

HUMAN RIGHTS MONITOR

QUARTERLY

ISHR | INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

ISSUE 2/3 | JULY 2010

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Key moments in the life of the Human Rights Council. Can you guess who's who and what's what? Look inside to find out!

When it established the Human Rights Council (the Council) in 2006, the General Assembly decided that the Council should be reviewed five years later. The review involves both an assessment of the Council's work and functioning to be carried out by the Council itself, and a re-assessment of its status by the General Assembly. The review processes that will be conducted in Geneva and New York respectively are still being defined in terms of their structure, scope, and modalities.

The General Assembly did not give much guidance on how the General Assembly or the Council should structure, coordinate, or sequence the review processes. The resolution also provides inconsistent timeframes for each process. Nevertheless, States and NGOs have already begun reflections and discussions on many of the key issues that are likely to be considered during the review. ISHR will play an active role in those discussions. We hope that through this overview of the review process, human rights defenders will be able to engage with the process and offer their reflections and proposals for how the Council could be made more effective.

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The International Service for Human Rights (ISHR) is an international non-governmental organisation based in Geneva, at the heart of the United Nations human rights system, with a small branch office in New York.

Now celebrating our 25th anniversary, we have established ourselves in supporting and facilitating the work of human rights defenders with the United Nations system, at national, regional and international levels.

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Our vision is a world where the UN and regional human rights systems effectively promote and protect the human rights of all and where everyone defending human rights enjoys protection of their rights.

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Our mission is to support the engagement of human rights defenders with the UN and regional human rights systems. In turn, ISHR also aims to make these systems more effective, more accessible to human rights defenders, and more responsive to their concerns.

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Special thanks to our guest contributor Lisa Myers (NGO Group for the Convention on the Rights of the Child).

CLOSING OF THIS EDITION

30 July 2010.

ACKNOWLEDGEMENTS

The International Service for Human Rights (ISHR) would like to thank Irish Aid for their support to this project.

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Photos from cover page, from left to right:

1. The Human Rights Council's 1st special session on the situation in the Palestinian and other occupied Arab territories, Assembly Hall, Palais des Nations, Geneva.
2. First President of the Human Rights Council, Ambassador Luis Alfonso de Alba (Mexico) at the adoption of the *International Convention for the Protection of All Persons from Enforced Disappearance*.
3. Ceiling of Room 20, the Council's Chamber at Palais des Nations.
4. Adivasi woman from the Kutia Kondh tribal group in Orissa, India. The Council adopted the UN *Declaration on the Rights of Indigenous Peoples*.
5. UN Secretary-General Ban Ki-moon confers with Doru Costea, President of the Council, Mr Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva, and Ms Louise Arbour, UN High Commissioner for Human Rights before the opening of the 7th session of the Council.
6. The Madres de Plaza de Mayo, an association of Argentinean mothers seeking information and justice about their disappeared relatives during the military dictatorship between 1976 and 1983.
7. Archbishop Desmond Tutu, Head of the high-level fact-finding mission to the southern Gaza Strip town of Beit Hanoun, addresses the 9th session of the Council.
8. Mr Farah Mustafa, representative of the Sudan to the UN at the Council's 4th special session on the situation of human rights in Darfur.
9. Mr Paulo Sérgio Pinheiro, Special Rapporteur on the situation of human rights in Myanmar.
10. Mr Olivier De Schutter, Special Rapporteur on the right to food.
11. Mr Hisham Badr, Permanent Representative of Egypt to the UN addresses the 9th special session of the Council on the situation in Gaza.
12. Mr Doru Romulus Costea (Romania), second President of the Council.
13. Ms Charlotte Abaka, former Independent Expert on the human rights situation in Liberia.
14. Ms Navanethem Pillay, UN High Commissioner for Human Rights and Mr Martin Uhomoibhi, third President the Council.
15. Mr Philip Alston, UN Special Rapporteur on extrajudicial, summary, or arbitrary executions.
16. Rasmata, 25, with her newborn baby in Ouagadougou, Burkina Faso. Maternal mortality has been a key issue raised by the Council.
17. Ms Esther Brimmer, US Assistant Secretary of State for International Organization Affairs, addresses the opening session of the high-level segment of the Human Rights Council. In her statement she affirmed the United States' commitment to the Council.
18. Mr Martin Scheinin, Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism.
19. Mr Mahinda Samarasinghe, Minister for Disaster Management and Human Rights of Sri Lanka, addresses the Council's special session on the situation of human rights in Sri Lanka.
20. Parallel event taking stock of the Council's performance with Mr Martin Uhomoibhi, Julie de Rivero (Human Rights Watch), and Katrine Thomasen (ISHR) among others.
21. Mr Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
22. Mr Richard Goldstone, Head of the fact-finding mission on the Gaza Conflict.
23. Mr Alex Van Meeuwen (Belgium), fourth President of the Council.
24. Mr Michel Forst, Independent Expert on the situation of human rights in Haiti, addresses the Council's special session on the support to the recovery process in Haiti.
25. Ms Sima Samar, former Special Rapporteur on the situation of human rights in the Sudan.
26. Human Rights Council observes moment of silence for Haiti quake victims.
27. Mr Vitit Muntarbhorn, former Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.
28. Mr Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
29. NGOs lining up to sign up to comment on the UPR outcome of Iran.
30. Mr Sihasak Phuangketkeow (Thailand), elected as the fifth President of the Council presidency.

HUMAN RIGHTS COUNCIL REVIEW *Continued from cover page.*

The two review processes are based:

- on the one hand on General Assembly *Resolution 60/251*, para. 16, which 'Decides further that the Council shall review its work and functioning five years after its establishment and report to the General Assembly'
- on the other on General Assembly *Resolution 60/251*, para. 1, which 'Decides to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years'.

GENEVA PROCESS

INFORMAL PREPARATIONS

Various informal preparations for the review have been underway for some time. Individual States and groupings of States, and others,¹ have convened informal meetings to discuss issues related to the review. These gatherings have included some level of NGO participation, with the notable exception of a meeting organised by Algeria in Algiers. Although NGO participation has generally been restricted, the outcomes of many of the meetings have been made public thus at least providing transparency.²

Meetings so far

- Reflection Group on the Strengthening of the Human Rights Council: Mexico City, 29-30 October 2009³
- Wilton Park Conference on Reviewing the Work and Functioning of the Human Rights Council: 14-16 January 2010⁴
- Reflection Group on the Strengthening of the Human Rights Council: Paris, 25-26 January 2010
- Retreat of Algiers on the review of the work and functioning of the Human Rights Council: 19-21 February 2010⁵
- Open-ended seminar on the review of the Human Rights Council: Montreux, 20 April 2010⁶
- Reflection Group on the Strengthening of the Human Rights Council: Rabat, 27-28 May 2010
- Reflection Group on the Strengthening of the Human Rights Council: Seoul, 14-16 July 2010

THE REVIEW PROCESS

The process for the Council's own review of its work and functioning was initiated by the Russian Federation. As early as September 2009 it presented a resolution to establish an inter-governmental open-ended working group to carry out the review.⁷ Although the General Assembly had asked that the Council carry out its review five years *after* it was established in April 2006, namely after April 2011,⁸ the working group on the review will instead meet in October 2010 and January 2011, and will report to the Council in June 2011 on the outcome of its discussions.

In the coming months the review process is likely to consume a great deal of the time of delegations, both governmental and non-governmental. It should not, however, pre-occupy the Council to the extent that it is distracted from implementing its mandate, an effect that some States have expressed a commitment to avoiding.⁹

Structure of the review

The President of the Council has been asked to undertake 'transparent and all-inclusive consultations prior to the working group session on the modalities of the review'. Those consultations resulted in the former President, Ambassador Alex Van Meeuwen (Belgium), drafting a roadmap on the review process and its modalities.¹⁰ However, when the roadmap was presented to the

¹ One grouping is referred to as the 'Reflection Group on the Strengthening of the Human Rights Council'. It is made up of Argentina, Brazil, Costa Rica, France, Ghana, India, Jordan, Mexico, Morocco, Nigeria, Republic of Korea, Romania, Spain, Switzerland, Ukraine, UK, US, and representatives of the Office of the High Commissioner for Human Rights (OHCHR) and NGOs.

² The documents related to the review are available at: <http://bit.ly/ctLlpT>, and on the OHCHR Extranet: <http://bit.ly/bOdE89>.

³ <http://bit.ly/bYfRlj>.

⁴ <http://bit.ly/bUWxaO>.

⁵ <http://bit.ly/a1z8Zc>.

⁶ <http://bit.ly/bxZSO3>.

⁷ *Resolution 12/1*. The membership of the working group is not restricted.

⁸ Para. 16 of General Assembly *Resolution 60/251*.

⁹ Austria, Azerbaijan, China.

¹⁰ The roadmap is available on the OHCHR extranet.

Council at an informal meeting on 14 June 2010, it met with significant resistance from States, and was not adopted.¹¹

This was no doubt in part due to the President's diminishing authority as his term was to end only a few days later. But it also demonstrated broader disagreements about how to structure the review process. It will now be up to the new President, Ambassador Sihasak Phuangketkeow (Thailand),¹² to carry out consultations and ensure agreement on the structure and modalities of the review. He has expressed his intention to further develop the roadmap.

The Russian Federation in mid-May, in a so-called 'non-paper', presented its quite detailed proposals for the structure of the review process.¹³ It proposed that the topics for discussion should be same as those covered when the Council's institutional framework was elaborated in 2006-2007, namely the universal periodic review (UPR), special procedures, Advisory Committee, complaint procedure, agenda and programme of work, and the methods of work and rules of procedure.¹⁴ This approach has been endorsed by a number of States.¹⁵ In putting forward such detailed proposals, the Russian Federation seems to be seeking a prominent role for itself in the review process. It would be no surprise if it were to be appointed as a facilitator for part of the review process.

Others, including Switzerland, Norway, and many NGOs,¹⁶ have suggested that the review should be structured around the Council's mandate as given to it by the General Assembly, and should examine how far this has been fulfilled.

A proposal by 18 NGOs recommends that the review be structured around four clusters of elements of the Council's mandate:

- Promoting international human rights law, its development and its implementation
- Addressing and preventing human rights violations
- Promoting coordination and mainstreaming of human rights
- Working methods and rules of procedure

The diverging approaches reflect fundamentally different ways of evaluating the Council's work and functioning. The approach favoured by the Russian Federation and others implies an evaluation of implementation of the Council's institutional framework (*Council Resolution 5/1*). The opposing view proposes an evaluation of the implementation of the Council's mandate (General Assembly Resolution 60/251). The structure of the review is likely to have a significant impact on the issues that will be discussed. If the discussions focus on the institutional

framework, there is every likelihood that this will result in *Resolution 5/1* being reopened, an outcome that many States, NGOs and the High Commissioner for Human Rights have warned against (see below). Such an approach is also likely to result in less discussion of how the Council has fulfilled important aspects of its mandate, such as addressing human rights violations, preventing violations, and mainstreaming human rights within the UN system. However, regardless of how the process is structured, a broad range of common issues is likely to be discussed. The difference in approach will primarily affect the yardstick against which the assessment of the Council's work and functioning is carried out.

The Council President's draft roadmap attempts to strike a balance between these different approaches. It suggests that the Council carries out an evaluation of how it has fulfilled its mandate in key areas, and then moves on to identify concrete gaps and shortcomings in relation to its mechanisms. While the roadmap may not have found the ideal balance, it generally seems to propose a constructive approach that would allow for a substantive assessment of achievements and shortcomings. This should be at the heart of the review if it is to be meaningful.

Scope of the review

There is broad agreement that the Council's institutional framework should not be re-negotiated through the review process. States have underlined that it is a process of review, and not 'reform' or 'rebuilding'. This seems to indicate that they do not want a comprehensive process of re-examination of the institutional framework, which was agreed only after lengthy and delicate negotiations. The Non-Aligned Movement (NAM) has suggested that the review should be restricted to issues where States agree there is a need for 'fine-tuning'.

At the same time, it is clear that States would like new elements included in the Council's institutional framework. Any new proposals should only be adopted if they substantially add to the Council's ability to fulfill its mandate. Supplements or explanations that detract from the current framework or from the Council's capacity to perform its mandate should therefore not be accepted.

One of the areas where States have identified a need for changes and clarifications is the UPR. However, the review of the UPR is complicated by the fact that *Resolution 5/1* suggests that the Council may review the modalities and periodicity of the UPR after the first cycle of reviews.¹⁷ That will only be completed in October 2011. On this basis some States, including Algeria and Switzerland, have argued that the review of the UPR should take place at a later stage. On the other hand, NAM wants the UPR to be included now, although it wishes for any changes to be implemented only after the first UPR cycle. It is yet to be decided whether the UPR will be included at this stage of the review.

11 The statements made by States during the informal meeting can be accessed on the OHCHR extranet: <http://bit.ly/bOdE89>.

12 Ambassador Sihasak Phuangketkeow replaced Mr Van Meeuwen on 21 June 2010.

13 Non-paper on modalities of the review of the Human Rights Council, 18 May 2010.

14 The Council's institutional framework is contained in *Resolution 5/1*.

15 Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), Egypt, on behalf of the Non-Aligned Movement (NAM).

16 See NGO proposal on the Structure for the 2011 Review of the Human Rights Council's Work and Functioning, <http://bit.ly/ctLlpT>.

17 See footnote a) to para. 14.

Modalities

The review process will be carried out by the working group and will be chaired and led by the President of the Council. However, there are differing views on how the working group and the discussions should be conducted.

