

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COUNCIL, 4<sup>TH</sup> SESSION DAILY UPDATE, 26 MARCH 2007

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### 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 afternoon was devoted to the second Special Event on the Council's timetable, dedicated to the *Convention on the Rights of Persons with Disabilities*, followed by the introduction of the reports by Mr Martin Scheinin, the Independent Expert on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as well as Mr Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Mr Scheinin focused his intervention on the use of profiling to counter terrorists threats, and outlined the dangers for human rights associated with this practice. Mr Nowak enumerated a number of areas of particular concern to his mandate, including the insufficient implementation of universal jurisdiction, the continued need for regional coordination as well as the lack of effective reparation for victims of torture.

Originally the Special Event was scheduled to last for one hour, with two hours dedicated to the two special procedures mandate holders. However, the Council ended up spending most of its time for the Special Event, and only two concerned States were given an opportunity to react to the reports. The remaining interventions by States and NGOs will be heard on 27 March 2007.<sup>1</sup> The Special Event took again the form of a panel as was the case for the Special Event on Violence Against Children. Many States took the opportunity to welcome the adoption of the *Convention on the Rights of Persons with Disabilities*, as well as to announce their upcoming signature of the text.

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<sup>1</sup> Only Mr Nowak will be able to attend tomorrow's session. Mr Scheinin will not be there, but according to the President he will follow the webcast and reply in a different form.

During lunchtime, the Facilitator of the Working Group on the Universal Periodic Review (UPR) again held informal consultations. The schedule for the other informal consultations is contained at the end of this Daily Update.

## Special Event on the *Convention on the Rights of Persons with Disabilities*

The Council held its second thematic Special Event on the afternoon of 26 March 2007, this time dedicated to the *Convention on the Rights of Persons with Disabilities* (the Convention).<sup>2</sup> The Convention had been adopted by the General Assembly in December 2006 and will be opened for signature and ratification<sup>3</sup> on 30 March 2007 in New York (next Friday).<sup>4</sup> The event was held in the form of a panel, comprised of eminent persons engaged in the drafting of the Convention, which was followed by reactions from States, specialised agencies, and NGOs. The panellists present were:

- Ms Louise Arbour, United Nations High Commissioner for Human Rights;
- Mr Don MacKay, the Ambassador of New Zealand and Chairperson of the Ad-hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities;
- Ms Hissa Al Thani, United Nations Special Rapporteur on Disability for the Commission for Social Development;
- Mr Monthian Buntan, President of the Thailand Association of the Blind;
- Mr Lex Grandia, representative of the International Disability Caucus.

Ms Louise Arbour said that her Office is seeking to establish and strengthen partnerships with national human rights institutions (NHRIs), civil society, other parts of the UN as well as specialised agencies, with a view to improve the protection of the right of persons with disabilities.<sup>5</sup> In this regard, she referred to the discussion that had taken place in the meeting of the International Coordinating Committee of NHRIs last week. She however underlined that States remain the key actors working towards that goal, and drew attention to a Handbook that is currently being developed by the OHCHR, which will assist parliaments in the implementation of the Convention. The High Commissioner reiterated her suggestion that the Council could ask her Office to provide annual analytical reports for its consideration. In her view this would allow the Council to better integrate the rights of persons with disabilities in its agenda and play its leadership role. Finally, she announced that the OHCHR was working towards an improvement of their website's accessibility.<sup>6</sup>

Mr Don MacKay highlighted that while most rights contained in the Convention were already covered by existing human rights treaties, in practice persons with disabilities had been discriminated against in a number of ways, and that insufficient attention had been paid to ensuring effective enjoyment of theoretically secured rights. He said that the Convention marked a 'paradigm shift' away from thinking about disability in terms of welfare towards recognising it as a human rights matter. He outlined a number of recurring themes of the Convention, including the principle of inclusiveness in the community, a change in attitude coupled with the

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<sup>2</sup> The first such event was held on 19 March 2007. See the ISHR *Council Monitor Daily Update* available at <http://www.ishr.ch/hrm/council/>.

<sup>3</sup> By **signing** a treaty, a State indicates that it has preliminarily endorsed the instrument and is examining it domestically to consider ratifying it. Signing a treaty obliges the State to refrain from acts that would defeat or undermine the treaty's objective and purpose. **Ratification** and **accession** both signify the agreement by a State to be legally bound by the terms of the treaty, but they involve different procedures. States that ratify a treaty will sign it first. Those that accede to a treaty do so directly without the preliminary signature, often years after the treaty has entered into force. The formal procedure of ratification and accession varies according to the national legal system of each State, but mostly involves formal approval by the parliament.

