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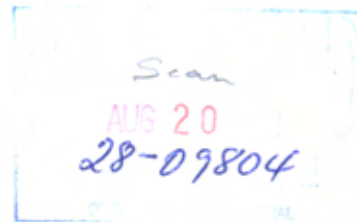


Human Rights Council
UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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MEMORANDUM



ATO: Mr. Vijay Nambiar
Chef de Cabinet

REF: NB/lc

DE/FROM: Ms. Kyung-wha Kang *[Signature]*
Acting High Commissioner for Human Rights

DATE: 19 August 2008

OBJET:
SUBJECT: Human Rights Council Advisory Committee – First session (4-15 August 2008) –
summary of the inaugural session

Please find attached the summary of the inaugural session of the Human Rights Council Advisory Committee (4 – 15 August 2008), for information and further distribution as appropriate. Attention is drawn to section 2 on the right to food.

Thank you.

Cc:
New York Office – Mr. N. Mbaidjol

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**Human Rights Council Advisory Committee
Summary of the inaugural session (4-15 August 2008)**

Continuity and change - overview

The Human Rights Council Advisory Committee held its inaugural session in Geneva from 4 - 15 August 2008. Composed of 18 experts, the Advisory Committee replaces the former Sub-Commission on the Promotion and Protection of Human Rights. It shall act as the think-tank of the Human Rights Council and work at its direction, and was established to provide expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice.

The inaugural session was opened by the Acting High Commissioner for Human Rights, Mrs. Kyung-wha Kang. The President of the Human Rights Council, Mr. Martin Ihoeghian Uhomoibhi, also made a statement.

During the two-week session, experts discussed substantive issues, and also agreed on a number of elements related to the organization of work of this new subsidiary mechanism of the Human Rights Council. As concerns substance, experts debated and responded to a number of requests emanating from Human Rights Council resolutions, including the questions of human rights education and training, and the right to food. Attention is drawn to a recommendation related to hunger refugees, by which the Advisory Committee suggests that the Human Rights Council and the Secretary-General should make available their good offices so as to extend the right to non-refoulement to hunger refugees.

Two strands of thought appeared to guide the discussions of the Advisory Committee: the need to ensure continuity from the Sub-Commission, while at the same time implementing change and respecting its new mandate.

A question of considerable contention was whether the Advisory Committee should embark on new areas of research, exemplified in the debate held regarding the right to self-determination. While the Sub-Commission disposed of an explicit right of initiative, the Advisory Committee has to seek the approval by the Council to be able to conduct research in specific areas.

The Advisory Committee adopted 13 recommendations related to the organization of its work, as well as in response to requests emanating from Council resolutions. A number of these recommendations require the approval by the Human Rights Council. The Chairperson of the Advisory Committee, Mr. Alfonso Martinez, will report orally to the next session of the Council, which is scheduled for 8-26 September 2008.

Composition

Resulting from the elections held during the 7th session of the Human Rights Council, the Advisory Committee is composed of the following members: Mr. Miguel Alfonso Martínez (Cuba), Mr. José Antonio Bengoa Cabello (Chile), Mr. Ansar Ahmed Burney

(Pakistan), Mr. Chen Shiqiu (China), Ms. Chung (Republic of Korea), Mr. Emmanuel Decaux (France), Mr. Héctor Felipe Fix Fierro (Mexico), Mr. Wolfgang Stefan Heinz (Germany), Mr. Latif Hüseyinov (Azerbaijan), Mr. Baba Kura Kaigama (Nigeria), Mr. Vladimir Kartashkin (Russian Federation), Mr. Bernards Andrews Nyamwaya Mudho (Kenya), Ms. Purificacion V. Quisumbing (Philippines), Mr. Shigeki Sakamoto (Japan), Mr. Dheerujlall Seetulsingh (Mauritius), Ms. Halima Embarek Warzazi (Morocco), Mr. Jean Ziegler (Switzerland), and Ms. Mona Zulficar (Egypt).

