

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL ALERT HUMAN RIGHTS COUNCIL 12TH SESSION – 14 SEPTEMBER TO 2 OCTOBER 2009

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### Overview

The Human Rights Council (the Council) will hold its 12<sup>th</sup> session from 14 September to 2 October 2009 in the Palais des Nations, Geneva. It is the first session under the newly elected President, Ambassador Alex Van Meeuwen of Belgium and his Bureau, and with the new members elected in May 2009 by the General Assembly.<sup>1</sup>

On 28 August 2009, President Van Meeuwen convened the usual organisational meeting, taking place before each session. On the same day, and building on the good practice of his predecessor, Ambassador Martin Ihoeghian Uhomobhi of Nigeria, the President and part of his Bureau also met with non-governmental organisations (NGOs) present in Geneva for an exchange of views ahead of the session.

During the organisational meeting, the President presented the draft programme of work for the session.<sup>2</sup> Roughly one week of the three-week session will be taken up by the adoption of reports of the UPR Working Group's 5<sup>th</sup> session, which took place in May 2009.<sup>3</sup> This Council Alert highlights the main themes that will be discussed during the upcoming session, and provides an update on the President's meeting with NGOs.

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<sup>1</sup> The new Bureau of the Council is composed of the following persons serving in their personal capacity: Ambassador Mr Hisham Badr, Permanent Representative of Egypt for the Group of African States; Ambassador Mr Andrej Logar, Permanent Representative of Slovenia for the Group of Eastern European States; Ambassador Mr Dyan T. Djani, Permanent Representative of Indonesia for the Group of Asian States; Ambassador Mr Carlos Portales, Permanent Representative of Chile for the Group of Latin-American and Caribbean States. See ISHR's overview of the organisational session held on 19 June 2009, available at [www.ishr.ch/publications](http://www.ishr.ch/publications).

<sup>2</sup> The programme of work is available on the Human Rights Council website, at <http://tr.im/xHjB>. The annotated agenda for the session provides a fair amount of detail on the reports to be discussed and is available at <http://tr.im/xHk6>.

<sup>3</sup> See [www.ishr.ch/upr](http://www.ishr.ch/upr) for more information.

## Programme of work

### Dialogue with the High Commissioner

Ms Navanethem Pillay, the High Commissioner for Human Rights, will give an update on her and her Office's work on Monday, 14 September on the activities of OHCHR since June. Her update is to be followed by general debate under Item 2. As in previous sessions, the interaction with the High Commissioner is formally limited to an 'update' on her work. However, more than the usual three hours are currently allocated to this dialogue, which is a welcome change in the programming for Council sessions. Past practice shows that the dialogues with the High Commissioner always take more time than expected.

Still under Item 2, the Council will also consider reports by the High Commissioner and the Secretary-General, as well as the latest report by the UN's 'Joint Inspection Unit'.<sup>4</sup> The report is submitted in follow-up to previous management assessments of the Office of the High Commissioner for Human Rights (OHCHR) and mainly deals with issues related to the geographical composition of staff. The scheduling of this report for discussion raised some concerns among States, with Pakistan (on behalf of the OIC) enquiring which report would be discussed and why previous reports of the Joint Inspection Unit had not been brought before the Council. Responding to these concerns, Eric Tistounet, the Secretary of the Council, explained that the Commission on Human Rights had discussed the last report of the Joint Inspection Unit in 2006. The General Assembly had then asked the Joint Inspection Unit to submit a follow-up report in 2009. The discussion of this report is likely to serve as an opportunity for some States to criticise the High Commissioner and OHCHR for failing to ensure equal geographical representation among its staff, as such criticism has become commonplace at almost every session. In recent years, the Council has adopted by a resolution on this issue on a yearly basis.<sup>5</sup> It will therefore be interesting to see how States react to the recommendation of the Joint Inspection Unit that the 'Council should monitor [OHCHR staffing] on a biennial basis.'

### Thematic focus

Seven thematic special procedures mandate holders will present their reports to the Council.<sup>6</sup> As usual, these '**interactive dialogues**' will be held with groups of two to three mandate holders, with one hour allocated per mandate holder. In general, ten minutes of that hour is reserved for NGO speakers. NGOs will therefore speak for 30 minutes at the end of each three-hour block of interactive dialogue. Towards the end of the session, the President will appoint a mandate holder for the newly created mandate of an Independent Expert in the field of cultural rights.<sup>7</sup> For all vacancies, the consultative group<sup>8</sup> will suggest several names, from which the President, after broad consultations with States and NGOs, will select and appoint one mandate holder for each vacancy. However, the consultative group has not yet submitted its recommendations to the President.

