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Overview

The Human Rights Council (the Council) reconvened today in a second informal meeting on pending institution-building issues. The morning meeting addressed the non-paper on guidelines for the preparation of information under the universal periodic review (UPR) mechanism¹.

Opening the morning meeting, the President of the Council, Ambassador Doru Romulus Costea of Romania, urged States to limit discussion to the content of the non-paper, a request that a number of States were unable to heed. The Facilitator on the guidelines for the preparation of information under the UPR (the UPR guidelines), Ambassador Mohammed Loulichki of Morocco, introduced his non-paper before opening the floor to informal discussion. Exchanges of proposals and responses between States and the Facilitator followed.

The second part of the informal consultations held in the afternoon was spent on receiving the comments of States on the non-paper on the technical and objective requirements for eligible candidates for mandate-holders², facilitated by President Costea himself. The President gave a brief introduction to the non-paper, stating the reasoning behind the structure and content of the paper. This was then followed by comments from

¹ The non-paper dated 7 September is available on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the username and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

² The non-paper dated 8 September is also available on the OHCHR extranet.

various States and NGOs on general and specific aspects of the non-paper and recommendations for changes. The list of speakers was not completed in the afternoon and the session on Wednesday morning will continue the discussion on this topic.

Informal meeting on the guidelines for the universal periodic review

Introduction and presentation of the non-paper

The Facilitator on the UPR guidelines, Ambassador Mohammed Loulichki of Morocco, introduced his non-paper to the Council. The non-paper supersedes a discussion paper on the UPR guidelines circulated on 30 June 2007 and, as the Facilitator reported, is the product of extensive bilateral consultations with States and other stakeholders.

The non-paper reaffirms the sections of the Council's institution-building package³ that deal with the UPR, and lists seven guidelines for the preparation of information. These are:

- Methodology (I)
- Background and framework for the promotion and protection of human rights (II)
- Promotion and protection of human rights on the ground (III)
- Identification of achievements, best practices, challenges and constraints (IV)
- Key national priorities, initiatives and commitments to overcome the abovementioned challenges (V)
- State expectations in terms of capacity building, and technical assistance if requested (VI)
- Presentation on follow-up to previous reviews (VII).

The non-paper differs from the 30 June 2007 discussion paper mostly in terms of cosmetic changes to language. Significant additions include guideline VII, and the insertion of a reference to national human rights institutions (NHRIs) in guideline III. The Facilitator also addressed concerns about the omission of references to NGOs in the non-paper. He assured the Council that NGOs were "very much in the hearts and minds of States and the Facilitator" and stated that the reworked guideline I provides for the participation of NGO and NHRIs in the preparation of information toward the review of States⁴.

Opening the floor to discussion of the non-paper, the President called on States to strive for a consensus text that gives the UPR "its true place in the architecture of the Council".

Informal discussion

The Facilitator's non-paper received warm support from States. A number of States considered the text to be very close to agreement⁵, while most States welcomed its generality and its simple and flexible structure. Discussion of the non-paper revolved around a handful of issues. These included:

- **Support for general rather than prescriptive guidelines**

It was almost unanimously agreed that the UPR guidelines should be general rather than prescriptive in nature. Accordingly, Egypt (on behalf of the African Group) proposed that the title of the non-paper be

³ Resolution 5/1, A/HRC/5/1, 18 June 2007.

⁴ The word "description" was added to the beginning of the first guideline. It now reads 'Description of the methodology followed for the preparation of information provided under the UPR'.

⁵ Mexico, Russian Federation, and Switzerland.

changed to “General guidelines for the preparation of national reports under the UPR”. This proposal was supported by Pakistan (on behalf of the Organization of the Islamic Conference (OIC)), Portugal (on behalf of the European Union (EU)), and Sri Lanka (on behalf of the Asian Group).⁶

The Facilitator, endorsing Egypt’s (on behalf of the African Group) proposal, stated that the guidelines needed to be flexible while offering adequate guidance to States.

