

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COUNCIL, 4<sup>TH</sup> SESSION DAILY UPDATE, 29 MARCH 2007

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### Overview

The morning session of the Human Rights Council (the Council) continued with the interactive dialogue related to the mandates of Mr John Ruggie, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr Paul Hunt, Special Rapporteur on the right to health, and Ms Hina Jilani, Special Representative of the Secretary-General on human rights defenders. Mr Hunt and Ms Jilani were unable to participate in the interactive dialogue today and only Mr Ruggie was present to reply to the questions and remarks he received this morning.

The interactive dialogues were followed by the related debate and then a discussion on ‘other issues’. States and NGOs used the related debate and the ‘other issues’ segment to highlight concerns about the situation in some countries and thematic issues. In terms of countries, Zimbabwe received considerable attention with Germany, on behalf of the European Union (EU), on behalf of 48 other States arguing that the human rights situation was deteriorating. They called for the Special Rapporteur on Torture and the Special Rapporteur on Freedom of Expression to visit Zimbabwe and report back to the sixth session of the Council. Some other States however took the view that African or sub-regional initiatives within Africa were the most appropriate fora to solve this issue. Zimbabwe stated that the recent action of the police could not be characterised as political repression and that it was determined to resist foreign interference. Other country situations that were highlighted included Belarus, China, the Democratic Republic of Congo (DRC), the Democratic People’s Republic of Korea (DPRK), Iraq, Iran, Libya, Western Sahara (Morocco), Myanmar, Pakistan, Somalia, Sri Lanka, the Sudan, Uzbekistan, and the USA

In the ‘other issues’ segment, Germany (on behalf of the EU) called for a world-wide abolition of the death penalty. This issue dominated the discussion with a number of States supporting this position but others arguing that there was no international consensus on the abolition of the death penalty. Other thematic issues that were raised in the ‘other issues’ segment and the related debate included human rights violations based

on sexual orientation and gender identity; gender equality and the rights of women and girls; rights of journalists; transnational corporations (TNCs) and toxic waste; the obligation to fully cooperate with special procedures; and the Council's institution-building process.

The afternoon session concluded with a discussion on the institution-building process. The President informed the Council that taking into account the comments received and the informal consultations held in the last two weeks, he and the Facilitators were preparing the next stages of the process. A schedule for the three weeks of Working Group sessions that would be held from 10 – 27 April 2007 was distributed. States and one NGO made general comments about the institution-building process with a number of States highlighting the need to complete the process by 18 June 2007. Some States also commented on specific aspects of the institution-building process with a few pointing out the need to begin the review and rationalisation of special procedure mandates.

Special Representative on transnational corporations and other business enterprises

### Conclusion of interactive dialogue

Two NGOs made some comments and asked questions during the continuation of the interactive dialogue on the annual report<sup>1</sup> of Mr John Ruggie, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Movement contre le racism et pour l'amitié entre les peuples (MRAP)<sup>2</sup> argued that transnational corporations are responsible for any violation of human rights, just as persons are.<sup>3</sup> It called for mechanisms to assess this and pointed out that transnational corporations could be complicit or directly involved in human rights violations. However, MRAP argued that Mr Ruggie plays down this approach, rather arguing that TNCs are not directly subject to international law.<sup>4</sup> Mr Ruggie did not respond on the issue of complicity and related legal issues, but stated that he will do so in the future. A number of NGOs in a joint statement<sup>5</sup> expressed their appreciation for the Council's continued focus on business and human rights. They agreed with Mr Ruggie that the expansion of the global market has not been matched with the protection of victims of corporate human rights abuses and stated that the Council's discussions on this issue must incorporate the perspective of those affected by corporate and human rights abuses. They also shared the Special Representative's concern that States either do not understand their obligation or are not able or willing to fulfil their duty. While they viewed voluntary and multi-stakeholder initiatives as playing a role in relation to business and human rights, they were concerned that many such initiatives lack credibility because they fail to ensure that the principles they advocate are upheld in practice. They stressed that over-reliance on voluntary initiatives as a means of safeguarding human rights of victims of corporate human rights abuses would be both inappropriate and inadequate. They asked Mr. Ruggie what measures he would take, if his mandate was extended, to analyse the patterns of corporate abuses and their impacts on individuals and communities and to integrate the perspective of victims into his programme of work as a basis from which to develop recommendations to the Council.

