

## EDITORIAL

### INTRODUCTION

In 2008, human rights defenders celebrated the 60<sup>th</sup> anniversary of the cornerstone of the international human rights system, the *Universal Declaration of Human Rights* (UDHR). On the anniversary day, the General Assembly adopted the optional protocol to the *International Covenant on Economic, Social and Cultural Rights*, which strongly reaffirmed the indivisibility and equality of all human rights.

After most of the energy of the Human Rights Council (the Council) and all those engaging with it had been devoted to procedural and institutional issues for almost two years since its establishment, the human rights community was keen to see this new body, now fully in place, garner its resources to address substantive issues and deliver on its promises. The hopes it had raised proved however to be excessive as a number of States continued to seek to weaken the Council and its mechanisms. The political dynamics within the Council, due mainly to a change in the respective power of regional and political groupings, has undermined its potential to take strong actions, in particular in response to violations of human rights.

A number of States with a 'negative agenda' felt increasingly confident of their numerical supremacy within the Council and tried to set new rules under the guise of strengthening its functioning. As for the countries that have traditionally sought to strengthen human rights protection, they mostly remained on the sidelines, either because they were paralysed by their internal regional procedures and unable to reach out to potential allies across the regional spectrum or develop proactive strategies, as exemplified by the EU, or because they did not engage sufficiently as was the case for several Latin American countries. At the same time, the non-governmental organisations (NGOs) that engaged with the work of the Council experienced renewed attacks from countries seeking to curtail their freedom of speech within the Council.

The consensual approach and systematic emphasis on 'dialogue and cooperation', explicitly lie at the heart of the working methods of the Council and more than ever dictate its dynamics. The deep divisions between regional and political blocs within the Council and the comparative strength and strategic skills of those with a negative agenda allowed for compromises on human rights standards that dangerously undermined their universality and subjugated human rights to national interests and foreign policy priorities.

With the new universal periodic review (UPR) mechanism, which took up its work in 2008, the battlefield and areas of confrontation between diverse understandings of human rights found a new ground. As the UPR held its first sessions, the treaty bodies had to face the challenge of assessing the impact of this new mechanism on their work and explore potential dangers and opportunities offered by establishing a relationship with the UPR. While some observers considered the roles of the UPR and treaty bodies as complementary, a number of Committee members were initially anxious that the new mechanism might undermine or trivialise their work and thus erode the legal authority of their examination of country reports and Concluding Observations. While the examination of the interplay between the work of the UPR and the treaty bodies and its potential implications on the latter will continue in 2009, fears that the UPR might undermine the independence of the treaty system and distort their recommendations for political purposes will continue. Against this background, the discussion held by the treaty bodies during the year to strengthen their cooperation and increase their effectiveness and visibility became all the more important. 2008 also witnessed concerted attempts at eroding the independence of the Office of the High Commissioner for Human Rights (OHCHR) and delegate new authorities to the Council. While these attempts failed, the threats have not disappeared and will without doubt be reactivated on future occasions.

This 2008 edition of the *Human Rights Monitor* explores major developments in the UN human rights system and lays bare some of these huge challenges.

## THE HUMAN RIGHTS COUNCIL

### Institution building

While the institution-building process was formally concluded in 2007, the implementation of the Council's decisions in 2008 provided an opportunity for members of the Council with a 'negative agenda' to renew their attempts at weakening the protection mechanisms. The implementation of a new agenda, the completion of the review of the last special procedures mandates, and the operationalisation of the UPR all provided opportunities to press for a restrictive reinterpretation of previous decisions. The political dynamics within the Council, where a majority of members either explicitly push for, or tacitly support an innocuous human rights body with limited powers, allowed some of these negative attempts to succeed. This was facilitated, among others, by an increase in negotiations held in private, which prevented NGOs from inputting in the discussions and holding governments to account. This practice stood in sharp contrast to the negotiations around the institution-building process that had mainly been held in public meetings.

While fine-tuning its methods of work, the Council adopted a number of decisions through presidential statements. These decisions often restrictively reinterpreted previous agreements. While they reflected a general agreement within the Council, they were often initiated by States seeking to weaken the Council.