In its non-paper, the Russian Federation suggests that the President in consultation with States should appoint five facilitators on the topics for discussion, mentioned above. Many others, including NAM and Switzerland, have expressed the view that it is too early to appoint facilitators.¹⁸ The President's roadmap recognises that the President may call on the assistance of facilitators but leaves the timing open. In addition, it suggests that States could also invite the President to call on specific expert input to the working group session, for example from special procedures or the Advisory Committee.

The Russian Federation also suggested that the substantive work of the working group should be carried out in two parallel sessions. This idea has met with considerable opposition from States, in particular small delegations, as well as NGOs.¹⁹ They fear not being able to effectively contribute to the process if it is taking place in parallel meetings.

In between the two sessions of the working group additional informal meetings may be held.

The President's roadmap proposes that the review process will be transparent, constructive, and consensual. That the outcome should be adopted by consensus has found broad agreement amongst States. This is important as it provides a safeguard against negative proposals that may enjoy majority support and could otherwise be forced through.

NGO PARTICIPATION

The Russian Federation's non-paper suggests that during the working group, States and groups of States would present their positions and concrete proposals. There is no mention of NGOs, national human rights institutions (NHRIs), or others contributing to the debate. However, an earlier version of the non-paper made it explicit that NGOs would not speak during the working group. This suggestion is in stark contrast to the active role played by NGOs in the Council's work. The Russian Federation's proposal is no doubt evidence of its views about NGO participation in general, and while probably shared by several other States, is unlikely to gain broad support. At the informal meeting organised by the President in June there was broad endorsement by States of the principle that the review process should follow the same modalities for NGO participation as those used during the institution-building process. NAM has also endorsed this in its position paper.²⁰

¹⁸ In an earlier version of its paper, dated 12 May 2010, the Russian Federation proposed that the facilitators could already be appointed in May and begin consultations with States. The later version does not make this suggestion.

¹⁹ EU, NAM.

²⁰ NAM position paper on the modalities of the HRC Review, 6 June

NGOs in consultative status with the Economic and Social Council (ECOSOC), and NHRIs granted A-status by the International Coordination Committee, will be able to attend the working group's sessions. The working group was established as 'open ended'. According to standard UN practice this means that all observers can participate. Based on the practices from the institution-building process, NGOs will be able to take the floor during the working group's sessions.²¹

KEY ISSUES

The following issues are likely to be at the core of the review discussions in Geneva. This overview does not seek to be comprehensive.

Addressing human rights violations

Without attempting here a full assessment of the Council's performance, it is fair to say that it has not done well in addressing and preventing human rights violations around the world.²² For human rights defenders this will therefore be one of the main issues to be addressed during the review process. The Council's shortcomings in this area are not generally due to a lack of relevant tools. Rather what needs to be enhanced is the political will of States.

The review process may also present an opportunity to explore the many under-utilised tools that are already available to the Council.²³ At the same time, some innovative proposals have been put forward that may help overcome some of the resistance to taking up country situations by making such decisions more objective and less political. These include establishing regional special procedures and enhancing the role for the High Commissioner for Human Rights in bringing situations of concern to the Council. There has also been discussion about introducing objective criteria to assist the Council in deciding when to address a situation, or developing a list of trigger indicators that would result in automatic consideration.

Special procedures

The special procedures were subject to an in-depth review during the Council's institution-building process.²⁴ Many of the topics discussed then are likely to also come up during this review, including their relationship with the Council, their working methods, State cooperation and follow-up to recommendations, and resources.

2010, para. 6.

²¹ The practices of the institution-building working groups varied considerably. Some sessions were very interactive with no distinctions drawn between State and NGO speakers. At other sessions NGOs spoke on each topic after States, or at the end of the 3-hour meeting.

²² See for example, Human Rights Watch, *Curing the Selectivity Syndrome: The 2011 Review of the Human Rights Council*, <http://bit.ly/b0jMDb>.

²³ The institution-building text already allows for the holding of panels, seminars, roundtables, and other work formats. These are available on a case-by-case basis, and their use only qualified in that they should be used to enhance dialogue and mutual understanding.

²⁴ For more information see, <http://bit.ly/ayu9u5>.

A number of NGOs have put forward a set of ten principles to guide a successful outcome of the review as it relates to special procedures.²⁵

In the last couple of years there have been an increasing number of allegations by States that the special procedures have breached the Code of Conduct for Special Procedures, which was adopted in 2007.²⁶ This has resulted in some calling for an oversight mechanism that would address complaints of non-compliance. A proposal has been made in this regard for a committee of magistrates or jurists.²⁷ However, there are serious concerns about the risk of politicisation of such a procedure and its potential negative impact on the independence of special procedures. Moreover, with the limited use of the existing procedure set up by the special procedures, to review their practices and working methods (Internal Advisory Procedure)²⁸ it is not clear that there is a need for a new procedure. Nevertheless, this is likely to be one of the key issues for the review of special procedures. While much State attention has been on the behaviour of special procedures, NGOs have highlighted the serious lack of State cooperation with these mechanisms. Some have even called for a code of conduct for States.

UPR

One of the key issues for the review of the UPR is likely to be how the second cycle will function. The Council's institution-building text provides little guidance in this regard. It merely states that subsequent reviews should focus, among other issues, on implementation of the outcome of previous reviews.²⁹ The Council review is therefore likely to examine how to include follow-up to previous reviews in the UPR process, while also undertaking a 'new' examination of recent developments.

Some of the UPR's current shortcomings are also likely to be discussed. These include the problems with the list of speakers, the large number of recommendations that many States find unmanageable to implement, and the lack of sufficient technical assistance to States in relation to implementation. The problems with the list of speakers have prompted suggestions that the time for each examination should be extended to allow all States wishing to speak to do so. There are also proposals to extend the periodicity of the review from four to five years, allowing States more time to implement outcomes. As attention turns to implementation at the national level, national human rights institutions could be given an increased role in the UPR process at the Council in recognition of the critical role they play in supporting human rights implementation.

There is also likely to be discussion about how to make the UPR process more relevant by bringing more expertise to the review of each State, including by strengthening the role of the troika. The current role of the group of three Ambassadors who facilitate the drafting of the outcome report, has fittingly been referred to as a 'glorified mailbox'. The UPR process would certainly benefit from greater expert input and involvement.

Human Rights Council Advisory Committee

In informal discussions so far, little attention has been paid to the functioning of the Advisory Committee. One of its members has expressed the view that it should be allowed to initiate work and make suggestions for research and study to the Council, as its predecessor did.³⁰ During its 5th session in August 2010, the Advisory Committee will discuss its work and functioning. It can be expected to present relevant recommendations on how to further improve its work to the Council. While its annual report is to be presented to the Council in March 2011, it will hopefully make its recommendations available for the working group session in October. This might prompt greater discussion of how the Advisory Committee could become a more relevant mechanism.

Complaint procedure

It is generally felt that the complaint procedure is not working effectively. This has led to two suggested solutions; either abolish it or make it work. Some have suggested that the best way to improve the procedure would be to change its confidential nature and make it a public procedure. While the complaint procedure has many shortcomings, one of its advantages is the high response rate of States subject to the procedure, reportedly more than 90%. In comparison, the response rate to special procedures is on average 32%.³¹ The Council should consider how to overcome the procedure's shortcomings while maintaining State cooperation.

Other issues

Other important issues that will be discussed during the review include: the need to strengthen the Office of the President; the need to streamline the Council's heavy programme of work (proposals have been made to reduce the Council's sessions to two from the current three, and for short one or two day monthly sessions); the need to streamline the agenda (proposals have been made to merge all agenda items dealing with country situations); and the role of the High Commissioner and her Office in supporting the Council's work. The latter issue is likely to generate controversy as States are divided on what the relationship between the High Commissioner and the Council should be. Some would like to see a greater role for States in setting OHCHR priorities, while others see this as the High Commissioner's independent prerogative.

25 Ten Principles to Guide a successful outcome of the review of the Human Rights Council as it relates to the Special Procedures, <http://bit.ly/d036bb>.

26 Council Resolution 5/2, <http://bit.ly/ayp03Q>.

27 Retreat of Algiers on the review of the work and functioning of the Human Rights Council, p. 25.

28 <http://bit.ly/98NL9N>.

29 Resolution 5/1, para. 34.

30 The Advisory Committee replaced the Sub-Committee on the Promotion and Protection of Human Rights.

31 UN Special Procedures, Facts and Figures 2009, <http://bit.ly/aGqX3y>.

NEW YORK PROCESS

The General Assembly may have to push back its deadline for review of the Council's status (15 March 2011) to the end of the 65th session (mid-September 2011) to accommodate the Council's proposed delivery schedule of its report to the General Assembly in June 2011.³² States are divided about whether to undertake the review processes concurrently or consecutively, despite a proposal to undertake an aligned and parallel process by the President of the General Assembly and the former President of the Council. As with the Council's own review of its work and functioning, the Resolution is silent on the scope and content of the General Assembly's review of the Council's 'status'. Many stakeholders have not yet weighed in on the range of issues and questions that this review should incorporate.

PROCESS AND KEY ACTORS

In March 2010, the President of the General Assembly, Mr Ali Abdussalam Treki (Libya), appointed two co-facilitators to conduct consultations in New York on the review process.³³ The President then indicated that the co-facilitators would conduct the review in an 'open, inclusive and transparent' manner, and 'work closely with the Human Rights Council'.³⁴ The co-facilitators have since affirmed that the two review processes are complementary, and require a coordinated approach.³⁵

On 15 June, the General Assembly President³⁶ and the former President of the Council, Ambassador Van Meeuwen, publicly expressed in a letter their support for linking the two processes, on grounds that they are 'mutually reinforcing' and will ultimately merge in the General Assembly.³⁷ They particularly encouraged visits by each president to their counterpart's respective consultations. Though not a ringing endorsement of a parallel process, the joint letter provides the necessary support for the co-facilitators to initiate their consultations alongside the Council's.

However, NAM representatives in Geneva have disregarded the Presidents' recommendation and are calling instead for consecutive reviews.³⁸ They have requested their counterparts in New York to introduce a short procedural decision at the General Assembly. This decision would call for the General Assembly review process to be delayed until the Council has completed its own review. However, it is unclear if the NAM in New York would act on this request,³⁹ or more importantly, if the General Assembly would approve it. Subsequently, the incoming President of the Council, Ambassador Sihasak Phuangketkeow, backedpedalled on his predecessor's commitment to concurrent processes.⁴⁰

It is not clear why the NAM representatives in Geneva prefer to arrange the reviews consecutively. It may be that they view the reviews through a competitive lens and are concerned that the General Assembly will 'encroach' on the Council's mandate if they are carried out concurrently. Conversely, the co-facilitators, who prefer a parallel process, may be indicating that they think the General Assembly should not merely 'rubber stamp' the Council's report, but should be genuinely engaged in all aspects of the review.

NGO PARTICIPATION

To date, neither the co-facilitators nor the General Assembly President has proposed modalities for the process in New York, including the role of NGOs in the review. Five years ago, during negotiations on the establishment of the Council, States met in mostly closed consultations often at the ambassadorial level. There were no formal arrangements for substantive NGO input.⁴¹

³² This may require the General Assembly to adopt a new resolution or decision.

³³ Ambassador Christian Wenaweser (Liechtenstein) and Ambassador Mohammed Loulichki (Morocco).

³⁴ Letter from the President of the General Assembly to all Permanent Missions in New York introducing the co-facilitators for the review of the Human Rights Council, 15 March, available at <http://bit.ly/acOLgM>.

³⁵ The co-facilitators made these comments at the Swiss mission in New York during a May 2010 meeting to discuss the summary report of the open-ended Seminar on the Review of the Human Rights Council held in Montreux, Switzerland on 20 April 2010, available at <http://bit.ly/bxZSO3>. The seminar was organised by Switzerland and took place on 20 April 2010 in Montreux.

³⁶ Ambassador Joseph Deiss of Switzerland was elected President of the 65th session of the General Assembly in June. He will begin his term in September 2010.

³⁷ Joint Letter from the President of the General Assembly and the President of the Human Rights Council to all Permanent Missions in New York, 15 June, available at <http://bit.ly/cvSrrl>.

³⁸ Letter from Egypt on behalf of the Geneva chapter of the Non-Aligned Movement (NAM) to the President of the Council, and copied to NAM counterparts in New York. The letter criticises the presidents' position in their joint letter, and asks the new President of the Council, Mr Phuangketkeow, to convene an urgent meeting with coordinators of regional groups to further discuss the process and modalities of the review.

³⁹ The NAM chapter in Geneva has requested the New York Coordinating Bureau of the NAM in New York to intervene with the President of the General Assembly to this effect and to persuade NAM membership to support the introduction of such a decision.

⁴⁰ Letter from the new President of the Human Rights Council to the President of the General Assembly, 29 June 2010. The letter states that the 'predominant view' of Geneva delegations is that the New York review should await the completion of Geneva's work, and that there is a 'common understanding' that the previous joint letter of the Presidents should 'not prejudge the question of the sequencing of the processes'.

⁴¹ Although no opportunity was provided for NGOs to speak formally at the consultations, over one hundred NGOs from around the world communicated their concerns and recommendations in writing to the General Assembly President and governments during the negotiations. However NGOs were not permitted to observe the proceedings, and had limited access to delegates and documents. The then President of the General

ECOSOC *Resolution 1996/31* grants accredited NGOs the right to observe and obtain documents during meetings of the General Assembly on human rights.⁴² Informally some States and the co-facilitators have expressed support for NGOs' participation in the review process in line with *Resolution 1996/31*. However, other States could try to obstruct or restrict such participation. NGOs should thus call on friendly States and other supporters to help ensure their effective access to and participation in the process.

