

## NEW YORK ALERT

### Forecast of key developments at UN General Assembly 67th session

The New York office of ISHR will monitor and report on key human rights developments at the Third Committee, which meets at UN Headquarters in New York from 8 October until 28 November 2012. The General Assembly delegates most of its human rights-related work to its Third Committee, including the endorsement of the annual report of the Human Rights Council; interactive dialogues with invited special procedures and treaty body chairpersons; and the negotiation of some 50 human rights resolutions. This Alert outlines the key issues and potential flashpoints.

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In the next edition of [the Human Rights Monitor Quarterly](#) (due out in early 2013), ISHR will publish an analytical overview of the 67<sup>th</sup> session.

ISHR has also published two fact sheets on the [General Assembly](#) and its [various committees](#), including the Third Committee

<b>RESOLUTIONS</b> .....	3
<b>COUNTRY SITUATIONS</b> .....	3
• Iran .....	3
• Myanmar .....	3
• DPRK (EU / Japan) .....	4
• Syria .....	4
<b>THEMATIC</b> .....	5
• Death penalty moratorium (cross-regional group of States) .....	5
• Defamation of religions and religious intolerance: .....	5
• Female Genital Mutilation (Burkina Faso / Benin) .....	6
• Extrajudicial Executions (Sweden, on behalf of Nordic States) .....	6
• Beijing +20? .....	7
• Violence against women (France/Netherlands) .....	7
<b>HUMAN RIGHTS COUNCIL ANNUAL REPORT:</b> .....	8
• ‘Composition of staff of the Office of the UN High Commissioner for Human Rights (OHCHR)’ .....	8
• ‘Follow-up to the report of the UN Fact-Finding Mission on the Gaza Conflict’ .....	8
• ‘National institutions for the promotion and protection of human rights’ .....	9
• ‘From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance’ .....	9
• ‘Human rights and Indigenous Peoples’ .....	9
• ‘Extreme Poverty’ .....	10
• ‘Preventable maternal mortality and morbidity’ .....	10
<b>INSTITUTIONAL, FINANCIAL, AND OTHER</b> .....	11
• OHCHR Strategic Framework – Programme 20 .....	11
• Strengthening and financing of the treaty bodies .....	13
<b>INTERACTIVE DIALOGUES</b> .....	14
• Violence against women (A/67/227) .....	14
• Human Rights Defenders (A/67/292) .....	15
• Freedom of religion or belief (A/67/303) .....	16
• Freedom of opinion and expression (A/67/357) .....	16
• Contemporary forms of racism (A/67/328) .....	17
• Health (A/67/302) .....	17
• Torture (A/67/279) .....	17
• Extrajudicial, summary or arbitrary executions (A/67/275) .....	17
<b>OTHER DEVELOPMENTS</b> .....	19
• Human Rights Council elections .....	19
• Occupied Palestinian Territories .....	19
<b>KEY SIDE EVENTS</b> .....	20
• Sexual orientation and gender identity: .....	20
• International Human Rights Day: .....	20
• Human Rights Defenders: .....	20



that the draft did not sufficiently recognise the progress made in Myanmar. China, Cuba, India, the Philippines, and the Russian Federation all dissociated from the consensus position, claiming that the resolution was not constructive and does not acknowledge the progress made in Myanmar.

- Despite striving for consensus, many NGOs and Member States want to ensure the resolution reflects remaining concerns and realities on the ground. NGOs in particular are concerned that the resolution should reflect the need for accountability for past violations. In this regard, the positions of States in the Association of South East Asian Nations (ASEAN) and others will be key. Furthermore, it is likely that the Organization of Islamic Cooperation (OIC) will have priorities regarding the Rohingya conflict.<sup>5</sup>

- **DPRK (EU / Japan)**

- No significant changes are expected to the resolution on the DPRK this year. The main sponsors are expected to continue to try to consolidate or increase the vote margin from previous years. Given that the Special Rapporteur has yet to be granted access to the country, the resolution will likely continue to press for such access, as well as for other UN human rights mechanisms and UN entities.

- **Syria**

- It seems that Member States are in discussions about who will table the fourth resolution on Syria in the General Assembly, with an eye towards those in the region. The first resolution was tabled in the Third Committee during the 66<sup>th</sup> session of the General Assembly on the premise that it was a ‘one off’ effort to address the immediate crisis in Syria. It was driven by the conviction that the General Assembly and the Third Committee should not remain inactive in view of the grave and systematic violations of human rights occurring in Syria.
- Following the first resolution in the Third Committee last year, the General Assembly adopted two more resolutions on Syria during the 66<sup>th</sup> session.<sup>6</sup> The Security Council in the same period has had three resolutions vetoed.<sup>7</sup> The last General Assembly resolution, tabled by Saudi Arabia, was passed in August with 133 votes for, 12 against and 31 abstentions. This is four less YES votes, 14 more abstentions, and the same amount of NO votes, as the vote on [the second resolution on Syria in the General Assembly in February](#). Click [here](#) for a comparison of the voting record of the three General Assembly resolutions on Syria during the 66<sup>th</sup> session. The resolution is thought to have lost support as some Member States perceive the text to be unbalanced, ignoring violence on the part of the opposition. Votes have not changed over the last year<sup>8</sup> in the Human Rights Council where Russia, China, and Cuba continue to vote against

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<sup>5</sup> <http://bit.ly/WI3AMB>

<sup>6</sup> 19 December 2011 ([A/RES/ 66/176](#)), 16 February 2012 ([A/RES/66/253](#)), 3 August 2012 ([A/RES/66/253B](#)). See earlier ISHR web stories at <http://bit.ly/RgVJUz> and <http://bit.ly/xMqXXO>.

<sup>7</sup> 4 October 2011 ([S/2011/612](#)), 4 February 2012 ([S/2012/77](#)), 19 July 2012 ([S/2012/538](#)). Russia and China have both vetoed the three attempts, which could have led to sanctions against the Syrian regime.