Mr Ruggie thanked delegations, including Bangladesh and Belgium, for their innovative approaches; and he thanked France who suggested he analyse human rights abuses by corporations. The Special Representative

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<sup>1</sup> A/HRC/4/75 5 February 2007. The report is available at <http://ohchr.org/english/bodies/hrcouncil/4session/reports.htm>. ISHR has produced unofficial summaries (*Reports in Short*) of reports that are available at [http://www.ishr.ch/hrm/council/reports\\_in\\_short/](http://www.ishr.ch/hrm/council/reports_in_short/). For a summary of the Special Representative's presentation and the interactive dialogue held yesterday see the *Council Monitor Daily Update*, 28 March 2007, available at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council).

<sup>2</sup> Speaking on behalf of: Centre Europe – Tiers Monde (CETIM); Fédération Syndicale Mondiale (FSM); Ligue Internationale pour les droits et la libération des peuples (LIDLIP); Women's International League for Peace and Freedom (WILPF).

<sup>3</sup> Oral statements made during the Council's sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>4</sup> MRAP referred to the definition of "soft law", where "soft" does not establish any kind of obligation affecting legal responsibility.

<sup>5</sup> Joint Statement by the International Commission of Jurists, ESCR-Net, Human Rights Watch, Amnesty International, International Federation of Human Rights Leagues (FIDH).

replied to questions on remedies regretting that at the international level he recorded little effectiveness for remedies. Mr Ruggie noted that he did go to the field and met with communities and representatives of many groups affected by corporations' activities and with enterprise associations. In Colombia and Peru he met with indigenous groups. Mr Ruggie noted that the United Nations lack the capacity to deal with the issue in a better manner, and he invited NGOs to undertake studies.

## Special Rapporteur on the right to health

### Conclusion of interactive dialogue

Only a small number of States made comments and asked questions in relation to Mr Hunt's report and presentation.<sup>6</sup> Austria welcomed Mr Hunt's recommendation to provide health professionals with human rights education and training, particularly in relation to the right to health.<sup>7</sup> It noted with appreciation the compilation of case law presented in the report. Further, Austria asked about the role of the Council with regard to States' independence and accountability to enhance the highest health standard.

Uganda commended the present report and the recommendations in the previous report of 2005. It thanked the Government of Sweden for the support given to Uganda's health sector through the Health Sector Strategic Plan II. Despite facing difficult health circumstances, Uganda noted that the Government continues to explore new measures in providing health care for the citizens. With regard to the issue of child and maternal mortality, Uganda stated that the Government continues its efforts to provide maximum benefit to recipients, particularly vulnerable groups. South Africa also voiced the importance of addressing health problems of vulnerable groups, namely children, women and elderly people. Amnesty International (AI) noted that Mr Hunt's report provides excellent information on the issue of maternal mortality. It asked Mr Hunt about the hierarchy of human rights and the position of the right to health in such a hierarchy.

Algeria expressed concern about the health deprivation of the population of Iraq and of the Occupied Palestinian Territories (OPT). With regard to the situation in Iraq, Algeria asked Mr Hunt why the situation in Iraq does not get the same attention as the other human rights issues such as those related to special sessions. With respect to the OPT, Algeria expressed its concern on sanctions by donors which have affected the sick, the infirmed, and the elderly living under occupation. Colombia referred to the issue it raised in the High Level Segment regarding drugs. Colombia noted that this issue is not in the competence of the Council, and therefore urged the relevant UN agency to respond.

The International Alliance of Women (IAW) pointed to the general lack of interest on the issue of maternal mortality. Women in low-income countries and women living in poverty in affluent countries are the most vulnerable in the face of maternal mortality. Maternal mortality exposes profound and multiple inequalities and that is a human rights issue that violates women's rights to life and non-discrimination. IAW noted that the issue has not attracted the attention of the international community. IAW argued that addressing maternal mortality could become a powerful means for strengthening health systems. It urged the Council to integrate the issue of maternal mortality in its agenda.

Two international agencies, the United Nations Population Fund (UNFPA) and the United Nations Programme on HIV/AIDS (UNAIDS) also took part in the interactive dialogue. UNFPA gave its comments on the issue of reproductive health, especially for marginalised groups, including indigenous peoples. It expressed its support to the Special Rapporteur's work, particularly his work in addressing the right to reproductive health. The UNFPA representative noted that the work of Mr Hunt has assisted UNFPA in operationalising the right to reproductive health with a human rights-based approach. UNFPA urged the human rights community and the UN system in general to work together to help countries achieve universal

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<sup>6</sup> Austria, Uganda, South Africa, Algeria, and Colombia. For a summary of the Special Rapporteur's presentation and the interactive dialogue held yesterday see the *Council Monitor Daily Update*, 28 March 2007, available at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council).

