

COUNCIL MONITOR

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DAILY UPDATE HUMAN RIGHTS COUNCIL, 9TH SESSION 8 SEPTEMBER 2008

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Overview

The President of the Human Rights Council (the Council), Ambassador Martin Uhomoibhi of Nigeria, opened the 9th session of the Council. He stated his intention to build on the achievements of the Council's first two Presidents. The President stated that transparency and mutual respect for one another must inform the Council's work, that 'no human rights issue is off limits', and that the Council should promote and protect human rights for *all* people'. He also noted that the relationship between the Council and the High Commissioner for Human Rights must be strengthened with full respect for the independence of both.

The new High Commissioner for Human Rights, Ms Navanetham Pillay addressed the Council for the first time. She committed herself to an open and frank relationship with the Council. While States recognised that this was not the time to discuss the relationship between the Office of the High Commissioner for Human Rights (OHCHR) and the Council, many already addressed this topic. It seems that Ms Pillay will not have much respite before having to confront a topic that has been plaguing the Council's debates for quite some time.

In the afternoon, the Council proceeded to a procedural point determining the order of review for the 4th, 5th and 6th session of the universal periodic review (UPR) and selecting the troikas for the 3rd, 4th and 5th sessions. Unlike during the first drawing of lots, there were no particularly notable configurations among the troika's drawn. This second round of troika-selections has confirmed that the exercise is a purely formal one. The first two rounds of the UPR have also shown that the role of the troika members is very limited. The absence of a

real ‘facilitating’ role as intended by the institution-building package makes the drawing of lots even blander.¹

Address by the High Commissioner for Human Rights

The High Commissioner, Ms Navanetham Pillay, addressed the Council for the first time after taking up her post on 1 September 2008.² Ms Pillay seemed keen to make a good first impression on the members of the Council, acknowledging that first impressions tend to last, and pledged to have ‘an open-minded, frank, and reciprocally reinforcing interaction’ with the Council. She asserted that of greatest importance to the effective functioning of the human rights system is ‘impartiality in the operation of the system’ and universal and equal application of human rights standards without political considerations. She further stated that human rights work must be based on truth ‘with no tolerance for double standards or selective application’. Perhaps following on from comments made by the former High Commissioner, Ms Louise Arbour in her last address to the Council about the importance of participation by all countries in the work of the Council, Ms Pillay noted that all States must ‘wholeheartedly participate in, give effect to, and take full ownership of human rights processes and agendas’. Ms Pillay stated that one of the current challenges is how to strengthen the international human rights protection, such as the special procedures and treaty bodies. In this context she urged States parties to human rights treaties to respect their obligations and engage with the treaty bodies in a constructive manner.

In identifying the main challenges ahead, the High Commissioner focused on up-coming events that would present opportunities for the human rights community. These included the anniversaries of the *Universal Declaration of Human Rights*, the Vienna Declaration and Programme of Action, and of the Declaration on Human Rights Defenders. While she did not explicitly mention the Durban Review Conference in this context, she urged those States³ that have distanced themselves from the review conference to reconsider their position, and pledged to do everything possible to bring everyone to the table.

Ms Pillay drew on her personal experiences in apartheid South Africa and as a judge dealing with war crimes in relation to many of the topics she addressed, including racism, gender inequality, and genocide. She warned that differences of view in relation to the Durban Review Conference should not be a pretext for inaction in the fight against racism and underlined that implementation of the Durban Declaration of Programme of Action is still ‘sorely lacking’ in many countries in all regions of the world. Ms Pillay informed that OHCHR is planning a seminar on prevention of genocide, and a seminar on articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR) to discuss the balance between freedom of expression and the need to ‘enhance protection against incitement to hatred, discrimination, hostility or violence’.

Turning to one of the more contentious aspects of the work of OHCHR, Ms Pillay suggested the High Commissioner is in a unique position to assist governments in the promotion and protection of human rights, including through the expansion of field offices. She explained that it is at the country level that OHCHR can more easily cooperate with governments and provide protection to victims.

Not surprisingly, Ms Pillay did not make any reference to particular human rights situations of concern in this first address. Only in passing did she mention South Africa and the challenges it faces in turning its strong

¹ For a comprehensive review of the first two sessions of the UPR, see ISHR’s analytical overview, available at <http://www.ishr.ch>.

² Her statement is 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.

³ While the High Commissioner did not mention any country, the United States of America and Canada have stated that they will not participate.

Constitution into reality. However, she expressed concern that rights to freedom of expression, association, and assembly have come under sustained attack in all regions of the world and that some States have enacted or tightened legislation to curtail or restrict civil society advocacy. It will be interesting to see how the High Commissioner will approach country situations of concern in the future.