A number of States also welcomed the insertion of a reference to the Council’s institution building package (adopted as *Resolution 5/1*) in the non-paper’s opening paragraph (chapeau)⁷. These States pressed the importance of ensuring that the guidelines remain true to the prescriptions of *Resolution 5/1*⁸.

- **The role of the Office of the High Commissioner for Human Rights (OHCHR) in compiling information toward reviews**

OHCHR’s role in compiling information toward country reviews was a subject of much discussion. A collection of States⁹ called on OHCHR to be objective and impartial when compiling such information, with Algeria proposing that this be included in the guidelines as a requirement.

Sri Lanka (Asian Group) stated that all collated information should be credible and reliable and should meet “minimum evidentiary standards”. China called on OHCHR to ensure geographic balance in the composition of the staff dedicated to the preparation of compilations.

South Africa asked for clarification of the process that OHCHR would use when compiling information, citing a distinction between the compilation of information and the preparation of compilations.

Ethiopia stated that OHCHR compilations, rather than State national reports, should summarise the treaty body and special procedures information relevant to each country review. Ethiopia went so far as to suggest that national reports are not mandatory and that States are free to submit information toward the UPR in any form they choose.

- **Consultations with NGOs and NHRIs toward preparation of information**

The introduction of the reference to NHRIs in guideline III proved to be a conversation starter. Pakistan (on behalf of the OIC) called for elaboration of what this inclusion would mean in terms of preparing information under the UPR. Egypt (on behalf of the African Group) suggested that requiring a State to prepare information on the activities of an NHRI could undermine the independence of national institutions.

Brazil, on the other hand, built on the reference to NHRIs by requesting that a reference to a “broad national consultative process” be incorporated into guideline I. It also called for a return to the language contained in the UPR discussion paper of 30 June 2007, which encouraged States to consult broadly with all stakeholders when preparing information under the UPR¹⁰.

India called for the insertion of a new guideline into the text that would require all stakeholders submitting information toward the UPR to use the same template that *Resolution 5/1* requires OHCHR to use. The Philippines supported this proposal. The Facilitator reserved comment.

⁶ Other States supporting ‘general’ guidelines included Bangladesh, China, Cuba, India, Norway, Republic of Korea, Russian Federation, Turkey, and the United States of America (USA).

⁷ Algeria, Egypt (on behalf of the African Group), India, Pakistan (on behalf of the OIC), and the Russian Federation.

⁸ 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

⁹ Algeria, China, Pakistan (on behalf of the OIC), South Africa, and Sri Lanka (on behalf of the Asian Group).

¹⁰ In response, the Facilitator stated that it might be possible to incorporate this proposal into a revised non-paper.

- **Level of development, State specificities, and State capacity to prepare for a review**

Two main points emerged in regard to State development and capacity. Firstly, that a State's level of development and specificities should be considered at all stages of the review process.¹¹ Secondly, that UPR reporting requirements should not be unwieldy and should not overburden States that have limited resources.¹²

- **National laws as a basis for review**

Informing the discussion, the Facilitator told the Council that national legislation would primarily be considered during reviews of States that are not party to international human rights instruments. To the Facilitator, this would ensure that there are no vacuums when it comes to human rights obligations.

The United Kingdom ran an alternative argument, stating that national legislation becomes relevant when it is compatible with a State's regional and international human rights obligations.

- **Remedies, implementation, and human rights training and education**

Portugal (on behalf of the EU) placed particular weight on the preparation of information on human rights implementation. It called on States to prepare information on each of the criteria listed in guideline III¹³ and interpreted the criterion 'public awareness of human rights' to include human rights education and the human rights training of security forces. It also called on States to submit information on remedies available to victims of human rights violations.

Supporting the spirit of Portugal's (on behalf of the EU) comments, the Facilitator said that he would prefer to avoid prescriptions (a point later taken up by Algeria) and to keep the meaning of the guidelines as open and as flexible as possible.