<sup>4</sup> For more background information on the Convention please refer to G. Pasztor and M. Ineichen, 'Successful and failed attempts to create human rights standards', *Human Rights Monitor 2006*, ISHR, Geneva (2007).

<sup>5</sup> Oral statements made at the Council can be found on the OHCHR extranet (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).

<sup>6</sup> This concept describes the ability by persons with disabilities to be able to access information and public places effectively, and not merely have the right to access information or a particular place. In the context of the OHCHR website, this means complying with certain technical standards, readable by devices supporting persons with disabilities.

combating of stereotypes, as well as a focus on accessibility. This includes the obligation of States to make necessary adaptations to accommodate various disabilities. Mr MacKay called on the Council to fulfil its responsibility by contributing to the effective implementation of the Convention. He saw information sharing among States as a key step in that regard. He concluded by supporting the suggestion by the High Commissioner that the Council should consider receiving annual analytical reports from the OHCHR.

Ms Hisa Al Thani shared her views as the UN Special Rapporteur on Disability for the Commission for Social Development. Ms Al Thani normally reports to the Commission for Social Development; nevertheless she stated that persons with disabilities should have a place on the agenda of the Commission on Human Rights (and now the Council), since the areas of social development and human rights are intrinsically linked. She underlined the importance of the Convention by stating that even though it dealt with the rights of persons with disabilities, it was a human rights instrument that protects *all* people because all are “potentially temporarily abled”. Expressing her appreciation of having witnessed and been part of the drafting process, she emphasised the role that civil society, disabled persons organisations, human rights institutes, development and social justice organisations, and persons with disabilities themselves had played in it. Calling on the international community to shoulder the responsibility of implementing the Convention, she warned that the mere fact of having a Convention did not change the lives of persons with disabilities on the ground. She emphasised the need for the rights of persons with disabilities to be realised at the community level. Therefore, signatories needed to make sure that cultures, societies, communities, legislations, policies, and programmes integrate the new culture that is expressed in the Convention.

Mr Monthian Buntan expressed his appreciation for the drafting of the Convention. He stated that as a member of the disability sector and member of the Thai delegation in the drafting process, he was convinced that the process had been successful only due to its participatory and accessible nature. Mr Buntan highlighted the need to continue this participatory approach to ensure effective implementation. He stressed the importance of monitoring to ensure that persons with disabilities will no longer be the poorest of the poor. Measures to achieve this include public education and training among disability communities and the general public by civil society; an effective facilitating role for UN agencies to ensure that the maximum number of States sign, ratify, and implement the Convention; as well as cooperation among States when working towards successful implementation of the Convention. He concluded by recalling that the Convention specifies that the text must be made available in ‘accessible formats’ and expressed his hope that the UN and its agencies would apply this philosophy for all documents.

Mr Lex Grandia gave a statement on behalf of the International Disability Caucus (IDC) and the International Disability Alliance, representing over 70 NGOs that were heavily involved in the drafting process of the Convention. Mr Grandia explained that in the beginning of the drafting process, the International Disability Caucus felt like an outsider, but at the end they were consulted as experts. He stressed the need to rapidly address the implementation of the Convention, including the adaptation of national laws and practices, and shared the view expressed by Mr Buntan that it is important that persons with disabilities continue to be engaged in the process of implementation. He called on the Council to use the Convention as ‘new eye glasses’, permitting it to better assess links between disability and poverty for example, as well as a ‘hearing aid’, allowing it to be responsive to the capacities of persons with disabilities and their ability to contribute to society. Mr Grandia underlined his hope that the Convention will help to guide the future work of the Council, including by way of inclusion of the rights of persons with disabilities as a regular agenda Item and in the Universal Periodic Review mechanism. The International Disability Caucus also asked that all special procedures take the Convention into consideration in their work. Mr Grandia reiterated the motto of the IDC that had driven the process of drafting: “nothing about us without us”.

### **Comment and questions by States, Specialised Agencies, NHRIs and NGOs**

All States who spoke in the dialogue were favourable of the ratification of the Convention. Along with general expressions of gratification to both the panel and the Ad-Hoc Committee who had drafted the

Convention, many States pledged to sign the Convention in New York on 30 March 2007.<sup>7</sup> Japan and Malaysia stated that they were seriously considering the signing and ratification of the treaty. The role that NGOs and persons with disabilities had played in the process of developing the Convention was praised by many States. There was also a strong agreement with members of the panel from States that there needed to be a continued role for NGOs, civil society, and persons with disabilities in the work of the Convention at both national and international levels.<sup>8</sup> The International Save the Children Alliance, UNICEF, and Italy all raised concerns on the rights of disabled children, in particular the lack of educational opportunities and the higher risk of living a life of poverty as suffered by children with disabilities. The International Coordination Committee of NHRIs welcomed the adoption of the Convention, and called for effective implementation at national level. They also said to pay particular attention to the participation of disabled people in the national monitoring mechanisms to be set up by the Convention.

