

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COUNCIL, 6<sup>TH</sup> SESSION DAILY UPDATE, 10 SEPTEMBER 2007

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### Overview

The President of the Human Rights Council (the Council), Ambassador Doru Romulus Costea of Romania, opened the 6<sup>th</sup> session of the Council on 10 September 2007. He introduced the latest version of the programme of work and explained how he intends to manage the review of mandates scheduled to start at the current session. He then gave States the opportunity to comment on his remarks. The Council also heard an address by the Minister of Justice of Mauritania, H.E. Limam Ould Teguedi. The formal meeting was then adjourned until Thursday, 13 September at 10 am.

The afternoon meeting of the Council was devoted to informal discussions on the institution-building process of the Council. It was decided by the President that the Council would address the issues consecutively, and would first hear from the Facilitator on the technical and objective requirements for the submission of candidatures to the Human Rights Council Advisory Committee, Ambassador Alicia Gallegos of Nicaragua. As the discussion on the Facilitator's non-paper concluded at 5.30 pm, the President requested that the Council adjourn to discuss the non-paper on guidelines for the preparation of information under the universal periodic review mechanism (UPR) at 10 am 'very sharp' the following morning. He concluded by characterising the afternoon meeting as 'useful' and States' attitudes as 'open-minded'.

## Opening of the session and organisational matters

The President of the Council opened the 6<sup>th</sup> session of the Council (the 1<sup>st</sup> session of the 2<sup>nd</sup> cycle). After the adoption of the draft agenda, the Council immediately proceeded to the first item on the agenda relating to organisational and procedural matters.<sup>1</sup> The President explained that he saw the work of the Council at this session having two sets of objectives. The first category applied to the continuation of the institution-building process and the implementation of the decisions taken on 18 June 2007. This would include the adoption of guidelines for the universal periodic review (UPR) and of technical requirements for both the selection of special procedures mandate holders and the members of the Human Rights Council Advisory Committee (the Advisory Committee), as well as deciding on the future of the working groups of the former Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission).<sup>2</sup> Secondly, President Costea called on States to start the consideration of substantive issues, given that the first year of the Council had been devoted primarily to the institution-building. He noted that there would be opportunities to address substantive issues during the consideration of reports from the special procedures and the Office of the High Commissioner for Human Rights (OHCHR).

### Programme of work

Turning to the draft programme of work for the session (that covered both the current three weeks in September and the week in December when the 6<sup>th</sup> session will be resumed), President Costea emphasised that it was the result of extensive consultations.<sup>3</sup> He stressed that it was a “living document” and could be adapted over the course of the 6<sup>th</sup> session. The latest version had been published only on 7 September, just before the weekend prior to the start of the session. Accordingly, the programme of work was not adopted but would continue to be considered over the next few days.

Before the start of the session, many delegations and NGOs had expressed the desire to make general remarks under a particular agenda item, or to speak on issues or situations not included in the programme of work. President Costea suggested that speakers wishing to raise issues not explicitly mentioned in the programme of work could register to do so with the secretariat, before 6.00 pm on Tuesday, 11 September 2007, indicating under which agenda item and on which topic they wish to speak.<sup>4</sup>

Concerning the discussion on integrating a gender perspective into the work of the Council scheduled under Item 8 for 20 September 2007, the President specified that a moderator would facilitate a panel discussion that would be followed by an interactive dialogue. He mentioned that the modalities for the dialogue would be communicated to delegations in the next few days.

In relation to time management, he expressed his intention to keep with existing practice and allow five minutes speaking time for members of the Council and three minutes for observers. Similar and also previously tested modalities would apply to the interactive dialogue with special procedures mandate holders. Mandate holders would have ten minutes to present their report, followed by reactions of the countries concerned (five minutes), members (five minutes) and observers (including non-government organisations

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<sup>1</sup> The agenda is contained in document A/HRC/6/1, 31 July 2007, available on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm).

<sup>2</sup> These are the Working Groups on Indigenous Populations, on Contemporary Forms of Slavery, on Minorities and the Social Forum.

<sup>3</sup> The latest version of the programme of work is available on the OHCHR extranet, see fn. 1.

<sup>4</sup> NGOs wishing to register to speak on issues not listed in the programme of work should use forms specifically provided for that purpose. NGOs present in Geneva should hand in the form at the list of speakers desk in room XVII of Palais des Nations. NGOs not present in Geneva can use the fax form. Both forms are available on [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council).