<sup>8</sup> See the records from the [21<sup>st</sup> session](#) (September 2012), [20<sup>th</sup> session](#) (June 2012) and [19<sup>th</sup> session](#) (March 2012).

the resolution and India, Uganda and the Philippines<sup>9</sup> continue to abstain.

## THEMATIC

- **Death penalty moratorium (cross-regional group of States<sup>10</sup>)**
  - A lengthy and heated debate is expected on the General Assembly’s fourth death penalty resolution. The resolution is a biannual one, last seen in 2010 at the 65<sup>th</sup> session. The last resolution was adopted by the largest vote margin yet (109 in favour, 41 against, with 35 abstentions). A cross regional ‘task force’ plans to use the 2010 death penalty text as the basis for inclusive negotiations. A vote is expected—the question is whether and how many amendments opponents will bring. The detractors may take the same route as in 2010 and focus on weakening the text by reaffirming State sovereignty. Both the Special Rapporteur on Torture ([A/67/279](#)) and the Special Rapporteur on Extra Judicial Executions ([A/67/275](#)) take up the issue of the death penalty in their reports to the General Assembly this year. Whether the text of this year’s resolution picks up on the content of either of these reports remains to be seen.
  
- **Defamation of religions and religious intolerance:**
  - A breakthrough occurred in the March 2011 session of the Human Rights Council when the OIC decided not to run its polarizing resolution on the defamation of religions. Instead the Council adopted by consensus an OIC-sponsored text ([A/HRC/RES/16/18](#)) on combating intolerance and incitement to violence against persons based on their religion or belief, which had no references to the defamation of religion. The defamation of religions concept, which was introduced at the UN over a decade ago, was widely criticized by NGOs and a growing number of States in recent years. The OIC sought a normative approach to protect religions, which is inconsistent with international human rights law that protects individuals.
  - The 66<sup>th</sup> session of the General Assembly maintained positive gains made by the Human Rights Council and moved towards a consensus text on religious intolerance ([A/66/167](#)). As in previous years, the General Assembly also adopted an EU-led resolution on religious intolerance ([A/66/168](#)). The OIC-sponsored General Assembly resolution requested the UN Secretary-General to submit a report at its sixty-seventh session on steps taken by States to combat intolerance. It is expected that this report ([A/67/296](#)) will be considered during the Third Committee this year.
  - Give the recent uproar and protests over the video “The innocence of Muslims”, it is unclear whether a consensus text will be reached on religious intolerance this year. It is possible that a member of the OIC<sup>11</sup> will try to insert language on the defamation of religions in racism- or religious freedom-related resolutions. At their annual coordination meeting, OIC foreign ministers urged the OIC group in New York to address the gaps in implementation of the

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<sup>9</sup> The Philippines did not vote at the 19<sup>th</sup> session.

<sup>10</sup> Including Albania, Angola, Argentina, Burundi, Chile, Croatia, Cyprus, EU, Gabon, Mexico, Micronesia, New Zealand, Norway, Serbia, Switzerland and Timor Leste.

<sup>11</sup> The United Arab Emirates is coordinating the OIC at this session of the Third Committee.

consensus texts from the Human Rights Council ([A/HRC/RES/16/18](#)) and the General Assembly ([A/66/167](#)), including through the development of a legally binding international instrument to promote respect for all religions and cultural values and prevent intolerance, discrimination and the instigation of hatred against any group or followers of any religion.<sup>12</sup> In addition, some heads of OIC States called for limits on freedom of expression during their statements at the General Assembly General Debate, citing incitement to hatred.<sup>13</sup>

- **Female Genital Mutilation (Burkina Faso / Benin)**

- Burkina Faso and Benin are expected to table a resolution addressing female genital mutilation. The resolution is expected to be a consensus text. NGOs will be looking to ensure that the resolution is holistic and comprehensive, addressing cultural and social pressures, as well as reflecting the relevant international legal framework.
- Momentum towards a resolution built over the past year. A key step in the process was the July 2011 decision by the Heads of State and Government of the African Union to support a resolution by the General Assembly. The African Group at the UN then introduced a decision at the last session of the UN Commission on the Status of Women (CSW) in March 2012, recommending that the issue of FGM, until now discussed only within the context of the CSW, be formally considered by the General Assembly under the agenda item “Advancement of Women” ([E/2012/27 E/CN.6/2012/16](#)). In July 2012, the Economic and Social Council (ECOSOC) [supported](#) the CSW recommendation and requested that the issue of female genital mutilation be added to the agenda of the 67th General Assembly.

- **Extrajudicial Executions (Sweden, on behalf of Nordic States)**

- Sweden (on behalf of Nordic States) will table the biennial resolution on extrajudicial executions. In the 65<sup>th</sup> session, the African Group voted as a bloc with the Arab Group and the OIC in Third Committee to remove ‘sexual orientation’ from the list of more than 15 vulnerable groups that States were specifically urged to protect from extra judicial killings.<sup>14</sup> The reference to ‘sexual orientation’ was later reinserted in the plenary of the General Assembly through an amendment put forward by the US.<sup>15</sup>
- Despite recent advances, such as the first report<sup>16</sup> and high-level panel<sup>17</sup> on violence and discrimination based on sexual orientation and gender identity (SOGI) at the Human Rights Council, intense opposition to lesbian, gay, bisexual and transgender (LGBT) rights still remains at the UN. Negotiations on this year’s text are expected to be difficult and attempts at amendments to delete language that refers to sexual orientation are anticipated. It will be important to retain this crucial text since the resolution on extrajudicial executions is the only UN text where Member States formally acknowledge their responsibility to prevent discrimination on the basis of sexual orientation.