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

access to reproductive health, including the reduction of maternal mortality rates. UNAIDS noted that in 2006 an estimated 39.5 million people were living with HIV, and nearly half of these people were women. In the same year,<sup>8</sup> governments reaffirmed their commitments to achieve universal access to HIV prevention, treatment, care and support by 2010. UNAIDS emphasised the importance of full engagement of the Council in achieving the universal access to HIV prevention. UNAIDS put forward several recommendations to the Council with regard to the AIDS response, including to promote accountability for commitments to achieve universal access to HIV prevention through the Universal Periodic Review (UPR) system; to support the work of the special procedures mandate holders; and to hear voices of people living with and affected by HIV through engagement with the civil society.

Special Representative on the situation of  
human rights defenders

### Conclusion of interactive dialogue

The interactive dialogue on the report and presentation of Ms Hina Jilani, the Special Representative of the Secretary-General on human rights defenders, continued this morning.<sup>9</sup> Ms Jilani was not able to be present today as the interactive dialogue ran over time and presented her replies in yesterday's afternoon session to the questions received till that point.

States and NGOs<sup>10</sup> expressed great appreciation for her work, and noted that it highlighted the particularly difficult situation of human rights defenders dealing with economic, social and cultural rights. Amnesty International asked Ms Jilani for initiatives to raise awareness on human rights defenders dealing with economic, social and cultural rights.<sup>11</sup> Some NGOs<sup>12</sup> also recalled the difficult situation of human rights defenders of indigenous peoples, minorities and lesbian, gay, bisexual and transgendered (LGBT) people.

The Republic of Korea noted the key role played by human rights defenders and shared its concerns over them facing insecurity, torture, and enforced disappearances. It hopes that the Council will use the *Declaration on Human Rights Defenders* as a guideline for future discussions on this matter. Denmark, demonstrating their interest in the situation of women human rights defenders, asked Ms Jilani if her own experience as a woman human rights defender had influenced the implementation of her mandate.<sup>13</sup> Front Line raised the issue of women human rights defenders being abused in Iran and Uzbekistan, and regretted that the situation of human rights defenders in these countries was discussed behind closed doors at the Council.

Several NGOs expressed their concern on the situation of human rights defenders in particular countries. Two NGOs, Liberal International and Centrist Democrat International, referred to the repression of human rights defenders in Cuba, and stressed that the Council should not remain silent. Centrist Democrat International also noted that China was persecuting civil society, especially Falung Gong religious activists.

Algeria stressed its satisfaction that Ms Jilani had finally used diplomatic channels to send urgent appeals. However, Algeria declared that the use of these urgent appeals have been incorrect in regard to the case of the dispersion of an unauthorised demonstration in September 2005. The Observatory for the Protection of

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<sup>8</sup> Political declaration on AIDS, 2006.

<sup>9</sup> A/HRC/4/37, 27 January 2007.

<sup>10</sup> Republic of Korea, Denmark, the Observatory for the Protection of Human Rights Defenders (a joint program of the World Organisation against Torture and the International Federation for Human Rights) and International Service for Human Rights.

<sup>11</sup> Oral statements made during the Council's sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>12</sup> Indian Council of South America, the Observatory for the Protection of Human Rights Defenders and International Service for Human Rights.

<sup>13</sup> A question also raised by the International Service for Human Rights.

Human Rights Defenders<sup>14</sup> and the International Service for Human Rights (ISHR) asked the Special representative if States had cooperated fully with her mandate, and what means the Council could establish to strengthen the cooperation of States with the special procedures. Further, these NGOs also asked Ms Jilani for proposals to enhance the participation of human rights defenders in the Council.

