

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## **COUNCIL UPDATE – ITEM 2, UPDATE FROM THE HIGH COMMISSIONER FOR HUMAN RIGHTS HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 4 AND 5 JUNE 2009**

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### Overview

The High Commissioner for Human Rights, Ms Navanethem Pillay, addressed the Human Rights Council highlighting key thematic and country situations of concern. Ms Pillay placed particular focus on the human rights of migrants, confirming the importance she has attached to this issue since taking office. She assured the Council that this issue would be one of OHCHR's priorities for 2010-2011. Ms Pillay also called on States that had not participated in the Durban Review Conference to re-join global efforts to fight racism. The High Commissioner in her strong statement underlined that the Council could draw attention to the situation of civilians in armed conflict in a variety of ways. In this context, Ms Pillay updated the Council on a significant number of serious situations of armed conflict, including in Afghanistan, Pakistan, Iraq, the occupied Palestinian territories, Colombia, Somalia, the Democratic Republic of the Congo, the Sudan, Chad, Sri Lanka, and Nepal. It was particularly welcome to see the High Commissioner exercising her strong and independent leadership at a time where the UN's main human rights body is increasingly reluctant to fulfil its mandate to address human rights violations.

In the following interactive dialogue, some States expressed disagreement with the comments made by the High Commissioner. The controversial issue of the relationship between the Council and the Office of the High Commissioner for Human Rights (OHCHR) was also brought up again. Cuba, speaking on behalf of the Non-Aligned Movement (NAM), Egypt (on behalf of the African Group) and other States again called for a 'formal' discussion of this relationship.

### Update from the High Commissioner for Human Rights

The High Commissioner for Human Rights, Ms Navi Pillay, urged States that chose to stay away from the Durban Review Conference to evaluate the outcome on its merit and substance and endorse it. She expressed her hope that these States would rejoin international efforts to combat racism and noted that some are already considering doing so.

She highlighted that the human rights of migrants was a key theme of the Durban Review Conference and underlined the need to ensure respect for these rights. She underlined the need to focus on human poverty instead of income poverty in addressing the root causes of migration. Ms Pillay also drew attention to discrimination

against migrants, national policies against irregular migration, and administrative detention of migrants resulting in punitive regimes and arbitrary detention. She called on States to ratify the *Convention on the Rights of Migrant Workers and Members of their Families* (CMW). The High Commissioner noted that this issue would continue to a priority for her Office in 2010-2011.

Ms Pillay then turned to the **protection of civilians in armed conflict** in a large number of countries around the world, Afghanistan, Pakistan, Iraq, the occupied Palestinian territories, Colombia, Somalia, the Democratic Republic of the Congo (DRC), the Sudan, Chad, Sri Lanka, and Nepal. It was the first time that the recently appointed High Commissioner forcefully raised country situations of concern to her Office. In some of these countries, the OHCHR is already engaged in promotion and protection of human rights, while it has encountered serious difficulties engaging the collaboration of other States, including in particular Sri Lanka. The High Commissioner proposed that the Council can draw attention to civilian suffering in a variety of ways including through special sessions, briefings and inter-sessional panels. These comments recalled her proposals made in March for the Council to adopt such working methods to enhance its work. These proposals were opposed by a number of States.<sup>1</sup>

In relation to **Afghanistan**, the High Commissioner was concerned about the high number of civilian casualties as a result of suicide attacks, improvised explosive devices and targeted killings by insurgents and air strikes by pro-Government forces. She called on all States engaged in the conflict to protect civilians and ensure independent investigations of all civilian casualties. Afghanistan thanked the High Commissioner for her comments. It explained that it is engaged in fighting against terrorism and has condemned killings of civilians that are 'mostly committed by criminal groups'.

The High Commissioner expressed concern regarding the situation in northwestern **Pakistan** and the large number of people that have fled that area as well as killings of civilians by insurgents and counter-insurgency operations. She stated her readiness to assist the Government to ensure respect for the rights of displaced persons. Pakistan noted the update. It argued that its security forces are engaged in law enforcement against terrorists and violent extremists. It also stated that it was the activities of militants that had led to the temporary displacement of civilians. Pakistan stated that it looked forward to working with the international community to provide humanitarian assistance to the IDPs.