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<sup>12</sup> [http://www.oic-oci.org/topic\\_detail.asp?t\\_id=7229](http://www.oic-oci.org/topic_detail.asp?t_id=7229)

<sup>13</sup> Including Egypt <http://bit.ly/Qb5eDV>, Pakistan <http://bit.ly/Qb6yGK>

<sup>14</sup> The vote count was 79:70:17 (for:against:abstentions)

<sup>15</sup> The vote count was 93:55:27 (for:against:abstentions)

<sup>16</sup> [A/HRC/19/41](#)

<sup>17</sup> <http://bit.ly/UNTFSP>

- **Beijing +20?**

- On International Women’s Day (8 March 2012), Secretary-General Ban Ki Moon and President of the 66th General Assembly Nassir Abdulaziz Al-Nasser [proposed a Fifth UN World Conference on Women](#). In response, Kazakhstan circulated a draft resolution on the subject at the General Assembly. The proposed conference would examine the implementation of the 1995 Beijing Platform for Action.
- However, there is some disagreement among States and NGOs about the utility of yet another conference, rather than focusing and directing resources to accelerating implementation of the existing programme of action with concrete steps on the ground. Given the divisive atmosphere at recent events such as the [56<sup>th</sup> session of CSW](#),<sup>18</sup> and [Rio+20](#), there is also a possibility that a new conference would risk opening up existing agreements, e.g. [the Beijing Declaration and Platform for Action](#), on contentious issues such as sexual and reproductive health and rights.

- **Violence against women (France/Netherlands)**

- The biennial violence against women resolution will be considered this year for the first time since 2010. Negotiations proved very difficult in 2010 though consensus was maintained in the end. One of the major contentions was a paragraph adopted by consensus in 2008, which referred to the need for States to ‘refrain from invoking any custom, tradition or religious consideration’ to avoid their obligations to end discrimination against women.<sup>19</sup> However, controversies at the Human Rights Council in the intervening years about whether undefined ‘traditional values’ could be used to justify human rights violations, meant some delegations in New York saw the language in a new light in 2010.
- Negotiations are expected to be difficult again this year against the backdrop of the traditional values debate, which has once again come to the forefront at the Human Rights Council. Last year, the Human Rights Council tasked its Advisory Committee to prepare a report on traditional values. A preliminary report of the Advisory Committee ([A/HRC/AC/9/2](#)) is highly critical of a traditional values approach to human rights, calling traditional values “vague, subjective and unclear” and noting that “those most marginalized and disenfranchised have the most to lose from a traditional values approach to human rights”. In response, Russia sponsored another resolution ([A/HRC/RES/21/3](#)) on traditional values at the most recent session of the Human Rights Council (21<sup>st</sup> session in September 2012), despite significant substantive concerns with the concept, and despite the fact that the Advisory Committee has yet to submit a final version of its study.<sup>20</sup> In [a joint statement](#), NGOs called the adoption of the resolution a failure of both substance and process, stating that the resolution would be invoked to impose State morality at the expense of human rights.
- Negotiations at the General Assembly will likely set the stage for the 57<sup>th</sup> session of the [Commission on the Status of Women in March 2013](#), which will consider “Elimination and prevention of all forms of violence against women and girls” as its priority theme.

In addition to the above resolutions, ISHR will also be following resolutions on the rights of the child

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<sup>18</sup> The 56<sup>th</sup> Session of the CSW concluded without an agreed outcome this year, due to disagreements over sexual and reproductive health and rights <http://www.un.org/News/Press/docs/2012/wom1905.doc.htm>

<sup>19</sup> OP8 of A/C.3/65/L.17/Rev.2. This language was taken from the Beijing Declaration.

<sup>20</sup> See <http://bit.ly/W3iygW> for an ISHR news story about the adoption of the Russian resolution

(special theme: indigenous children); freedom of expression; protection of migrants; a range of texts on economic, social and cultural rights (including the right to development); trafficking; racism; and torture.

## HUMAN RIGHTS COUNCIL ANNUAL REPORT:

As it did last year, the General Assembly will consider the annual report of the Human Rights Council.<sup>21</sup> Since the Council's creation, States have engaged in contentious debates each year about whether the Third Committee or the General Assembly plenary should consider the Human Rights Council's annual report. Some States prefer that the Human Rights Council report directly to the General Assembly plenary, in line with its status as a subsidiary body to the General Assembly. Others favour the Human Rights Council reporting to the Third Committee, arguing that the Third Committee has the human rights expertise to address the relevant issues and recommendations in the Human Rights Council's report. As in previous years, the African group is expected to bring the resolution on the report of the Human Rights Council. The resolution will likely be tabled by Cameroon, which is chairing the African Group in October 2012.

In the report, the Human Rights Council brings several resolutions to the attention of the General Assembly for consideration and possible action. Some of the recommendations will likely be controversial (given some were not well supported by States at the Council) and thus could also affect the expected Third Committee vote on the African-run resolution on the Human Right Council report. However, regardless of the content of the report, the resolution on the Report of the Human Rights Council is always voted, given the disagreement among States as to whether it should even be considered as a whole by Third Committee.

- **'Composition of staff of the Office of the UN High Commissioner for Human Rights (OHCHR)'**
  - [HRC Resolution 19/3](#) resolution encourages the General Assembly to consider further measures to promote 'desirable ranges of geographical balance' in the staff of the OHCHR and recalling [General Assembly resolution 61/159](#), underlines the priority importance that the General Assembly continue to provide support and guidance to the High Commissioner for Human Rights (the High Commissioner) in the ongoing improvement of the geographical balance in the composition of the staff of OHCHR.<sup>22</sup> The African group has been particularly critical in the past about the limited geographical diversity of OHCHR staff, suggesting the imbalance has a negative impact on the OHCHR and undermines its work worldwide.
  
- **'Follow-up to the report of the UN Fact-Finding Mission on the Gaza Conflict'**
  - As demonstrated in [HRC Resolution 19/18](#), the accountability process triggered more than two years ago by the Report of the UN Fact-Finding Mission on the Gaza Conflict ([A/HRC/12/48](#)) still hangs in the balance. In [resolution 16/32](#), the 16th session of the Human Rights Council recommended that the 66th session of the General Assembly submit the

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<sup>21</sup> [A/67/53](#) and A/67/53/Add.1 (to be issued). This year's annual report before the General Assembly covers the 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> regular session as well 18<sup>th</sup> and 19<sup>th</sup> special sessions.