In the third week, the Council will focus on **indigenous peoples**. It will consider the report of the Expert Mechanism on the Rights of Indigenous Populations in the third week of the session. Based on requests voiced at the organisational meeting, the Special Rapporteur on indigenous peoples, Mr James Anaya will present his report

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<sup>4</sup> The report has the document number JIU/REP/2009/2 and is available at <http://www.unju.org/en/reports.htm>.

<sup>5</sup> See A/HRC/RES/7/2 and A7HRC/RES/10/5 available on the OHCHR extranet. Username: 'hrc extranet' Password: '1session'.

<sup>6</sup> Special Rapporteur on contemporary forms of slavery, Special Rapporteur on the sale of children, Independent Expert on international solidarity, Independent Expert on safe drinking water and sanitation, Special Rapporteur on toxic wastes, Special Rapporteur on indigenous peoples and Special Rapporteur on racism. Although not a mandate of the Council, the Special Representative of the Secretary-General on children in armed conflict will also present her report. The Working Group on the right to development will also present its annual report to the 12<sup>th</sup> session.

<sup>7</sup> Information about the appointment of special procedures mandate holders is available at <http://tr.im/xMI7>.

<sup>8</sup> According to the process for the selection of mandate holders established by Resolution 5/1, all stakeholders can submit suitable candidates to OHCHR for inclusion on the public list. From that public list, a consultative group composed of representative from each of the five regional groups of the Council, mandated to act in their personal capacity select candidates and present a short-list to the President of the Council

at the same time. It was felt that a thematic clustering of these two mechanisms would facilitate the engagement of organisations working on indigenous issues.

The Council will also follow-up to its two **thematic special sessions** on the global food crisis and on the financial crisis.

Two thematic panel discussions also feature on the programme of work for the session. Based on *Resolution 11/9*, the Council will discuss the ‘**human rights of migrants in detention centers**’. Côte d’Ivoire, one of the sponsors of the panel discussion, explained that the objectives of the panel are to discuss the ‘current trends, good practices, challenges and possible approaches to address the issue of detention of migrants and explore ways to promote and protect their human rights’ and to ‘elaborate on how to reduce the recourse to and duration of detention for persons who enter or remain in a country in an irregular manner’. The situation of migrants has been an increasing concern of the Council in the last year, and it is one of the priorities of OHCHR. The panel discussion will be an interesting opportunity to explore the theme from various viewpoints, as the panellists represent special procedures, national human rights institutions (NHRIs) and NGOs.

The second panel will be held on the occasion of the annual discussion on the **integration of a gender perspective** in the work of the Council. Organised by Chile, the panel will focus in particular on the integration of a gender perspective in the universal periodic review (UPR). During the organisational meeting, Nigeria (on behalf of the African Group)<sup>9</sup> questioned the focus of this panel discussion. It argued that the integration of a gender perspective could not focus on the UPR only, and that the ‘UPR is a separate mechanism and should be universal’. It was not clear why the African Group did not favour such a discussion. In its *Resolution 6/30*, which forms the basis for the annual debate on gender integration, the Council reaffirmed ‘its commitment to effectively integrate the human rights of women as well as a gender perspective, in its work and that of its mechanism (...) including in all phases of the universal periodic review’.<sup>10</sup>

A final thematic initiative that might be taken up again, and if so is likely to be controversial, is the Russian initiative on ‘**traditional values**’. It was introduced but later withdrawn at the June session.<sup>11</sup> This initiative met many reservations and even opposition from several States and NGOs that saw it as an attempt at undermining the universality of human rights. The Russian Federation argued that its initiative was aimed at strengthening human rights protection by building a ‘more common and universal approach’ to human rights values. It held three informal consultations on the draft resolution. Despite support from several States such as the Sudan, Sri Lanka, Pakistan, Belarus, China, Algeria, Syria, South Africa, Egypt, and Vietnam, many others questioned the initiative. In this context, the Russian Federation decided to postpone the further consideration of the resolution. During the negotiations, one of the key topics of discussion was the meaning of ‘traditional values’, which the Russian Federation never explained clearly and comprehensively. It was in no small part this uncertainty that gave rise to reservations and questions about the intentions of the Russian Federation in presenting this text.

