibetans had faced arbitrary detention which led to many cases of enforced disappearances, custodial deaths, unfair trials and harsh prison sentences. Another matter of concern was denying the right of relatives and friends of Tibetans who had self-immolated to hold funeral services for their loved ones.

Human Rights House Foundation said that a detention, even if it was authorized by law, could still be considered arbitrary if it was premised on an arbitrary piece of legislation or was inherently unjust. In August 2011 Ales Bialiatski was arrested and sentenced to four and a half years of imprisonment under strict regime conditions in Belarus. His rights to receive visitors and food parcels had been severely restricted. Human Rights House Foundation called upon Belarus to release Ales Bialiatski immediately and unconditionally and to drop all charges against him.

Concluding Remarks

MADS ANDENAS, Member of the Working Group on Arbitrary Detention, in concluding remarks said that interventions in the discussion which emphasised the importance of compliance with opinions and with urgent appeals, which was part of a core international human rights supervisory system, were very important. Mr. Andenas thanked Brazil for its invitation to visit and also welcomed and found helpful the intervention by the United States and the way it had emphasised its support for the work of the Working Group on individual cases, as well as its expression of the *lex specialis*. Regarding the United States questions on process and consultations that would be held, the Working Group had already begun discussions on methodology and work regarding Resolution 20/16, which would involve consultations with States. Mr. Andenas made reference and expressed thanks to Morocco for its repeated invitation, the Republic of Korea and Malaysia on implementation of recommendations, Burundi's information on the release of detainees, Palestine for the information provided, and Cuba and the issue of the Cuban Five, among other interventions he would have liked to respond to. Cooperation and coordination were very important and the Working Group regarded its work concerning Resolution 20/16 as absolutely essential. It would continue its work and

cooperation with other mandates including Mr. Emmerson's and it would continue to make reference to United Nations bodies and courts, and do so very strictly within its mandate.

BEN EMMERSON, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, in his closing remarks, thanked a number of States for their positive reactions to the political commitment that was needed to bring the guiding principles to reality. The right to truth, the principle of accountability and the principle of non-impunity must apply to all States equally and not only the weaker ones. Taking account of the extraordinary nature of acts of terrorism, the pursuit of truth and accountability could enhance measures by Governments aiming at deterrence. It was critical that the West and democracies practiced what they preached and implemented the standards they called on others to implement. The human rights violations committed in the framework of counter-terrorism fuelled terrorism. Words would never be enough and statements by Western Governments opposing torture rang empty to the ears of those currently living under regimes practicing torture; their scepticism could only be enforced if Western Governments ignored the crimes committed by their predecessors. Use of torture by public officials must not be kept secret or justified in the name of national security; States routinely resorting to claims of national security were abused as a means for suppressing the truth. That was why an independent judiciary was essential in regulating any claim made by the State in the name of national security. While the Special Rapporteur recognized the efforts of some countries to investigate cases of detention and torture in the context of secret programmes, such as in Poland, he noted that most of those inquiries and investigations must be reopened and repeated. It was disappointing that the United States had failed to release the report of the Feinstein Committee and that the results of the investigation on the involvement of the Central Intelligence Agency into the secret detention programme were being kept secret.