(NGOs), three minutes). The mandate holder would then be given five minutes to reply to the comments and questions raised.

Only three States took the opportunity to comment on the President's remarks and to raise other issues they wanted to see addressed by the Council. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), complained that the programme of work was only circulated three days before the start of the session, and said that delegations had great difficulties in dealing with the resulting uncertainty. Egypt, on behalf of the African Group, requested that a programme of work for the whole Council year be distributed at the earliest occasion.

Both Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group) were concerned that according to the current programme of work, the report on defamation of religion requested by Human Rights Council *Resolution 4/9* was to be considered under Item 3 of the agenda (Promotion and protection of all human rights) instead of under Item 9 (Racism, racial discrimination, xenophobia and related forms of intolerance). Both argued that defamation of religion was traditionally treated under the heading of racism, and should therefore remain there.<sup>5</sup>

Both Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group) expressed their wish to see time dedicated on the programme of work to discuss the relationship of the OHCHR with the Council. Pakistan added that the relationship of the Council with the Secretary General of the United Nations should be "streamlined". Egypt (on behalf of the African Group) was concerned that not all documents required for the current session were as yet available. They said that for the second part of the sixth session in December, the African Group would not be able to consider any document that was not ready in all United Nations languages two weeks prior to the session at the latest. The United Kingdom (on behalf of Western European and Others Group (WEOG)) stressed that the Council needed to deal with the full range of issues at the appropriate moment.

### **Review of special procedures mandates**

The institution-building package adopted in June 2007 requires the Council to review all mandates of the special procedures according to its programme of work. Currently, the programme of work lists three blocks of time entitled 'Assessment of mandates', where the first mandates should be considered.<sup>6</sup> The assessment of mandates does not take place under any particular agenda item, but is scheduled in addition to the normal agenda items of the Council. The President finally shed some light on how he intends to carry out the review. In his view, the process should comprise of three stages.

The first stage would be an assessment of the mandate, in which sponsors and other States could express their views about the mandate. The current mandate holder should preferably be present in the Council at this stage, to share his or her views on the terms of reference of the mandate. In a second stage, the mandate holder would present his or her final or annual reports. The third stage would be the adoption of the resolution determining the future of each mandate. The President emphasised that the three stages need not necessarily take place during the same session of the Council, but that States would in each case decide on the way to proceed. He invited sponsors to start consultations on resolutions about 'their' mandates, and said that these would be adopted whenever sponsors were ready.

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<sup>5</sup> During the time of the former Commission on Human Rights this issue was dealt with under Item 6 of the Commission's agenda on racism, racial discrimination, xenophobia and all forms of discrimination.

<sup>6</sup> During the first part of the 6<sup>th</sup> session from 10 to 28 September 2007 the mandates of the Special Rapporteurs on freedom of religion or belief, on the right to food, on indigenous people, and on the Sudan, the Working Group on arbitrary detention, as well as the Independent Experts on Haiti, on the Democratic Republic of the Congo and on Burundi are scheduled to be assessed. In the second part of the sixth session from 10 to 14 December 2007 the mandates of the Special Rapporteurs on human rights while countering terrorism, on health, on the independence of judges and lawyers and on housing, the Working Group on mercenaries, the Independent Expert on Liberia as well as the Special Representative of the Secretary General on internally displaced persons are to be assessed.

President Costea reminded States that they had the possibility to extend, on an exceptional basis, the terms of mandate holders who had been in office for more than the maximum of 6 years, until the review of their mandate was finalised. He stressed that such action might be necessary in order to avoid protection gaps during the process of the review, and invited the Council to extend the terms of all mandate holders until the review was completed and their successors were selected.

Pakistan (on behalf of the OIC) expressed concern about the terminology used in the programme of work for the review of mandates.<sup>7</sup> President Costea provided his assurance that such terminology was merely used for practical reasons, and was not intended to change the meaning of the Council's tasks.