On **Iraq**, the High Commissioner highlighted the precarious security situation and the continued loss of civilian lives due to insurgents' operations criminal activities. Ms Pillay also stated that the multi-national force and the national military expose civilians to risk. Iraq made several clarifications to the High Commissioner's statement. It underlined that the security situation has improved in the last two years. It stated that some actors are endeavouring to impeach Iraq in the Council for political motivations. It was unclear what this referred to. Iraq also argued that its judiciary is independent and not corrupt and that women are treated equally with men.

In relation to the situation in the **occupied Palestinian territory**, the High Commissioner went further stating that there are 'credible indications that grave breaches of international humanitarian law and human rights violations' may have been committed during the military operations by Israel in Gaza four months ago. She emphatically stated that these must be investigated by 'credible, independent, and transparent accountability mechanisms'. She also called on all parties to cooperate with and support accountability efforts including the Independent Fact-Finding Mission mandated by the Council. Israel expressed concerns that the Council's mandate was often overshadowed by political considerations. It stated that it had carried out an independent investigation into the military operation in Gaza and shared the first conclusions with the High Commissioner in early May. It replied to the High Commissioner's comments regarding restrictions on freedom of movement that they were imposed only as a result of imperative security concerns and could be relaxed if the situation improved. Finally it underlined, in relation to Ms Pillay's comments about access to Gaza that Israel is not the only gateway, implicitly referring to Egypt's refusal to open up its borders. Palestine acknowledged that there is a dispute between Israel and other

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<sup>1</sup> For more information, please see ISHR's Council Update from March 2009 on Item 2, available at [www.ishr.ch](http://www.ishr.ch).

States about whether the Palestinian territories are under occupation. It underlined that the UN in many resolutions has acknowledged that Palestine is under foreign occupation. It expressed its support for the work of the Fact Finding mission.

Regarding Colombia Ms Pillay expressed utmost concern and the continued targeting of civilians by armed groups and the use of sexual violence as a war tactic. She called on the Government to act on the recommendations of the special procedures in an effective manner. Colombia acknowledged the endemic violence committed by armed groups and underlined that it does not deny the difficulties, problems and shortcomings it faces. However, it called for understanding during this period and cooperation from the international community. It stated that it would continue to fight impunity and strengthen reform of the judiciary.

On **Somalia**, the High Commissioner expressed particular concern about the situation in Mogadishu and the effect of the conflict on aid workers, human rights defenders and journalists. Finally she underlined the need to combat impunity for past and current atrocities to achieve justice and deter further violations. Somalia expressed appreciation for the High Commissioner's interest in and the contribution of the Independent Expert on Somalia to its human rights situation. It stated that the violence against civilians was 'unacceptable'. It stated its commitment to protecting the civilian population and requested technical assistance from the international community.

The High Commissioner expressed deep concern about the situation in the **DRC** and stated that the horrific levels of sexual violence must be addressed. The DRC stated that the Government had created conditions for lasting peace and is in the process of eradicating violence committed by foreign armed groups. It underlined that fighting impunity is a priority. The DRC also noted that all special procedures can visit the country at any time. It also reiterated its appeal to the High Commissioner and other States to assist the DRC.