KEY ISSUES FOR THE REVIEW

In *Resolution 60/251*, the Council was created as a subsidiary organ to the General Assembly.⁴³ The question of the Council's status divided the General Assembly during negotiations on the Council's establishment. Some States,⁴⁴ with the support of NGOs, advocated that the Council become a principal organ, alongside the General Assembly, Security Council, and ECOSOC. Others⁴⁵ preferred a human rights body with lesser standing in the UN system. Ultimately, the compromise was to establish the Council as a subsidiary body, with the agreement that the General Assembly would review its status in five years.⁴⁶

The Council's status

Given that human rights constitutes one of the three pillars of the UN, along with peace and security, and economic and social development, the elevation of the Council to a principal organ is a potential, but unlikely, outcome of the review. A considerable obstacle to elevating its status is that it would require an amendment to the UN Charter, which is a difficult process.⁴⁷

States are not inclined to consider promoting the Council based on the principle of the three pillars framework alone. Instead, as the co-facilitators have indicated,⁴⁸ the General Assembly will

probably use the opportunity to tie the review of 'status' to an assessment of the Council's work and functioning, and whether it has yet 'earned' a place next to the other principal UN bodies.

States' views on the question of status do not appear to have changed considerably over the past five years. Some key developing States continue to hold the decision to modify the Council's status hostage to other unresolved institutional matters, including reform of the Security Council.⁴⁹ The permanent members of the Security Council are invested in maintaining the status quo, and ensuring that States bestow the greatest level of attention and urgency to security matters, rather than respect for human rights.

Nonetheless, the General Assembly could use the review process as an opportunity to ensure a more central and strategic place within the overall UN system for the Council. This could include supporting practical and concrete ways to enhance the Council's direct working relationship with the Security Council and Peacebuilding Commission. The General Assembly could also identify ways for the Council to better contribute its expertise to the human rights work of the Secretariat and other UN bodies and agencies. This would further the goal of mainstreaming human rights throughout the UN's work.

Membership

Resolution 60/251 is silent on whether issues relating to membership, such as the Council's size and composition, and criteria for election, fall within the purview of the review of 'status'. However, since the quality of membership has a clear impact on the Council's functioning, the General Assembly could consider these issues in the context of enhancing the implementation of the Council's mandate. Although changing the size of the Council is unlikely to garner broad support, the General Assembly could strengthen the criteria for membership, including by requiring candidate States to present pledges, something which is only voluntary at present, and supporting measures to ensure Council members cooperate with the special procedures. Election procedures and practices could also be improved, such as ensuring competitive elections⁵⁰ and evaluating the implementation of election pledges.

Relationship between the Council and the General Assembly

The division of labour between the Council and the Third Committee⁵¹ would be another worthy topic for the review.⁵²

Assembly and the co-Chairs of the negotiations visited Geneva for two days to consult with the human rights community there, including with NGOs. However this meeting provided little opportunity for substantive and sustained dialogue. The letter is available on the OHCHR extranet: <http://bit.ly/bOdE89>.

42 ECOSOC *Resolution 1996/31* (para. 67(f)) does not grant accredited NGOs speaking rights at the General Assembly.

43 The Council's predecessor, the Commission on Human Rights had a lower status. It reported to the ECOSOC, which in turn reported to the General Assembly.

44 EU, Iceland, Argentina, Chile, Mexico, Turkey, Japan, Norway, Azerbaijan.

45 African Group, Iran, Egypt, Bangladesh, India, Saudi Arabia, Yemen, Cameroon, China, Russian Federation, El Salvador, Malaysia, Cuba, Syria, Pakistan, Indonesia, Sudan, Venezuela, Algeria, Belarus, Mongolia.

46 During the establishment of the Council, some States did not express support for the elevation of the Council to a principal body immediately, but supported a compromise solution whereby States would make a strong commitment to elevating the body to a principal organ in five years. These States included Liechtenstein, Switzerland, Republic of Korea, Jordan, Brazil, Vietnam, Israel, Armenia, Costa Rica, and Uruguay. However the General Assembly ultimately did not include the proposed amendment 'with a view to elevate to a principal organ' at the end of the adopted provision: 'the Assembly shall review the status of the Council within five years'.

47 An amendment to the Charter must be adopted by a vote of two thirds of the members of the General Assembly, followed by ratification by two thirds of the member States, including all the permanent members of the Security Council. Amendments to the UN Charter can be made by a procedure set out in Article 108, Chapter XVIII of the UN Charter.

48 The co-facilitators view the question of status as 'inextricably linked'

to the evaluation of the Council's work and functioning. Comments made at the Swiss mission in New York during a May 2010 meeting to discuss the summary report of the open-ended Seminar on the Review of the Human Rights Council.

49 Brazil, Egypt, Germany, India, Japan, Nigeria and South Africa are among the States seeking permanent seats on the Security Council.

50 In 2010, for the first time since 2006 when the Council was established, each of the five geographic regions the same number of candidates as the number of available seats.

51 This is one of the six Main Committees of the General Assembly. It has responsibility for dealing with social, humanitarian affairs, and human rights issues on the General Assembly's agenda.

52 *Resolution 60/251* establishes the Council as a subsidiary body of the General Assembly, but it does not articulate what if any relationship the

Both the Third Committee and the Council are subsidiary bodies of the General Assembly. In many instances their work is duplicative, with both bodies discussing and adopting similar thematic resolutions. States could thus consider how the Third Committee's work could complement and add value to that of the Council. However, the risk here is that some States, which consider the Council's UPR process as the only appropriate forum for consideration of country situations,⁵³ may use any such discussion to challenge adoption of country specific resolutions at the General Assembly.

One outcome of the review should be the clarification of reporting lines from the Council to the General Assembly.⁵⁴ Since the Council's creation, States have disagreed on this topic and have engaged in contentious debates each year on which body should consider the Council's annual report.⁵⁵ Some States⁵⁶ prefer the Council to report directly to the General Assembly plenary, in line with its status, whereas others favour it reporting to the Third Committee.⁵⁷

To reflect the letter and spirit of *Resolution 60/251*, the Council should report to the General Assembly plenary. This would affirm its status as the premier human rights organ of the UN system, and allow the Third Committee's highly politicised environment to be circumvented. This would avoid the risk of the Third Committee 'reopening' Council decisions, but at the same time matters that would benefit from further expert discussion could still be delegated by the plenary to the Third Committee.

Financing of the Council's work

If the Council were to report to the plenary it would also reinforce the General Assembly's financial responsibility to support the work of the Council and its mechanisms. Only the General Assembly has the authority to approve the allocation of financial resources to implement Council recommendations. However, in recent years, the General Assembly has not allocated the appropriate funds to implement some recommendations.⁵⁸ Although politics in the Third Committee is no doubt playing a role in stalling the approval of funds, the weak support of some Council members for its own recommendations has also likely influenced this outcome.⁵⁹

Another related budget problem is the reporting cycle of the Council, which is not in sync with that of the General Assembly.⁶⁰ As a result, some Council recommendations have been shelved.⁶¹ The review process presents a valuable opportunity to correct this timetabling problem.

CONCLUSION

The review of the Council's status provides a unique opportunity for States to demonstrate the political will to raise human rights to the priority accorded them in the UN Charter. Although this political will was reaffirmed at the World Summit in 2005 when the Council was first conceived, the review provides a welcome opportunity to realise the full potential of *Resolution 60/251* for a stronger and more effective human rights body. Now is the time for States to commit to and take steps to ensure that neither politicisation nor a sense of rivalry between Geneva and New York hamper their negotiations. It is also the time for States to make good on their promises to work in partnership with civil society at the UN, by putting in place meaningful opportunities for civil society participation in the deliberations that will shape the future of the Council. ■

Council should have with the General Assembly's Third Committee.

53 This position is based on the argument that only the UPR process promotes the principles of 'objectivity, non-selectivity and equal treatment of all states'.

54 Joint letter, June 15, from the President of the General Assembly and the President of the Council to Permanent Missions in New York. In the letter, the presidents state that the review process offers 'a unique opportunity to make the reporting line between the Human Rights Council and the General Assembly more regular, clear and transparent, in full respect of the role of the General Assembly and the mandate of the Human Rights Council', <http://bit.ly/cvSrrl>.

55 In the previous two years, the General Assembly, while stipulating its decisions would not set a precedent, has allocated the Council's annual report to the Third Committee for action on the recommendations, and the General Assembly plenary to consider the report as a whole. More detailed reports on these developments at the 64th and 63rd sessions of the General Assembly are available at <http://bit.ly/a6hqCi>.

56 The EU, Japan, Lichtenstein, and New Zealand.

57 The African Group, Cuba, Russian Federation, US, and China. One argument of these States is that the Third Committee, rather than the plenary, has the human rights expertise to address the relevant issues and recommendations in the Council's report.

58 The General Assembly's practice of only 'taking note' of the annual report of the Council and 'acknowledging' its recommendations, rather than 'welcoming' and 'endorsing them' respectively, has been interpreted as an insufficient level of support to warrant the allocation of funds. General Assembly *Resolution 64/143* (2009) and *Resolution 63/160*, available at <http://bit.ly/U53GO>.

59 For example, the General Assembly has not approved the funds to implement a 2008 Council decision, which calls for the establishment and resourcing of an Office of the President of the Human Rights Council. In 2009, at the initiative of Switzerland, the General Assembly (*Resolution 64/144*) requested that the Council 'address the question of the establishment and the modalities' of such an office as part of its review of its work and functioning.

60 The Council's reporting cycle is July-June each year. In the General Assembly, for budgetary purposes, each budgetary biennium operates along a January-December basis.

61 The Council's annual report (adopted at its June session) only reaches the General Assembly plenary in December. Technically, this means that Council resolutions adopted at and subsequent to its September session have to wait until the General Assembly session the following year for endorsement and related funding. This delay has sometimes resulted in the recommendations of those sessions being considered 'earlier' than the General Assembly would have considered them. However, where this has not been possible, 'creative' interim funding arrangements have had to be found, or the recommendations have been shelved.

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PEACEBUILDING COMMISSION

Five-year review of its functioning



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INTRODUCTION

In addition to the Human Rights Council (the Council), the Peacebuilding Commission (PBC) will be reviewed this year, five years after it was established.¹ The General Assembly and the Security Council will carry out the review, which provides an opportunity to reflect on the PBC's achievements and challenges, enhance its relevance, and improve its performance.²

The PBC review negotiations are not likely to be highly political. The process is widely expected to be approached as a stock-taking exercise of a relatively new body. The PBC was established in 2005 and is still finding and refining its strategic niche and value-added role. However there is a risk that institutional issues, such as proposed changes in the membership of the PBC's Organisational Committee, could shift the dynamic.

What is the PBC?

Established in 2005 by concurrent resolutions of the General Assembly (*Resolution 60/180*) and the Security Council (*Resolution 1645*), the PBC promised to close the institutional and strategic gap in the UN system on peacebuilding in post-conflict countries. The PBC acts as a central coordination hub and a main forum for key actors (including governments, donors, international financial institutions, UN operational actors, and civil society) to come together in support of integrated and coherent approaches to peacebuilding. The PBC also plays a unique role in lining up resources from donor countries, international financial institutions, and regional bodies, and in drawing their attention to post-conflict countries' specific peacebuilding needs. As part of the UN peacebuilding architecture, the UN also established two other supportive, complementary bodies, the Peacebuilding Support Office (PBSO) in the UN Secretariat, and the Peacebuilding Fund (PBF).

The Commission's Organisational Committee is comprised of 31 States. In addition to the Organisational Committee, the PBC meets in country-specific committees and has also set up a Working Group on Lessons Learned to distill lessons from post-conflict engagements. So far, the PBC has engaged with Burundi, the Central African Republic, Guinea-Bissau and Sierra Leone, where it has set up strategic frameworks for peacebuilding as well as monitoring mechanisms. It looks set to add Liberia to its agenda, following a request from the country that is supported by the Security Council.

¹ The PBC was established as one of the outcomes of the 2005 Millennium Summit. See General Assembly *Resolution 60/1*. The five-year review was decided in two simultaneous resolutions by the Security Council and the General Assembly that set out the mandate and functions of the PBC. For more information on the PBC see <http://bit.ly/KjP6H> and ISHR's guide to the PBC at, <http://bit.ly/aGph1W>. For relevant background documents and resolutions, see <http://bit.ly/cXkCaX>.

² For more information on the review and to access relevant documents see <http://bit.ly/aiffy5>.

REVIEW PROCESS AND KEY ISSUES

In December 2009, the President of the General Assembly appointed three co-facilitators from Ireland, Mexico, and South Africa to undertake consultations on the review. At the time of writing, the co-facilitators have held three open meetings (17 February, 10 May, and 7 July).³ At the second meeting, States based their comments on six clusters of issues identified by the co-facilitators to guide the discussion.⁴ The key issues were identified through consultations with various stakeholders:

- 1) **Evaluating the PBC's place within the overall UN architecture.** This includes re-evaluating the PBC's relationship with the Security Council (including its potential advisory role in the drafting of peacekeeping mandates), General Assembly, and the Economic and Social Council (ECOSOC), and assessing the extent to which peacebuilding is prioritised within the Secretariat and across the UN system.
- 2) **Improving the relationship between peacekeeping and peacebuilding,** including how to create smoother transitions between these processes.
- 3) **Mobilising resources and ensuring mutual accountability.** This includes assessing how the PBC can help ensure that governments and the international community abide by their mutual commitments. Another related issue is evaluating how the PBC can address the developmental challenges that characterise post-conflict societies.
- 4) **Overcoming challenges and improving results in the field.** This includes ensuring that administrative burdens, as a result of becoming a country on the PBC agenda, do not overwhelm new and fragile national structures or duplicate existing strategies, such as the Poverty Reduction Strategy Papers (PRSP). It also means ensuring that New York-based processes bring added value to developments on the ground.
- 5) **Improving regional approaches to peacebuilding,** including fostering relevant partnerships and developing perspectives that reflect the complexity of conflict situations.
- 6) **Scaling up the PBC,** such as analysing whether the PBC is equipped to take on further specific situations and include countries with larger population size.