### Related debate

The related debate was dominated by a discussion on recent events in Zimbabwe. Germany (on behalf of EU) on behalf of 48 States,<sup>15</sup> followed up on concerns raised by the EU during yesterday's interactive dialogue with the Special Rapporteur on torture and the Special Rapporteur on freedom of opinion and expression.<sup>16</sup> It expressed concern on the latest developments in Zimbabwe, in particular the events of 11 March 2007, concerning the repression, violence, arrest, and degrading treatment of activists. This included the murder of Mr Gift Tandare, an opposition activist and the arrest and detention of 50 activists. It noted that Itai Manyeruki, one of the many activists who suffered ill treatment from the police, died from his injuries the day after. This was not an isolated case and a parliamentarian was attacked on 18 March and ten days later the harassment and violence towards activists continued. Germany condemned the arbitrary detention, enforced disappearance, and ill treatment of political opponents, peaceful protestors, and civil society activists. It also condemned the violation of rights of freedom of expression, assembly and opinion and called for the immediate release of people who were arrested. It urged Zimbabwe to immediately stop these human rights violations, to implement legislation, which protects freedom of expression, opinion and assembly, as well as to commence a constructive dialogue with civil society. It also urged Zimbabwe to comply with its international obligations and to restore the rule of law.

Germany (on behalf of the EU) called on the Council to monitor the situation in depth, stressing that the international community is prepared to give aid to Zimbabwean people. It also requested the Special Rapporteur on torture and the Special Rapporteur on freedom of expression to request an urgent visit to Zimbabwe, and urged Zimbabwe to cooperate with these mandate holders.<sup>17</sup> The United Kingdom (the UK) highlighted that the recent horrific events had not taken place in isolation but were part of a wider pattern of that was getting worse, not better. It welcomed regional efforts to promote a dialogue and stated that the Office of the High Commissioner for Human Rights (OHCHR) and the special procedures were uniquely placed to address the serious concerns expressed today. Sweden emphasised that the Council should not turn its back on people of Zimbabwe. The USA regretted that the members of the Council could have done more to address these events. Related to this point, the Netherlands noted their strong dissatisfaction with the recent decision of Zimbabwe to stop their Ambassador's visit to Zimbabwe. France reiterated the obligation for all State parties to cooperate with the special procedures system.

Other States intervened to declare that they did not align with the position of Germany (on behalf of the EU), with regard to the situation in Zimbabwe.<sup>18</sup> Zimbabwe declared that it regretted that the action of the police had been seen as political repression. It stressed that living conditions in Zimbabwe were harsh not because of misgovernance but because of the economic sanctions. It urged the Council not to respond to the call made by Germany and said that it was determined to resist such foreign interference. Ghana noted its close relationship with Zimbabwe and pointed out that African countries should be the first to comment on other African

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<sup>14</sup> A joint programme of the World Organisation against Torture and the International Federation for Human Rights Leagues (FIDH).

<sup>15</sup> Among them there are the following States that took the floor during the related debate today: the Netherlands, the UK, France, Japan, Sweden, Ireland, Australia, Hungary, Slovakia, Portugal, Luxembourg, Belgium, Bulgaria, the USA, Denmark. Chile, even if not explicitly endorsing the EU position, expressed the same serious concerns on the situation in Zimbabwe, calling on the Council to ask Zimbabwe to put an end to these violations and to overcome the situation in a spirit of constructive dialogue with civil society.

<sup>16</sup> Oral statements made during the Council's sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>17</sup> This was supported by the UK.

<sup>18</sup> Ghana, South Africa, Algeria, Zimbabwe, Iran, Lesotho, Tanzania, Costa Rica, Libya and the Democratic Republic of Congo.



countries, especially regarding human rights violations. Iran also agreed that African problems should be solved in Africa. Algeria said that the African Union (AU) should be involved, and that the Council should support regional initiatives. A number of African countries<sup>19</sup> considered that the Southern African Development Community (SADC) was the most appropriate forum to address the current situation, and pointed out that high-level meetings had already been organised. Lesotho insisted on the willingness of SADC to solve the issue. Together with South Africa, Ghana acknowledged that a dialogue between the Zimbabwean Government and the opposition should take place to help to address the problem. Tanzania added that it was supporting the statement made by Zimbabwe. The DRC stated that Zimbabwe was conscious of its responsibilities and had undertaken a campaign of dialogue but some opposition leaders, claiming to be human rights defenders, had manipulated it. Iran and Libya stressed that States were targeting a single country and that other human rights violations occurring in other parts of the world should be addressed. They stated that the Council must deal with all human rights violation in order to be credible. Costa Rica said the fact that it was not supporting the statement made by Germany did not mean that it was not concerned with the events occurring in Zimbabwe. Costa Rica noted it was concerned by the violation of the freedom of expression and urged the Government to comply with its commitments under international human rights law.