Regarding **the Sudan**, Ms Pillay expressed alarm at the arrest, detentions and ill treatment and torture against human rights defenders, humanitarian workers and UN national staff. She also expressed deep concern about recent executions that had not complied with international standards. She called on the Government to ensure that investigations and prosecutions of criminal acts meet international human rights standards. The Sudan raised concerns about the credibility of the information provided to the High Commissioner about the situation in the country and in particular in Darfur calling it 'precooked, fabricated, unverified and incorrect'. It implicitly seemed to allege that the High Commissioner was politically biased. It called on the High Commissioner and UN monitors in the Sudan to refrain from 'misinforming and disinforming' and from disseminating unverified and incorrect information. It also invited the High Commissioner to visit the country at the earliest convenience. The Sudan also strongly defended the independence and integrity of its judiciary on which it would accept 'no insinuations' and the security situation in Khartoum, which it called 'the most peaceful city in the world'. Finally it stated that the situation in the Sudan was only one of insurgency, and by implication not one of armed conflict, and that the Government had the 'right to preserve the security of the people'. This argument has become increasingly commonly used and was recently also put forward by Sri Lanka in the context of the special session held on that country. It seems to deliberately misrepresent international human rights law which imposes an obligation on a State to ensure the safety of persons under its jurisdiction, and not as suggested grants it a right to do so.

The High Commissioner noted a deteriorating human rights situation in **Chad** with widespread violations by State and non-State actors. She highlighted the need to end impunity. Chad stated its readiness to cooperate with any UN mechanisms. It stated that it had set up a commission of inquiry and that a judicial inquiry would be opened soon. It expressed its wish to overcome the crisis and fulfil its commitments to human rights.

In relation to Sri Lanka and Nepal she stated that post-conflict situations often require close scrutiny and support of the international community.

In relation to **Sri Lanka**, the High Commissioner welcomed the special session and stated that although the debate had been difficult, it was important to hold it. She reiterated concerns about limited access to IDP camps and strongly called for unfettered access and freedom of movement for those in camps. She also restated her call for an international independent inquiry into the violations committed during the conflict. While welcoming the Government's commitment to reconciliation, she stressed that accountability is key for reconciliation and justice.

Sri Lanka somewhat sarcastically stated that while the High Commissioner had welcomed the special session on Sri Lanka, it could only welcome the outcome. It jokingly noted that it had been a good experience but not one to be repeated soon. Commenting on the High Commissioner's call for accountability for the acts committed by all sides during the conflict in that country Sri Lanka drew on examples of conflicts from world history, including in Spain, Germany and Cambodia concluding that each country had approached the question of accountability in its own way. It emphasised that the transition from conflict to peace largely 'depends on the sovereign decisions of each country and its priorities'. It further stressed that when Sri Lanka would address these issues it would 'privilege national institutions and processes'. In closing it stated that it would be happy to receive assistance from the High Commissioner 'as soon as OHCHR is more geographically representative and transparent', thus introducing new criteria for future collaboration. This comment recalled a previously made proposal by the High Commissioner to establish an OHCHR presence in Sri Lanka, which the Government has fervently opposed.

The High Commissioner expressed her keenness to continue to support the Government of **Nepal** as well as its civil society and national human rights institution. Nepal noted that it had received a visit by the High Commissioner in March 2009. It expressed appreciation for the assistance provided by OHCHR during the conflict and stated that it was committed to constructive engagement with the human rights mechanisms in an 'objective manner'. It was unclear what this referred to.

In her closing remarks, the High Commissioner stated that the Security Council has made forceful appeals for protection of human rights and international humanitarian law during hostilities. She urged all States to heed such calls 'in the name of fundamental human rights'.

### **General debate**

During the general debate States and NGOs focused on the issues raised by the High Commissioner, as well as the relationship between OHCHR and the Council, the UPR and special procedures, and the issue of sexual orientation and human rights.

### ***Migrants' rights***

Echoing statements made by the High Commissioner, there was widespread support for the emphasis placed on protecting **migrants** and the focus that the High Commissioner will afford this issue over the coming years. However none of the States present followed up on the High Commissioner's comments urging more States to ratify the CMW, and to respect the fundamental rights of migrants. Both traditional 'receiving' and 'sending' States, such as Egypt and the Philippines respectively, spoke of the need to decriminalise irregular migration and to provide more support for all migrants within their jurisdiction. Germany and Jordan said that the causes of irregular migration need to be addressed, whilst China and Algeria encouraged host countries in particular to do more to acknowledge the responsibilities they owe to migrant workers. Egypt (on behalf of the African Group), Kazakhstan and Azerbaijan highlighted the need to pay attention to child and female migrants as particularly vulnerable migrant groups. Several contemporary issues were raised in this regard, including Indonesia's highlighting of the impact of the global economic crisis, and the Maldives' understandable concern about mass-migration situations emanating from climate-induced displacement. Referring to its own plight, the Maldives called upon the Council to address the issue of such displacement, which has not been afforded as much attention by the Council as perhaps it could.