Some States gave specific suggestions on how the Council could continue its involvement in the process. Brazil outlined three major areas where the Council needed to be involved with the new system, focusing on the areas of the promotion of a leading role for different UN agencies; on international cooperation in the facilitation of technical and financial assistance; and as a further level of monitoring for the system. Austria proposed the need for cooperation between agencies, in particular the need for the system established by the Convention to communicate with the framework put in place by the *Ottawa Convention on Anti-Personnel Mines*. Several States noted the opportunity to mainstream the policies contained in the Convention into the wider UN framework and the USA asked the panel how this could be accomplished.<sup>9</sup> Germany and Uruguay questioned the panel on the role the Council could play as a facilitator and what the most urgent action for the Council was at that stage.

A number of States commented on the legal protection that the Convention would give to the rights of persons with disabilities. UNICEF and Italy highlighted the legitimacy and change in perspective that the Convention would give to disability as a human rights issue.<sup>10</sup> The Russian Federation expressed that the Convention should not only constitute a legal basis but also one for real action. Other States looked at the systems and legislation already in place or under development in their countries, to bring them in line with the Convention.<sup>11</sup> The Republic of Korea warned States of becoming complacent in this regard, stating that the Convention was only the first step required for greater respect of the human rights of persons with disabilities. Bangladesh raised concerns about the protection of the rights of persons with disabilities in developing countries, highlighting the need for technical and financial assistance from developed countries if developing States were to be successful in the ratification of the treaty. In a similar vein, Honduras stated that poverty as a larger issue impacted on persons with disabilities, with poverty being both a cause and effect of disability.

### Replies by the panellists

In their replies, the panellists were grateful for the positive echo the Convention had generated amongst States. Ms Arbour recognised that many comments directed to her were focused on implementation, which she interpreted as a positive forward-thinking spirit. She also promised that resources within the OHCHR will be dedicated to the Committee on the Rights of Persons with Disabilities once it is set up. Ms Al Thani underlined the importance of international cooperation to make sure developing countries could effectively implement the Convention. Don MacKay identified the important role played by disability organisations as a common thread of interventions heard, and called on States to involve such organisations closely in the implementation. Both Mr Buntan and Mr Grandia reiterated that the process of a close cooperation between States and civil society had worked well, and should be a good recipe to move forward. The IDC stressed that their expertise continues to be available for States to use in the implementation of the Convention.

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<sup>7</sup> Spain, Morocco, Mexico, Thailand, Tanzania, the Sudan, Libyan Arab Jamahiriya, Canada, India, Indonesia, Croatia, Finland (on behalf of the Nordic Countries Sweden, Norway, Denmark, Iceland who will all sign the convention), the Republic of Korea, the Czech Republic, Brazil, Algeria.

<sup>8</sup> Japan, the Russian Federation, Malaysia, Finland, Brazil, UNICEF, Tunisia, the USA, Costa Rica, Mexico, Argentina, Italy.

<sup>9</sup> The USA, Germany, Uruguay.

<sup>10</sup> Spain, China, Canada.

<sup>11</sup> Cuba, Morocco, Croatia, India, Japan, Malaysia, Thailand, Algeria, Pakistan (on behalf of the OIC).

## Special Rapporteur on the promotion and protection of human rights while countering terrorism

The Special Rapporteur, Marin Scheinin, presented his annual report, his report on the mission to Turkey, and his study on counter-terrorism measures in Australia.<sup>12</sup> The Special Rapporteur reminded the Council of his dissatisfaction with the cooperation of governments during his last address in September. Mr Scheinin stated that things had improved and that he had received invitations from South Africa, the United States of America (USA), and Israel. He also reported that discussions are underway for a visit to Spain, who has extended a standing invitation, and the Philippines.

The Rapporteur explained his methods of work for these upcoming missions. He stated that he will conduct an assessment of the compatibility of the law and practice of the country's counter-terrorism measures with human rights and fundamental freedoms. He explained that the primary point of assessment would be the human rights treaties ratified by the country concerned. Secondly, norms of customary international or humanitarian law would need to be addressed, but only with regards to certain aspects of counter-terrorism measures. Humanitarian law was to be considered only to the extent that the country concerned was experiencing an armed conflict or was seeking to justify its counter-terrorism activity with reference to an armed conflict.