Egypt (on behalf of the African Group) said that while it was desirable that the current mandate holder be present for the assessment of his or her mandate, it was not a prerequisite for the review. Egypt made this remark with particular reference to the scheduled review of the mandates on Burundi, the Democratic Republic of the Congo and the Sudan, for which some of the respective mandate holders might not be present.<sup>8</sup>

### **Universal periodic review (UPR)**

Pakistan (on behalf of the OIC) suggested that the first session of the UPR working group should only be held after the March 2008 session of the Council, which would allow for more consultations with all stakeholders.<sup>9</sup> Pakistan also promised to help with the early completion of the setting up of a voluntary trust fund to facilitate the participation of developing countries in the UPR process. Egypt (on behalf of the African Group) shared this view, and suggested discussing the timing of the UPR working group under Item 6 of the agenda, scheduled for 19 September 2007.

### **Address by the Minister of Justice of Mauritania**

During the morning segment, the President invited the Minister of Justice of Mauritania, H.E. Limam Ould Teguedi, to address the Council. H.E. Teguedi noted that Mauritania was at an important turning point after a successful transition to democracy, and he enumerated the progress made by his country with regards to a variety of issues such as strengthening the rule of law and penal procedures, the rights of women, and anti-slavery measures. He affirmed Mauritania's commitment to human rights. Algeria and Morocco welcomed the statement. The Ambassador of Morocco congratulated Mauritania on the steps taken to address its human rights situation and expressed the hope that it would have a positive impact on the whole region. Algeria expressed its appreciation for the efforts made by Mauritania to address subjects formerly taboo in African and Islamic culture, and issues such as refugees, slavery and the rights of women.

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<sup>7</sup> It requested that "assessment of mandates" be changed into "review and rationalisation of mandates" to reflect the purpose of the review exercise. Egypt (on behalf of the African Group) formally requested to have the wording changed to "review, rationalisation and improvement of mandates." The United Kingdom (on behalf of WEOG) said it had taken note of the different wordings suggested.

<sup>8</sup> The assessment of these mandates is scheduled for 25 September 2007.

<sup>9</sup> Currently, the first meeting of the UPR working group is scheduled from 4 to 15 February 2008.

# Non-paper on the Advisory Committee of the Human Rights Council

## Introduction and presentation of the non-paper

The President of the Council opened the afternoon meeting by declaring that he intended to work through the following three meetings of Monday and Tuesday by discussing one-by-one the non-papers on the technical and objective requirements for the submission of candidatures to the Advisory Committee, the non-paper on the guidelines for the preparation of information under the UPR, the non-paper on technical and objective requirements for eligible candidates for mandate holders,<sup>10</sup> and finally an informal discussion relating to the status of the working groups of the former Sub Commission. With this the President gave the floor to Ambassador Gallegos to present her non-paper on the submission of candidatures to the Advisory Committee.

The Facilitator described the non-paper as a reflection of various State positions, which includes four criteria: ‘competence and experience’, ‘high moral standing’, ‘independence and impartiality’, and ‘other factors’. In discussing the non-paper, the Facilitator pressed that gender and generational balance and balance between academic qualifications and field experience are essential to ensuring that the Advisory Council is composed of the “best people”. Open discussion followed.

## Informal discussion

States’ responses to the initial non-paper were entirely varied, from near total approval (Brazil) to near blanket dismissal (Egypt, on behalf of the African Group), although the majority made reference to the fact that they had only recently received the non-paper and so their comments were merely preliminary.

While the majority thanked the Facilitator for a ‘broad-minded approach’ that allowed for flexibility<sup>11</sup>, others referred to the non-paper’s unnecessarily prescriptive detail<sup>12</sup>, which ‘upset the balance’ achieved in the institution-building text<sup>13</sup>, or its ‘conflicting viewpoints’.<sup>14</sup> The Ambassador of Algeria even went so far as to request that the ‘legal counsel of OHCHR’ should comment on whether the Council was required ‘to discuss something that didn’t belong to the Council text’<sup>15</sup>, although the International Service for Human Rights later clarified that the requirement is expressly provided in paragraph 67 of *Resolution 5/1* and that the development of criteria was not a matter of choice for the Council.

Few States drew reference to the content of the non-paper’s introductory paragraph, although India and Cuba requested that ‘Guidelines’ be added to the title, with Ethiopia adding that reference should be made to the ‘election’ of candidates. Many States also requested that the reference to ‘**high moral standing**’ in both the preamble and the operative guidelines be removed as this requirement was inherent in the other criteria of ‘recognised competence and experience’ and ‘independence and impartiality’ and would be very difficult to quantify.<sup>16</sup>

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<sup>10</sup> All of the above non-papers of the institution-building process are available on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm).