### ***Durban Review Conference outcome***

Many States took the opportunity to use the recent Durban Review Conference and outcome document as an example of the progress that can be made in rights-based fora such as the Council in combating **racism**. Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group) in particular were pleased that the issue of racism had been addressed in this way. There was also praise for the role the High Commissioner played in facilitating the 'successful' outcome of the conference, with Norway suggesting that this indicates the continued need for an independent OHCHR, whilst Indonesia, Nigeria, Turkey, the Russian Federation and China were highly vocal in calling upon all States to sign the outcome document – especially those who did not participate in the Review Conference.

### **Protection of civilians in armed conflict and country situations**

Many States welcomed the High Commissioner's comments on the protection of civilians in armed conflict.<sup>2</sup> Germany and Slovenia strongly encouraged use of the Council's functions to draw attention to the suffering of civilians in armed conflict and many statements confirmed the need for all States to comply with relevant international humanitarian and human rights law. Switzerland also made it clear that both international *and* non-international armed conflicts should be addressed, and Japan called upon all parties to conflicts to ensure that they respect the security and safety of civilians. Mexico highlighted the need for the Council to also pay close attention to the status of civilians in post-conflict environments.

Tensions resurfaced when many States addressed the issues raised in the 11<sup>th</sup> Special Session on the situation in Sri Lanka. Whilst the US called on all States to grant full access for the OHCHR and International Committee of the Red Cross (ICRC) to internally displaced persons, Algeria expressed its non-interventionist approach to the issue by declaring that it is for the Sri Lankan Government alone to deal with the human rights issues prevalent following the recent internal armed conflict. The Czech Republic (on behalf of the EU) reiterated its calls for independent inquiries to be held on the situation in Sri Lanka and emphasised the important role of a free media in maintaining transparency during armed conflicts. In response to this, India argued somewhat questionably that, since the Council had supported the holding of the 11<sup>th</sup> Special Session, it would therefore be 'prudent' to 'adhere to' the outcome. It further stated that it would also be prudent to not 'take a position on contested proposals or controversial issues and ideas' that had not found acceptance in the outcome of the special session, implicitly referring to the High Commissioner's reiteration of her call for an independent inquiry. India noted that it would be 'unfortunate' if the High Commissioner or OHCHR were to 'misinterpret or wilfully supersede' decisions by the Council at their 'convenience or in accordance with the agenda of some states or unrepresentative or unaccountable organisations, or to pursue their own agenda'. Some States<sup>3</sup> also reiterated the call for an independent inquiry into the alleged violations committed in Sri Lanka suggesting that there continues to be disagreement among Council members about this issue.

Other country issues addressed included the Israel-Palestine conflict, with Indonesia supporting the UN fact-finding mission and Pakistan (on behalf of the OIC) declaring that the situation was one more of occupation than armed conflict. Due to the impending conclusion of its mandate in the country, particular attention was paid to the OHCHR mission in Nepal, with the Czech Republic (on behalf on the EU), along with Canada, Norway, Austria, Australia and Denmark, all commending the mission's work and urging the State to demonstrate its commitment to human rights by promptly extending the mandate. Nepal did not make any comment on extending the mandate in its reply to the High Commissioner's report.

### **Relationship between OHCHR and the Council**

Several States expressed strong support for the independence of OHCHR and the High Commissioner.<sup>4</sup> Australia and Norway underlined the importance of the 'strong voice' of the High Commissioner, and Nigeria called for her advocacy role 'not to be constrained'.

Ireland stated that it is time for the Council to prove that it can provide support to OHCHR for it to discharge its independent mandate.