Statement by the Acting High Commissioner

The session was opened by the Acting High Commissioner (AHC), Mrs. Kyung-wha Kang, who emphasised that the session marked a significant step forward in completing the Council's institution-building process. The AHC outlined the mandate and expectations placed on the Advisory Committee for this first session and beyond. Over the course of the next two weeks, the experts would have to undertake the arduous task of laying the foundations and developing the working methods to enable this new body to effectively provide expert advice and perform the required think-tank functions for the Council.

Statement by the President of the Human Rights Council

Also addressing the Advisory Committee at its first meeting, the President of the Human Rights Council, Mr. Martin Ihoeghian Uhomoibhi, underlined the Committee's role as an independent expert body and referred to the specific requests which the Council had already entrusted it with. Moreover, the President mentioned that guidance from the Advisory Committee on how to deal with the pending studies of the Sub-Commission would be welcome.

Election of Chairperson and officers

Following informal consultations, the Advisory Committee elected Mr. Miguel Alfonso Martinez (Cuba) as Chairperson. Elected as Vice-Chairpersons were Ms. Mona Zulficar (Egypt), Mr. Vladimir Kartashkin (Russian Federation) and Ms. Chung Chinsung (Republic of Korea). Mr. Emmanuel Decaux (France) was elected Rapporteur. With this, the composition and order of rotation among regional groups established by the Sub-Commission was continued.

In his opening remarks, the Chairperson, Mr. Alfonso Martinez, pointed out that this new body indeed carries the heritage of the Sub-Commission, but that it would need to adapt its working methods, rules of procedures and calendar of meetings to its new mandate and responsibilities. Another important task would be to ensure that the Advisory Committee could exercise a certain right of initiative, which had not been explicitly spelled out in Council resolution 5/1.

I. Requests emanating from Human Rights Council resolutions

The Advisory Committee discussed a number of requests entrusted to it by way of Human Rights Council resolutions. While some of these constitute specific, time-bound tasks, others were rather of an unspecified nature. On each occasion, the Secretariat (for the most part the Research and Right to Development Division) introduced the subject and outlined the major activities undertaken in the respective area.

1. Human Rights Education and Training (HRC-resolution 6/10)

Introducing the subject, the Secretariat outlined the status of various initiatives in the area, in particular the World Programme for Human Rights Education as well as General Assembly-resolution 62/171 on the international year of human rights learning, which will be launched in December 2008. Discussing how to respond to the request emanating from Council resolution 6/10, by which the Advisory Committee shall "prepare a draft declaration on human rights education and training", the Advisory Committee entrusted a group of five members with the task of undertaking preparatory work for the review and further discussion of the Advisory Committee. The drafting group is composed of the following members: Mr. Emmanuel Decaux (France), Mr. Héctor Felipe Fix Fierro (Mexico), Mr. Vladimir Kartaschkin (Russian Federation), Ms. Purificacion V. Quisumbing (Philippines) and Ms. Halima Embarek Warzazi (Morocco). The drafting group held several meetings, including with interested NGOs, and presented an extensive outline for its future work in preparing the requested draft declaration (recommendation 1/1).

2. Right to food (HRC-resolution 7/14)

The Secretariat outlined the various measures undertaken by the OHCHR and its mechanisms – in particular the Special Rapporteur on the right to food and treaty bodies – in seeking to implement the human right to food. Reference was made to the Comprehensive Framework for Action adopted by the High-Level Task Force on the global food crisis. In this context, the importance of applying a human rights-based approach in responding to the global food crisis was emphasised, and the availability of the OHCHR to cooperate with other UN agencies and programmes was reiterated.

In the ensuing discussions, in which Advisory Committee member Mr. Ziegler (former Special Rapporteur on the right to food) took a leading role, the experts debated the applicable State obligations in implementing the right to food, the link between the scourging food and oil prices, the impact of bio-fuel production, and the increasing number of hunger refugees.

In responding to Council resolution 7/14, which "requests the Advisory Committee to consider potential recommendations for approval by the Council on possible further measures to enhance the realization of the right to food, bearing in mind the priority importance of promoting the implementation of existing standards", the Advisory Committee entrusted a drafting group with further analysis of the question. The drafting group consists of the following members: Mr. Bengoa (Chile), Ms. Chung (Republic of Korea), Mr. Hüseyinov (Azerbaijan), Mr. Ziegler (Switzerland) and Ms. Zulficar (Egypt).