The United Kingdom built on Portugal's (on behalf of the EU) comments, describing implementation as "at the heart" of the UPR process.¹⁴ Japan proposed that questions be sent to States before their review, with the attached obligation that States should respond "as faithfully as possible" to these questions.¹⁵

Argentina proposed the division of guideline III into two sections. One section would focus on implementation of human rights obligations and voluntary commitments. The other would focus on information related to NHRIs and national jurisprudence. This proposal received little support from States and the Facilitator.

In an NGO statement, the Juridical Commission for the Autodevelopment of First Andean People suggested including a provision within the guidelines requesting States to report on the implementation of human rights body recommendations regarding indigenous peoples.

¹¹ Egypt (on behalf of the African Group), Saudi Arabia and Tunisia.

¹² Ethiopia.

¹³ International human rights obligations, national legislation, voluntary commitments, national jurisprudence, NHRIs, public awareness of human rights, and cooperation with human rights mechanisms.

¹⁴ The International Federation for Human Rights (FIDH) suggested that the UPR should also focus on types of human rights implementation that are of financial cost to States, such as the extension of invitations to special procedures mandate holders or the abolition of legislation in conflict with human rights obligations.

¹⁵ Japan also proposed the addition of the "assessment of the human rights situation of the country, including responses to the points raised in international human rights fora of the United Nations" to guideline III as a source of information to be provided toward State reviews.

- **Cooperation with other human rights mechanisms**

Cuba raised the interesting point of what would happen where States do not acknowledge particular human rights mechanisms or mandates. Pakistan (on behalf of the OIC) asked what would happen where an issue of non-recognition of a State arose.

Egypt (on behalf of the African Group) and Ethiopia pressed that the UPR should not duplicate the work of the treaty bodies. On this same point the International Commission of Jurists (ICJ) stated that the UPR guidelines should clarify the distinction between information to be submitted by a State toward a review and information already available to other human rights mechanisms.

Norway considered cooperation with other human rights mechanisms to be a primary UPR objective.¹⁶ It called for information to be provided on each State's history of cooperation with human rights mechanisms. The United Kingdom proposed that a standard phrase that discusses cooperation with national, regional and international human rights mechanisms be added to the guidelines.

- **Follow-up to previous UPR reviews**

A number of States welcomed the introduction of guideline VII on follow-up to previous UPR reviews.¹⁷ Egypt (on behalf of the African Group) sought to add a qualifier to this guideline, proposing that any consideration of follow-up on previous reviews should only be possible once the first cycle of reviews has been completed.

Facilitator's concluding remarks

Closing discussion, the Facilitator welcomed the richness of the views expressed and committed to incorporating as many proposed elements as possible into the next revision of the non-paper. He again underscored the need for an open, flexible and practical document that would evolve and improve with time and that placed confidence in the role of States. This sentiment reflected an analogy drawn by the Facilitator earlier in the day in which he compared a State under review to a beautiful woman at a wedding: both want to look their best.

Technical and objective requirements for
mandate holders of the special procedures

Introduction and presentation of the non-paper

A non-paper on technical and objective requirements for eligible candidates for mandate holders of the special procedures prepared by the President had been circulated yesterday and was the basis for discussion during the afternoon session.¹⁸

¹⁶ The encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR is one of six UPR objectives listed in *Resolution 5/1*.

¹⁷ Including Argentina and Chile.

¹⁸ The non-paper is available on the extranet page of the OHCHR, under the section on the 6th session of the Council. 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.

The non-paper has three main sections on background (I), general aspects (II), and technical and objective criteria (III). Section III on the criteria suggests the following elements: qualifications (3.1), relevant expertise (3.2), established competence (3.3), extensive professional experience (3.4) and experience in the field of the mandate (3.5).