The most recent paper by the facilitators on 'some emerging recommendations'⁵ was circulated before the third and final meeting. States were asked to comment on the following topics: the functioning of the PBC; its preventive dimension; the wider peacebuilding architecture; and the allocation of funding for the Peacebuilding Fund (PBF).

3 Analytical reports on General Assembly's three open ended consultative meetings with detailed overviews of States' positions are available at www.betterpeace.org. Together for a Better Peace is a joint World Federalist Movement and Institute for Global Policy project on the Peacebuilding Commission.

4 Review of Peacebuilding Architecture Emerging Issues, available at <http://bit.ly/boa7FB>.

5 Some Emerging Recommendations, available at <http://bit.ly/9R0lr9>.

NGO PARTICIPATION

NGOs have participated in informal meetings,⁶ monitored the review proceedings, and contributed policy papers to the review. However NGOs have not enjoyed any formal avenues for consultation during the process to date.

The review will not revisit the 2007 Guidelines for NGO Participation,⁷ which provide for the involvement of civil society and NGOs in the PBC's formal and informal meetings. Although some misgivings were expressed about the guidelines at their adoption, they have worked relatively well in practice.⁸ Many NGOs have advocated for a holistic approach by the PBC to engagement with civil society.⁹ This includes the PBC enhancing civil society's capacity building, and informing civil society actors about its work so they can effectively provide their important and constructive contributions.¹⁰

What is the Peacebuilding Fund?

The Peacebuilding Fund (PBF) is a multi-donor trust fund funded by voluntary contributions. It aims to address immediate challenges to peacebuilding in the aftermath of conflict, and catalyse sustained support and engagement of bilateral and multilateral donors. Countries that are not on the PBC agenda may also receive funding, following a declaration of eligibility by the Secretary-General. Among other activities, the PBF supports dialogue processes, capacity-building, and employment generation. The PBSO is responsible for the overall management of the PBF; the UN Development Programme (UNDP) administers the Fund. All proposals for funding from the PBF must be submitted through the office of the Senior UN Representative in-country, and all PBF funding is disbursed to recipient UN organisations, including the Office of the High Commissioner for Human Rights (OHCHR). NGOs cannot access the PBF directly, however they may implement projects through partnership arrangements with eligible UN agencies and organisations. In addition to an advisory board at the international level, the PBF also has a national steering committee for each country, where civil society has a place.

6 For example, the co-facilitators have held and participated in many informal meetings, including in New York, Burundi, and Geneva and have met with various stakeholders, including civil society actors.

7 PBC/1/OC/12.

8 NGOs, including human rights defenders, have contributed to the development of priorities, the integrated peace-building strategies, and the monitoring process at the country level. However, genuine engagement by civil society with the PBC has been inconsistent across different countries for various reasons.

9 For example, some NGOs are focused on ensuring that the PBC engages civil society at the beginning of PBC engagement and places greater emphasis on peacebuilding as a 'process' of restoring the social compact.

10 The Peacebuilding Commission Five Year Review: The Civil Society Perspective, June 2010. This joint policy paper (developed by the Global Partnership for the Prevention of Armed Conflict (GPPAC) and the Institute for Global Policy) outlines the main conclusions and reflections resulting from GPPAC's consultations with civil society organisations in Burundi and Sierra Leone, and meetings with NGOs in New York on the review of the PBC in spring 2010. Available at <http://bit.ly/caQIUz>.

PEACEBUILDING FUND

National NGOs often focus on the PBF when seeking international peacebuilding support, rather than the PBC. It seems that many civil society actors have yet to fully understand and recognise the role of the PBC.

The PBC review is unlikely to impact on the operational aspects of the PBF, since the PBSO recently revised the Fund's terms of reference.¹¹ The main issue at stake in the review is the relationship between the PBF and the PBC.

Currently the PBC exercises very little oversight of the PBF, and some States¹² want the PBC to have a greater supervisory role, including in the PBF's priority setting and resource allocation. However others, mainly States that are donor countries, prefer to keep the political role to a minimum.

LOOKING FORWARD

The co-facilitators submitted their report on the review of the PBC to the President of the General Assembly on 19 July 2010.¹³ They concluded that the PBC is 'now at a crossroads', and rather than allowing it to settle into the 'limited role' it has had to date, States are 'strongly' in favour of revamping the PBC and re-affirming that peacebuilding is at the very heart of the UN's work.¹⁴

While States might agree on the kind of PBC they would like to see emerge, they are likely to hold a range of views about what actions need to be taken and by whom to achieve such an entity. We can therefore expect lively debates in both the General Assembly and Security Council about the way forward, but the timing of these debates is unclear at this stage. ■

Desired outcomes

Following their review of the PBC, the co-facilitators outlined the changes they would like to see emerge:

A more relevant PBC, with genuine national ownership ensured through capacity-building and greater civil society involvement; simplification of procedures; more effective resource mobilisation; deeper coordination with the international financial institutions; and a stronger regional dimension.

A more flexible PBC, with a possibility of multi-tiered engagement.

A better performing PBC, with an Organisational Committee that has improved status and focus; Country-Specific Configurations that are better resourced, more innovative, and have a stronger field identity.

A more empowered PBC, with a considerably strengthened relationship with the Security Council as well as with the General Assembly and ECOSOC.

A better supported PBC, with a strongly performing PBSO that carries greater weight within the Secretariat; and a PBF that is fully attuned to the purposes for which it was created.

A more ambitious PBC, with a more diverse range of countries on its agenda.

A better understood PBC, with an effective communications strategy that spells out what it has to offer and creates a more positive branding.

¹¹ The main changes for the terms of reference were a broadening of the scope of the PBF to include 'efforts to revitalise the economy and generate immediate peace dividends to the population at large' and a restructuring of the PBF's funding facilities.

¹² Non-Aligned Movement, African Group.

¹³ The report is available at <http://bit.ly/9uQ2hk>

¹⁴ Executive summary of the report of the review of the PBC, available at <http://bit.ly/9JoxaK>

HUMAN RIGHTS COUNCIL

Consensus re-established on freedom of religion and belief, but divisive appointments to special procedures taint 14th session



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Nuns in Kerala, South India. The resolution on freedom of religion or belief was adopted without a vote at the Human Rights Council's 14th session in June 2010.

The 14th session of the Human Rights Council took place from 31 May to 18 June 2010. The session marked the end of the Council's 4th year, and ended with mixed results. Positive developments could be seen in several thematic areas (a large joint statement on maternal mortality, a consensus resolution on freedom of religion or belief, and a discussion of decriminalisation of consensual sexual conduct). However, the response to country situations, although somewhat improved with new resolutions on the human rights situation in Kyrgyzstan and school children in Afghanistan, was still weak. What tainted the session most was the divisive appointment of several special procedures that saw a regrettable departure from the established practice of Council endorsement of the President's appointments. The lack of respect for the authority of Ambassador Van Meeuwen, the Council's President was perhaps of little surprise. His influence seemed limited throughout his tenure but during the 14th session, as his term was coming to an end, his political capital diminished further. This was also plainly obvious when States refused to discuss his suggested 'road map' for the review of the Council.¹

INTERACTION WITH THE HIGH COMMISSIONER

The dialogue with the High Commissioner for Human Rights (the High Commissioner), Ms Navanethem Pillay on 31 May 2010, was overshadowed by the attacks of that morning by Israeli forces on a humanitarian aid flotilla heading for the Gaza Strip. Discussion of the key points of her update to the Council, including the Millennium Development Goals Summit to be held in September 2010, the upcoming 25th anniversary of the Declaration on the Right to Development in 2011, and a number of country-specific situations, including Sri Lanka, Thailand, and Nigeria, was limited as a result.²

While many States expressed their continuing support of the independence of the Office of the High Commissioner for Human Rights (OHCHR),³ Algeria reiterated its call for OHCHR to undertake more in-depth consultations with concerned countries prior to establishing field offices.⁴ The African Group also stated that the Council should be given a say in all matters of policy, a reference to the current negotiations in New York of Programme 19, the UN's policy framework for its human rights activities.⁵

Several States took the opportunity to offer their views on the upcoming Council review, some calling for the Council to be strengthened (Pakistan, on behalf of the Organization of the Islamic Conference (OIC), UK), with several States insisting that this should not involve 're-opening' the institution-building package⁶ (Pakistan on behalf of the OIC, China, Brazil, Indonesia, Azerbaijan), and others requesting that the review process should not detract from the Council's on-going work (China, Austria, Azerbaijan).

1 See the article on the Council review process in this edition for more information.

2 See ISHR 'Opening of Council's 14th session marked by Gaza flotilla incident', 6 June 2010: <http://bit.ly/9cZREx>.

3 Lithuania, Morocco, New Zealand, Spain.

4 See *Human Rights Monitor Quarterly*, 'Human Rights Council', April 2010, Issue 1, p.2: <http://bit.ly/aBbany>.

5 For a summary of the General Assembly's most recent discussion (2008) on Programme 19 and a more detailed explanation of what Programme 19 is and how it is developed, see ISHR's New York Monitor, 63rd session, Human Rights Council report and the Office of the High Commissioner for Human Rights and annex on p. 17: <http://www.ishr.ch/new-york-monitor/general-assembly>.

6 The institution-building package is the basis for the Council's work, *Resolution 5/1*: <http://bit.ly/dwLlzz>.

For more information on the institution-building process at the Council see: www.ishr.ch/institution-building.

APPOINTMENT OF SPECIAL PROCEDURES

The appointment process saw some improvement at this session compared to previous sessions as the Consultative Group presented a much improved report on the recommended candidates for the special procedures to the President.⁷ However, the process in the Council was marked by regional factionalism, open politicisation, and a disturbing lack of respect for the authority of the President of the Council. Nigeria (on behalf of the African Group) raised objections to the President's list of appointments to the special procedures. This resulted in a three-hour suspension of the session, during which the African Group and the OIC successfully got the appointments changed for the Independent Expert on Burundi and the Special Rapporteur on freedom of religion or belief.⁸ However, attempts to also replace the new Independent Expert on the right to education with a candidate from Uganda, failed. This blatant political horse-trading seriously damages the integrity of the appointment process and poses a real risk to the system of special procedures. It is hoped that the next President will be able to withstand such political pressure and ensure that his appointments enjoy the necessary support. Regrettably, the appointments did not include a single woman, although the Council's institutional framework (*Resolution 5/1*) requires due consideration be given to gender balance. Overall, they also resulted in a reduction of the number of women mandate holders (two of the mandates were previously held by women), bringing the overall number to 19 out of 51.

New mandate holders

Working Group on enforced disappearances: Mr Ariel Dulitzky (Argentina/US)
 Working Group on mercenaries: Mr Faiza Patel (Pakistan)
 Special Rapporteur on freedom of religion or belief: Mr Heiner Bielefeldt (Germany)
 Special Rapporteur on extrajudicial executions: Mr Christof Heyns (South Africa)
 Special Rapporteur on the right to education: Mr Kishore Singh (India)
 Independent Expert on Burundi: Mr Fatsah Ouguergouz (Algeria)
 Special Rapporteur on toxic waste: Mr Calin Georgescu (Romania)
 Special Rapporteur on the DPRK: Mr Marzuki Darusman (Indonesia)

THEMATIC DEVELOPMENTS

At its June 2010 session the Council held interactive dialogues with 22 special procedures along with five thematic panel debates.⁹

Human rights defenders: reprisals and the killing of Floribert Chebeya

The Council's discussion of the Secretary-General's report on reprisals against those who have cooperated with the UN human rights system revealed a lack of urgency amongst States.¹⁰ Of the 14 States mentioned in the report, eight had failed to provide any information about steps being taken to hold the perpetrators accountable, while the replies received in the other six cases were generally unsatisfactory. India and Israel denied the allegations without any attempt to investigate them. Sri Lanka stated that it would not tolerate attacks against human rights defenders but then questioned the legitimacy of those defenders. Kenya committed itself to an investigation into the killing of two human rights defenders,¹¹ but over one year after their deaths the Secretary-General has yet to receive any information about such an investigation.

Defrosting of relations between Security Council and High Commissioner

The High Commissioner for Human Rights addressed the Security Council on 7 July 2010 when it held an open debate on the protection of civilians in armed conflict. This was the first time the High Commissioner has addressed the Council since Ms Louise Arbour, the previous High Commissioner, did so in May 2007 (see ISHR's Human Rights Monitor 2007, p. 79, at <http://bit.ly/dqZ8Gn>). The High Commissioner was invited to address the Security Council on the same topic in November 2009, but was unable to attend.

Although the High Commissioner was invited under a thematic topic, this did not prevent her from speaking directly about several country situations and suggesting responses to the Security Council. In her most recent remarks she:

- detailed her concerns about the situation in Afghanistan, the Democratic Republic of the Congo (DRC), Guinea, Haiti, Kyrgyzstan, Gaza, Sri Lanka and the Sudan (Darfur)
- welcomed the Security Council's action to establish commissions of inquiry to hold perpetrators of human rights abuses accountable, but noted that 'more use can be made of such mechanisms,' and stressed the need for national processes to be 'credible, independent and impartial'
- encouraged the Security Council to make greater use of information gathered by her Office and the special procedures of the Human Rights Council, pointing out that their monitoring of human rights situations can 'sound an alarm when situations are at risk of degenerating into violence'.