States and NGOs also highlighted concerns about the situation in other countries. The Netherlands raised the issue of the human rights situation in Belarus and Iran. It expressed its deep concern on the lack of political rights in Belarus, including the right to freedom of opinion and expression. The Netherlands noted that NGO activists and human rights defenders are subjected to violence and abuses there. Accordingly, the Netherlands called on the Belarusian Government to take measures to stop the violations and to cooperate with all special procedures, including the Special Rapporteur on the situation of human rights in Belarus, as well as the international community. With respect to the situation in Iran, the Netherlands expressed its concern about the arrest of 33 female human rights defenders. The Netherlands noted that civil society plays a crucial role in building a healthy society. Belgium commented on the human rights situation in the Democratic Republic of Congo. It welcomed and supported the Government's willingness to establish and maintain democracy in the DRC. Belgium also highlighted the important role of the Independent Expert on the human rights situation in the DRC and also thematic rapporteurs, including the Special Rapporteur on extra judicial execution, the Working Group on arbitrary detention, and the Special Representative of the Secretary-General on human rights defenders.

Jubilee Campaign expressed concern over the conditions in the DPRK, specifically those of forced labour, imprisonment of children, systematic torture, and a lack of food despite food aid to the country. Their representative asked the Government of the DPRK to be more transparent about aid and to end the repression of rights in the country. He also called on China to stop forcible repatriation, and to allow the High Commissioner for Human Rights access refugees. The World Federation of Trade Unions expressed concern over the imprisonment of five Cubans in jails in the USA. Their representative also referred to Colombia's record on arbitrary detention and the Philippines' on extrajudicial assassinations as matters requiring redress. Worldview International noted the culture of impunity in Burma (Myanmar) as a cause for concern, specifically in regards to human rights defenders.

Several groups mentioned issues of concern under the theme of torture. The Indian Peace Council<sup>20</sup> noted their concern regarding the situation in Guantánamo Bay, as well as in Iraq. Regarding terrorism, the Organization for Defending Victims of Violence expressed their concern for acts of terror that have been taking place in Iran since the Islamic revolution. Their representative stated two principles that should be respected regarding terrorism: the threat of terrorist acts should not be used as a pretext to ignore international laws; and terrorism should not be used as an excuse to limit freedoms. The Baha'i International Community echoed concern for the situation in Iran, but mentioned specifically the Baha'i community as a target for religious persecution that prohibits the Baha'i from living full lives in Iran. The International Humanists and Ethical Union asked that secularism not be confused with a lack of respect for religion.

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<sup>19</sup> South Africa, Algeria, Lesotho, Tanzania and the DRC.

<sup>20</sup> They were joined by the African Commission of Health and Human Rights Promoters for their concern about Guantánamo Bay.

Switzerland and Norway focused on the issue of human rights violations based on sexual orientation and gender identity. Switzerland noted that this issue has been raised several times before the fourth session of Council as well as its third session. It noted that at the third session of the Council, Norway had made a statement on behalf of 54 States on violations of human rights linked to sexual orientation and gender identity. Switzerland noted that people with a different sexual orientation often have to face violations, including arbitrary detention, torture, criminal sanction, police harassment, violence, rape, beatings, denial of freedom of expression, the death penalty, and violations of the right to education, health, and housing. With respect to the importance of this issue, Switzerland encouraged treaty bodies to give more attention to the issue of human rights violations based on gender identity and urged them to prepare General Comments on this matter. Switzerland also promoted the *Yogyakarta Principles*<sup>21</sup> to the Council and proposed future dialogue on these principles. Norway, on behalf of Nordic countries,<sup>22</sup> urged the Council to pay due attention to human rights violations based on sexual orientation and gender identity, and requested the President of the Council to provide an opportunity to discuss these issues. At the national level, Norway called all States to investigate and prosecute all forms of violence and abuse without making any distinction. At the international level, Norway expressed its support for the special procedures mandate holders to continue to focus on the violations based on sexual orientation and gender identity and to provide guidance to the Governments. The Centre for Women's Global Leadership welcomed the attention paid by special procedures on human rights defenders who are under particular risk, such as women, lesbian, gay, bisexual, and transgender individuals, and HIV/AIDS sufferers. They worried that health efforts against AIDS were hindered in some countries, notably Sri Lanka.

Argentina, on behalf of 53 States,<sup>23</sup> noted the importance to promote gender equality and the rights of women and girls, and to integrate a gender perspective into the work of the UN. The promotion of gender equality and the rights of women and girls are essential to the achievement of the UN's goals for peace and security, development, and human rights. Argentina welcomed the initiative taken by the UN High-Level Panel on System-Wide Coherence to assess the questions on gender mainstreaming and to make recommendations for improvements. It urged member States of the Council to take up this important issue. Argentina argued that the Council must be at the forefront in the promotion of gender equality and the rights of women and girls. Argentina stated that the first step that can be taken by the Council to promote this issue is by providing adequate space in the Council agenda and programme of work.