President Costea introduced the non-paper by stating that his proposal was aimed at ensuring the inclusion of specialised expertise required by mandate holders who were chosen to implement a specific mandate. He emphasised the importance of the special procedures system as a whole, and that the results of the selection of mandate holders must be credible, substantiated and objective, but possible to implement. While conceding that the special procedures so far represented a wide diversity of cultures, countries, languages and so on, he noted that this posed a challenge to the Council to recruit new mandate holders who are at least as good, if not better, than those they are to replace. The President also said that the current discussion on the criteria for mandate holders benefited from the previous day's discussion on the criteria for members of the Advisory Committee of the Human Rights Council (the Advisory Committee). The President said that the general categories for the criteria for mandate holders could be found in the institution-building text adopted in June 2007. He also said that OHCHR would begin registering candidates on a Public List as soon as the Council agrees upon the criteria. While the list to be maintained by OHCHR would always be updated and kept public, the Consultative Group would be called upon to exert its role in the selection of mandate holders.

Informal discussion

The overwhelming majority of States welcomed the non-paper as a good basis for discussion and for finding a consensus on the requirements for candidates for mandate holders of the special procedures.¹⁹ However, a vast majority were critical of the level of detail contained in the paper and asked that it be simplified. Many delegations argued that the requirements contained in the institution-building text were adequate and sufficiently broad.²⁰ There was broad agreement that the aim of the requirements was to ensure highly qualified persons for the special procedures mandates. However, several delegations were concerned about requirements in the guidelines that could be restrictive for candidates from developing countries²¹, while others said that such demanding requirements would be difficult to meet.²² In response to some of these concerns, Mexico said that developing countries had in the past presented candidates with the highest level of expertise and professional experience for appointment to a special procedures mandate. Other States argued that the current non-paper was not too prescriptive and that it reflected the agreement reached in *Resolution 5/1*.²³

Many delegations believed that the non-paper was well structured, while others suggested minor adjustments. Egypt (on behalf of the African Group) suggested that the two points in the non-paper dealing with 'extensive professional experience' and 'experience in the field of the mandate' (point 3.4. and 3.5.) could be combined under the heading of 'professional experience'. India suggested merging sections 3.2. and 3.4. (on relevant experience and professional experience) and sections 3.3. and 3.5. (on 'established competence' and 'experience in the field of the mandate'). In addition, it was suggested that the point on the availability of the candidate to perform the duties of the mandate should be addressed as a separate point and not under the heading of 'experience in the field of the mandate'.²⁴ Some delegations suggested that several sections could be deleted, as they did not add much to the paper.²⁵ Sri Lanka (on behalf of the Asian Group) proposed that the non-paper be completely restructured around four broad headings: qualifications (including

¹⁹ India, Portugal (on behalf of the EU), Brazil, Egypt (on behalf of the African Group), Morocco, Switzerland.

²⁰ Pakistan (on behalf of the OIC).

²¹ Pakistan (on behalf of OIC), Turkey.

²² Cuba.

²³ Portugal (on behalf of the EU), Mexico.

²⁴ Pakistan (on behalf of OIC).

²⁵ Norway suggested deleting section 3.3., 3.5.2., 3.5.3, and 3.6.

comprehensive and in-depth knowledge of a wide-range of human rights issues); relevant expertise (including knowledge of human rights instruments, norms and principles); relevant work experience; and 4 other considerations (including flexibility or readiness to efficiently perform the functions of a mandate holder).

Cuba said that the discussion on the technical and objective requirements for mandate holders was similar to the previous day's debate on the requirements for members of the Advisory Committee, and suggested that one document could suffice for both mechanisms. The Russian Federation felt that the requirements for special procedures should be "extremely broad" and noted that the previous discussion on the requirements for members of the Advisory Committee had been going in the right direction.