<sup>22</sup> Para 11 and 13

Report of the UN fact-Finding Mission on the Gaza Conflict to the Security Council, with the recommendation that the Security Council refer the situation in the Occupied Palestinian Territory to the International Criminal Court. However, that recommendation was not taken up during the 66th session of the General Assembly.

- This new Human Rights Council resolution omits the call for referrals to the Security Council and the International Criminal Court. However, it retains language recommending that the General Assembly consider launching an urgent discussion on the legality of the use of certain munitions as recommended by the fact-finding mission, among other recommendations. It remains to be seen how this resolution will be dealt with during the 67th session of the General Assembly.
  
- **‘National institutions for the promotion and protection of human rights’**
  - [HRC Resolution 20/14](#) recommends that the General Assembly explore the feasibility of enabling national human rights institutions compliant with [the Paris Principles](#)<sup>23</sup> to participate in the General Assembly based on practices and arrangements agreed upon in General Assembly resolution [60/251](#)<sup>24</sup>, Council resolutions [5/1](#)<sup>25</sup> and [5/2](#)<sup>26</sup>, and [16/21](#)<sup>27</sup> of 25 March 2011, and Commission on Human Rights resolution [2005/74](#).<sup>28</sup>
  
- **‘From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance’**
  - [HRC Resolution 21/33](#) resolution ‘strongly recommends’ to the General Assembly to proclaim the International Decade for People of African Descent starting from 2013, with the theme “People of African descent: recognition, justice and development” and recommends to the General Assembly to establish a UN permanent forum for people of African descent. This will likely be hotly contested given the budget implications/the cost of creating such a body.
  
- **‘Human rights and Indigenous Peoples’**
  - [HRC Resolution 21/24](#) resolution welcomes the adoption by the General Assembly of resolutions [65/198](#) and [66/296](#) on the organization of the World Conference on Indigenous Peoples (the World Conference), and notes the report of the Secretary-General on promoting participation at the UN of indigenous peoples’ representatives on issues affecting them. The resolution invites the General Assembly to consider ways to enable indigenous peoples’ representatives to participate at the UN and existing procedural rules regulating such participation.

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<sup>23</sup> The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights (NHRIs). Compliance with the Paris Principles is the central requirement of the accreditation process that regulates NHRI access to the United Nations Human Rights Council and other bodies. This is a peer review system operated by a subcommittee of the International Coordinating Committee of NHRIs.

<sup>24</sup> Human Rights Council

<sup>25</sup> Institution-building of the UN Human Rights Council

<sup>26</sup> Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council

<sup>27</sup> Review of the work and functioning of the Human Rights Council

<sup>28</sup> National institutions for the promotion and protection of human rights

- This issue may be contested given the deliberations at the General Assembly 66<sup>th</sup> session regarding the participation of indigenous peoples’ representatives at the World Conference on Indigenous Peoples. [Resolution 66/296](#) adopted in the General Assembly sets out that a list of ‘relevant’ NGOs without ECOSOC accreditation<sup>29</sup> who apply to participate in the World Conference will be submitted to Member States for their consideration on a ‘non-objection basis’, and that the list will be brought to the attention of the General Assembly. This procedure—whereby decisions to allow NGOs without ECOSOC accreditation to participate are taken on a ‘non-objection’ basis—allows States to anonymously object to the participation of NGOs without providing a reason or any recourse to the concerned NGO. This procedure has become prevalent in a range of meetings at UN headquarters in recent years but its use remains controversial.<sup>30</sup>
  - The modalities for the World Conference appear to have some additional safeguard as the list will then be brought to the attention of the General Assembly, though it is unclear whether this will have any effect. At [the adoption of the resolution](#), Russia was presumably alluding to this when it stated that nothing in the resolution should be construed as annulling or modifying the rules of the General Assembly. The EU regretted that the text did not contain full inclusion of civil society groups and the US noted that the issue would require further consideration. It is therefore possible that this issue will be further deliberated during this session of the General Assembly.
- **‘Extreme Poverty’**
    - [HRC Resolution 21/11](#) resolution decides to transmit the ‘Draft Guiding Principles on Extreme Poverty and Human Rights’ (Draft Guiding Principles) to the General Assembly for its consideration.
    - It is expected that the Third Committee will discuss the text, and then decide whether to recommend the General Assembly to adopt the Draft Guiding Principles. The text will then be considered by the General Assembly Plenary in December. The exact procedure for the adoption is not clear at the time of writing. States will likely consider the adoption of the Guiding Principles through a resolution.
  - **‘Preventable maternal mortality and morbidity’**
    - [HRC Resolution 21/6](#) resolution requests the Secretary-General to transmit the “[Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality](#)” (the Technical Guidance) to the General Assembly as a contribution to the review of the realization of the Millennium Development Goals and the implementation of the Programme of Action of

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<sup>29</sup> ECOSOC status provides NGOs with access to a range of fora at the UN and is granted by ECOSOC on the recommendation of the Committee on NGOs. The Committee has come under criticism in recent years as the Committee is known for excessive politicization and the balance of the Committee’s membership tends towards States that do not support a vibrant civil society at the UN. [Click here for an earlier ISHR article about the ECOSOC NGO Committee.](#)

<sup>30</sup> See for example, a discussion of its use during discussions on treaty body strengthening at the General Assembly: <http://bit.ly/VXFipI>

the International Conference on Population and Development

- Though the Human Rights Council resolution was adopted by consensus, a number of Arab, Islamic and African States dissociated themselves from the call to the Secretary-General to transmit the Technical Guidance to the General Assembly (OP8) as well as from the language in the resolution welcoming the Technical Guidance and calling on all relevant actors to disseminate and apply it (OP4). Those States could not accept the Technical Guidance as an authoritative document. They claimed that the Technical Guidance, which was not negotiated by States, promotes ‘new rights’ not defined in international human rights instruments, namely the reference to ‘sexual and reproductive health rights’. Those States furthermore claimed that a human rights based approach to maternal mortality and morbidity must respect the sovereignty of states and the various religious and ethical values and cultural backgrounds.