In commenting on her broader vision for the work of the OHCHR, Ms Pillay stated that sustained by the principles of impartiality, integrity and independence, she would follow in the footsteps of her predecessors in shaping the Office as a ‘springboard for the betterment and welfare of all’.

General comments

The first opportunity to welcome the new High Commissioner and exchange views with her drew much interest from States speaking on behalf of six groupings of States⁴ and more than 25 members of the Council wanting to speak. Due to this long list of speakers the debate could not be concluded within the allotted time and will continue on Tuesday 9 September.

Many States commented on Ms Pillay’s background and qualifications in welcoming her. Notably, several speakers appreciated that she is a woman from a developing country in Africa.⁵ Many States also welcomed her stated commitment to impartiality and the truth hoping that this would do away with any selectivity or double-standards.⁶ Notably, Ghana argued that the Council should work towards human rights as a unifier rather than a divider and that it should become ‘more cohesive’.

While States generally recognised that this was not the time to pursue the discussion about the relationship between the Council and OHCHR, many took the opportunity to comment on this topic, often welcoming Ms Pillay’s commitment to an open and frank interaction.⁷ Cuba, on behalf of the Non-Aligned Movement (NAM), noted that the discussion, while urgent, could wait for a reasonable time to allow the High Commissioner to settle in. Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), asserted that OHCHR and the Council should work in tandem, and pledged to uphold the independence of OHCHR. India spoke of a partnership between OHCHR and the Council, while the United Kingdom (UK) referred to a partnership between equals. Egypt (on behalf of the African Group) asserted that OHCHR must reflect the diversity of the world in its staff and output. France, on behalf of the European Union (EU), reiterated the group’s well-known position that OHCHR should continue to be an independent institution.⁸ It was notable that South Africa in this context also called for a review of the institutional relationship between the General Assembly’s 3rd Committee and the Council.

In relation to the OHCHR’s country offices, the UK and Italy expressed general support for OHCHR’s presences around the world and its efforts to assist governments, while Switzerland noted the need to further strengthening country offices. France (on behalf of the EU) welcomed the signing of a Memorandum of Understanding with the government of Kyrgyzstan and expressed the hope that Uganda would accept the extension of OHCHR’s presence there. On the other hand, Egypt (on behalf of the African Group) argued that country engagement strategies should be developed through a structured and transparent process with States, ideally following a study by an independent expert Bangladesh suggested that there was a need for greater understanding of local situations in relation to country presences.

⁴ Pakistan (on behalf of the OIC), France (on behalf of the EU), Cuba (on behalf of the Non-Aligned Movement), Chile (on behalf of GRULAC), Egypt (on behalf of the African Group), Morocco (on behalf of the Arab Group).

⁵ Chile (on behalf of GRULAC), Egypt (on behalf of the African Group), South Africa, Brazil, Philippines.

⁶ Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group).

⁷ South Africa, China, Indonesia, India, Philippines, Malaysia, Bangladesh.

⁸ This was supported by Germany, UK, Switzerland, Canada, Slovenia.

In view of the absence of comments by the High Commissioner on country situations, it was interesting that France encouraged the High Commissioner to regularly draw the Council's attention to situations that require attention. The Russian Federation commented on the recent conflict with Georgia, but the President interrupted its accusations of genocide against Georgia and asked it to make such comments at a more appropriate moment.

Several States commented on the important institution-building work done in the Council's first two years. Cuba (on behalf of the NAM) stated that the UPR still needs to be 'consolidated'.⁹ Morocco (on behalf of the Arab Group) also commented on the UPR as a key mechanism. Notably, India stated that the terms of reference for the Consultative Group for the selection of special procedures must be clarified and that decisions must be taken about the pending studies from the former Sub-Commission on the Promotion and Protection of Human Rights.¹⁰

Many States welcomed Ms Pillay's commitment to making the Durban review conference a success.¹¹ Pakistan welcomed her comments as 'thoughtful' and agreed that the participation of all would be beneficial. In addition, it stated that the review conference should not become an anti-Semitic exercise. France (on behalf of the EU) and Chile, on behalf of the Latin American and Caribbean Group, (GRULAC) pledged continued support for the review conference.¹² Egypt (on behalf of the African Group) reiterated an earlier call for the High Commissioner to appoint an executive director to handle preparations for the review conference. South Africa called for the speedy development of the racial equality index.

Several States welcomed the planned seminar on articles 19 and 20 of the ICCPR.¹³ Egypt (on behalf of the African Group) also welcomed the holding of a seminar on prevention of genocide. Finally, some States took the opportunity to highlight particular issues of concern to them. Notably, Germany drew attention to the importance of national human rights institutions and the role OHCHR could play in relation to their creation through its country and regional offices. Morocco (on behalf of the Arab Group), identified Israel's lack of respect for the Council's resolutions as a major obstacle preventing the human rights system from promoting and protecting human rights. It expressed the hope that the High Commissioner would be able to strengthen these decisions.