France emphasised States' obligation to fully cooperate with the special procedures. The cooperation with the special procedures was noted as an important step in promoting human rights. France urged all States, in the context of the fight against terrorism, to adopt measures that remain consistent with human rights.

## Other issues

Germany (on behalf of the EU) led a discussion on the abolition of the death penalty in the segment on 'other issues'.<sup>24</sup> It highlighted that for the first time, 85 States supported a declaration against the death penalty at the General Assembly on 19 December 2006. It called upon all States to take steps that maintain the death penalty to abolish it completely and establish a moratorium on executions. Numerous States endorsed these

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<sup>21</sup> The *Yogyakarta Principles* are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity, as a result from an international seminar of legal experts that took place in Yogyakarta, Indonesia from 6 to 9 November 2006. For more information, please see [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org). The European Region of the International Lesbian and Gay Federation also expressed its hope that the *Yogyakarta Principles* be consulted in future dialogues and processes.

<sup>22</sup> Denmark; Finland, Iceland, and Sweden.

<sup>23</sup> Argentina, Andorra, Armenia, Australia, Azerbaijan, Belgium, Brazil, Cameroon, Canada, Chile, Costa Rica, Denmark, Djibouti, Estonia, Finland, France, Gabon, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Ireland, Italy, Liechtenstein, Malaysia, Mali, Mexico, Morocco, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, the Philippines, Portugal, the Republic of Korea, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the United Kingdom, Uruguay, Venezuela, and Zambia.

<sup>24</sup> Oral statements made during the Council's sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

comments.<sup>25</sup> Several delegations called upon States to abide by the international minimum standards for capital punishment, including the prohibition on sentencing individuals who were below the age of 18 years at the time of the commission of the offence; not executing pregnant women or mentally disabled persons; only using it for the ‘most serious crimes’; only imposing the death penalty after a fair trial, in conformity with due process guarantees and in a humane manner.<sup>26</sup> Mexico called upon the UN, in particular the Human Rights Council, to take serious steps to establish an international ban on the death penalty. However, several States stressed that there was no international consensus on abolishing the death penalty as long as minimum standards are applied.<sup>27</sup> Despite endorsing this statement, Algeria stated that it was moving towards abolishing the death penalty for all crimes.

NGOs used this section of the debate to call attention to various specific problems around the world. Action Contre la Faim announced that 17 of their members had been massacred in **Sri Lanka** and expressed concern about the standards in place for the inquiry into the incident. It urged the Human Rights Council to monitor this inquiry. Amnesty International described the situation in Sri Lanka as deteriorating. Le Mouvement contre le Racisme et pour l’Amitié parmi les Peuples and L’Union Action de Femmes du Maroc discussed the situation in **Western Sahara**, particularly referring to the difficulties faced by human rights defenders there. It urged the Council to incorporate this matter into its agenda. The International Fellowship of Reconciliation talked about the transfer of large numbers of Chinese people to **Tibet**, and described this as a form of cultural genocide. It urged the Council to send a fact-finding mission of relevant special procedures to assess this situation immediately. Human Rights Watch noted that **Iran** executes more people per capita than any State in the world. It also expressed concern about the human rights situations in **Zimbabwe**,<sup>28</sup> the detention facility at **Guantánamo Bay**<sup>29</sup> and **Uzbekistan**<sup>30</sup>, and the situation of **Iraqi refugees**. Finally, it stated that the work of the Council should be seen as complementary to the regional approaches being taken to these problems. Interfaith International discussed the actions of the Pakistani Government in Kashmir and Nadrum, including the victimisation of political activists. UN Watch referred to human rights problems in **Burma (Myanmar)**,<sup>31</sup> **Libya** and the **Sudan**. Amnesty International described “gross and systematic violations” in **Iraq**, and the International Federation for the Protection of Ethnic, Religious, Linguistic and Other Minorities discussed the freedom of religion of Assyrians in Northern Iraq. Amnesty International also discussed the need assist to **Somalia** after 16 years of State collapse.