## INSTITUTIONAL, FINANCIAL, AND OTHER

### • **OHCHR Strategic Framework – Programme 20**

- Another expected carry-over from the Council is the ongoing debate about the independence of the OHCHR vis-a-vis the Human Rights Council. Many States have argued that the Human Rights Council should have greater oversight of OHCHR, and in particular have a role in approving the Office’s budget, while others vigorously defend the High Commissioner’s and OHCHR’s independence. These debates have brought up complex legal and political issues, revealing divergent views among States about the interpretation of various UN resolutions and other documents that established the High Commissioner and OHCHR, and that govern the status of OHCHR and its relationship with the Council and other UN bodies, including the General Assembly.<sup>31</sup> Some States are of the opinion that these matters are beyond the mandate of the Human Rights Council and would be more appropriately addressed by the General Assembly, given its superior status to the Human Rights Council.
- The General Assembly’s consideration of [the human rights component \(formerly Programme 19, now Programme 20\) of the UN’s proposed strategic framework for the period 2014-2015](#)<sup>32</sup> (the Strategic Framework) could provide a trigger for this debate in the General Assembly. The Strategic Framework was drafted by the UN Secretariat and reviewed in June by the Committee for Programme and Coordination (CPC) of the General Assembly. However, while the CPC was in session in New York, Cuba engaged in yet another standoff with OHCHR during the 20<sup>th</sup> session of the Human Rights Council about whether it is the Human Rights Council or the General Assembly that should be tasked with approving the strategic framework.
- States that are traditional defenders of the independence of OHCHR argue that the CPC is a subsidiary body of the General Assembly and cannot send the Strategic Framework for consideration to another subsidiary body, namely the Human Rights Council. In addition, the

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<sup>31</sup> In particular, General Assembly Resolution 48/141 establishing OHCHR and General Assembly Resolution 60/251 establishing the Human Rights Council

<sup>32</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/67/6\(Prog.20\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/67/6(Prog.20)) - The strategic framework is the principal policy directive of the UN, which serves as the basis for programme planning, budgeting, monitoring and evaluation, with effect from the biennium 2014-2015

[Office of Legal Affairs has already pronounced on the issue in 2007](#), stating that the Human Rights Council does not have an oversight role over administrative, financial or programmatic aspects of OHCHR.

- It is relevant that the Human Rights Council adopted a President’s statement at its 15th session ([PRST 15/2](#)) prepared in consultation with the High Commissioner. The statement invited the High Commissioner to present the proposed Strategic Framework to the Human Rights Council prior to its submission to the Committee for Programme and Coordination (CPC), so that the High Commissioner could compile and submit the views of States and relevant stakeholders to the CPC for its consideration.
- Different interpretations were taken about the meaning of the call in PRST 15/2 for the High Commissioner to present her Strategic Framework for human rights to the Council. [The High Commissioner has steadfastly maintained](#) that the statement does not compromise OHCHR’s independence. During an interactive dialogue with the Third Committee in 2010, a majority of States reiterated their support for OHCHR’s independence (Chile, Norway, UK and the [EU](#)), but China reminded the High Commissioner that her strategic plan must now be submitted to the Council before the CPC, and pressed the High Commissioner on how best to implement PRST 15/2. Ms Pillay underscored that the presidential statement does not provide for formal oversight, which would threaten the role of her Office. She also pointedly noted that her reporting obligations are to the General Assembly and the Secretary General, not the Council.
- However, while some States, including Cuba, understood from PRST 15/2 that the Strategic Framework would be discussed in a meeting with States, OHCHR understood that the presentation and consultation could be done through a written procedure. Cuba appears to have concluded that by using a written procedure OHCHR was avoiding the requirements of PRST 15/2, and it reacted by proposing a formal procedure to review the draft Strategic Framework in the Human Rights Council in a draft decision circulated at the Human Rights Council in Geneva. The decision invited the General Assembly to consider the Human Rights Council as the relevant intergovernmental organ entrusted with reviewing the programme and sub-programmes of the proposed Strategic Framework related to human rights.
- Cuba’s draft decision prompted a strong reaction from many delegations. To diffuse the situation the High Commissioner agreed to present the draft Strategic Framework at an informal meeting of Human Rights Council members and observers after the Human Rights Council session. Cuba agreed not to pursue its proposal for a formal procedure.
- Meanwhile in New York Cuba refused to engage in a substantive review of the Strategic Framework in the CPC until the matter had been resolved in Geneva. As a result, negotiations only began on the penultimate day of the session. Since both Russia and Cuba had proposed a number of [amendments](#), States agreed that it would not be possible to adopt the report by the end of the session, [deferring its consideration to the Third Committee of the General Assembly](#). It remains to be seen whether the Third Committee will attempt to settle the question of which UN body (the General Assembly or the Human Rights Council) should be tasked with approving the Strategic Framework.
- Mexico and Egypt have been appointed as co-facilitators of this process, which takes place during a very busy Third Committee session already loaded with politically divisive topics<sup>33</sup>. It remains to be seen if States from a broad cross-section of the full UN membership will have the

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<sup>33</sup> E.g. resolutions on the death penalty, extrajudicial executions, violence against women, etc.

capacity or interest to engage.

- **Strengthening and financing of the treaty bodies**

- *The treaty body strengthening process*

- 2012 was a significant year for treaty body reform as the ‘Dublin process’<sup>34</sup> culminated in a report by the High Commissioner. However, the issue became very politicized when Russia launched a rival ‘intergovernmental process’ in the General Assembly in New York. In February 2012, the General Assembly passed a resolution creating the “Intergovernmental process on strengthening and enhancing the effective functioning of the human rights treaty body system.” The resolution and the intergovernmental process it created were marred with controversy and 66 States abstained from the vote. Many hard-lined States put forward negative proposals attempting to restrict the independence of the treaty bodies and control NGO participation. The process has been extended and is scheduled to resume in early 2013.
- In the meantime, the Third Committee will be confronted by requests from several treaty bodies for additional temporary funding to deal with backlogs. However, language to the effect that continuation of the intergovernmental process would not prejudice temporary measures was negotiated out of the resolution extending the process, leaving the prospects for those requests uncertain.<sup>35</sup> The General Assembly would need to adopt resolutions that approve the associated budget increases, and this will not be easy given the tightening of the purse strings at the UN. Member States remain divided on the issue, with many hoping to address the issues facing the treaty body system through reforms that do not involve increased funding, due in part to domestic financial constraints.