Mr Scheinin explained that the main concern of his annual report was racial, ethnic or other forms of terrorist profiling. He defined 'profiling' as the systematic association of a set of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law enforcement decisions. The Special Rapporteur was of the view that this was a permissible means of law enforcement activity, as detailed profiles based on factors that are statistically proven to correlate with certain criminal conduct may be effective tools to better target limited law enforcement resources.

However, he cautioned against using too broad profiles, in particular if they are based on stereotypical assessments of 'race', national or ethnic origin or religion, because these are prone to lead to prohibited discrimination. The Rapporteur also expressed that terrorist profiling practices based on 'race' cannot be supported on objective and reasonable grounds, because they are based on the wrongful, unscientific assumption that there are different human 'races'. He added that these are often inaccurate indicators for a risk of terrorism, because the initial premise that people of a particular origin are likely to be involved in terrorist activities is doubtful. The Rapporteur also explained that many States use ethnic appearance or national origin as substitutes for religious profiling. Mr Scheinin highlighted that the cases of the USA and the United Kingdom have demonstrated that these were often very poor substitutes for religion. Summarising, he explained that while profiling is not by definition impermissible, it tends to fail to meet the tests of legitimate aim and proportionality. He added that profiles are easy to evade, as terrorist groups have regularly proven their ability to adapt their strategies to avoid stereotyping. The Special Rapporteur was of the view that profiling practices based on ethnicity and national origin are an unsuitable and ineffective means of countering terrorism, and that they affect thousands of innocent people without producing concrete results.

Speaking of the efforts by States to control people (for example at airports), the Special Rapporteur explained that guidelines for controls should be universal and affect everyone equally. He said that where blanket searches were impossible, the people to be searched must be selected on a random basis rather than on an ethnic or religious basis. He stressed that random searches are impossible for terrorists to evade and may be more effective than profiling. Due to the short time available, Mr Scheinin could not go into enough detail in his presentation, but referred to his written statement. There he stresses that any terrorist profiling activities need to be monitored and clearly documented. He called on States to establish systems of transparent and independent oversight of law enforcement agencies, and to provide effective means of holding law

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<sup>12</sup> A/HRC/4/26, 29 January 2007 (annual report), Add. 1, 16 November 2006 (Turkey), Add. 3, 14 December 2006 (Australia). The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of these reports available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

enforcement agents accountable for any violations of human rights, including when committed in the context of countering terrorism.

On the issue of suicide attacks, the Special Rapporteur stated that existing international standards such as the *Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* are adequate in respect to both regulate the behaviour of law enforcement officers when faced with suicide attacks, but also to allow them the necessary leeway when countering such acts. In particular, he deplored the rhetoric of “shoot-to-kill” as displacing clear legal standards.

Turning to his country visits, Mr Scheinin thanked the Government of Turkey for its cooperation in the preparatory stage and during the Special Rapporteur’s visit. He also spoke about the content of his study on the counter-terrorism law and practice of Australia. He stated that while the frequency of his country visits will prevent him from conducting such a study in future months, he intended to apply the methodology developed from the Australia study in future cases in preparation of a country visit, or instead of such a visit.

### Interactive dialogue

Turkey responded to the presentation of Mr Scheinin as a concerned country. The delegation took the opportunity to address some of the concerns the Rapporteur raised in his report. They stated that terrorism was the biggest security threat that the entire world faces, and that it was a crime against humanity. Turkey explained that in combating terrorism, human rights should not be sacrificed. The delegation made clear that it had not violated any of its treaty obligations even at times when terrorist acts were on the rise. It added that Turkey’s counter-terrorism measures had always been subject to judicial scrutiny, primarily by the European Court of Human Rights.

The Turkish delegation briefly described their reform process which started in 2001, and that its *Anti-Terror Law* was in line with the principle of legality enshrined in the Constitution. On the Special Rapporteur’s concerns regarding internally displaced persons (IDPs), the delegation referred to Special Rapporteur Walter Kälin’s presentation where he had positively assessed Turkey’s efforts in this regard. Turkey also stated that they were working with the UN High Commissioner for Refugees on the repatriation of refugees from the Makhmour Camp.

The delegation cited the section of Special Rapporteur’s report where the shortage of economic, social and cultural rights in the East and South of Turkey are suggested as the cause of violence. However, in the view of the delegation, the Special Rapporteur had failed to explain why institutions such as schools, social institutions, and income generating activities had become targets of terrorism. Furthermore, the delegation stated that assessing root causes or prevention of terrorism was not within his mandate, as this would require the Special Rapporteur to make a security risk assessment, which was entirely outside of his mandate.