Upon invitation by the drafting group, the Advisory Committee heard presentations by the United Nations Conference on Trade and Development (Director of the Division on Globalization and Development Strategies), pointing out that the food crisis had resulted mainly from speculation, as well as by the United Nations High Commissioner for Refugees (Chief of Protection, Policy and Legal Advice, Division of International Protection Services), stressing the dire situations prevalent in refugee camps and the dwindling capabilities of aid organisations in providing the necessary assistance because of the scourging prices.

The Advisory Committee adopted a number of recommendations in response to Council resolution 7/14:

- Recommendation 1/6 on "Hunger Refugees" suggests that the Council and the Secretary-General should make available their good offices, so as to extend the right to non-refoulement to hunger refugees. The recommendation points out that hunger refugees place their lives in danger when fleeing from their famine-hit countries, only to find themselves turned back by the countries of arrival even before their cases have been examined. It also states that other refugees from hunger, rejected by neighbouring countries, run the risk of political persecution on account of their flight after they have been forcibly returned to their countries of origin.
- Recommendation 1/7 entitled "Realization of the right to food in United Nations refugee camps" encourages the Council to launch an urgent appeal to States to increase their voluntary contributions substantially and as soon as possible, so as to enable the UN High Commissioner for Refugees to discharge its mandate.
- Recommendation 1/8 entitled "Drafting Group on the right to food: Programme of work" outlines the further work of the drafting group, and invites the Council to entrust it with the preparation of two further studies, i.e. "Current food crisis, the right to food and hunger refugees: definition and situation" and "Current food crisis, the right to food and the rights of peasants". The drafting group also suggested meeting two days prior to the January session, in order to review its draft report.

3. Integrating the human rights of women throughout the UN system (HRC-resolution 6/30)

The Secretariat briefed the Advisory Committee about current focus areas, including administration of justice and gender-based violence in conflict situations, integration of a gender perspective in the OHCHR's country engagement, as well as gender mainstreaming within the work of the Human Rights Council. Reference was also made to efforts undertaken in responding to sexual exploitation and abuse within the UN system, as well as to a number of joint initiatives with UN partners, including in the areas of awareness-raising and capacity-building. While resolution 6/30 does not entrust the Advisory Committee with any specific action, the experts and participating observers emphasized that a gender perspective should be applied in the work of the Advisory Committee. The Advisory Committee adopted recommendation 1/4, by which the Advisory Committee recommends the Council to authorize Ms. Chung, Ms. Quisumbing and Ms. Zulficar to prepare and submit proposals for concrete action in specific areas, special procedures or further measures to enhance substantive gender equality within the United Nations.

4. Promotion of a Democratic and Equitable International Order (HRC-resolution 8/5)

Citing Council-resolution 8/5, the Secretariat referred to the link recognised in that resolution between the right to a democratic and equitable international order and the right of every human person and all peoples to development. The High Commissioner had accorded key emphasis to the mandate of the right to development, which constitutes a universal and inalienable right. Since 2004, the right to development mandate had moved in an increasingly constructive direction, with a shift in focus from conceptual debates to practical implementation. The experts discussed the link between human rights and development, as well as the challenge of arriving at a single definition of democracy and the role of good governance. Since resolution 8/5 did not entrust the Advisory Committee with a specific task, the Advisory Committee agreed to continue its deliberations on the matter at its next session (recommendation 1/2).

5. Missing Persons (HRC-resolution 7/28)

Introducing the issue of missing persons, the Secretariat stressed that States hold the primary responsibility for missing persons, and that families have the right to know the fate of their relatives. Data collection, traditional and newly developed forensic methods were especially important in addressing the phenomenon of missing persons. Moreover, reference was made to the right to truth, being a related issue. It was also highlighted that the resolution calls for the organization of a panel discussion at the September session of the Council, and that the Advisory Committee would subsequently be charged with the preparation of a study on best practices in the matter.