India reminded the Council that the requirements would be used by OHCHR to place eligible candidates on a Public List and that it would therefore be important that the criteria are objective and not subjective.²⁶

Addressing the specific elements of the non-paper, States commented upon and suggested changes to the existing draft:

- Regarding the qualifications of candidates, Algeria argued that the use of adjectives to qualify their experience or knowledge would amount to value judgments and that the criteria used should not be too prescriptive. Many other delegations agreed that it was unnecessary to require candidates to have "excellent" "comprehensive" or "in-depth knowledge" of human rights instruments and issues²⁷ and that this could be difficult to assess.²⁸ Others argued that specialised knowledge was an essential requirement of candidates because of the nature of their mandate in contrast to the general expertise required by members of the Advisory Committee.²⁹
- The majority of delegations agreed that it was unnecessary to require that candidates hold a university degree, and several suggested deletion of this section³⁰. Some argued that this may not truly reflect the expertise of the candidate,³¹ some accepted that it would be an asset³² and others thought it preferable.³³ Portugal (on behalf of the EU), however, suggested that no region would have difficulties finding suitable and excellent candidates and that the reference to a university degree should be maintained. The delegate also noted that the Consultative Group could under exceptional circumstances consider candidates that were not on the Public List. Many delegations suggested that professional experience should be considered as an equivalent to academic qualifications.³⁴
- There was also general agreement among States that it would not be necessary to include experience with the United Nations (UN) or other multilateral bodies among the criteria.³⁵ Some argued that including such experience would be selective and restrictive³⁶ and that eligible candidates could simply be given an induction course to the UN system.³⁷ The International Service for Human Rights argued that mandate holders should at least have knowledge of the UN system even if direct exposure was not required.

²⁶ Supported by ISHR.

²⁷ Egypt (on behalf of the African Group), Brazil, India, Switzerland and Norway.

²⁸ Morocco.

²⁹ Brazil and Mexico.

³⁰ Egypt (on behalf of the African Group), Norway and Bangladesh.

³¹ Egypt (on behalf of the African Group), and Human Rights Watch (HRW), who suggested that the requirement did not adequately reflect other essential qualifications such as human rights analyses, monitoring, assessment and protection.

³² China and Switzerland.

³³ Uruguay.

³⁴ Brazil, India, China, Morocco and the Philippines.

³⁵ Egypt (on behalf of the African Group) and Switzerland.

³⁶ China and Russian Federation.

³⁷ Pakistan (on behalf of OIC).

Several delegations also raised questions about who would assess whether the performance of a candidate in these bodies had been ‘outstanding’, as stated in the non-paper.³⁸

- Egypt (on behalf of the African Group) argued that it would be important to add regionally recognised competence to point 3.3., in addition to nationally and internationally recognised competence. Many delegations supported this suggestion.³⁹ They also suggested that it was unnecessary to add that this competence could be established through participation in international events or fact-finding missions, as these were often only accessible to a limited number of persons,⁴⁰ and could be seen as selective or discriminatory⁴¹. Others noted that the composition of fact-finding missions had often been controversial.⁴²
- Regarding the extensive professional experience of candidates, Egypt (on behalf of the African Group) said that it could support point 3.4. of the non-paper. Pakistan (on behalf of the OIC) argued that requiring analytical and research skills would be discriminatory towards candidates from developing countries.
- Many delegations believed that it would be excessive to require ten years of professional experience in the field of the mandate as suggested in point 3.5.1. Some argued that five years would be sufficient⁴³ while others suggested that ten years would be acceptable if the experience required was of a general nature.⁴⁴ Many States were in favour of a more flexible approach to the length of experience and some suggested that qualifying it as ‘sufficient’⁴⁵ or ‘significant’⁴⁶ would be adequate. Portugal (on behalf of the EU) said that information from the Secretariat on the experience and academic qualifications of previous mandate holders would be useful in determining the appropriate minimum experience.⁴⁷ The President informed the Council that all current mandate holders have university degrees and that many even have post graduate training. Mexico noted that many of the current mandate holders have accumulated 40 years of human rights experience and that those with lesser experience still had up to 16 years. It suggested that further discussion take place on this issue.
- Pakistan (on behalf of OIC) argued that the language requirements for the special procedures mandate holders should not become a norm-setting exercise. India suggested that introducing language requirements could favour particular regions and Morocco said that the requirement failed to take account of experience “on the ground”. Portugal (on behalf of the EU) said that it would be important for logistical reasons that the mandate holders could communicate in one of the UN languages as limited translation was available for the presentation of their reports and interactive dialogues with the Council. Norway underlined that good communication skills was a critical requirement. The President also noted that there could be difficulties in relation to the preparation of documents and reports to the Council if the mandate holder was unable to communicate in one of the languages and suggested further discussion.
- Many delegations expressed concern about section 3.5, dealing with the required expertise in the field of a specific mandate, and suggested that it be made more generic to the full range of special procedures mandates. However, Egypt (on behalf of the African Group) stated that it did not have any problems with the inclusion of such a section. Mexico also said that it would be important to indicate a candidate’s particular areas of specialisation on the Public List.