Switzerland announced that it will present a human rights agenda for the next decade in December 2008 on the occasion of the 60th anniversary of the UDHR. Argentina noted that it will present a resolution on the right to truth at this session, while Brazil said it would propose a draft resolution on the UN Guidelines on Children without Parental Care.

UPR Selection Process

In the afternoon, the Council proceeded to a procedural point determining the order of review for the 4th, 5th and 6th session of the universal periodic review (UPR) and selecting the troikas for the 3rd, 4th and 5th sessions. A number of States were absent from the proceedings and the President of the Council drew the lots for them. The Secretariat was in contact with the delegation of these States in New York to allow them to request a redrawing of one troika member. Some of these States requested a re-drawing. In relation to the States present

⁹ Nigeria expressed similar views.

¹⁰ See also ISHR's report on the 1st session of the Human Rights Council Advisory Committee available at www.ishr.ch.

¹¹ Cuba (on behalf of the NAM).

¹² Argentina said it would participate, India that it was ready to contribute. The UK said that more had to be done to overcome challenges in fighting racism.

¹³ Pakistan (on behalf of the OIC), France (on behalf of the EU), Egypt (on behalf of the African Group), South Africa, Malaysia, Bangladesh, Malaysia.

at the meeting and drawing their own lots, it is not known how many rejected a troika member and had to draw again, since that part of the selection was confidential.

Unlike during the first drawing of lots, there were no particularly notable configurations among the troika's drawn. This second round of troika-selections has confirmed that the exercise is a purely formal one. The first two rounds of the UPR have also shown that the role of the troika members is very limited. The absence of a real 'facilitating' role as intended by the institution-building package makes the drawing of lots even blander.¹⁴

The OHCHR will publish a list of all troika members shortly. Below you will find such a list, with additional indications as to whether a State had requested to draw one member of its troika from among its own regional group. No objections were raised by the State under review or the selected troika members unless stated otherwise.

* indicates that the State under review requested that a member of its regional group be among its Troika.
(a) indicates that the State under review was absent from the drawing of lots.

3rd session of the UPR (1 to 12 December 2008)

Botswana*

Regional groups selected: African Group, GRULAC, EEG

Members selected: Uruguay, Senegal, Slovakia.

Bahamas¹⁵

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Djibouti, Malaysia, Netherlands.

Burundi*

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: Mauritius, India, Cuba.

Luxembourg

Regional groups selected: Asian Group, WEOG, EEG

Members selected: Canada, Slovenia, Bangladesh.

Barbados

Regional groups selected: African Group, Asian Group, WEOG

Members selected: South Africa, Japan, United Kingdom.

Montenegro¹⁶

Regional groups selected: EEG, African Group, GRULAC

Members selected: Russian Federation, China, Brazil.

United Arab Emirates*

Regional groups selected: Asian Group, African Group, GRULAC

¹⁴ For a comprehensive review of the first two sessions of the UPR, see ISHR's analytical overview, available at <http://www.ishr.ch>.

¹⁵ Bahamas was not present in the room. The Secretariat was in contact with the delegation in New York.

¹⁶ Montenegro changed its request to have someone from own regional group – it initially had such a preference but then renounced on it.

Members selected: Indonesia, Argentina, Cameroon.

Israel

Regional groups selected: African Group, Asian Group, EEG

Members selected: Republic of Korea, Azerbaijan, Nigeria.

Liechtenstein

Regional groups selected: Asian Group, GRULAC, WEOG

Members selected: Germany, Mexico, Jordan.

Serbia*

Regional groups selected: EEG, African Group, Asian Group

Members selected: Ukraine, Pakistan, Ghana.

Turkmenistan*¹⁷

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Philippines, Chile, Gabon.

Burkina Faso*

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Switzerland, Qatar, Madagascar.

Cape Verde*

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: Angola, Bolivia, Saudi Arabia.

Colombia

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Burkina Faso, Bahrain, Italy.

Uzbekistan*

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Egypt, Nicaragua, Indonesia.

Tuvalu*¹⁸

Regional groups selected: Asian Group, African Group, EEG

Members selected: Qatar, Zambia, Azerbaijan.

4th session of the UPR (2 to 13 February 2009)

Cameroon

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: china, Cuba, Senegal.

Djibouti

Regional groups selected: African Group, GRULAC, EEG

¹⁷ Turkmenistan was not present, accordingly the President selected the troika on behalf of it. The delegation of Turkmenistan rejected one troika member from the Asian Group, it is not known which State.