<sup>11</sup> Brazil, Japan, Australia.

<sup>12</sup> Pakistan (on behalf of the OIC), Algeria, Switzerland.

<sup>13</sup> The institution-building text of the Human Rights Council is contained in *Resolution 5/1* available at [http://www.ohchr.org/english/bodies/hrcouncil/docs/5session/A.HRC.5.21\\_AEV.pdf](http://www.ohchr.org/english/bodies/hrcouncil/docs/5session/A.HRC.5.21_AEV.pdf)

<sup>14</sup> The Russian Federation.

<sup>15</sup> Later supported by Egypt (on behalf of the African Group).

<sup>16</sup> Morocco, Ethiopia, Algeria, Argentina, International Service for Human Rights.

Moving to the core requirements, States generally addressed the content of the non-paper as it presently existed, although certain States also noted omissions in the text, and requested that additional elements be included. Beginning with **‘competence and experience’**:

- There was general opposition to the non-paper’s prescriptive listing of relevant areas of academic study.<sup>17</sup> Morocco indicated that certain areas did not appear relevant, and that a more general reference would suffice.<sup>18</sup> Algeria recommended that the sentence end ‘in the field of human rights or related areas’, although India stated that ‘related areas’ should be avoided.
- There was sizeable objection to the non-paper’s reference to positively considering candidates with post-graduate degrees. Egypt (on behalf of the African Group) argued that this made the submission of candidatures more difficult for developing countries. Portugal (on behalf of the European Union (EU)), in upholding the non-paper as supporting ‘excellence’, stressed that this element would not make it difficult to find ‘excellent experts in every region’.<sup>19</sup> The delegate of Egypt sharply responded that it had declared that this would make it ‘more difficult for developing countries’, and not simply ‘difficult’, adding that he did not appreciate his comments being ‘interpreted’, this being his right alone. Cuba proposed that this element should simply refer to ‘studies’. Bangladesh added that a degree is not necessary to understand human rights as it ‘is not a technical subject as such’.
- Ethiopia expressed concerns about the separation of ‘experience and exposure to leadership roles’ from academic experience, and questioned the hierarchy that this may imply. It stated that persons with no academic qualifications, but with significant leadership exposure and direct human rights experience, would be important to the Advisory Committee. Morocco sensed that emphasis was placed on academic qualification to the detriment of practical experience. South Africa requested that reference to leadership in the ‘social field’ be removed as this would indicate social rights are distinct from other rights.
- Argentina expressed satisfaction with the non-paper’s reference to ‘participation in international events’, and requested that ‘work in the field’ may be added to this criteria. Senegal, however, noted that it is usually government representatives who attend or can attend such international events, and it would therefore be difficult to reconcile this with the exclusion of those ‘holding decision-making positions in Government’. Egypt again perceived this as an added difficulty for developing countries.
- Brazil, Japan and Australia supported the Facilitator’s proposal of five-year’s experience in the field of human rights so as not to exclude ‘young developing professionals’. The European Union, however, proposed that reference to ‘vast experience’ was not compatible with five years and proposed the word be changed to ‘substantial’.<sup>20</sup> Switzerland supported this, while proposing the deletion of ‘five years’. Cuba lowered this further to ‘appropriate’. ISHR stated that at least 10 years of experience would be preferable, and proposed that experience in human rights could extend beyond publications to incorporate ‘research and investigation’.
- Algeria specified that limiting ‘knowledge of the UN system and its rules and procedures’ was sufficient without including reference to ‘institutional mandates’, ‘norms’ etc. Russia expressed broad support for this abbreviated form.
- Many States drew attention to the fact that there were six official languages of the United Nations (UN) and not simply the three working languages listed (English, French and Spanish).<sup>21</sup> India preferred reference to ‘knowledge of’ rather than ‘ability to draft and communicate in’ a UN language.

Concerning the question of **‘independence and impartiality’**, the language of the non-paper created difficulty for many States, with no noticeable support from others. The core problem arose from the sentence

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<sup>17</sup> India, Cuba, Switzerland, Algeria, Morocco.

<sup>18</sup> India, Switzerland.

<sup>19</sup> Supported by ISHR.

<sup>20</sup> Supported by Japan, Switzerland and ISHR.