### Special Rapporteur on Torture

Mr Manfred Nowak, the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, presented his annual report as well as the report on his mission to Jordan and the follow-up of his recommendations.<sup>13</sup> In his presentation, Mr Nowak discussed the main points raised in the Report.

First of all, he approached the issue of the obligations of States parties to establish universal jurisdiction to the principle *aut dedere aut iudicare*.<sup>14</sup> He stressed that the major aim of the *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (the Convention against Torture) was to end impunity for torture and to oblige States to set up a specific definition of the crime of torture in their national

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<sup>13</sup> A/HRC/4/33, 15 January 2007 (annual report), A/HRC/4/33/Add.2, 15 March 2007 (Jordan) and A/HRC/4/33/Add.3, 5 January 2007 (follow-up of Recommendations). The reports are available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (“Reports in Short”) of these reports that are available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/).

<sup>14</sup> The principle requires States to either extradite (*aut dedere*) or prosecute (*aut iudicare*) perpetrators of torture.

legislation. To this aim, the Convention against Torture appeals to the principle of universal jurisdiction as an international obligation. However, Mr Nowak regretted that, despite the fact that 20 years have passed since its entry into force, States remain reluctant vis-à-vis this principle. On this issue, Mr Nowak quoted a decision of the Committee against Torture in 2006, concerning the former dictator of Chad (Hissène Habré); in that decision the Committee ruled out that Senegal violated the principle universal jurisdiction together with the obligation *out dedere out iudicare*. He underlined that this decision had to be regarded as a positive example for other States. Indeed, Senegal reviewed its law to permit the trial, created a witness protection programme and raised funds for the investigations and trials. Mr Nowak emphasised the urgent need for all State parties to comply with their rights and obligations to exercise universal jurisdiction by virtue of the Convention against Torture.

Secondly, Mr Nowak stressed the importance of enhancing cooperation with regional organisations, stating that human rights problems could only be effectively addressed with an effective coordination among all actors, in particular with regional organisations such as European Union, Council of Europe, Organisation for Security and Cooperation in Europe, Organisation of American States.

Thirdly, the Special Rapporteur emphasised once again the importance of the right to remedy and reparation for victims of torture, clarifying in particular that these notions go well beyond the concrete monetary remedy, and also include criminal prosecutions of perpetrators and guarantees of non-repetition. Mr Nowak paid tribute to civil societies, organisations, and governments engaged in the rehabilitation of victims of torture, in particular he mentioned the European Union and United Nations Voluntary Fund for Victims of Torture; he thanked the USA, Denmark, and the Netherlands as for their generous contributions to the fund. He however suggested that those countries found to be practising torture should be the primary contributors to that fund.

Finally, Mr Nowak focused on his country visits. He pointed out that he was scheduled to undertake a visit to the Russian Federation in October 2006, with particular attention to the situation in Chechnya. Because the Russian Government did not accept parts of the 'terms of reference' for the visit, he decided not to carry it out.<sup>15</sup> He called on the Russian Federation to demonstrate its commitments to human rights and to allow the Special Rapporteur an objective visit to its territory, including to the Northern Caucasus.

Turning to his visit to Jordan in June 2006, Mr Nowak showed appreciation for the full cooperation of the Government. Nevertheless, he expressed serious concerns regarding cases of torture committed by the General Intelligence Directorate (GID) agents and by the Criminal Investigation Department (CID) agents, who do not face any punishment for such crimes. Mr Nowak came to the conclusion that beatings and corporal punishments amounting to torture are routinely taking place in Jordanian prisons.

The Special Rapporteur briefly spoke on his recent visits to Paraguay (November 2006) and to Nigeria (March 2007).<sup>16</sup> He expressed his gratitude for the cooperation and thanked both Governments for the readiness to cooperate and for the efforts and commitments for the promotion of human rights. However, he expressed concerns that in both countries the use of torture is widespread. He also deplored the appalling prison conditions in both countries. On a more positive note, he mentioned that during his mission to Paraguay he participated in a workshop organised by the Government of Paraguay and the Association for the Prevention of Torture together with other NGOs on the *Optional Protocol to the Convention against Torture*. He considered such an exercise as best practice.