- *Committee on the Economic, Social and Cultural Rights*

- Because the CESR is a subsidiary body of the Economic and Social Council (ECOSOC), its request for additional temporary funding was dealt with at the July 2012 session of ECOSOC. [Resolution 2012/29](#) approved, as a temporary measure and without prejudice to the intergovernmental process, the extension of the second annual session of 2013 of the CESR by one week and the first annual session of 2014 by one week. ECOSOC also approved the participation of up to ten members of the Committee in both pre-session working group meetings in 2013, in order to prepare for the consideration of extra reports.
- Though approved by ECOSOC, the budgetary implications of this resolution will still need to be reviewed and adopted by the Fifth Committee of the General Assembly, responsible for administrative and budgetary matters.

- *Committee on the Rights of the Child*

- In its report to the General Assembly ([A/67/41](#)), the Committee on the Rights of the Child

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<sup>34</sup> <http://bit.ly/Rftgij>

<sup>35</sup> News stories on the intergovernmental process and how it relates to the Dublin process on treaty body strengthening can be found here: <http://bit.ly/VXFiPi> and here: <http://bit.ly/HpwA6y>

- requested additional meeting time to deal with its backlog. The CRC was previously granted the ability to work in double chambers in 2004 (implemented in 2006) and 2008 (implemented in 2010). However, the backlog has increased again and currently stands at approximately 90 reports. In order to address the backlog and to encourage timely reporting, the Committee has requested the General Assembly to provide appropriate financial support to enable it to work in two chambers at pre-sessional working group meetings due to take place in 2013 and at a session to be held in 2014.
- It is unclear at the time of writing how this request will be considered by the General Assembly and specifically whether it will be considered in the resolution on the Rights of the Child. When the last request was made in 2008, New Zealand ran a separate resolution addressing the request.
- *Potential additional requests*
- It seems that requests for additional meeting time are also expected from **the Human Rights Committee** and the **Committee Against Torture**. However, the reports of those committees had not yet been released at time of writing.

## INTERACTIVE DIALOGUES

Forty-five Special Procedure mandate holders, Chairs of Working Groups and Chairs of treaty bodies are [scheduled](#) to present [reports](#) and hold dialogues with the Third Committee, which represents a significant increase from last year when there were thirty one. In addition, there will be interactive dialogues with the High Commissioner (24 Oct); the Special Envoy on Myanmar, Mr Vijay Nambiar (date TBD); and the President of the Human Rights Council who will present the Council's annual report (14 November to the Third Committee, date TBD to the Plenary of the General Assembly). In addition, the Secretary-General's report on the Khmer Rouge Trials will be presented to the Third Committee (31 October). All of these discussions will require the Committee to strictly adhere to time limits—something it has not always managed well.

It is likely that some States will criticise the reports of certain Special Procedures. In previous years, the Third Committee's disapproval of reports has escalated to personal attacks on mandate holders and accusations that they have not complied with the [Code of Conduct for Special Procedures](#). Similar concerns remain this year in relation to the following reports:

- **Violence against women (A/67/227)**
  - The Special Rapporteur's report focuses on **violence against women with disabilities** and focuses, inter alia, on lesbians and other sexual minorities.
  - Language on the discrimination on the basis of SOGI may provoke members of the OIC and several African States who, in recent years have resisted all efforts by others in the General Assembly to discuss this issue. They argue, inter alia, that this form of discrimination does not exist under international law. That said, these concerns should be evaluated against progress made in Geneva on this issue, most notably the first-ever resolution, report and panel discussion

on human rights, SOGI at the Human Rights Council.<sup>36</sup>

- **Human Rights Defenders (A/67/292)**

- The report focuses on the use of **legislation to regulate the activities of human rights defenders**. The issue of national legislation to restrict the work of human rights defenders has been a divisive issue in recent resolutions on human rights defenders and it is likely that the Special Rapporteur's report will provoke reactions from some States on that basis. At her most recent dialogue with States at the 19<sup>th</sup> session of the Human Rights Council (March 2012), several States made negative statements on the issue of national legislation. Although this issue has been raised during previous dialogues with the Special Rapporteur, detractors may have been further emboldened by the additional reference they succeeded in getting in the last General Assembly resolution on HRDs<sup>37</sup> regarding the requirement that HRDs operate in the framework of national legislation.<sup>38</sup> Senegal, Pakistan (on behalf of the OIC), Malaysia, China, Algeria, and Egypt all raised this issue in their interventions at the Human Rights Council in March 2012. At that time, the Special Rapporteur addressed the issue head-on in her concluding remarks, clarifying that while there is no disagreement that HRDs must respect national laws, those laws must in turn comply with international human rights standards.
- In addition, the Special Rapporteur reports that the **situation of defenders working on the promotion and protection of human rights of LGBT persons** continues to be volatile, given that same-sex relations between consenting adults are currently criminalized in more than 75 States worldwide. She notes legislative moves in recent years in several States that have further curbed the activities of defenders working on these issues. As is the case with the report of the Special Rapporteur on Violence against women, SOGI issues may be controversial. The Special Rapporteur also notes that defenders of **sexual and reproductive rights** experience constraints, which is likely to engender some controversy from some States who claim these are 'new rights' and are not defined in any international human rights instruments.

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<sup>36</sup> <http://bit.ly/kNDWwP>, <http://bit.ly/Pojv33>, <http://bit.ly/UNTFsq>

<sup>37</sup> [A/RES/66/164](#)

<sup>38</sup> See ISHR stories on the 2011 session of the General Assembly [here](#) and [here](#). The General Assembly began adopting resolutions on human rights defenders in 1998 with the adoption of the [Declaration on human rights defenders](#). Though the Declaration included a reference to the requirement that human rights defenders should operate within the framework of national legislation, it was not until 2005 that a similar reference was made in the resolution. This was due to threats by Cuba that it would call a vote on the resolution otherwise. States opposed to civil society engagement seek to include such references in order to limit the rights of defenders to those prescribed by domestic law, which are often not in line with international human rights law.