### Special procedures

During the year, the Council completed its review of the 19 remaining special procedures mandates, except for the mandate on the occupied Palestinian territories (OPT). While the

Council was under clear obligation to review *all* mandates, some States considered that this particular mandate was not subjected to this process as it had been established 'until the end of occupation'. While the Council did not create any new country-specific mandates, it created a new thematic procedure on the issue of 'human rights obligations related to access to safe drinking water and sanitation'. In the process of renewing the mandates, the Council's systematic consensual approach faced serious challenges and exposed its limitations. In particular, the debates around the review of the mandate of the Special Rapporteur on human rights defenders created a renewed opportunity for a number of States, led by Egypt and the Russian Federation, to attempt to renegotiate the definition of 'human rights defenders' in the *Declaration on human rights defenders*<sup>1</sup> and thus undermine this crucial international standard and its associated mechanism. While the mandate was finally renewed without a vote, this was not the case for three other mandates that gave rise to a divisive debate and were put to a vote, namely the mandates on international solidarity, the effects of foreign debt on human rights, and the use of mercenaries. The Council's failure to apply the consensual approach to these topics, as well as the question of migration, considered controversial by most migrant-receiving countries, illustrated diverging views on the Council's role in addressing these issues. It also revealed the reluctance of most Western countries to engage with their Southern counterparts on some topics of particular concern to the latter.

As the system of special procedures constitutes one of the most tangible and effective mechanisms of the Council, it was no surprise that 2008 witnessed a continuation of attacks against some of the most outspoken mandate holders, in particular on torture and on extrajudicial, summary or arbitrary executions, for allegedly exceeding their mandate and violating the Code of Conduct. On the other hand, the Council was able to demonstrate its ability to improve its working methods, as exemplified by the issue of the appointment process for new mandate holders, which was substantially strengthened during the course of the year.

<sup>1</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, General Assembly Resolution 53/144.

## UNIVERSAL PERIODIC REVIEW

After almost two years in the making, the UPR finally started its work in April 2008 and held three sessions during the year. As the initial sessions devoted a substantive amount of time and energy to defining its methodology, the UPR also dangerously exposed attempts by a number of States to backpedal on agreements reached during the institution-building process. The universal character of this new mechanism is one of its most significant features by ensuring the examination of every country's human rights situation. In a few cases, the UPR's intergovernmental nature created a positive dynamic and the quality of the interactive dialogue led to some concrete actions. However, many States approached the process as a purely foreign policy exercise rather than involving relevant ministries and authorities responsible for the implementation of human rights.

The first sessions of the UPR have exposed the limits of the collaborative and cooperative approach that lies at the heart of this new mechanism. Double standards in the examination of countries, selectivity, lack of formal endorsement by the Council as a whole of the recommendations formulated by its members, as well the vagueness of the recommendations were some of the examples of the serious shortcomings of the UPR. The ability of certain States to pervert the review into a praising exercise of their peer, and the lack of follow-up mechanisms to monitor implementation of those recommendations that have been accepted by the State have also nurtured serious doubts about the UPR's potential for impact. However, the usefulness of this mechanism should not be assessed only by the process in Geneva but also at the national level where the UPR offers a number of concrete and positive options for local NGOs to engage with their governments on issues of concern.

## COUNTRY SITUATIONS

The Council's emphasis on dialogue and consensus fundamentally undermines its potential to tackle country situations through the adoption of country resolutions. 2008 confirmed the reluctance of members of the Council not

only to adopt new country resolutions but also to maintain existing ones, as illustrated by the concerted attacks on several existing country mandates and the discontinuation of the mandates on Liberia and the Democratic Republic of the Congo (DRC). It also created an unfortunate precedent by renewing a country mandate for nine months only (on the Sudan) and by extending the mandate of the Independent Expert on Burundi only until an independent national human rights institution is established. The analysis of the dynamics leading to the adoption of country resolutions clearly indicate the increasing influence of the country concerned over the content of the resolution addressing its human rights situation.

Similarly, the General Assembly did not adopt new resolutions on country situations. On the contrary it only took action on the same three countries as in 2007 – the Democratic People's Republic of Korea, Myanmar, and Iran – and did not consider the human rights situation in Belarus as it had done the previous year. The passivity in relation to country resolutions both at the General Assembly and in the Council, already noticeable in previous years, has become more entrenched, due in large part to the existence of the UPR. As a universal mechanism designed to examine the human rights situation in all countries, the UPR continues to be invoked by many States as the most appropriate mechanism for addressing human rights situations. As for the Security Council, continuing divisions among its permanent five members prevented it from adequately reacting to the gravity of human rights situations in the world. It proved unable to operationalise the concept of the responsibility to protect by concretely alleviating the plight of civilians subjected to grave and systematic violations of their rights. This inability compounded a situation of impunity for perpetrators of such violations. The Security Council stood by while many of its resolutions were disregarded and a number of governments, such as the Government of the Sudan, refused to cooperate with the International Criminal Court to action arrest warrants against perpetrators of violations of human rights.