Regarding the follow-up to earlier country reports, he mentioned Kenya, Mongolia, and Pakistan (of which he had not received information on follow-up), and thanked Georgia, Nepal, and China (who had provided information to that effect). He regretted that the no developments had taken place regarding the detainees in Guantánamo Bay since the joint report by 5 special procedures presented at the second session of the Council. Finally, Mr Nowak listed the visits included in his agenda: Togo (April 2007), Sri Lanka (October 2007), and Indonesia (November 2007).

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<sup>15</sup> The Russian Federation had deemed parts of these terms, such as the unannounced visits to places of detention or the private interviews with detainees contrary to federal legislation.

<sup>16</sup> The respective reports are not yet available.

To conclude, he briefly turned to the *Optional Protocol to the Convention against Torture*. In particular, he called on all States to ensure sufficient funding for the Sub-Committee established by the Optional Protocol to function effectively.

## **Interactive Dialogue**

Jordan speaking as a concerned country welcomed the Special Rapporteur and underlined that they had carefully considered its report for some time.<sup>17</sup> Jordan addressed a few remarks to the Special Rapporteur. Firstly, they considered that some recommendations were generally valid; the authorities had started already implementing them since they were already on their programme since long time. However, the report, according to Jordan, still contains unjustified conclusions such as the routine nature of torture in prisons. Jordan admitted that some individual cases of torture and occasional violations of human rights may have occurred in the past and may still occur in future, but reiterated that this was not a routine. Thirdly, Jordan spelled out that the Government was continuing its fight against impunity, and that a number of security and police officers were tried for committing torture. Finally, Jordan underlined that since its ratification of the Convention against Torture, the authorities had incorporated its provisions in the domestic legal system.

### Informal consultations on the universal periodic review mechanism

Ambassador Loulichki, the Facilitator of the discussions of the Working Group on the universal periodic review (UPR) mechanism, held a second round of informal consultations today on his non-paper.<sup>18</sup> Ambassador Loulichki requested States to focus on: the periodicity of the review and the order in which countries are reviewed and the outcome and follow up to the review.

### **Periodicity and order in which countries will be reviewed**

A number of States again restated their support for a five-year cycle for the UPR.<sup>19</sup> Canada expressed its preference for retaining a three-year periodicity. It emphasised that this would not be burdensome if States did not have to prepare additional reports.

Canada stated that it was not in favour of following an alphabetical order for the review and instead would prefer to draw lots in regional groups to determine which countries are reviewed when. Azerbaijan expressed support for the compromise proposal put forward by the Facilitator (that the first member and observer States to be reviewed will be chosen by the drawing of lots and then an alphabetical order will be applied, with the exception of those who volunteer to be reviewed).

### **Process of the review**

Canada suggested that the State under review should be asked to complete a hybrid questionnaire made up of standard and individualised questions, which would be prepared by an expert or by the OHCHR.<sup>20</sup> It stressed that if the State was going to be reviewed through a three-hour interactive dialogue, the discussion had to be focused. It supported the participation of experts at different stages of the UPR and took the view that leaving these tasks to States would increase their workload and politicise the process. Canada stated again that it preferred that the review be undertaken in working groups and that it still prefers the option of having four working groups. The United Kingdom (the UK) also stated that though the State under review should be able

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<sup>17</sup> Mr Nowak had already shared some thoughts on his visit to Jordan at the second session of the Council, to which Jordan had objected saying that it did not want to be under consideration twice. See ISHR *Council Monitor Daily Update* 21 September 2006.

<sup>18</sup> The non-paper can be found on the OHCHR extranet (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).

<sup>19</sup> Algeria (on behalf of the African Group), Republic of Korea.

<sup>20</sup> Japan also preferred to use a questionnaire instead of asking the State to submit a report.

to provide as much information as they choose to, it should not have an obligation to produce a report. It thought that obliging the State to produce a report could force the State to expend unnecessary resources and lead to delays. If it was decided that a report was necessary, the UK would argue for providing for an examination in the absence of a State report if this was not submitted in time. It also thought that experts, however constituted, should input into the process. The UK felt that this would not detract from the inter-governmental nature of the process as States would be asking the question and making decisions.<sup>21</sup> It also stated that experts would help ensure consistent treatment of all States and that if the review was based on a list of issues that were identified in advance by an expert, this would help sufficient preparation by the State under review. It would also enable them to have sufficient expertise on those issues on its delegation for the UPR.

France also emphasised that experts should be part of the process for both practical reasons and to ensure impartiality. It suggested that experts should be involved at different stages of the UPR: in reviewing initial information and preparing a list of issues; helping the State rapporteur to draft recommendations; and helping with implementation of recommendations. It thought that the experts could be appointed through a hybrid process with pre-selection based on criteria by the OHCHR and with the final choice by the Council, if needed by vote and perhaps on the advice of the bureau. Cuba on behalf of the Non-Aligned Movement (NAM), took the view that the cost of using experts in the process was very high as this would require business class travel, their stay in five-star hotels, and per diems and thought that this money should instead be used to enhance capacity-building.