* See meeting record (SPV.6354) available at: <http://bit.ly/aeUc3z>

⁷ The Consultative Group is made up of a representative (in practice an Ambassador) from each of the five regional groups, acting in their personal capacity. The Consultative Group proposes a list of candidates that possess the highest qualifications for the mandates to be filled.

⁸ The President had nominated Mr Alain Didier Olinga (Cameroon) as the Independent Expert on Burundi and Ms Ambiga Sreenevasan (Malaysia) as the Special Rapporteur on freedom of religion or belief.

⁹ For brief summaries of key interactive dialogues see www.ishr.ch/council. For a list of special procedures reports considered, see ISHR's Council Alert for the 14th session: <http://bit.ly/abBoET>. The Council held panel discussions on trafficking, the protection of journalists in armed conflict, maternal mortality, toxic waste, and a full day panel on women's human rights and education.

¹⁰ A/HRC/14/19: <http://bit.ly/be3rVN>.

¹¹ Oscar Kamau Kingara, a Kenyan human rights defender, and his assistant, Mr John Paul Oulu, of the Oscar Foundation Free Legal Aid Clinic, were killed in March 2009. Mr Kingara had provided information to the UN Special Rapporteur on extrajudicial executions, Mr Philip Alston, during his recent official visit to the country. This case was discussed at the 11th session of the Council, see p.8: <http://bit.ly/d6RQeB>.

DRC: Security Council begins controversial troop withdrawal

On 28 May 2010 the Security Council unanimously adopted *Resolution 1925*, under which the UN peacekeeping mission in the Democratic Republic of Congo (DRC), MONUC, will be reduced by 'up to 2,000 UN military personnel' by 30 June 2010. MONUC will also be replaced by a new UN stabilisation mission called MONUSCO, which will commence its one year mandate on 1 July 2010. The protection of civilians remains the top priority of the UN mission, and specific language regarding the need to protect civilians from 'all forms of sexual and gender-based violence' remains.

Further withdrawal of troops will depend on 'the evolution of the situation on the ground' as well as the achievement of three objectives:

- the completion of ongoing military operations in North and South Kivu as well as Orientale provinces
- improved Government capacity to protect the population effectively, and
- the consolidation of State authority throughout the territory

The resolution represents a compromise between the DRC's call for a complete withdrawal of troops by mid-2011, and the concerns of all 15 members of the Security Council that this timeline was 'premature'.

In a concession to the DRC and in recognition that much of the western part of the country is now relatively stable, MONUSCO's 20,000 military personnel will be concentrated in the east where the human rights situation remains highly volatile. However, given the unpredictable nature of events in the country and general instability in the region, MONUSCO

There was also a low level of State engagement with the report during the general debate, with just four States addressing the subject.¹² Given that human rights defenders are important allies of the Council in bringing to its attention situations on the ground, this lack of interest points to a deeper lack of concern with the effectiveness of the Council in upholding the rights of individuals. Those States that spoke called for more visibility to be given to attacks against human rights defenders as a means to combat impunity.

Killing of prominent human rights defender in the DRC

The Council's debate on reprisals coincided with the killing of a prominent human rights defender in the Democratic Republic of the Congo (DRC). Floribert Chebeya was the Executive Director of the NGO Voix des sans Voix. NGOs called for a credible, impartial, and independent inquiry to investigate the circumstances of his death and the disappearance of his driver Fidèle Bazana Edadi. On the initiative of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Philip Alston, the Council held a minute of silence in memory of Mr Chebeya, which went some way towards increasing the visibility given to attacks of this nature. The killing of Mr Chebeya drew widespread condemnation and concern during the Council's debate on situations requiring its attention (Item 4). A large number of States called for additional information surrounding his death, and an independent, impartial and transparent investigation. In exercising its right of reply, the DRC noted that the director of the police has been suspended, and that four forensic experts from the Netherlands would be joining the chief prosecutor in conducting an autopsy.

Sexual orientation: resistance to discussion

The issue of sexual orientation and human rights came up in several debates during the session. The report of the Special Rapporteur on the right to health, Mr Anand Grover, focused on the criminalisation of consensual sexual relations, orientation, sex work, and HIV/AIDS transmission.¹³ In particular the report examined the way in which the criminalisation of same-sex relations and same sex-orientation impedes the equal realisation of the right to health.

The discussions revealed the continuing high level of opposition from many States even to raising the issue of sexual orientation at the Council. Some argued that in focusing on an issue that does not have universal support, Mr Anand had overstepped his mandate.¹⁴ Pakistan (on behalf of the OIC) accused the Special Rapporteur of bias and criticised him for having focused on a 'negligible group'. South Africa advanced the view that the Special Rapporteur should have focused more on other marginalised groups, and Bangladesh argued that lesbian, gay, bisexual, and transgender persons are not marginalised at all and that the Special Rapporteur was trying to 'invent' a new marginalised group. Pakistan ended its statement by warning the Special Rapporteur that it would monitor his future activities and take 'appropriate action' if he continued to disrespect the Code of Conduct for special procedures.¹⁵

Similar comments were made in the interactive dialogue with the Special Rapporteur on racism, Mr Muigai.¹⁶ In his report he had noted that the identity of a person is influenced by 'multiple components, such as gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin'.¹⁷ Several States, including South Africa, Egypt, and the Sudan, objected to the inclusion of sexual orientation as part of an individual's identity. South Africa even claimed that the Special Rapporteur had 'demeaned the legitimate plight of the victims of racism'.

Joint study on secret detention

After initially being scheduled for consideration at the 13th session of the Council, the 14th session finally saw the presentation of the joint study on 'global practices in relation to secret detention in the context of countering terrorism'.¹⁸ The report had earlier been blocked on

12 Norway, Spain on behalf of the EU, Sweden, and Switzerland.

13 See <http://bit.ly/9I02Pa>.

14 Algeria, Botswana, Egypt, Iran, Nigeria (on behalf of the African Group), Pakistan (on behalf of the OIC).

15 Code of Conduct for Special Procedures: <http://bit.ly/ayp03Q>.

16 A/HRC/14/43: <http://bit.ly/9LaFm1>.

17 A/HRC/14/43: p.7: <http://bit.ly/9LaFm1>.

18 A/HRC/13/42: <http://bit.ly/dsVmeu>. The study was undertaken by the Special Rapporteur on the promo-

grounds that, since it had been undertaken on the initiative of the mandate holders rather than at the request of the Council, it should not be considered before all the Council's outstanding requested reports had been dealt with.¹⁹

Despite the delay, the fact that the report was considered at all upheld the principle that the special procedures are able, on their own initiative, to take up any issues that fall within their mandate. Nevertheless some States, such as China, continued to claim that it was in breach of the Code of Conduct for the special procedures to take up any matters beyond those that the Council directly requested them to look into.

A broad range of States²⁰ expressed concern about the way in which information had been obtained for the study, particularly the use of anonymous sources, and questioned the accuracy of some of the cases included in the report. The Russian Federation went so far as to state that the use of anonymous information was in breach of the Code of Conduct, since it did not allow States to investigate the complaints made. Algeria made reference to the requirement that special procedures must 'rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up',²¹ but ignored the further requirement that special procedures should not name individuals where to do so would place those individuals in danger.²² The authors of the joint study noted that this was a real issue as many of those they had spoken to feared for their safety in providing information for the study.

Although many States expressed the view that the investigation of secret detention was important, there is currently no indication that any State is willing to follow up on the suggestion of Mr Scheinin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, that the Council should adopt a resolution on the study's recommendations. This clearly calls into question just how committed States really are to combatting the practice of secret detention.

Extrajudicial executions

The presentation of the annual report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,²³ saw strong opinions voiced on both sides of a divided dialogue.

In response to his call for an international inquiry into human rights violations committed during the armed conflict in Sri Lanka, the State condemned what it described as the Special Rapporteur's lack of professionalism and integrity in the execution of his mandate. The DRC 'categorically rejected' the report on his visit to that country, alleging that it lacked objectivity and was 'stuffed with insinuations'. The US criticised Mr Alston for the late submission of the report on targeted killings. It claimed that as a result it was unable to respond to his concerns about the expansive interpretation of the right to self-defence used by the US in its fight against terrorism, and particularly the issue of drone killings carried out by the US Central Intelligence Agency (CIA). The Russian Federation stated that the late submission of reports was 'clearly another example of a flagrant violation of the code of conduct for special procedures'. It said that it would address this during the review of the Council's work and functioning.

In return, Mr Alston was highly critical of the unconstructive way in which these States participated in the dialogue. He also highlighted two more general issues regarding the interaction of

will also 'keep a reserve force capable of redeploying rapidly elsewhere in the country.'

A concerning omission from MONUSCO's mandate is any explicit requirement that its support to the Congolese military forces (FARDC) be 'strictly conditioned on FARDC's compliance with international humanitarian, human rights and refugee law and on an effective joint planning of these operations.' This had been a critical safeguard in MONUC's 2009 mandate (*Resolution 1906*, para.22). The Special Rapporteur on extrajudicial executions, Mr Phillip Alston, has repeatedly alerted the Security Council to the obvious risk to its own reputation and that of the UN as a whole if it allows UN military forces to cooperate with senior Congolese military commanders who are known to have committed war crimes and other serious abuses against civilians.*

Prior to MONUSCO's creation, the Special Rapporteur recommended that MONUC's conditionality policy be made public, strictly adhered to, and its implementation monitored by a mechanism independent of the UN.

*Report of the Special Rapporteur's mission to the DRC, (A/HRC/14/24/Add.3), 1 June 2010, available at <http://bit.ly/9CGglq>.

Chad: Security Council caves into demands to leave by 31 December

Security Council *Resolution 1923*, adopted on 25 May 2010, sets out a timetable for the rapid, but phased withdrawal of both military and civilian personnel working with the UN Mission in the Central African Republic and Chad (MINURCAT).

tion of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.

19 For more information on the debate see ISHR's Council Alert for the 14th session: <http://bit.ly/bfWQrS>.

20 Canada, Ethiopia, the EU, Nepal, Nigeria on behalf of the African Group, Pakistan, Romania, Sri Lanka, Syria, the UK and the USA.

21 Code of Conduct for Special Procedures, Section 8c: <http://bit.ly/ayp03Q>.

22 Code of Conduct for Special Procedures, Section 8b: <http://bit.ly/ayp03Q>.

23 A/HRC/14/24: <http://bit.ly/aXNXnn>. Mr Alston also presented thematic reports on targeted killings, election-related violence and killings and police oversight mechanisms. Of these the report on targeted killings received the most attention from the Council.

By 15 July, MINURCAT's military component will be reduced from 3,300 to 2,200 troops, with the final withdrawal commencing on 15 October 2010. By 31 December, MINURCAT will cease to exist and in its wake, full responsibility to protect civilians and assist refugees and internally displaced persons (IDPs) in eastern Chad will revert to the Government of Chad.

In an effort to minimise the impacts on civilians, the Security Council requested that the Chadian Government and the Secretary-General establish a joint high-level working group to make monthly assessments of the situation on the ground with respect to the protection of civilians. This working group will continue to operate beyond the lifespan of MINURCAT, with an oversight responsibility in respect of Chad's achievement of three benchmarks that were developed by the Secretary-General (para.3 of *Resolution 1923*).

The resolution was adopted unanimously in face of the Government of Chad's intractable position and despite concern from members of the Security Council and civil society more broadly that the authorities lack the capacity to fill the security vacuum that MINURCAT's departure will leave. The future remains particularly uncertain for humanitarian organisations operating in eastern Chad, which fear that a reduced UN troop presence will heighten their exposure to attack, and may force them to suspend operations altogether.

For more background on recent Security Council discussions on the DRC and Chad, see ISHR *Human Rights Monitor Quarterly*, April 2010, at: www.ishr.ch/quarterly.

States with the special procedures. He called for the communications procedure to be reorganised, and underlined the need for more creative measures to be found to encourage cooperation of States with the special procedures, particularly in accepting country visits. The dialogue marked the end of Mr Alston's tenure of the mandate, and despite the volatile discussion there were many expressions of appreciation for his work.

Freedom of expression: a more constructive approach

In comparison with discussion of the first report²⁴ of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, the interactive dialogue at this session was relatively positive.²⁵ One of the main themes of Mr La Rue's report was permissible limitations that could be put on freedom of expression. The applicability of defamation of religion as a basis for limiting freedom of expression continued to generate deep disagreement among States. While Mr La Rue expressed serious concern about discrimination on the basis of religion, he also made it clear that he continues to believe that the phenomenon should not be countered by restricting freedom of expression. On the other hand, Algeria, Azerbaijan, Bangladesh, Egypt, Iran, Nigeria (on behalf of the African Group), and Pakistan (on behalf of the OIC) held to their argument that defamation of religion constitutes incitement to discrimination, hatred, or violence, in violation of Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). Bangladesh was particularly critical of Mr La Rue for holding to his position, which they claimed prevented the possibility of dialogue. But there were indications, such as the more diplomatic language used by States that have previously been very critical of Mr La Rue, and the requests from both sides for increased understanding, that future interactions between the Special Rapporteur and the Council on this issue may be more constructive.²⁶

Resolutions adopted

The negotiations around the resolution on the renewal of the mandate of the Special Rapporteur on freedom of religion or belief also indicated a more conciliatory approach to the issue of freedom of religion. Pakistan threatened to withdraw from the negotiations unless language condemning incidents of incitement to religious hatred, discrimination, intolerance and violence was included. However, it withdrew amendments calling on the Special Rapporteur to examine such incidents and to ensure respect for places of worship, after the EU took its concerns on board. This ensured that the resolution was adopted without a vote.