Two references to national legislation appeared in the General Assembly resolutions on human rights defenders in [2005](#), [2007](#) and [2009](#). One is contained in a preambular paragraph that is based on the reference to national legislation in the Declaration. The other is contained in an operative paragraph that refers to registration requirements. In the last session of the General Assembly in 2011, detractors such as China, Russia and Iran were able to gain an additional reference to the requirement that human rights defenders operate in the framework of national legislation, this time in a new paragraph on peaceful protests. It is worth noting that the references to national legislation are somewhat mitigated by corresponding references to the requirement that national laws be consistent with international human rights law.

- **Freedom of religion or belief (A/67/303)**
  - The Special Rapporteur’s report this year focuses on **conversion**, specifically the right of conversion, the right not to be forced to convert, the right to try and convert others by means of non-coercive persuasion, and the rights of the child and parents regarding conversion. In this context, the report also discusses states that have apostasy laws. Given the sensitive nature of this subject, it is expected that this report may provoke from some UN Member States, especially from the OIC.
  
- **Freedom of opinion and expression (A/67/357)**
  - The Special Rapporteur’s report this year focuses on **hate speech and incitement to hatred**, and the reconciliation of freedom of opinion/expression with combating discrimination and incitement to hatred. When discussing domestic legislation that contravenes international norms and standards, the Special Rapporteur expresses concern about the continuing existence and use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices. The Special Rapporteur provides a number of examples of such laws in different States.
  - The Special Rapporteur also reiterates his concern in relation to **anti-blaspemy laws**, which are inherently vague and leave the entire concept open to abuse. He underscores again that international human rights law protects individuals and not abstract concepts such as religion, belief systems or institutions, as also affirmed by the Human Rights Committee in its General Comment 34 ([CCPR/C/GC/34](#), para. 48). General Comment 34 is controversial because it deals with the legality of blasphemy laws.
  - The Special Rapporteur also wades into the divisive **defamation of religions** issue, stating that the right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticism or ridicule. Moreover, he states that the right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend, shock and disturb, and criticize belief systems, opinions and institutions, including religious ones, provided that they do not advocate hatred that incites hostility, discrimination or violence. The Special Rapporteur welcomes the shift from the notion of “defamation of religions” to the protection of individuals against incitement to religious hatred in recent resolutions at the General Assembly and Human Rights Council (See section above on [Defamation of religions and religious intolerance](#)). Given recent events surrounding the film “The innocence of Muslims”, it is unclear how States will react to the Special Rapporteur’s report but it seems the focus may elicit strong reactions from some members of the OIC.
  - In addition, when discussing the international norms and standards applicable to incitement to hatred, the report also specifically mentions that the Human Rights Committee has found that **sexual orientation** is included in the basis for non-discrimination in article 2 of the Universal Declaration on Human Rights.<sup>39</sup> See the section above on [Violence against women](#) for a discussion of SOGI issues in Special Rapporteur reports.

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<sup>39</sup> Para 34

- **Contemporary forms of racism** ([A/67/328](#))
  - The report of the Special Rapporteur on contemporary forms of racism focuses on the key issues/challenges posed by the increasing **use of the Internet to disseminate racist ideas/incite hatred** and gain support of youth. As this theme is somewhat related to incitement to hatred in the religious context, it is possible that some States will also react negatively to this aspect of the report.
  
- **Health** ([A/67/302](#))
  - The [Special Rapporteur's report](#) focuses on **health financing in the context of the right to health**. In this framework, he addresses the right to access good quality health facilities, goods and services on a non-discriminatory basis, particularly for vulnerable or marginalized groups, including, among others, **sexual minority groups**. As with the reports from the Special Rapporteur on [Violence against women](#), the Special Rapporteur on [Extrajudicial executions](#), and the Special Rapporteur on [Freedom of opinion and expression](#), the inclusion of SOGI themes in the report may be controversial for certain States.
  
- **Torture** ([A/67/279](#))
  - The Special Rapporteur's report this year focuses on the **death penalty** and the prohibition of torture and cruel, inhuman and degrading treatment in that regard. Specifically, the Special Rapporteur recalls that practices of the death penalty must comply with the absolute prohibition of torture and cruel, inhuman and degrading treatment. The Special Rapporteur also explores if there is an evolving standard to consider the death penalty as running afoul of the prohibition of torture and cruel, inhuman and degrading treatment or punishment.
  - Given the controversy surrounding the issue of the death penalty at the UN, it is expected that the report will provoke reactions on the part of retentionist States. See the section above on the resolution on [Death penalty moratorium](#) for more discussion of this issue.
  
- **Extrajudicial, summary or arbitrary executions** ([A/67/275](#))
  - The Special Rapporteur's report also focuses on the **death penalty**, specifically on the problem of error and the use of military tribunals in the context of fair trial requirements. He also examines the constraint that the death penalty may be imposed only for the most serious crimes: those involving intentional killing. Lastly, he considers the issues of collaboration and complicity, in addition to transparency in respect of the use of the death penalty. Much like the report of the Special Rapporteur on [Torture](#), this focus is also likely to engender some controversy among retentionist States.
  - In discussing the constraint that the death penalty only be imposed for the 'most serious crimes', the Special Rapporteur points out that States cannot claim compliance with the requirement merely because a crime is seen as serious in their specific context. This consideration rules out such moral crimes as **apostasy** and **homosexual conduct**. Both the references to apostasy and homosexual conduct are likely to engender a range of reactions from States. See the [section on the report of the Special Rapporteur on Violence against women](#) for a brief discussion regarding SOGI language and the [section on the report of the Special](#)

[Rapporteur on Freedom of religion and belief](#) for a brief discussion regarding apostasy.