## TREATY BODIES

In 2008, the huge workload of the treaty bodies did not abate and led two Committees to sit in parallel chambers to ease the reporting backlog (Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women). During the two Inter-Committee meetings held during the year and the Meeting of Chairpersons, the treaty bodies continued to examine ways to strengthen their work and explored concrete options for cross-committee cooperation. The new High Commissioner for Human Rights, Ms Navanethem Pillay, expressed a strong interest in supporting these efforts, in particular in increasing the effectiveness of follow-up procedures and in making them more accessible and visible. Thus, at the concrete level, the Human Rights Committee adopted a media strategy while the Committee on the Elimination of Discrimination against Women introduced a follow-up procedure requesting States to report on the implementation of specific recommendations within a given timeframe.

Discussions on harmonisation of working methods led to some tangible results in the area of reporting guidelines and follow-up procedures to Concluding Observations, and more progress can be expected on those and similar technical topics. However, attempts at cooperating on more substantive or legal issues, such as joint General Comments, were thwarted by differences in understanding of their purpose. In any case, the drafting of General Comments continued and the Human Rights Committee and the Committee on Economic, Social and Cultural Rights both adopted new General Comments during the year.

## INTERNATIONAL HUMAN RIGHTS STANDARDS

2008 represented a milestone in standard-setting as the Council, and then the General Assembly, adopted the optional protocol to the *International Covenant on Economic, Social and Cultural Rights*. This major achievement marked the culmination of a complex near 20-year process, and was a major success for the work of the Council,

despite last-minute threats to the optional protocol's adoption that seriously endangered its submission to the General Assembly for final adoption. The new protocol closed a major gap in the international legal framework as it will provide a right for individuals to seek redress for the violation of economic, social and cultural rights.

## OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2008 saw the arrival of a new High Commissioner for Human Rights, Ms Pillay, in September. The year was also marked by recurrent attempts by a number of States to examine and eventually regulate the relationship between the Council and OHCHR. Under the guise of streamlining the work of the Council, the intention was rather to curtail the scope of the mandate and independence of the High Commissioner, in particular in relation to monitoring functions and field activities. The topic of the relationship between OHCHR and the Council was a divisive issue, pitting advocates of an 'independent' Office against those promoting greater oversight by the Council, in particular from within the African Group and the Organization of the Islamic Conference (OIC). The fact the General Assembly was not able to reach consensus in its consideration of the Council's annual report and OHCHR's strategic framework, but had to vote on both of these framework documents, provided a further indication of the growing divide between States on these critical issues. While the previous High Commissioner, Ms Louise Arbour, energetically defended the integrity of her Office, proponents of an enhanced control of the Council over OHCHR are likely to pursue their agenda once Ms Pillay has settled in. The latent tensions, that will doubtlessly continue in 2009 and could potentially lead to more open confrontations, are just one more expression of the more generalised attempts at weakening independent human rights mechanisms and bodies.

While the country work carried out by OHCHR represents one of its most action-oriented and effective activities, the wealth of information available in the reports of the High Commissioner



submitted to the Council did not lead to much discussion during its sessions. The untapped potential of the Council's own procedures and mechanisms and of OHCHR that could inform result-oriented decisions and actions illustrates the lack of political will of a majority of Council members and observers to use implementation of human rights standards as the leading thread of its actions. In this respect, Ms Pillay's emphasis on the importance of her Office's work at country level takes on added relevance and will certainly be challenged in 2009 by those States keen to bring OHCHR under greater control by the Council.

## CONCLUSION

As the UN human rights architecture was finally completed in 2008 and the Council became operational, the assessment of its performance in ensuring respect for human rights was quite mixed. Its work illustrated the widespread lack of political will to take action and strengthen its response to the continuation or emergence of major situations of human rights violations in the world. The increase in the number of thematic procedures, for instance, should not hide the persistent attempts by a number of States to shift the debates away from country scrutiny in favour of a thematic focus. As the Council focuses its attention on substantive issues rather than institutional questions, the human rights community needs to continue to mobilise its energy to build on the gains achieved through the transition from the previous Commission on Human Rights and ensure that the consolidation of its work results in the actual strengthening of its mechanisms and in improvements to human rights. In this overall challenging environment, the role and voice of the High Commissioner for Human Rights will be all the more crucial, as will be the authority of the treaty bodies, away from the political manipulation of the proceedings at the Council, the General Assembly, and the UPR. This edition of the *Human Rights Monitor* identifies the major human rights developments and some of the key challenges the UN human rights system faced in 2008.