<sup>21</sup> India, Switzerland, Morocco, Algeria.

that ‘Governments should verify the integrity of their candidates prior to the submission of their candidatures’.

- India and South Africa drew attention to the disparity between the language of the non-paper’s introductory paragraph, which states that individuals in Government ‘could represent a conflict of interest’, and the later language that this ‘could give rise to a conflict of interest’, and sought uniformity in accordance with *Resolution 5/1*.
- South Africa thought that official Government ‘verification’ would impinge upon the principle of independence. Pakistan (on behalf of the OIC) pointed to the absence of language specifying that candidates will ‘act in an individual capacity’, and argued that it is therefore not the responsibility of States to verify their integrity. Morocco noted that this language might suggest States would seek to put forward persons without integrity. Australia, in contrast, stated that it saw no difficulty in pointing out that States are best placed to verify the integrity of their own candidates.
- The Russian Federation expressed that the non-paper should be clear that States undertake national consultations and take responsibility for candidatures up to the point of their election by the Council. Belgium explained that certain States had favoured nomination of candidates by NGOs during the Working Group on expert advice<sup>22</sup>, while others had preferred that this be decided solely by States. The compromise outcome was for national consultative processes to be conducted with NGOs and national human rights institutions (NHRIs) in choosing candidates. This should be stipulated in the non-paper.<sup>23</sup> Portugal proposed that the language ‘candidates should be selected after a **national consultation** process involving NHRIs and civil society organisations’ be inserted. Mexico re-iterated that national consultations would contribute to guaranteeing competency, independence and impartiality and added that members of Government should be ‘excluded’, as opposed to ‘not be eligible’, in the language of the non-paper.
- Switzerland proposed that the entire section on independence and impartiality could be deleted, as *Resolution 5/1* is ‘specific on these matters’.

The non-paper concluded with the subject of ‘**other factors**’. Morocco was critical of the inclusion of ‘generations’, inquiring whether this would require establishing ‘age-brackets’. ISHR agreed that this adds little and would be difficult to implement. Brazil, in contrast, favoured the ‘generation’ element as a means ‘modernise the group of experts’. Argentina sought the inclusion of a balance of regional and geographic representation, while South Africa requested the inclusion of ‘knowledge of civilisations’. Algeria, on the other hand, questioned how it would be possible for individual States to ensure any such balances, provided that they each are only responsible for the nomination of one candidate.

Finally, in addition to the content of the present non-paper, Portugal (on behalf of the EU) and Australia notified the Facilitator that it was important to include the limitation of two three-year terms for membership to the Advisory Committee. Cuba urged the Council not to resort to discussions on excluding previous members of the Sub-Commission but to ‘avoid polemics’ and focus on the text. Amnesty International drew the Council’s attention to the fact that members of the Advisory Committee would also constitute the new Working Group on Communications under the new complaint procedure, and the requirements of this mandate would differ substantially from the often-discussed ‘think-tank’ character of the Advisory Committee. Accordingly, Amnesty considered that it may be useful to include this element in the competencies of members. ISHR also recommended that reference to a ‘commitment to human rights’ should be inserted in the text.

The Facilitator opened her response to the discussion by confirming that the non-paper was mandated by the Council’s institution building package of 18 June 2007. She insisted that equal weight would to be given to academic qualifications and field experience of proposed candidates. Fields of study would not be limited to

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<sup>22</sup> For a review of the sessions of the Working Group on expert advice, see <http://www.ishr.ch/hrm/council/wg/expertadvice/expert.html>

<sup>23</sup> Supported by Portugal (on behalf of the EU).

the disciplines listed in the non-paper and human rights experience could include experience at *either* the national, regional or international levels rather than requiring the accumulation of experience at all three levels.

The Facilitator also supported a change of language in the non-paper to match the required five years human rights experience, and pressed that many of the remaining criteria listed in the non-paper are “desirable” rather than absolute qualities. Further, it was confirmed that eligibility of candidature would not be restricted to persons with knowledge of one or more of the UN’s three working languages. She concluded that consultations on the non-paper would continue.

### Other issues

The President adjourned the meeting at 5.30 pm, with the permission of the Council, to begin the informal discussion of the non-paper on guidelines for the preparation of information under the UPR at 10 am the following morning. He thanked the delegates for their ‘open minded attitudes’ towards the informal meetings and requested that they maintain the same spirit the following day.

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