

UNITED NATIONS UPDATE

NAVANETHEM PILLAY SUCCEEDS LOUISE ARBOUR AS UN HIGH COMMISSIONER FOR HUMAN RIGHTS

Louise Arbour's term as the UN High Commissioner for Human Rights (the High Commissioner) ended in June of 2008 and the Secretary General, Ban Ki-Moon, chose Navanethem Pillay to succeed her. Arbour had an impressive record during her time as the High Commissioner, rarely holding her silence regarding human rights abuses. As it is still early in her term, it is uncertain if Pillay will be as outspoken as her predecessor, but Pillay has an impressive record on human rights.

As High Commissioner, Arbour freely criticized human rights abuses and rarely shied away from defending victims, even when her candor drew criticism from major world governments. Among her critics was John Bolton, former U.S. Ambassador to the UN, who called her critique of U.S. detention policies "inappropriate and illegitimate."

Under Arbour's direction, the office of the High Commissioner doubled its budget to nearly \$100 million and oversaw accomplishments such as the ratification of the Convention on the Rights of Persons with Disabilities, which went into effect this past May. In addition to her outspoken criticisms, she filed amicus curiae briefs on behalf of individuals she believed were denied their rights. During her time she used this power sparingly, only filing two. Perhaps her most notable use of the amicus brief was before the U.S. Supreme Court in *Boumediene v. Bush*, challenging the detention of Lakhdar Boumediene, an Algerian national held at American Naval facilities in Guantánamo Bay, Cuba.

During her career in South Africa, Pillay fought for the right to legal counsel for those imprisoned under the Apartheid regime. When Nelson Mandela became president, he nominated Pillay to be the first non-white woman to serve on the country's Supreme Court. Shortly thereafter, Pillay became a judge on the International Criminal Tribunal for Rwanda

(ICTR), and then its president in 1999. She has always had strong views on gender rights and equality and is of the opinion that the first international statute to explicitly recognize sexual and gender violence as being among the most serious international crimes was heavily influenced by decisions made in the ICTR and other similar courts.

Pillay's current focus appears to be discrimination. Addressing the Human Rights Council, Pillay spoke eloquently about the problems of enforcing the Universal Declaration of Human Rights (UDHR) when it is perceived as merely an "empty pledge" to many ethnic groups. She said the UDHR is "undermined when discrimination and inequality...are allowed to fester and poison harmonious coexistence." In the speech, her first major address since taking office, Pillay stressed the value of countries' participation in the process, encouraging all nations to join in a 2009 anti-racism conference.

Some human rights groups have expressed concern that Pillay may not be as outspoken as Arbour. Kenneth Roth, of Human Rights Watch, was quoted in the *LA Times* as saying that "the challenge for her will be to use the bully pulpit and be a strong advocate for human rights . . . As a judge she has no experience with that." Other of Pillay's colleagues assert that she has her own, low-profile way of accomplishing things.

THE ORGANIZATION OF THE ISLAMIC CONFERENCE AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Organization of the Islamic Conference (OIC), has submitted to the Council on Human Rights (Council) another proposal for UN Member states to adopt the Cairo Declaration of Human Rights (CDHR). The CDHR contains substantial alterations to the Universal Declaration of Human Rights (UDHR) currently endorsed by the UN. Backed by Saudi Arabia, the OIC has made a similar move every year. This year, however, critics of this proposal

have grown more vocal and have begun to come from liberal Muslim groups.

The OIC is an intergovernmental organization of fifty-seven Muslim countries that aims, among other things, to be the voice of the Muslim world and promote Muslim interests. The organization was established in 1969, and has envoys from many of the world's governments, including the United States.

Following the creation of the UDHR, the OIC criticized it as being merely a secularized version of traditional views of Judeo-Christian justice; the OIC then adopted the CDHR in hopes of addressing that concern. Proponents of the CDHR claim it does not represent a different view of human rights but, rather, complements the UDHR. There are, however, many differences between the two declarations.