Other resolutions adopted at the 14th session included a resolution to renew the mandate of the Special Representative of the Secretary-General on internally displaced persons, under which the title of the mandate will change to Special Rapporteur to conform to the Council's new standardised appointment process. The Council also adopted a resolution on 'accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention',²⁷ without a vote. The resolution was sponsored by Canada, and focuses on preventing violence against women as part of a series of three resolutions to be tabled over the next three years. The other two will focus on protection and remedies. The resolution urges States to adopt a series of specific measures aimed at preventing violence against women.

In the resolution on the right of peoples to peace,²⁸ the Council requests the Human Rights Council Advisory Committee to draft an international declaration on the right of peoples to peace. This resolution was adopted by vote with opposition from the EU and Western States

24 The first report, discussed at the 11th session of the Council in June 2009, had generated heated controversy due to the perception of some that Mr La Rue had not fulfilled his mandate, specifically allegations that he had ignored the amendment to his mandate introduced by Pakistan, on behalf of the OIC, in March 2008 calling on the Special Rapporteur to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination. During this year's dialogue however, this issue was only directly raised by Egypt. For more information see ISHR news piece, 'Heavy criticism against Special Rapporteur on freedom of expression', <http://bit.ly/9BxEQ9>.

25 A/HRC/14/23: <http://bit.ly/aS0Dbp>.

26 This follows the reduction in support for Pakistan's traditional resolution on 'defamation of religion' at the March 2010 session of the Council: <http://bit.ly/aEiG4V>.

27 A/HRC/RES/14/12: <http://bit.ly/bCgLO8>.

28 A/HRC/RES/14/3: <http://bit.ly/bwUuBg>.

who argued that it is overly focused on inter-State relations rather than the rights of individuals, who are at the core of the Council's mandate.²⁹

A new resolution was introduced by Ukraine on the role of prevention in promoting and protecting human rights.³⁰ Attempts by the EU, led by Hungary, to introduce more substantive elements into the resolution, including indicating the elements of the obligation of States to prevent human rights violations, failed. The final version simply calls on OHCHR to convene a workshop on the conceptual and practical implications of the concept of prevention.³¹

Other developments

Other noteworthy moments included the presentation, at the panel debate on maternal mortality, of a joint cross-regional statement under the leadership of Burkina Faso, Colombia, and New Zealand, with the total support of 108 States. This is a record for the number of supporters for a statement in the Council. The previous record, of 85, was also set for a statement on maternal mortality, at the March 2009 session.

A panel debate was held on the protection of journalists in armed conflict. While States expressed concern regarding the threats to journalists working in inherently dangerous situations, there was little attempt during the discussion to make a link between the vulnerability of journalists and their role as human rights defenders. There was, however, a call from Canada for a follow-up panel on the targeting of journalists during peace time, an acknowledgement that it is the role that journalists play that places them in danger, not just the sometimes dangerous situations in which they work.

COUNTRY-SPECIFIC DEVELOPMENTS

No debate on the situations in Burundi and the Sudan

Regrettably, the Independent Experts on the human rights situations in Burundi and the Sudan, respectively, were unable for personal reasons to present their reports to the Council.

The Council's failure to organise for the Independent Expert on the situation of human rights in Burundi to brief it before leaving the mandate was disappointing. The current mandate holder, Mr Akich Okola, will be replaced in July 2010 (see text box on new mandate holders). The resolution creating the mandate only asks the Independent Expert to report to the Council after the establishment of an independent national human rights institution.³² As a result, Mr Okola has not appeared before the Council since September 2008. Burundi held elections in June 2010, and the Independent Expert visited the country in May 2010.³³ Under these circumstances, it seemed most appropriate that the Independent Expert should report to the Council on his recent mission to the country, and present a last update to the Council on developments since 2008. Despite an exceptional invitation from the President of the Council to Mr Okola to report to the 14th session, the interactive dialogue did not materialise. It seems that the Independent Expert was not able to attend due to scheduling conflicts.

The Independent Expert on the situation of human rights in the Sudan, Mr Mohamed Chande Othman, was unable to present his report for medical reasons. While some efforts were made to explore whether another mandate holder could present the report on his behalf, they seemed to have failed. In the end the Council decided to postpone the consideration of the report to September, and to exceptionally extend the mandate until then.³⁴ Given that the Independent Expert's report, among other things, dealt with the recent general elections in the Sudan, it was particularly unfortunate that the Council could not consider it in a timely manner.

Security Council inaction on Kyrgyzstan

In contrast to the Council's timely response to the deaths and humanitarian crisis in Kyrgyzstan, the Security Council was unable to formally take up the matter. At the request of some members, the Security Council was briefed about the situation by the UN Secretariat in closed meetings on 14 and 24 June. Both meetings were held under an existing agenda item to avoid Kyrgyzstan being added to the Council's formal agenda. This approach was due to the Russian Federation's insistence that the outbreak of violence in Kyrgyzstan was an internal matter that did not threaten international peace and security. This view was shared by China and several other Council members, even after 100,000 people fled Kyrgyzstan to seek refuge in Uzbekistan.

Although no official statement was issued, the June President of the Security Council, Ambassador Claude Heller of Mexico, commented to the media on 14 June that he and others had 'expressed concern about the risk of the internationalisation of the crisis'. However, they supported the efforts of the Secretary-General and the Organisation for Security and Cooperation in Europe (OSCE), and believed any follow up on the situation was best handled by them.

The situation is yet to stabilise, and there is concern that tensions may flare again with elections scheduled in October. The Government of Kyrgyzstan may well seek the UN's assistance to hold the elections, which would provide the Security Council an opportunity to consider the situation anew.

²⁹ The resolution was adopted 31 in favour, 13 against, three abstentions

³⁰ A/HRC/RES/14/5: <http://bit.ly/c3YuJ5>.

³¹ For a list of all resolutions adopted at the 14th session of the Council see: <http://bit.ly/bD7sSg>.

³² See A/HRC/RES/9/19 for the mandate of the Independent Expert. The Independent Expert has undertaken missions to Burundi in January and December 2009 and in May 2010.

³³ See the UN press release on the visit at: <http://bit.ly/bix5t3>.

³⁴ A/HRC/DEC/14/117: <http://bit.ly/bRPKJT>. As a country mandate, the mandate on the Sudan needs to be renewed every year.

Security Council condemns deaths on Turkish flotilla and calls for credible investigation

An emergency meeting of the Security Council, held on 1 June 2010 at the request of Lebanon and Turkey, resulted in a presidential statement (PRST)* that condemned the loss of life and injuries during the Israeli military operation onboard the Turkish convoy sailing to Gaza.

In contrast to the resolution adopted in the Human Rights Council, the Security Council used more neutral language. It backed the Secretary-General's call for a 'full investigation into the matter' and itself called for a 'prompt, impartial, credible and transparent investigation conforming to international standards'. Significantly, the requirement that the investigation be 'independent' did not make it into the statement, despite this being the topic of lengthy closed-door discussions. The statement also renewed the Security Council's repeated calls for the free flow of goods, people and humanitarian aid into Gaza.

Israel's subsequent appointment of a five-member Committee of Inquiry, which included two international observers, was endorsed by the US as a 'serious and credible investigation'. However the UN Secretary-General argued the contrary, and instead proposed an independent panel of a similar size, with one representative each from Israel and Turkey, to be led by former New Zealand Prime Minister Geoffrey Palmer. Whilst Turkey has welcomed this proposal, the Secretary-General is yet to convince Israel to cooperate with an investigation that would meet the terms set by the Security Council.

During the general debate on situations requiring the Council's attention, several States nevertheless expressed concern about irregularities during the recent elections and other rights violations.³⁵

New initiative on Somalia

The Council decided, at the initiative of the African Group, to hold 'a stand-alone interactive dialogue' on Somalia at the 15th session in September 2010.³⁶ The dialogue will have input from the High Commissioner, the Independent Expert on the situation of human rights in Somalia, and the Special Representative of the Secretary-General for Somalia. It will focus on the status of technical cooperation and capacity-building programmes in the country and how to enhance the effectiveness of UN efforts to support human rights promotion and protection there. Some NGOs have lobbied for a special briefing on Somalia for quite some time and finally seem to have been successful in achieving almost that. It will be interesting to see whether this new initiative will bring about the needed improvements to the human rights situation.

New country resolutions

The Council adopted two new resolutions on country situations. They were both initiated by the US with the support of the countries concerned.

The Council adopted a resolution on technical assistance and cooperation on human rights in Kyrgyzstan, which strongly condemns the human rights violations that took place after the elections on 7 April 2010, calls for a full and transparent investigation, and requests OHCHR to continue to provide technical assistance.³⁷ In this case, the Council demonstrated its capacity to respond in a timely manner to human rights crises. The Russian Federation objected to the presentation of this resolution under Item 10, stating that it went far beyond a call for technical assistance and would have been more appropriately introduced under Item 4, which focuses on situations requiring the Council's attention. While a distinction is often drawn between the more critical resolution texts presented under Item 4 and the 'softer' texts under Item 10, this division is in practice not clear-cut and seems rather artificial.

The Council also adopted a resolution addressing attacks on school children in Afghanistan. It urges all parties in Afghanistan to take appropriate protective measures and encourages governments and relevant UN and international agencies to respond to Afghanistan's requests for assistance. It also requests the High Commissioner to give increased focus to the situation of girl school children in Afghanistan in her reports to the Council. In its general comments the US noted that this resolution demonstrates the ability of the Council to address serious human rights concerns. However, some NGOs criticised the resolution for being too narrow and not addressing the broad range of serious human rights issues in that country.³⁸

Occupied Palestinian territories

The urgent debate on the Israeli attack on the aid flotilla heading to Gaza organised during the first days of the session proved that the Council can be more responsive to urgent human rights situations. However, the Council's initiative to address this incident provoked mixed State reactions. It was not surprising that the US, Italy, and the Netherlands had reservations and ultimately voted against the resolution condemning the Israeli attack.³⁹ The resolution also decides to dispatch an international fact-finding mission to investigate violations of international law.

Norway and Switzerland later expressed hope that the Council would also respond to other pressing situations in the future. Human Rights Watch and Amnesty International went further,

35 Spain, France, Norway, UK, Slovakia, Austria, Sweden, Ireland, Czech Republic.

36 HRC/DEC/14/119: <http://bit.ly/cC4Xzu>.

37 A/HRC/RES/14/14: <http://bit.ly/bHWhwp>. The resolution was adopted without a vote.

38 See for example, Human Rights Watch, UN: Rights Council Condemns Violations in Kyrgyzstan, at <http://bit.ly/b11l0J>.

39 A/HRC/RES/14/1: <http://bit.ly/9968Lq>. The resolution was adopted by 32 votes in favour, three against, and nine abstentions. France, Burkina Faso, Belgium, Hungary, Japan, the Republic of Korea, Slovakia, Ukraine and the UK abstained.

expressing concern about double standards used by some States that called for the urgent debate but opposed action on other critical situations. The US asked the Council to take a more balanced approach to addressing violations by considering human rights situations around the world, and not pay disproportionate attention to the Israel-Palestine situation.

The Special Rapporteur on the situation of human rights in the occupied Palestinian territories (OPT), Mr Richard Falk, presented his annual report to the Council focusing on follow-up to the Goldstone report, settlements, and the blockade on the Gaza Strip. Mr Falk stated that despite making formal requests for a visit to the OPT, there was no indication that Israel would allow a visit or reconsider its policy of not cooperating with the Special Rapporteur. He noted that he would be arranging a visit to the Gaza Strip through Egypt in order to better assess the humanitarian needs and try to understand first hand the human rights implications of the blockade. Mr Falk also regretted that the same States that have been critical about non-cooperation by Myanmar and the Democratic People's Republic of Korea (DPRK) with the special procedures have remained 'utterly silent' regarding Israel's lack of cooperation. Much of the Council's debate focused on the Goldstone report.⁴⁰ Other issues presented by the Special Rapporteur received little attention during the debate, a fact regretted by the Special Rapporteur.

Members appointed to the Committee of Independent Experts to monitor investigations into violations in the Gaza conflict

The High Commissioner announced the appointment of the members of the Committee of Independent Experts to monitor investigations into violations in the Gaza conflict established at the 13th session in follow-up to the Goldstone report's recommendations. The Independent Experts are Mr Christian Tomuschat (Chair), Mr Param Cumaraswamy, and Justice Mary McGowan Davis. They are tasked to 'monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side' in implementing the recommendations of the Goldstone report.'

Debate on country situations requiring Council attention

The Council held a general debate on 'human rights situations that require the Council's attention' (Item 4). The debate, in which around 30 States and more than 60 NGOs took part, was clearly polarised.⁴¹ In addition to a broad survey of human rights violations across many regions, the debate also witnessed allegations of 'politicisation' of the Council. The situations raised were largely similar to those brought to the Council's attention at previous sessions. Not surprisingly, the situation in Iran was among those receiving most attention,⁴² with States expressing concern at the lack of impartial, transparent, and independent investigations into alleged violations following the 2009 elections. However, these concerns are still not translating into any Council action to address the situation.

Many States⁴³ also expressed concern over the situation of journalists and human rights defenders, and the lack of an independent mechanism to investigate human rights violations committed during the final phase of the armed conflict in Sri Lanka. Since the failed special session on Sri Lanka in May 2009, States are unwilling to take any initiatives to address that situation.⁴⁴

Other situations, either generally or in relation to specific concerns, requiring the Council's attention included: Belarus, Burundi, China, Cuba, the DPRK, racial and religious discrimination in several European countries;⁴⁵ discrimination against Roma and Muslim minorities in EU countries;⁴⁶ Fiji, Guatemala, Myanmar, Pakistan, Syria, Thailand, the US,⁴⁷ Venezuela, Vietnam, and Zimbabwe. ■

Rather, after being accused of war crimes and possible

crimes against humanity in the Goldstone Report, the Human Rights Council's investigation into the Gaza military operations in late 2008, Israel appears resistant to any UN-sponsored investigation.