¹⁸ Tuvalu was not present, and accordingly the President selected. It wanted one member from EEG to be substituted but it was not disclosed which one.

Members selected: Russian Federation, Bolivia, Indonesia.

Mauritius*

Regional groups selected: African Group, Asian Group, EEG

Members selected: Zambia, Malaysia, Slovakia.

Nigeria

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Japan, Djibouti, Switzerland.

Senegal

Regional groups selected: African Group, GRULAC, WEOG

Members selected: Italy, Brazil, Angola.

Bangladesh*

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Argentina, Egypt, Philippines.

China*

Regional groups selected: Asian Group, African Group, WEOG

Members selected: India, Canada, Nigeria.

Jordan*

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Burkina Faso, Mexico, Japan.

Malaysia*

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Nicaragua, Qatar, Egypt.

Saudi Arabia*

Regional groups selected: Asian Group, African Group, WEOG

Members selected: Germany, Madagascar, Qatar.

Cuba*

Regional groups selected: GRULAC, EEG, African Group

Members selected: Gabon, Bosnia and Herzegovina, Uruguay.

Mexico

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: South Africa, Pakistan, Nicaragua.

Canada

Regional groups selected: Asian Group, WEOG, EEG

Members selected: United Kingdom, Bangladesh, Azerbaijan.

Germany

Regional groups selected: African Group, WEOG, Asian Group

Members selected: Cameroon, Republic of Korea, France.

Russian Federation

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: Ghana, Chile, Bahrain.

Azerbaijan

Regional groups selected: Asian Group, EEG, African Group

Members selected: Saudi Arabia, Mauritius, Slovenia.

5th session of the UPR (4 to 15 May 2009)

Central African Republic¹⁹

Regional groups selected: African Group, GRULAC, EEG

Members selected: Bolivia, Gabon, Bosnia and Herzegovina.

Chad*

Regional groups selected: African Group, WEOG, EEG

Members selected: France, Slovenia, Zambia.

Comoros*²⁰

Regional groups selected: African Group, GRULAC, WEOG

Members selected: Ghana, United Kingdom, Mexico.

Congo*

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Netherlands, Bahrain, Madagascar.

Vanuatu*²¹

Regional groups selected: African Group, Asian Group, GRULAC

Members selected: Chile, Djibouti, India.

Viet Nam*

Regional groups selected: African Group, Asian Group, WEOG

Members selected: Burkina Faso, Japan, Canada.

Yemen*

Regional groups selected: Asian Group, African Group, GRULAC

Members selected: Nicaragua, Indonesia, South Africa.

Afghanistan*

Regional groups selected: Asian Group, African Group, EEG

Members selected: Azerbaijan, Republic of Korea, Cameroon.

Uruguay

Regional groups selected: GRULAC, Asian Group, African Group

Members selected: Nigeria, Jordan, Argentina.

Belize*

Regional groups selected: GRULAC, EEG, Asian Group

Members selected: Russian Federation, Malaysia, Brazil.

¹⁹ Not present, President selected troika.

²⁰ Not present, President selected troika.

²¹ Not present, President selected troika.

Chile

Regional groups selected: African Group, Asian Group, GRULAC
Members selected: Senegal, Qatar, Cuba.

Malta

Regional groups selected: African Group, Asian Group, EEG
Members selected: Saudi Arabia, Ukraine, Egypt.

Monaco

Regional groups selected: Asian Group, GRULAC, WEOG
Members selected: Switzerland (v), Uruguay, China.

New Zealand

Regional groups selected: Asian Group, African Group, WEOG
Members selected: Philippines, Italy, Mauritius.

Slovakia

Regional groups selected: African Group, Asian Group, GRULAC
Members selected: Chile, Angola, Pakistan.

The former Yugoslav Republic of Macedonia*

Regional groups selected: EEG, Asian Group, WEOG
Members selected: Bangladesh, Germany, Slovakia.

6th session of the UPR (30 November to 11 December 2009)

The order of the review was determined as follows:

- | | |
|-------------------------------------|--|
| 1. Eritrea | 9. Portugal |
| 2. Cyprus | 10. Bhutan |
| 3. Dominican Republic | 11. Dominica |
| 4. Cambodia | 12. Democratic Peoples Republic of Korea |
| 5. Norway | 13. Brunei Darussalam |
| 6. Albania | 14. Costa Rica |
| 7. Democratic Republic of the Congo | 15. Equatorial Guinea |
| 8. Cote d'Ivoire | 16. Ethiopia |

Next steps

The President informed that the Council would adopt the programme of work for the session and the annual programme of work on Tuesday 9 September 2008. He noted that the annual programme of work should be discussed further since there was a need to better distribute the issues over the three yearly sessions.

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