Considerable discussion took place on the question whether this mandate also includes persons missing as a result of enforced disappearances. State representatives participating in the debate expressed their understanding that the mandate of the Advisory Committee is limited to missing persons in the context of armed conflicts, and that the issue of enforced disappearances was a different issue altogether. The Advisory Committee adopted recommendation 1/3, which invites the President of the Council to invite Mr. Burney and Mr. Hüseyinov to attend the panel to be held at the ninth session of the Council in the capacity as observers.

6. Human Rights of Persons with Disabilities (HRC-resolution 7/9)

The Secretariat briefed the Advisory Committee on current activities in the field of disabilities, in particular in relation to the Convention on the Rights of Persons with Disabilities, which represents a paradigm-shift in attitudes and approaches towards persons with disabilities. The focus is increasingly moving away from the treatment of persons with disabilities as "objects" of charity and social protection, but instead recognising them as "subjects" with rights, who are capable of claiming those rights. It was highlighted that the resolution encourages the Advisory Committee "to integrate the perspective of persons with disabilities, as appropriate, in carrying out their work and in their recommendations". In the absence of a specific request, the Advisory Committee did not take any decision on how to approach the issue at this stage.

7. Elimination of discrimination against persons affected by leprosy and their family members (HRC-resolution 8/13)

As requested by the resolution under discussion, the Secretariat informed the Advisory Committee that it would convene a public meeting on the subject in November of this year in Geneva. On the basis of the report to be issued by the OHCHR, the Advisory Committee was requested to formulate a draft set of principles and guidelines, to be submitted to the Council for its consideration by September 2009. In the ensuing debate, experts pointed out that with the development of drugs, leprosy has today become a curable disease, but that discrimination still persists. They also discussed the difference between discrimination against persons with disabilities and persons suffering from leprosy. By recommendation 1/5, the Advisory Committee entrusted Mr. Sakamoto with the task to prepare a draft set of guidelines and principles, as requested by the resolution, and for that purpose to attend the meeting organized by the OHCHR.

II. Organization of work of the Advisory Committee

The Advisory Committee during this inaugural session devoted considerable time to the discussion of its organization of work, including rules of procedure, agenda and boundaries of its mandate given by Council resolution 5/1 of 18 June 2008. The transition from the Sub-Commission to the Advisory Committee proved to be one of the main subjects of discussion. At the beginning of the session, the Advisory Committee adopted modalities for its work as proposed by the Bureau, on the basis of the modalities followed by the Sub-Commission at its 58th session. In line with Council resolution 5/1, national human rights institutions were explicitly included among the observers. Another change concerned the speaking time limit for Government observers, which was increased from 5 minutes to 7 minutes, and now equals the time accorded to speakers for non-governmental organizations.

1. Studies and reports by the Sub-Commission – way forward

The Advisory Committee held a general debate on how to approach the pending studies and reports mandated to be carried out by its predecessor body, i.e. the Sub-Commission on the Promotion and Protection of Human Rights. A compilation of these studies and reports, which had reached varying degrees of completion, was transmitted to the Human Rights Council following the last session of the Sub-Commission (cf. Appendix II to Sub-Commission decision 2006/112).

At the request of the Advisory Committee, the Secretariat provided further clarifications regarding the factual status of these studies, thereby explaining that those studies which had not been submitted by June 2007 had not been processed, in the absence of a specific mandate by the Human Rights Council to do so.

The experts cautioned against discarding all the pending studies and reports *en bloc*, as these represented important work. Some experts however raised the question whether the Advisory Committee had any discretion in this matter. Delegations participating in the debate indicated that input by the Advisory Committee as to which studies should

be carried forward would be useful, but that it would remain at the discretion of the Human Rights Council to approve the continuation or not of any of these studies.

At the end of the session, the Advisory Committee adopted recommendation 1/13 on the question of Sub-Commission studies, by which the Council is invited to examine and eventually take the decisions it may consider fit for a possible follow-up to the studies commissioned by the Sub-Commission, now pending a decision from the Council. In the same recommendation, the Advisory Committee explicitly expressed an interest in continuing with the following studies: (a) Discrimination in the criminal justice system; (b) Corruption and its impact on the full enjoyment of human rights; (c) Discrimination based on work and descent; and (d) The role of States in the guarantee of human rights with reference to the activities of transnational corporations and other business enterprises.