- **President of the Human Rights Council**

- For the second time, the President of the Council will engage in an interactive dialogue with the Third Committee (in addition to a dialogue with the plenary of the General Assembly). This new element was viewed positively last year by States with limited representation in Geneva as an opportunity to more meaningfully participate in debate regarding the Council's work. However, some States object to the President of the Human Rights Council being called on to answer substantive questions about highly politicized aspects of the HRC's work when the President position is a procedural one.

There are also a number of noteworthy 'comings and goings' in relation to the special procedure mandate-holders that will shape the interactive dialogues they hold with the Third Committee:

- Two special rapporteurs will present their own reports to the General Assembly for the first time, having submitted reports by their predecessors last year: **human rights of migrants** (Mr Crépeau,, replacing Mr. Bustamante); and **promotion and protection of human rights while countering terrorism** (Mr Emmerson, replacing Mr Scheinin).
- One Special Rapporteur will present a report to the General Assembly for the first time: **contemporary forms of racism, racial discrimination, xenophobia and related intolerance** (Mr. Ruteere), having been appointed in November 2011.
- The Special Representative of the Secretary-General for **Children and Armed Conflict** (Ms. Zerrougui) will present a report submitted by her predecessor Radhika Coomaraswamy. It is not clear whether the new SRSG will speak to this report, or seek to distance herself from it.
- Two Special Procedure mandate holders will report to the General Assembly for the first time: the Special Rapporteur on **promotion of truth, justice, reparation and guarantees of non-recurrence** (Mr De Greiff) and the Independent Expert on **promotion of a democratic and equitable international order** (Mr Zayas).
- In addition, the **Secretary-General's report on the Khmer Rouge Trials** will be presented to the Third Committee. The last SG report on the Khmer Rouge Trials was presented in 2007, during the General Assembly's 62nd session.
- The Special Rapporteur **on the situation of human rights in Iran** (Mr Shaheed) will present his first full report to the General Assembly, having been appointed in June 2011 and mostly outlined his approach to the mandate last year.

## OTHER DEVELOPMENTS

- **Human Rights Council elections**

- On 12 November 2012, the General Assembly will elect 18 new members to serve on the Human Rights Council. The resolution establishing the Council ([60/251](#)) stipulates that its members must uphold the highest standards in the promotion and protection of human rights. NGOs are urging all Member States to only elect States that have demonstrated their commitment to the promotion and protection of human rights even if, in some instances, this means leaving the ballot blank.
- Before the Human Rights Council Review in 2011, the elections were held in May. One of the consequences of the change to November elections is that the campaigns are being run and the elections held while a number of contentious issues are being considered by the Third Committee of the General Assembly. It remains to be seen what effect this will have on Third Committee negotiations and on the elections.
- Despite [calls from NGOs](#) and some States for competitive elections, four of the five regional groups will be running 'clean slates' this year, meaning there are only as many candidates as there are vacancies. The Western European and Other Group is the only group running a competitive slate. Sweden, Greece, Germany, Ireland and the United States will vie for three available seats. The African Group slate is made up of Cote D'Ivoire, Ethiopia, Gabon, Kenya, Sierra Leone.<sup>40</sup> The Asian Group slate is made up of Japan, Kazakhstan, Korea, Pakistan, and the United Arab Emirates. The Eastern European Group slate is made up of Estonia and Montenegro. The Latin American and Caribbean Group slate is made up of Argentina, Brazil and Venezuela.
- Switzerland and Mexico will host an inaugural public 'pledging event', which will be held on the side-lines of the General Assembly on 19 October, through which candidate States will present their pledges and vision of the Human Rights Council in a public discussion ahead of the elections.
- For more information on the election process to the UN Human rights Council, visit the UN General Assembly information page [here](#) . For guidance by the OHCHR on voluntary pledges and commitments by candidates for election to the Human Rights Council, see the OHCHR guidance [here](#) . Amnesty International information on the Human Rights Council Elections can be found [here](#).

- **Occupied Palestinian Territories**

- After failing last year to win recognition of full statehood for the Palestinians at the UN, the Palestinians are now seeking "non-member state" or "observer state" status. The Palestinians' current status is that of an "observer entity". Mahmood Abbas, President of the Palestinian National Authority, announced during the General Debate that the government is now in talks with regional organisations and Member States to adopt a resolution considering Palestine a

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<sup>40</sup> <http://bit.ly/VXCI5v> Sudan pulled out of the race in late August following a behind-the-scenes campaign by the United States, Western governments, and human rights organizations that culminated with a decision by Kenya to contest the Sudanese nomination.

non-Member State during the 67<sup>th</sup> session.

## KEY SIDE EVENTS

- **Sexual orientation and gender identity:**

- On the 10 or 11 of December (date TBC), the theme of ‘leadership’ will be the focus of a high-level side event on SOGI. The event will be sponsored by the LGBT core group (a group of States that support and advocate for the human rights of LGBT persons at the UN) and will be held in the ECOSOC chamber.

- **International Human Rights Day:**

- On 10 December, International Human Rights Day, the OHCHR will organise events under a yet to be announced theme.

- **Human Rights Defenders:**

- ISHR, FIDH and CIVICUS will also host a side event with the Special Rapporteur on Human Rights Defenders, to highlight her most recent report on the use of legislation to regulate the activities of human rights defenders. The event will take place at 1.15pm on 31 October 2012 at the office of the Baha’i International Community, 866 UN Plaza (Ground Floor). See the section above on [Human Rights Defenders](#) for more information about the Special Rapporteur’s report.

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For information about key developments during the 67th session of the General Assembly and its Third Committee, sign up for updates from ISHR at <http://www.ishr.ch/subscribe> or visit ISHR’s [General Assembly](#) webpage. In the next edition of [the Human Rights Monitor Quarterly](#) (due out in early 2013), ISHR will publish an analytical overview of the 67<sup>th</sup> session.

ISHR has also published **two fact sheets** on the [General Assembly](#) and its [various committees](#), including the Third Committee. They provide useful information about:

- The role and functions of the General Assembly and the President;
- voting and the political groupings in the GA;
- rules of procedure; and
- budget processes.