*A PRST reflects the consensus of the Council's 15 members, but is not legally binding.

Sri Lankan Government attempts to evade accountability

In June 2010, in response to the Government's failure to undertake their own accountability processes, the UN Secretary-General appointed a three member panel to advise on 'accountability issues' in post conflict Sri Lanka. The panel will not investigate individual allegations of misconduct during the conflict, but advise the Secretary-General on best practices to implement the commitment on accountability made in a joint statement with the Prime Minister of Sri Lanka in May 2009. The panel has met with opposition from the Government of Sri Lanka.

The Minister for housing led a group of hundreds of pro-government protesters that surrounded the UN's Colombo office, harassed staff and forced its closure. The Secretary-General described the Sri Lankan authorities' tacit support for the protesters and failure to ensure the UN could continue its work in the country as 'unacceptable' and recalled the UN's most senior official in the country. He also shows no signs of caving into pressure from the powerful 118-member Non-Aligned Movement, which has condemned the advisory panel as an infringement on Sri Lanka's sovereignty and beyond the legal mandate of the Secretary-General.

40 A/HRC/12/48: <http://bit.ly/ZnAwh>.

41 For more information, see <http://bit.ly/bcbV3p>.

42 Spain, France, Norway, Japan, UK, Slovenia, Slovakia, USA, Netherlands, New Zealand, Denmark, Austria, Australia, Sweden, Ireland, Israel, Canada, Czech Republic, Luxembourg <http://bit.ly/cg6GfN>.

43 Spain, Norway, Japan, Slovenia, Slovakia, Switzerland, Sweden, Ireland, Czech Republic.

44 For more information, see <http://bit.ly/b8FWCN>.

45 Pakistan.

46 China.

47 China, Iran.

UNIVERSAL PERIODIC REVIEW

Institutional stumbling blocks and uncooperative States continue to prevent the UPR mechanism from realising its full potential



Creative Commons.

Traditional umbrellas from Laos, one of the 15 countries reviewed by the UPR Working Group in May 2010.

The 8th session of the universal periodic review (UPR) Working Group was held from 3 to 14 May 2010. Fifteen countries were reviewed by the Working Group: Kyrgyzstan, Kiribati, Guinea, Lao People's Democratic Republic (Laos), Spain, Lesotho, Kenya, Armenia, Guinea-Bissau, Sweden, Grenada, Turkey, Guyana, Kuwait, and Belarus. Haiti was also originally scheduled to be under review, however due to the devastating earthquake of January 2010, the Human Rights Council (the Council) in a special session postponed Haiti's review until a later date.¹

The session overall did not raise many controversies. The majority of States under Review participated constructively and openly, with a few key exceptions.² The session also saw the display of the long-standing tensions between Armenia and Azerbaijan, and Turkey and Cyprus, resulting in rejection of recommendations for political reasons.

ENGAGEMENT BY STATES UNDER REVIEW

The number and titles of delegates who represent a State under Review at the Working Group session can be an indication of the seriousness which it attaches to the UPR process. For the most part, States under Review were represented by high-level delegates, for example a Minister of Justice³, or Attorney General.⁴ A few States under Review such as Kyrgyzstan, Laos, Armenia, Sweden, and Turkey were represented by relatively lower level vice-ministers or bureaucrats. Sizes of delegations ranged from three (Grenada, Guyana) to 37 (Kuwait), with the overall average at about 13. However, the number of delegates who actively participated varied. For example with Belarus and Guinea-Bissau (five and seven members respectively), only the head of the delegation took the floor at any time, whereas with Armenia and Laos (13 and 18 members respectively), multiple delegates were given the chance to speak on their various areas of expertise.

As has become the practice in the UPR, the majority of States under Review took the floor three times: once to give an introductory statement, and two additional times to answer questions. For the most part, States under Review responded with scripted answers. The participation of the States under review continues to be a largely non-interactive exercise, and more of a planned and prepared series of statements in response to expected issues.

1 Documents on the Council's special session on Haiti can be found at: <http://bit.ly/9Xi42M> (www2.ohchr.org/english/bodies/hrcouncil/specialsession/13/index.htm). See also ISHR's report at: <http://bit.ly/cXlu8V>.

2 Belarus.

3 Kenya, Guinea.

4 Kiribati.

STATES PARTICIPATING IN THE REVIEW

Over the course of the session, a total of 681 interventions and 2045 recommendations were made.⁵ The level of involvement of States participating in the review of States varied significantly. A small number of States (mostly European) continue to provide a disproportionately large number of recommendations.⁶ Out of the total number of recommendations, approximately 52% were made by members of the Council, indicating that Council members play a significant, though not dominant, role in UPR proceedings.⁷ As has traditionally been the case, States from the WEOG regional grouping made the plurality of recommendations at approximately 37%. Members of the Organization of the Islamic Conference (OIC) made about 26% of all recommendations, confirming their active participation. The States who made the most recommendations over the course of the entire session included Norway (80), Spain (79), Brazil (70), Canada (70), France (67), and the Netherlands (63). Of note is that the Netherlands, Norway, and Spain made interventions in every review at this session. Also, only a small number of States (almost all European) took the opportunity to submit advance questions to most States under Review.⁸

A number of States participating used the opportunity to raise specific concerns across a number of reviews. Examples include: Angola (the *International Convention on the Protection of Migrant Workers and their Families*); Argentina and Tunisia (gender equality); Australia and France (discrimination on grounds of sexual orientation or gender identity); Austria (cooperation with civil society); Bangladesh (poverty and development); Belgium and Italy (death penalty); Brazil and Latvia (standing invitations to UN special procedures); Cuba (health and education); Czech Republic (human rights education and training for law enforcement); Germany (judicial independence and juvenile justice); Hungary and Slovakia (submission of late treaty body reports); Ireland (freedom of association); Libya (HIV/AIDS); Malaysia (violence against women); and Morocco (financial and technical assistance).

However, the States that made the highest number of recommendations were more likely to tailor those recommendations

specifically to the State under Review. This suggests that some States approach the UPR as an opportunity to promote an issue that may be of domestic importance (such as Angola, Bangladesh, or Cuba), or an issue the State has chosen to promote internationally (such as France or Belgium). Others use the UPR as a bilateral exercise (such as Canada, Mexico, the Netherlands, or a significant number of States that only participated in a single review).⁹

The constructive practice of following up on human rights treaty body recommendations was used by several States. For example, CEDAW recommendations were highlighted with respect to Guinea (Israel, Mexico), Guinea-Bissau (Mexico), and Laos (Hungary) while CRC recommendations were highlighted with respect to Spain (Israel), Sweden (Netherlands) and Grenada (South Africa, Slovenia).

Notably, three States under Review at the 8th session (Guinea, Kyrgyzstan, and Kenya) were in the midst of constitutional reform or preparations for upcoming elections. Kyrgyzstan's review saw States from all regions not only comment on ongoing and systemic human rights issues, but also make calls for return to democracy and rule of law. Similarly Kenya witnessed wide-ranging participation from both African States and States of other regions alike. However, similar to the UPR review of Madagascar at the 7th session, only four States from the African Union participated in the review of Guinea.¹⁰ It seems a lost opportunity for States not to use the UPR process to press for respect for democratic principles in countries where they do not recognise the Government.

OUTCOMES AND RECOMMENDATIONS

The number of recommendations to States under Review ranged from 83 (Kiribati) to 168 (Kyrgyzstan), with the average number of recommendations at 124.¹¹ However the total number of recommendations remains skewed due to inconsistent formulation of Working Group reports by the troikas. While some Working Group reports listed recommendations individually followed by the State who proposed the recommendation,¹² other Working Group reports clustered similar recommendations by several States into a single item,¹³ and some reports used a mix of these two systems.

⁵ The total number of actual recommendations listed in Working Group reports is 1860, however due to clustering of recommendations in certain reports, the total number of individual recommendations made by States is higher.

⁶ While the mean number of recommendations made by States was roughly 18, the median was about 11, indicating that a small number of States participated disproportionately more often than others. Ten States made only a single recommendation, five States made two recommendations, and another six States made just three recommendations.

⁷ However, five Council members did not participate in a single review (Cameroon, Gabon, Madagascar, Mauritius, and Zambia) and India participated on only once, presenting a single recommendation to Sweden.

⁸ For example, Argentina, Czech Republic, Denmark, Germany, Ireland, Latvia, Netherlands, Norway, Slovenia, Sweden, Switzerland, and the United Kingdom submitted advance questions to a number of States under Review. This same group of States also followed the same practice at the 7th session of the UPR.

⁹ For example, Cote d'Ivoire (Guinea), Mozambique (Guinea-Bissau), Ethiopia (Lesotho), Cambodia and Myanmar (Laos), Jamaica (Grenada).

¹⁰ Madagascar and Guinea are both currently under the rule of transitional governments not recognised as legitimate by all members of the African Union. No African State took part in the review of Madagascar.

¹¹ States under Review that received more than the average number of recommendations were: Kyrgyzstan (168), Spain (166), Kuwait (159), Turkey (152), Kenya (150), and Sweden (149). States under Review that received fewer than the average number of recommendations were: Lesotho (122), Guinea (114), Guyana (112), Guinea-Bissau (108), Laos (107), Belarus (93), Grenada (92), Armenia (85), and Kiribati (83).

¹² For example Kenya and Kiribati.

¹³ For example Laos and Belarus.

For example, Belarus accepted two recommendations on trafficking which in fact included 11 separate (though similar) recommendations from States. With such inconsistent formatting of reports, the total number of recommendations (and the number accepted, rejected, or otherwise) remains a only rough tool for comparison of State reviews. The formatting of reports and included recommendations has changed several times over the course of the first cycle of the UPR. Consistent guidelines and practices would enable the Working Group reports to provide a clearer basis for implementation and follow-up of recommendations.

As with previous sessions, small island States received the least amount of attention with Kiribati (28 interventions, 83 recommendations) and Grenada (27 interventions, 92 recommendations). These were also the only two States to leave all recommendations pending.¹⁴ The States which received the greatest amount of attention were Kyrgyzstan (51 interventions, 168 recommendations), and Spain (56 interventions, 166 recommendations). The large number of recommendations on Kyrgyzstan revolved around recent civil unrest, as States called upon Kyrgyzstan to ensure the rule of law, follow through with the proposed constitutional referendum and election, and ensure freedom of assembly and expression in that regard. In contrast, the large number of recommendations on Spain highlighted discrimination against migrant workers and ethnic minorities, as well as concerns over Spain's anti-terrorism activities and legislation. Spain, along with Sweden, broke with what had been the informal practice among European Union (EU) States to leave all recommendations pending until adoption by the Council, with Spain rejecting 18 recommendations, and Sweden 12.¹⁵

Only a small number of States provided justification for their rejection of recommendations. Turkey rejected nine recommendations from Cyprus on the grounds that Turkey 'does neither recognize Republic of Cyprus nor accept its claims to represent the whole island', despite some of Cyprus's recommendations being similar to recommendations made by other States and others clearly reflecting Turkey's international obligations.¹⁶ Similarly, Armenia explained its rejection of the Azerbaijani recommendation to 'eliminate discrimination against Yezidis' by noting that it is 'inaccurate and does not correspond to the actual situation.' The only State under Review to give explicit reasons for rejection was Kenya, providing detailed substantive explanations to all seven recommendations rejected.¹⁷

14 At the 7th session, five States left all recommendations pending.

15 Other EU States that have broken with this practice in the past include the Czech Republic and Germany.

16 The recommendation by Cyprus for Turkey to 'swiftly accede to the Rome Statute of the International Criminal Court' was rejected, while similar recommendations by Brazil and Chile were accepted.

17 However, such explanations were not all necessarily in line with international commitments. Kenya's rejection of the recommendation by the Netherlands to 'take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons' was rejected on the grounds that 'same-sex unions were culturally unacceptable in Kenya.'

The 8th session saw continuation of the troubling practice of rejecting recommendations that contradict a State's existing international obligation. Examples included Kuwait, which rejected several recommendations in contradiction of CEDAW and ICESCR,¹⁸ and Guinea-Bissau, which also rejected recommendations on eliminating discrimination against women and children despite being a party to CEDAW and CRC.

Additional voluntary pledges and commitments were generally absent from all Working Group reports. However, Kuwait, Laos, and Lesotho included such commitments in their respective national reports prior to the UPR session, which were referred to in the outcome report.¹⁹

NGO ENGAGEMENT

As with previous sessions, NGO engagement varied greatly. The OHCHR compilations of stakeholder information included submissions ranging from just three organisations (Grenada) to 29 (Belarus) with the average number of submissions at about 14.²⁰ In almost all cases, the bulk of civil society submissions were from international NGOs, the exceptions being Spain, Lesotho, Sweden, and Belarus.²¹ Out of all stakeholder reports, only three included submissions from national human rights institutions (NHRI).²²

Only two NGO side events were held during the 8th session, in regard to Guinea, Kenya and Belarus. The side event on Kenya was particularly well organised, featuring a panel consisting of representatives from the Kenya National Commission on Human Rights (the NHRI), and several domestic NGOs. A document prepared by the Kenya Stakeholders Coalition for the UPR²³ was distributed that highlighted 'key human rights concerns in Kenya for purposes of the UPR process'. While only two States took the floor during the event (Hungary and Norway) they both raised concerns and asked questions on

18 These included recommendations to criminalise violence against women (by Israel), to review and amend laws to ensure gender equality and equal access for women to their social and economic rights (by the Netherlands), to take measures to promote women's participation in the judiciary, and the public administration (by Greece and the Netherlands), and to end discriminatory provisions in the housing programme (Norway). It was not surprising that Kuwait rejected recommendations on reforming the nationality law to allow women to pass nationality to their children as it has entered a reservation to CEDAW in this regard.