³⁸ India and China.

³⁹ Turkey, Portugal (on behalf of the EU), Brazil, China and Uruguay.

⁴⁰ Russian Federation and Switzerland.

⁴¹ Pakistan (on behalf of OIC).

⁴² Egypt (on behalf of the African Group).

⁴³ Egypt (on behalf of the African Group) and Turkey.

⁴⁴ India and ISHR.

⁴⁵ Turkey.

⁴⁶ Switzerland and Uruguay.

⁴⁷ Supported by Mexico.

- While Egypt (on behalf of the African Group) had requested that the paper be less prescriptive and impose fewer requirements on eligible candidates, they also suggested the reflection of the need for gender balance, equitable geographical representation and the representation of different legal systems in the non-paper in accordance with paragraph 40 of *Resolution 5/1*. This was endorsed by a number of States⁴⁸ and welcomed by the President in his responses. Portugal (on behalf of the EU) stated that while the issue regarding the possible conflict of interest between candidates and the exercise of a mandate should not be re-opened, there was a need to give further consideration both to situations in which a conflict of interest could arise with the function of serving as mandate holder, and instances of appointment to a particular mandate. However, no solution was proposed and it was said that this issue did not have to be resolved in the non-paper. Turkey also suggested that the principle of non-accumulation of human rights functions from the institution-building text should be reflected.

Other issues

At the beginning of the afternoon session the President reminded delegations that he had invited them to register with the Secretariat by 6.00 pm (11 September), to speak on any topic not currently included in the programme of work, although even delegations who had not registered could still be considered if time permitted. He explained that this process was intended to find an optimum way to manage time and to have an inclusive debate with the participation of as many delegations as possible. He reminded the Council of its heavy agenda and asked that delegations focus on issues where discussion would add value to its work. Attempts would be made to accommodate all the requests received. The distribution of the debates on the proposed issues during the programme of work would be considered before the reconvening of the formal session on Thursday morning.

Egypt (on behalf of the African Group) requested an extension of the deadline for registering until Wednesday to allow members of the African Group to hold further consultations. The President responded positively to the request but did not specify what the deadline for registration would be.

In response to other comments from States, the President announced that his preferred dates for the first meeting of the UPR working group are 7-18 April 2008, and confirmed that there will be a simulation held on Wednesday, 12 September 2007 demonstrating the process to determine the order of States to be reviewed.

Next steps

The discussion on the technical and objective requirements for eligible candidates for mandate holders of the special procedures will resume on Wednesday morning as the list of speakers was not completed in the afternoon. Then the Council will debate the future of the Working Groups of the former Sub-Commission on the Promotion and Protection of Human Rights.

⁴⁸ Pakistan (on behalf of OIC), Portugal (on behalf of the EU), Brazil.

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