In a further recommendation (1/10), the Advisory Committee recommended that the Council authorize that all reports and working papers that have been completed and submitted to the OHCHR be issued as UN documents and sent to the Council.

2. Agenda and annual programme of work

As concerns its annual programme of work, the Advisory Committee experts discussed whether they should hold one session of 10 days or two sessions of 5 days each per year. It was recognised that two sessions per year may have the advantage of responding more adequately to the requests emanating from the Council. It was also suggested that the Advisory Committee could ask the Council for additional working days if required.

As concerns the agenda, a number of experts considered that it was premature to decide on these aspects for the time being, as the workload would depend considerably on the number and nature of requests transmitted by the Council to the Advisory Committee. Delegations participating in the debate pointed to the importance of the Advisory Committee working as a collegiate organ, but also recognised that there was scope for the experts to engage in intersessional contacts, as stipulated in the institution-building package of the Council (paragraph 80 of resolution 5/1). In order to facilitate the intersessional communication between members, the Secretariat has set up an extranet-page for the Advisory Committee, as well as a blog with restricted access for members only.

The experts also discussed the status of the drafting groups created during the session, and inquired whether these entities could meet between sessions. Furthermore, it was suggested that the Advisory Committee should seek to guarantee more active participation of NGOs and other observers in its work.

3. Rules of procedure

Given that the Advisory Committee is a newly established body, it was suggested that it should dispose of its own rules of procedure, in order to guarantee the highest degree of efficiency in its work. Various sources were cited (including rules of procedure of the General Assembly, Human Rights Council and Sub-Commission), and it was agreed to

establish a drafting group to further examine the matter. The drafting group is composed of the following members: Mr. Burney (Pakistan), Mr. Fix Fierro (Mexico), Mr. Heinz (Germany), Mr. Hüseyinov (Azerbaijan) and Ms. Zulficar (Egypt).

4. Working Group on Communications

In line with Council resolution 5/1, the Advisory Committee at this session appointed five of its members to the Working Group on Communications, which forms part of the Council's complaint procedure. The Advisory Committee appointed Mr. Alfonso Martinez, Mr. Chen, Mr. Decaux, Mr. Kartaschkin, and Ms. Warzazi, as members to this function, all of whom were previously members of the Sub-Commission and of the Working Group on Communications.

5. Official summary records

In a further recommendation (1/9) related to its organization of work, the Advisory Committee recommended that the Council request the OHCHR to take the necessary steps to provide official summary records of all plenary meetings of the Advisory Committee. In addition, the Advisory Committee also recommended that webcasting would be made available to it to enhance access to its proceedings by the public at large.

6. New bodies established by the Human Rights Council

Advisory Committee recommendation 1/11 designated some of its members to follow the work of the various mechanisms established by the Council. Hence, Mr. Bengoa and Ms. Quisumbing were designated to attend the Social Forum; Ms. Zulficar would participate in the Forum on Minority Issues, and Mr. Alfonso Martinez would follow the Expert Mechanism on the Rights of Indigenous Peoples.

7. The right of peoples to self-determination

The question of the Advisory Committee's ability to propose to the Council suggestions for further research areas within the scope of its work proved to be a question of considerable contention during this first session. While the Sub-Commission disposed of an explicit right of initiative, the Advisory Committee needs the approval by the Council before it can embark on new initiatives.

This requirement was discussed extensively in connection with the proposal submitted by one expert, requesting the Council's approval to examine the right to self-determination as recognised by General Assembly resolution 62/144 of 18 December 2007, including for indigenous peoples. It was perceived by a number of members that this area was too complex and contentious, and that it may trigger negative reactions by the Council. Following considerable discussion, a compromise solution was found according to which the Advisory Committee would consider the right to self-determination only if the Council requests it to do so (recommendation 1/12).

Closure of the session

After adopting the report of the session, the Advisory Committee heard congratulatory remarks from a number of members on behalf of their respective regional groups. Members welcomed that the Advisory Committee had successfully been set on track, and thanked the colleagues at the OHCHR for their valuable assistance in the conduct and organization of this first session. The Advisory Committee is scheduled to meet again in January for its next session.