On **Monday, 7 September 2009**, at 3 p.m. Chile, India, Norway, the Russian Federation and South Africa will organise a meeting for interested delegations to share planned initiatives and resolutions for the 12<sup>th</sup> session.<sup>12</sup> Hungary has already announced, during the organisational meeting, that it will pursue two specific thematic initiatives, one on the **independence of judges and lawyers**, and a second one on **cooperation with UN experts**.

## Discussion of country situations

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<sup>9</sup> Nigeria has taken over the coordination of the African Group from Egypt at the beginning of the 4<sup>th</sup> cycle in June 2009. The Egyptian Ambassador has been elected as Vice-President of the Council.

<sup>10</sup> Paragraph 15.

<sup>11</sup> A/HRC/11/L.1. The draft resolution was only co-sponsored by non-members of the Council: Sri Lanka, Vietnam and Singapore. It is available on the OHCHR extranet for the 11<sup>th</sup> session.

<sup>12</sup> It will take place in room XII of the Palais des Nations.

In addition to the interactive dialogues with thematic mandates, the Council will hold dialogues with two country specific mandates,<sup>13</sup> and hold general debates under Item 4 (country situations that require the Council's attention), 7 (situation in Palestine and other occupied Arab territories) and 10 (technical assistance and capacity building). All other items provide an opportunity to address human rights issues. For instance, under Item 3, many of the thematic special procedures will present reports of their missions. This opportunity for States and other stakeholders in the Council has so far been somewhat under-utilised, and often the mission reports of the special procedures go largely unnoticed.<sup>14</sup>

The mandate of the Special Rapporteur on **Cambodia** expires in September, and the Council will have to decide on the terms of its renewal. The mandate of the Independent Expert on **Somalia** was extended, at the 10th session, for only six months until September 2009 and is therefore also up for renewal. It will be interesting to see what follow-up action the Council will take during the upcoming session. In addition, the Council will also consider reports by OHCHR on the situation of human rights in **Burundi** and **Liberia**. While the mandate on Liberia was discontinued in 2008, there is still an existing mandate on Burundi. Curiously, however, the Special Rapporteur is mandated to report to the Council only after the establishment of an NHRI by Burundi.<sup>15</sup>

The follow-up to **9<sup>th</sup> special session on the violations of human rights in Gaza** will be a key moment in the 12<sup>th</sup> session. Some observers expect the debate to be milestone in the Council's work, as the format of the independent fact-finding mission investigating the violations that occurred during last December's military operations in Gaza is unique. Appointed by the former President of the Council, the members of the fact-finding mission have looked at violations committed by both sides of the conflict.<sup>16</sup> They have also adopted novel working methods, including open and web-cast consultations in Geneva with all interested stakeholders.<sup>17</sup>

During the organisational meeting, several States including Pakistan (on behalf of the OIC) and Nigeria (on behalf of the African Group) questioned why more time was currently scheduled for the general debate under Item 4 than under Item 7. The Secretary of the Council justified the programming with reference to empirical evidence which shows that Item 4 requires significantly more time than Item 7.

### Universal periodic review (UPR)

The Council will consider and adopt the report of the review of 16 States reviewed during the May 2009 session of the UPR Working Group.<sup>18</sup> This will be an opportunity for all stakeholders, including NGOs to make general comments before the adoption of reports.

One hour is set aside for the adoption of each report. Twenty minutes of that hour is reserved for the State under review to present its views on the recommendations made in the Working Group. Twenty minutes are set aside for member and observer States, and for other stakeholders respectively. In the past, the adoption of UPR reports has generated very varied levels of interest among States and other stakeholders.

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<sup>13</sup> Independent Expert on Somalia, Special Rapporteur on Cambodia.

<sup>14</sup> See for instance ISHR's *Human Rights Monitor 2008*.

<sup>15</sup> A/HRC/RES/9/19.

<sup>16</sup> The members of the fact-finding mission are Justice Richard Goldstone from South Africa and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda; Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, University of London; Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary General on Human Rights Defenders; and Colonel (retired from the Irish Armed Forces) Desmond Travers.