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<sup>2</sup> Norway, Austria, Slovenia, Germany, Republic of Korea, Jordan, Czech Republic (on behalf of the EU).

<sup>3</sup> Ireland, UK, France.

<sup>4</sup> US, Australia, Chile, Ireland, Germany, Czech Republic (on behalf of the EU), Argentina.

Algeria argued that OHCHR sub-regional offices could not be opened without consultation with the countries in the region concerned. On the other hand, Austria stated its strong support for the ‘country engagement’ of the High Commissioner with Australia expressing specific support for the work of OHCHR in Fiji.

Egypt (on behalf of the African Group) underlined the need to address the institutional relationship between OHCHR and the Council, while the Czech Republic (on behalf of the EU) stated that this relationship is already well-defined. The Russian Federation suggested that the 2011 review of the Council by the General Assembly should focus on a ‘systemic’ examination of the relationship between OHCHR and the Council as well as the role of States in setting priorities for OHCHR. It suggested that this review process should start without delay, ideally through the establishment of an intergovernmental working group.

Cuba (on behalf of NAM), China and Algeria welcomed the presentation of the High Commissioner’s 2008 annual report during an informal meeting earlier this month but called for such reports to be presented in a formal Council meeting in the future. The Philippines stated that the relations between OHCHR and the Council should continue ‘to be cultivated on the basis of trust and respect’ and in full transparency. Germany and Canada were satisfied with the High Commissioner’s efforts to ensure transparency regarding the activities of her Office through informal and formal briefings. The Czech Republic (on behalf of the EU) welcomed her efforts to keep everyone well-informed. Indonesia was pleased with the openness and approachability of the High Commissioner, and asked her to set the agenda for a discussion about the institutional relationship with the Council.

The Philippines supported the High Commissioner’s efforts to increase the geographical representation of her staff, while Egypt (on behalf of the African Group) questioned what had been done to address ‘the serious imbalance’ in the staff and urged the High Commissioner to take ‘affirmative action’.

Cuba (on behalf of NAM) expressed concern about the lack of implementation of Council *Resolution 8/9* on the right to peace.

In somewhat unrelated comments, China stated that OHCHR should continue to objectively compile information for the treaty bodies’ examinations of countries. It also called on treaty bodies to respect the principles of objectivity and non-politicisation.

### ***Special procedures***

Some States expressed concerns about violations of the Code of Conduct for special procedures by some mandate holders. Algeria alleged that two mandate holders had violated the Code of Conduct without stating who they are, in what consisted their misconduct or which provisions of the Code had been violated. Cuba (on behalf of the NAM) stated that OHCHR should assist the mandate holders in avoiding breached of the Code of Conduct. Indonesia noted that all special procedures must comply with the Code of Conduct at all times.

### ***Universal periodic review***

Several States expressed dissatisfaction with the lack of translation of UPR outcome documents in time for their adoption.<sup>5</sup> Cuba (on behalf of NAM) questioned how the Secretariat could question the decisions of an intergovernmental body on the modalities of the UPR process. It stated that the Council should have been consulted in this regard. Ireland, on the other hand, expressed gratitude for the ‘excellent support’ OHCHR provides to all of the UN mechanisms, including in particular the UPR.

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<sup>5</sup> Cuba (on behalf of NAM), Pakistan (on behalf of the OIC), Azerbaijan, Jordan.

### **Sexual orientation and human rights**

Pakistan (on behalf of the OIC) and Algeria regretted the statement made by the High Commissioner at a conference in Paris on sexual orientation as this issue does not ‘enjoy universal agreement’. Ireland expressed its strong for the High Commissioner’s earlier statement to an event held during the 62<sup>nd</sup> session of the General Assembly that all persons enjoy protection under human rights without exception. The NGO Canadian HIV/AIDS Legal Network emphasised that it was untenable to suggest that when faced with evidence of abuses against any group or individual, including on the basis of sexual orientation, the Council should turn away. It called for more discussion of these issues.

#### 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).
- Oral statements made at the Council, as well as other 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’.
- 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/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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