The CDHR rests all of its rights and authority entirely on the Qur'an and Shari'ah, which is the full body of Islamic law. Article 25 of the CDHR says that all resources for clarification and methods for interpretation of the CDHR must arise from these two sources. The doctrine does not guarantee freedom of religion, but it does prohibit discrimination based on religion.

The CDHR also makes a large distinction between the rights of men and women. Article 6 says that a woman, although equal to a man in human dignity, "has her own rights to enjoy." The UDHR, on the other hand, makes no such distinctions and guarantees the same rights for both sexes.

The CDHR also restricts many of the rights listed in the UDHR by using Shari'ah law to limit an otherwise limitless right. For example, Article 22 states: "Everyone shall have the right to express his opinion freely in such manner as would not be contradictory to the principles of Shari'ah." Many human rights activists believe limiting rights to comply with Shari'ah severely undermines the goal of achieving universal human rights standards.

When the OIC presented their proposal for adoption of the CDHR this year, an opposition conference convened entitled “An Analysis of Religion and Freedom of Expression.” Opponents of the CDHR spoke to delegates of the Human Rights Council to express their opposition to the CDHR and the problems it may present to universal human rights.

Tarek Fatah, a Pakistan-born Canadian and founder of the Muslim Canadian Conference spoke at the opposition conference. Fatah decried the OIC’s attempt to “validate the crimes that have led to trauma and dysfunctional societies across the Muslim world,” and went on to claim that the OIC “does not speak for Muslims.” His critique said that there are more than a billion Muslims in the world, but that most live under varying forms of tyranny. Fatah felt that the adoption of the CDHR would legitimize and sanction ongoing violations, such as the imprisonment of political opponents and attacks on minority groups.

This year is the first time the OIC’s proposal has received such an outspoken response, especially among Muslim groups. The OIC, on the other hand, maintains that the CDHR is a valid declaration of human rights and is still supported by members of the OIC.

YASH GHAI, UN ENVOY TO CAMBODIA, RESIGNS IN ANGER

After three years as the Special Representative of the Secretary-General (SRSG) on the situation of human rights in Cambodia, Yash Ghai recently announced his resignation in a bitterly critical letter to the Human Rights Council. Ghai replaced Peter Leuprecht as UN envoy in November 2005 following Leuprecht’s resignation for similar reasons. Ghai’s letter, read aloud at a September session of the Council, criticized both the Cambodian government and the UN. “Reviewing the impact of my reports, advice, and recommendations over the past three years, and that of my predecessors, it is hard to see any improvement for the better,” wrote Ghai.

Ghai’s letter stressed his problematic relationship with the Prime Minister of Cambodia, Hun Sen, as one of the major reasons for his resignation. Sen announced he was “prepared to work with any person assigned by the UN, but not Yash Ghai.” In 2006, Ghai said power in Cambodia’s government remained “too centralized around one individual.” Sen responded, calling Ghai “deranged” and requested his removal as the UN envoy. Sen’s relationship with Ghai’s predecessor, Leprecht, also suffered from the same mutual disdain.

Ghai’s speech criticized the support, or lack of support, he asserted he received from the UN. He specifically cited the UN’s refusal to issue a statement that he received no salary to fulfill his duties. Ghai’s request followed an attack from Sen claiming that Ghai only took the position for money. Ghai was instead forced to issue the statement in his own name.

Following Ghai’s resignation, the Council reconsidered and revised its mandate in Cambodia. The new mandate replaces the SRSG with a Special Rapporteur, who will report directly to the Council, rather than to the Secretary-General. “The change makes very little difference in practice,” according to the UN representative in Cambodia, Christophe Peschoux. The Council hoped the change would help simplify profiles, yet some claim this may result in a softer stance on human rights issues in Cambodia. The Council has not yet announced the name of Ghai’s replacement. **HRB**