A number of NGOs also raised thematic issues. Amnesty International stressed the need to finish the institution-building process by June and reminded the Council of its responsibility to create a working environment and methods that will enable the Council to enhance the enjoyment of human rights of all people around the world. It also noted that institution-building has created a hiatus in the Council’s work of protecting human rights, and numerous situations needed to be addressed urgently. The International Federation of Free Journalists called for the need to focus on the rights of journalists and noted the widespread imprisonment of Internet journalists and the actions of the Russian Federation in blocking the voices of journalists. Earth Justice and Human Rights Advocates discussed the need to examine the environmental dimension of human rights issues, referring particularly to TNCs who use developing nations as dumping grounds for toxic waste. It recommended that a working group be established to specify the responsibilities of corporations to investigate the provisions of environmental law and propose effective sanctions.

## Institution-building process

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<sup>25</sup> The Netherlands, France, Finland, Mexico, Slovenia, Sweden, Luxembourg, Italy

<sup>26</sup> Finland, Mexico, Slovenia, Sweden

<sup>27</sup> Pakistan (on behalf of the OIC), Singapore, the USA, Algeria

<sup>28</sup> UN Watch and the Centre for Housing Rights and Evictions also referred to this issue

<sup>29</sup> Amnesty International also referred to this issue

<sup>30</sup> Amnesty International also referred to this issue

<sup>31</sup> Amnesty International also referred to this issue



The end of the session was dedicated to general comments on of the working groups dealing with the institution-building issues of the Council. President Luis Alfonso de Alba stated that the informal consultations that had taken place during the fourth session had been useful and he and the Facilitators were preparing for the next stage of the process in light of all the comments received. He announced that the non-papers prepared by the six Facilitators had been translated into all official UN languages and that a schedule for the next Working Group sessions from 10 – 27 April 2007 was being distributed in the room.

India stated that members must remember that the various aspects of the six parallel processes, through which the institution-building work was being undertaken, were interlinked and Working Groups and that the Council would need to take a holistic approach at some point on these issues at some stage.<sup>32</sup> Germany (on behalf of the EU) stated that it was important to make sure that all the components of the institution-building process complement each other and to make utmost use of the Working Group sessions to ensure that there was a consensus package for decision making in June 2007.<sup>33</sup> Cuba stated that there was no reason to delay the decision-making progress beyond the deadline but noted that there was uneven progress in the discussions across Working Groups and that it was time to move towards a negotiations phase.<sup>34</sup> India also thought it would be useful to have a timetable that would facilitate the process of negotiation. Algeria was of the view that there was much that remained to be done, and reiterated that itself and other delegations had expressed reservations about carrying out this work in an informal setting because of concerns about transparency. It highlighted that due to lack of personnel and translation, many smaller delegations had not been able to participate in the informal consultations, and though the Facilitators should draw on the comments made during these consultations, they should not serve as formal benchmarks for judging state of advancement of the process.

### **Review of special procedures**

India stated that the Working Group had not yet seriously engaged in the rationalisation of special procedure mandates. It noted that there are some suggestions to defer rationalisation of mandates till after June and renew all mandates for the time being. In its view, rationalisation was an important and integral feature the institution building work that the Council was required to accomplish within a year.<sup>35</sup> While it recognised the complexity of the task, it did not view it as an impossible one and suggested commencing this process at the earliest. It suggested requesting the OHCHR to re-arrange the ‘matrix’ of background information on special procedures in the form of clusters of thematic mandates and then asking delegations for proposals, within a limited timeframe, on the possible merger, revision or termination of mandates. Delegations would also have the opportunity to highlight gaps and thought that after consolidating all the proposals, the Working Group could reassess the situation about the timeframe. It however suggested reviewing country mandates individually, one by one, based on the merits of each mandate. Cuba highlighted that there were divisions of opinions within the Working Group and that this was due to those States who benefited from the selectivity and politicisation of the former Commission. It emphasised again that there was no room for politicised country mandates and stated that those who thought there could be a link between the UPR and country mandates were mistaken. The Russian Federation also supported using the matrix provided by the OHCHR to review the mandates and suggested starting with the most controversial special procedures, the country-specific mandates. It stated that the Working Group should make recommendations to the fifth session of the Council on the future of these mandates. It stated that it supported the African Group draft code of conduct for mandate holders and suggested that this should be discussed in detail. Action Canada for Population Development was pleased to note that the non-paper on the review of mandates stated that protection gaps must be closed. It suggested setting up a new special procedure, in the form of a working group made up of five persons, which would be responsible for identifying protection gaps.

### **Other aspects of institution-building**

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<sup>32</sup> This was supported by Indonesia, Germany (on behalf of the EU) and the Russian Federation.