<sup>17</sup> See <http://www.un.org/webcast/unhrc/archive.asp?go=041> for an archive of videos from the hearings.

<sup>18</sup> Central African Republic, Chad, Comoros, Congo, Vanuatu, Viet Nam, Yemen, Afghanistan, Uruguay, Belize, Chile, Malta, Monaco, New Zealand, Slovakia, The Former Yugoslav Republic of Macedonia. See [www.ishr.ch/upr\\_monitor](http://www.ishr.ch/upr_monitor) for further information and reports on these reviews.

## NGO meeting with the President

Following the organisational meeting, three of the members of the Bureau of the Council met with civil society to exchange views on the upcoming session.<sup>19</sup> It was unfortunate that neither the Slovenian nor the Egyptian Ambassador were present. The President opened the meeting by thanking NGOs for their general support of the Council. He raised the appointment of a new Independent Expert on the situation of human rights in the Sudan, stating that he would conduct broad consultations to find an appropriate candidate once he had received a report from the consultancy group. Other issues raised in the meeting were largely well known challenges to NGOs, including their in the Council, the efficient admittance of NGO representatives into the United Nations Office at Geneva for meetings of the Council, regular consultations between NGOs and the Bureau and time management. In particular the question of time management raised criticism, with Human Rights Watch pointing out that during several past sessions, NGOs were given less than the normal speaking time. The President agreed that time management needed to improve, and assured that he was ‘committed to respecting time management as much as possible.’ Several NGO speakers encouraged the President to build on the efforts of his predecessor, Ambassador Uhomoibhi of Nigeria, in ensuring respectful dialogue on all issues and among all stakeholders in the Council.

During the meeting a representative of Amnesty International asked the President how he intended to consult with NGOs on the appointment of mandate holders, following the reception of the recommendations of the consultative group. Although he is a counsellor of the Egyptian mission and therefore not a member of the Bureau strictly speaking, Mr Amr Roshdy Hassan responded to this inquiry.<sup>20</sup> He claimed that the President ‘would not, nor had ever consulted with NGOs on the appointment of mandate holders’.<sup>21</sup> It was notable that this claim squarely contradicted the commitment the President had expressed just previously, that he would consult widely including with civil society.

The Egyptian representative’s intervention was also remarkable for his contempt of NGO participation in the Council in general, which stood in stark contrast to the openness of the actual members of the Bureau. Saying he ‘wanted to be sure not to miss the opportunity to express his frank opinion on NGO participation in the Council,’ he embarked on a lecture on why he thinks NGOs were ‘ineffective’. Repeating the claims he had raised many times over the past several years as Egyptian delegate, he accused NGOs of not using their speaking time wisely by addressing issues outside the scope of agenda items. He in particular made reference to the issue of sexual orientation and gender identity, which had triggered repeated points of order by Egypt in the past, and encouraged NGOs to ‘outsmart people like [himself]’. There was no response to the statement of Mr Hassan by members of the Bureau or the President during the meeting.

## Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council’s proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).

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<sup>19</sup> The Bureau of the Council is constituted of the President and four Vice-Presidents. During the meeting with NGOs, the Ambassadors of Belgium (President), Chile and Indonesia (Vice-Presidents) were present. The Slovenian and Egyptian Ambassadors were not present, although a counsellor from the Egyptian mission, Mr Amr Roshdy Hassan was present on the podium.

<sup>20</sup> According to the institution-building text, ‘the Council shall elect, from among the representatives of its members, a President and four Vice-Presidents.’ This seems to imply that the members of the Bureau, like the President of the Council, are elected in their personal capacity. See also the UN press release on the election of the Bureau at <http://tr.im/xRdx>.

<sup>21</sup> He claimed that *Resolution 5/1* (the institution-building text) does not provide for such consultations. However, the relevant paragraphs specify that the President will appoint mandate holders ‘following broad consultations, in particular through the regional coordinators’ and does therefore imply consultations with all stakeholders.

- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>.
- More informal documents and draft resolutions are available on the ‘OHCHR extranet’ at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: ‘hrc extranet’ Password: ‘1session’.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, are invited to contact the ISHR secretariat by email or phone at [information@ishr.ch](mailto:information@ishr.ch) or +41 (0) 22 919 71 00.*

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