Algeria (on behalf of the African Group) stated that the national report should be the basis of the review and the compilation by the OHCHR should complement this report. It also emphasised again the African Group's view that the participation of NGOs and experts should be limited to the national level keeping in mind the inter-governmental nature of the mechanism. The Republic of Korea expressed its support for the review to be undertaken in plenary. It thought that NGOs and NHRIs should be able to contribute directly to the compilation of information prepared by OHCHR and that the review should be undertaken on the basis of information provided by States and all other relevant stakeholders. It also supported a prior review by a regional group or a group of friends.

The Republic of Korea supported the selection of a rapporteur to facilitate the process, in the manner that they are selected at the World Trade Organization or the Organisation for Economic Co-operation and Development, as they thought this would benefit the process. Japan questioned the need for a rapporteur as it thought this may politicise the process. The UK also thought that while a rapporteur could have a role in summarising the discussion, it would not be appropriate for a State representative to prepare recommendations for another State and would lead to politicisation of the process. It would prefer this to be done by an expert and then the recommendations could be discussed and changed as necessary by the Working Group or the Council. India suggested that the rapporteur should be selected from a group of State representatives constituted on the basis of equitable geographical representation. It suggested that the rapporteur could help identify issues for the review.

## **Outcome of the review and follow-up**

A number of States expressed appreciation for the reference in the non-paper to assessment of the human rights situation in a country, including positive developments and challenges.<sup>22</sup> The discussion largely focused on the mode of adoption of the outcome, the reference in the non-paper to the Council addressing persistent non-cooperation,<sup>23</sup> the reference to 'other relevant stakeholders/ in relation to implementation of the outcome of the UPR,<sup>24</sup> and the proposal to appoint a rapporteur for follow-up.

Germany (on behalf of the EU) requested a clarification from the Facilitator on what he meant in the non-paper by the statement that the 'country concerned should be fully involved' in the decision-making for the

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<sup>21</sup> This was supported by France.

<sup>22</sup> Cuba (on behalf of NAM),

<sup>23</sup> Fourth bullet, point B, chapter VI of the non-paper, on p. 7.

<sup>24</sup> First bullet, point A, chapter VI of the non-paper, on p. 6.

UPR outcome. The Facilitator clarified that States had put forward different views on this issue, which ranged from a veto on the decision to not taking into account the views of the concerned State. He thought that the full involvement of the concerned State in the decision making process could fall in the middle of these two view points. Cuba (on behalf of NAM) stated that considering its sensitive nature, the outcome of the UPR could not be adopted in the same way as any other decision of the Council. It wanted the outcome to be adopted by consensus or perhaps by a substantial majority if consensus was not possible. India took the view that the consent of the concerned State in the decision-making process on outcomes was necessary to ensure the effectiveness of the process.<sup>25</sup> The Russian Federation also strongly supported the adoption of the outcome by consensus. Uruguay and Portugal emphasised that the concerned country should not have a veto. Belgium pointed out that General Assembly Resolution 60/251 only required a two-thirds majority for suspension of members and there was no ground for asking for such a requirement for the UPR when the Resolution itself had not visualised this requirement. India responded that the fact that *Resolution 60/251* had not provided for this requirement did not limit the Council from creating it. The UK stated that the Facilitator's compromise proposal that the decisions for the UPR should be adopted by in the same way as other decisions, while involving the country concerned, struck a good balance between striving for consensus but recognising that it may not be possible in a minority of cases.

Cuba (on behalf of NAM) expressed the NAM's opposition to references to 'other relevant stakeholders' in relation to the implementation of the outcome of the UPR. It emphasised that this should only be the responsibility of the State concerned.<sup>26</sup> Canada supported retaining this reference. The USA did not understand this reference and thought it was confusing the issue. Mexico suggested rewording this sentence on the lines of a proposal put forward by Philippines at the Working Group to read that the 'State concerned is responsible for implementation but other stakeholders can support implementation'.<sup>27</sup>

Cuba (on behalf of NAM) thought that it was not useful at this stage to discuss what action the Council should take in cases of non-cooperation. It stated that NAM had suggested establishing a capacity building fund that the Council could draw on to help implementation of the outcome of the UPR and build the State's capacity. Belgium pointed out OHCHR already had a budget line for technical assistance and there was no need for a new fund for this. India also took the view that it was not useful for the Working Group to discuss measures to address non-cooperation or follow up at this stage and thought this could be done while reviewing the modalities after the first cycle of the UPR was completed. The Russian Federation stated that this issue should be discussed in detail at the Working Group.