<sup>33</sup> Oral statements made during the Council’s sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

<sup>34</sup> Indonesia and the Russian Federation also emphasised the importance of completing the process by the deadline.

<sup>35</sup> This was supported by Indonesia.

On the **universal periodic review** (UPR) mechanism, the Indian delegation felt that there was consensus emerging that it should be a cooperative, simple and light mechanism.<sup>36</sup> It emphasised that States had to be realistic in their expectations of this mechanism as it was only one of several mechanisms of the Council for promotion and protection of human rights and it could not perform all functions. It repeated its suggestion for focusing on the first cycle of the UPR and reviewing the procedure after the first cycle. The Global 2000 International felt that the UPR is a hopeful mechanism, and that it should be accessible to experts and NGOs.

Indonesia and India emphasised the need for ensuring the admissibility criteria were fully reviewed and respected in the **complaint procedure**. India repeated that National Institutions, set up in line with the Paris Principles, should also be involved in the process and that the processing time for complaints should be reduced without reducing the first response time available to States to respond to complaints. The Russian Federation stated that the procedure should only be used for reviewing situations of gross and systematic violations of human rights and not individual cases. It and Indonesia emphasised the importance of maintaining the confidentiality of the procedure.

With regards to the future system of **expert advice**, India stated that it should be designed keeping in mind the overall requirements of the Council, which were different to those of the Commission. It repeated again the institution building process should address the rigidity of working methods that affected the Sub-Commission for the Promotion and Protection of Human Rights. The Russian Federation stated that the time had come to focus on compromise formulae to bring together the two opposing positions and that the expert body should be a body of experts elected by States. Indonesia stated that it should be a think tank comprised of highly qualified experts, respecting criteria for equitable geographical balance, different legal systems, religions and gender etc.

Indonesia stated that the Council should soon have clear rules and structured agenda in order for it to work more smoothly and in a transparent manner. The Russian Federation stated that significant progress had been made in the informal consultations and suggested that the Working Group focus on codification of the existing practice of the Commission on Human Rights to avoid reinventing the wheel and build on the Commission's achievements.

The President stated at the end that all States would need to focus the discussions on pending matters and avoid circular discussions as they would need to bring positions together across the three weeks of the Working Groups' sessions. He emphasised that this required flexibility in working method and requested all delegations to support the Facilitators in their work. He stated that he planned to begin negotiations on the outcome document of all six institution-building processes in the beginning of May 2007 and not to wait until the June session to do so. He stated that he would try and organise interpenetration for these negotiations and would take all efforts to ensure that the process was as transparent as possible. He stated that the Facilitators would review their non-papers if needed in the course of the Working Groups' sessions and noted that some processes are more complex than others and some have made more progress than others. He called on all States to work towards consensus and reaffirmed his commitment to completing the institution building process by 18 June 2007. He stated that the Mexican mission wants to organise an event on 18 June 2007 to celebrate what he hoped would be the successful completion of the process by that date.

## Rights of reply

Zimbabwe responded to accusations regarding the situation of human rights defenders. It stated that they are not at risk in Zimbabwe as long as they work within the law of the land.<sup>37</sup> However, the delegation explained that human rights defenders should not be confused with political thugs. Zimbabwe stated that many foreign countries were involved in the riots that recently took place, including the UK, the USA, the Netherlands and several others.

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<sup>36</sup> Indonesia also stated there should be an emphasis on cooperation.

<sup>37</sup> Oral statements made during the Council's sessions are available on the OHCHR extranet, which can be accessed at <http://portal.ohchr.org> (fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password).

Uzbekistan responded to the USA's allegations that it exercised pressure on human rights defenders. The delegation felt that the USA's statement was prejudiced and politically motivated, and referred to it as an "open provocation". It also took the opportunity to raise concerns about the human rights situation in the USA.

Singapore exercised a right of reply in relation to the Special Rapporteur on summary executions. It clarified that they had stated that there was no consensus in international law on the abolition of the death penalty and not that there is no customary international law in relation to the death penalty.

China responded to a statement made earlier in the day by Liberal International focusing on two points. Firstly, it stated that the correct terminology for Taiwan is 'Taiwan, province of China'. Secondly, it stated that the Council is not the right place to talk about participation or membership to the World Health Organization. China stated that while it supports the participation of civil society, it cannot accept NGOs abusing their right to participate in the Council to bring up unrelated issues and insisted that the relevant parts of the statements be placed in brackets in the record.

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