The Facilitator pointed out that he had referred to the Council addressing 'persistent non-cooperation' to take into account situations where the State was not responding to recommendations or invitations by the Council. He also pointed out that he was not suggestive punitive measures but was inspired by the process at the Law of the Sea Conference where cooperation was encouraged but a decision was taken at the ultimate stage when cooperation was not forthcoming. He stated that the Council had a number of tools at its disposal to deal with persistent non-cooperation.

Germany (on behalf of the EU) enquired whether the rapporteur to ensure follow up would be the same person who facilitated the review and stated that it would not want this person to be a State representative. It also suggested changing the wording to clarify that the rapporteur would not be in charge of ensuring follow up but rather monitoring follow up. Uruguay and Japan expressed their support for the inclusion of a mechanism for follow-up of the recommendations of the UPR. Canada thought that the rapporteur to ensure follow-up should be an expert.<sup>28</sup> The USA stressed that appointing a rapporteur for follow up for each country that was reviewed would be too much and did not conform to their idea of a light process. The Russian Federation also thought that the appointment of a rapporteur for follow up for each country, in effect over 190 rapporteurs, would be too costly and lead to politicisation.<sup>29</sup> Argentina emphasised that it wanted independent

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<sup>25</sup> This was supported by Bangladesh.

<sup>26</sup> This was supported by Bangladesh and the Russian Federation.

<sup>27</sup> Norway and Turkey stated that they found this proposal interesting.

<sup>28</sup> This was supported by Norway.

<sup>29</sup> Algeria also expressed its opposition to this proposal.

experts as rapporteurs and thought that as others had different views, an option could be to create a working group of experts to facilitate the process.<sup>30</sup>

The Russian Federation suggested that an agenda Item on follow up could be created and States could be encouraged to report on implementation of recommendations under this Item if they chose to do so. In cases where OHCHR was providing technical assistance, with the consent of the concerned State, it could also report under this agenda Item. It did not however visualise the submission of interim reports on follow up.<sup>31</sup>

The USA stated that the outcome should include a summary, including recommendations<sup>32</sup> but it may be difficult to have clear conclusions for each country reviewed. Algeria (on behalf of the African Group) expressed its preference for the outcome to consist of just a summary of the proceedings.

Canada thought that the outcome should include an assessment on the follow up of recommendations of treaty bodies and special procedures. It thought that these should not be too prescriptive but there should be the option to create a special procedure, request existing special procedures to visit or to establish a fact-finding mission. Mexico suggested that the outcome could also include recommendations on structural reforms and about ratification of main human rights instruments. Norway stated that the recommendations should be limited in number and focus on how cooperation with the UN human rights machinery could be improved. Germany (on behalf of the EU) requested clarification from the Facilitator on why the option of having a statement from the Council as one of the outcomes of the UPR had been removed from his non-paper. The Facilitator clarified that as the option of a statement by the President of the Council had not received much support during the discussions at the Working Group; he had removed this option and retained the two other options that had more support. Germany (on behalf of the EU) stated that as there had not been strong opposition to this option, it should be retained.

The Facilitator concluded by stating that the discussion had given him a clear idea of the pending issues and that these were the ones that he identified a week ago. He listed them as:

1. Whether the UPR should be undertaken by the Council in plenary or by working groups (and how many working groups would be required in this case)?
2. The involvement of experts in the process.
3. The role of the concerned State.
4. Participation of NGOs in the process (both the scope of their participation and at what stages this should occur).

He informed the participants that the President would announce the next steps in the process.

## Other issues

The schedule of informal consultations on the institution building processes for this week is as follows:

<b>Date</b>	<b>Morning (8.30 – 10 am)</b>	<b>Lunchtime(1.30 – 3 pm)</b>
26 March		Universal periodic review
27 March		
28 March	Methods of work and rules of procedure	Review of special procedures
29 March	Complaint procedure	

The informal consultations will be held in room XXIII (23).

Professor Vitit Muntarbhorn, the Chairperson of the Coordination Committee of special procedures, will hold a public briefing on Thursday, 29 March 2007, from 9 – 10 am in Room XXVII (27).

<sup>30</sup> Norway and Turkey stated that they found this proposal interesting.

<sup>31</sup> This was supported by Mexico and Portugal.

<sup>32</sup> This was supported by Norway.

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council)

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