19 Commitments by Kuwait and Lesotho were relatively specific, while commitments by Laos were vague and general.

20 The number of organizations submitting stakeholder information varied as follows: 0-5 (Lesotho, Guinea-Bissau, Grenada), 6-10 (Kiribati, Guinea, Guyana, Kuwait), 11-15 (Kyrgyzstan, Laos, Spain, Armenia, Sweden), 16-20 (Kenya), 21 or more (Turkey, Belarus).

21 Submissions by international organizations as a rounded percentage of total stakeholder submissions, in descending order: Grenada (100%), Guyana (88%), Guinea (86%), Kyrgyzstan (80%), Kuwait (80%), Armenia (77%), Turkey (76%), Kiribati (75%), Guinea-Bissau (75%), Kenya (68%), Laos (64%), Lesotho (50%), Belarus (48%), Spain (46%), Sweden (43%).

22 Spain, Kenya, Sweden.

23 A group of 97 NGOs in Kenya facilitated by the Kenya National Commission on Human Rights.

issues that they later presented during Kenya's review.²⁴ The side event on Kenya could provide a model for other NGOs, NHRIs, and stakeholder coalitions in the future.

THE SPEAKERS' LIST

The time limitation set on the UPR review prevented States from participating in eight of the 15 reviews.²⁵ As with the review of Qatar in the 7th session, the review of Kuwait witnessed a large number of States taking the floor to praise its human rights record, or merely present mild recommendations.

In an attempt to find a solution to the list of speakers problem, at the Council's Bureau meeting in February 2010 the President suggested a new way forward. Under the proposed system, States would inscribe themselves on the list of speakers, the list would then be put in alphabetical order, and a random starting point on the list would be chosen. The proposal was however abandoned. The issue was again not dealt with at the following Bureau meeting in May, at the request of the African Group. At the closing of the 8th session, the President of the Council publically lamented 'that the various attempts by the Bureau to find a solution' were unsuccessful. Additionally, the informal and entirely non-transparent practice of trading spots on the speakers list is raising potential concerns about politicisation of the UPR process.²⁶

ACTIONS ON UPR REPORTS AT THE COUNCIL'S 14TH SESSION

At the 14th session of the Council in June 2010, 16 reports from the 7th session of the UPR were considered and adopted. The adoptions were for the most part routine, with the expected exception of Iran. Iran failed to provide further explanation for those recommendations it had rejected during the 7th session on the grounds that they were 'inconsistent with the institution-building text and/or not internationally recognized human rights'. Around 20 States were wished to comment on the outcome of the UPR of Iran, with only half being able to do so. Some States, including the United States expressed serious concerns about the situation in Iran and its continued failure to cooperate with UN mechanisms. This led Iran to accuse the US of advancing 'malicious political objectives' and of being full of 'prejudice, racism and phobias'. In turn, Iran was rebuked by the President of the Council and told to focus on the UPR of Iran only. The adoption largely looked to make a farce of the UPR process. However, a good number of NGOs were able to critically comment on the UPR outcome on Iran, largely by physi-

cally out-running government sponsored NGO representatives to get onto the restricted speakers' list.

In a positive development, the President of the Council made attempts to ensure clear responses to recommendations. For example, in regard to the adoption of the Working Group report on Bosnia and Herzegovina, a series of recommendations marked as 'partially accepted' were clarified as 'already implemented or in the process of implementation'. Unfortunately this did not prevent States from merely 'noting' recommendations, such as in the case of Fiji which, after a request for clarification from the President, 'noted' four recommendations that had been previously marked as 'impractical'.

In the general debate on the UPR that took place on 11 June during the Council's 14th session, concerns over the list of speakers again dominated discussion, with the United States calling the current system 'untenable and undignified'. Another major concern was raised in regard to recommendations not being clearly accepted or rejected (leading to the unconstructive practice of 'noting' a recommendation) and the common problem of providing no justification when a recommendation is rejected. The interactive dialogue during State reviews was also described as 'not interactive' by Singapore, which also encouraged States to better attend UPR sessions and send higher level delegates with the authority to participate dynamically.²⁷ Many other States also took the opportunity to present progress they had made on UPR recommendations since their own reviews.²⁸ Despite concerns raised, the general debate showed that States from all regions continue to consider the UPR a valuable process. ■

24 Hungary raised issues surrounding constitutional reform, and Norway raised its concerns over protection of human rights defenders.

25 Number of States unable to participate in descending order by State under Review: Kuwait (22), Turkey (21), Belarus (20), Kenya (15), Laos (9), Spain (6), Sweden (6), Kyrgyzstan (3).

26 During the review of Laos, due to an apparent misunderstanding with the Council President, it was made clear that Iran and China had traded their spots on the list. The issue of trading spots was also referred to during the Council's debate on item 6 at its 14th session, for more information, see <http://bit.ly/afdlIB>.

27 An issue that was raised by ISHR during an intervention at the Council's 13th session, see <http://bit.ly/9RlnFm>.

28 France, Netherlands, Morocco, Switzerland, Finland, Canada, Colombia, Bahrain.

PERMANENT FORUM ON INDIGENOUS ISSUES

The Forum's 9th session and evolution as a hybrid body in the UN's human rights system



Maori group from New Zealand.

Richard Sihamau

STATE SUPPORT FOR THE DECLARATION ON INDIGENOUS RIGHTS GROWS

The 9th session of the Permanent Forum on Indigenous Issues¹ (the Forum) opened on 19 April in New York to a surprise announcement from the New Zealand Government that it had reversed its position on the UN *Declaration on the Rights of Indigenous Peoples* (the Declaration) and would support it.² The estimated 2,000 indigenous people, NGOs, States, and UN agencies in attendance welcomed the news with a rousing standing ovation. The next day, the United States announced it would begin consultations with indigenous peoples to review its position on the Declaration. This means that all four States that voted against the adoption of the Declaration in the General Assembly in 2007 now either support it, or are actively reviewing their position; several others are yet to express a view.³

SPECIAL RAPPORTEUR ON INDIGENOUS PEOPLES: SUPPORT FOR THE DECLARATION SHOULD NOT BE QUALIFIED

In his response to the increasing State support for the Declaration, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (the Special Rapporteur), Mr James Anaya, welcomed the change of heart by Australia and New Zealand, but sent a pointed message to Canada and the US. He advised that any future statements of support should 'be informed by the spirit and objectives of the Declaration' as well as the practical challenges facing indigenous peoples. This in turn prompted the Forum to recommend that Canada and the US 'work in good faith with indigenous peoples for the unqualified endorsement and full implementation' of the Declaration.⁴

1 Created in 2000, the Permanent Forum on Indigenous Issues is an advisory body to the UN Economic and Social Council (ECOSOC) and is composed of 16 independent experts. Eight are nominated by governments and eight by indigenous peoples. It addresses indigenous issues in the areas of economic and social development, environment, health, human rights, culture, and education. In 2008, the Forum expanded its mandate to include responsibility to 'promote respect for and full application of the Declaration and to follow up the effectiveness of the Declaration'. According to its mandate, the Permanent Forum provides expert advice to ECOSOC and to UN programmes, funds, and agencies; raises awareness about indigenous issues; and promotes the integration and coordination of activities relating to indigenous issues within the UN system. More information is available from the Forum's website: <http://bit.ly/asBp7q>.

2 The New Zealand Government's statement included a number of reservations to its support of the Declaration. More information is available at <http://bit.ly/aE76sp>.

3 Australia, Canada, New Zealand, US voted against the Declaration. Eleven States abstained, but of these, Colombia and Samoa have since come out in support of the Declaration. Azerbaijan, Bangladesh, Bhutan, Burundi, Georgia, Kenya, Nigeria, Russian Federation, Ukraine have not revised their positions.

4 Para.92 of the report of the Forum's 9th session, available at <http://bit.ly/9YPyBe>.

Following a comment from the Indigenous Youth Caucus⁵ that the Declaration was a 'potentially empty instrument', the Special Rapporteur remarked that this had 'struck fear' in his heart and should spur States to into action to address the 'deep, systemic and widespread' nature of the violations indigenous peoples still experience.

There is a well-established practice of the Special Rapporteur holding an interactive dialogue with the Forum each session. At this session, Mr Anaya developed an additional informal component to his participation. In advance of the session on the Forum's website, he advised that he would be available for informal appointments with indigenous participants to hear about human rights violations. In response to the demand from participants, the Special Rapporteur agreed to offer this opportunity at the Forum's next session. Although this informal approach is an ad hoc measure, it was welcomed by indigenous peoples. Many of them have been critical that the Forum's mandate does not equip it to deal with individual or group complaints. They also complained that it has failed to develop a mechanism to ensure reports of serious violations are redirected to other UN mechanisms better equipped to respond to them.

NEW METHODS OF WORK: THE FORUM EMBARKS ON COUNTRY VISITS

Just as the Declaration is establishing itself on a more solid footing, so too is the Permanent Forum. New and innovative methods of work are being used to give effect to the Forum's mandate to 'promote the full application of the Declaration' (Article 42). A significant new approach evident this session was the Forum's country visits to Bolivia and Paraguay to investigate forced labour and servitude in indigenous communities in the Chaco region.⁶ The effectiveness of these visits was increased by the inclusion of the relevant UN country teams, as well as specialised UN organisations like the International Labour Organisation and the Office of the High Commissioner for Human Rights. This has added a new and potentially far-reaching dimension to the way the Forum will work with States and the UN system in the future.

Each visit resulted in a report from the Forum that included comprehensive, time-bound recommendations for both States, as well as recommendations regarding the technical assistance the UN should provide to them. Each State submitted a

response, which were included among the documentation for the 9th session.⁷

Although a number of other parts of the UN system undertake country visits, the Forum has distinguished itself by also incorporating a follow-up mechanism from the outset. This took the form of an in-depth dialogue during the Forum's current session that involved Forum members, representatives of each State, members of the respective UN country teams, and indigenous peoples from the affected communities. Not only did this shine a much needed spotlight on the grave human rights violations these indigenous communities face.⁸ It also demonstrated how the Forum can act as an intermediary to bring these groups together, in a spirit of cooperation, to develop a common plan of action to address the violations, and monitor its implementation.

The Forum's in-depth dialogue with the States bore many of the hallmarks of a review of a state party by a UN treaty body. However there were some key differences, notably that indigenous community leaders were able to take an active part and directly challenge statements made by the States. Input from UN agencies was also publicly presented (rather than being delivered in a closed meeting); and the recommendations issued by the Forum were addressed to the States, indigenous communities and UN country teams (rather than just State parties).

The in-depth dialogue involving the indigenous leaders also revealed how useful the Forum's intervention had already been in their communities, as well as its potential for indigenous peoples to hold their governments more accountable in the future. Indigenous leaders emphasised how the country visits had motivated their governments to search for solutions and begin working with their communities on long-standing grievances and abuses. However, they also presented their own perspectives on the State performance since each visit in 2009, pointing out where bottlenecks and inaction had set in, and making their own recommendations to the State representatives. A key recommendation was that each State should submit a report to the next session to update the Forum on the implementation of its recommendations.

The challenge for the Forum is to remain engaged with all parties in Bolivia and Paraguay to ensure progress continues, a goal that it has committed to.⁹ This is not only a challenge in political terms, it is also a significant time and resource chal-

⁵ The caucus is an informal group of indigenous youth from around the world who are registered participants at the Forum. Although its membership differs each year, they usually meet daily to discuss issues, draft statements and make recommendations that are submitted to the Forum. Their voice carries considerable weight with Forum members and participants alike.

⁶ The Forum members who visited both Bolivia and Paraguay were: then Forum Chairperson, Ms Victoria Tauli-Corpuz, and members Mr Lars Anders-Baer, Mr Bartolomé Clavero and Mr Carlos Mamani. They were assisted by two officials of the UN Department of Economic and Social Affairs (DESA) and accompanied by a range of representatives from UN agencies working in Bolivia, Paraguay and Peru.

⁷ All documentation for Forum's the 9th session is available at: <http://bit.ly/9YPyBe>

⁸ The reports of the country visits confirmed violations of international human rights law including forced labour and servitude; child labour; systematic violence against indigenous peoples; restrictions on freedom of association and movement; deprivation of territory, lands and resources; food insecurity; and lack of access to justice and healthcare. See E/C.19/2010/6 and E/C.19/2010/5 available at <http://bit.ly/9YPyBe>

⁹ Paras. 70 and 90 of the Forum's report of the 9th session.

lenge for the Forum, which has an expanding work load and a very limited budget.

However, if tangible results are achieved, it may well prove to be an effective way of directly engaging more States in the work of the Forum, as well as tackling some of the worst human rights violations. The potential for the Forum to produce more targeted and concrete recommendations as a result of this approach has been welcomed by a range of UN agencies, many of whom had previously struggled to identify how they could give effect to the Forum's more general recommendations. Providing other parts of the UN human rights system (such as treaty bodies, special procedures, and the universal periodic review) are alerted to the Forum's recommendations, there is also scope to hold States accountable for their follow-up in a range of processes outside the Forum itself.

It remains to be seen how eager States will be to invite the Forum to undertake these investigative visits. They are comparable to the country visits undertaken by special procedures which are not renowned for their popular demand.¹⁰ However, in an encouraging sign, the Forum has already undertaken a third visit following an invitation from Colombia, and this will be the topic of an in-depth dialogue at its next session.

It was also encouraging that over 20 States (the largest number to date) took part in the discussion on the special theme of the 9th session: 'Indigenous peoples: development with culture and identity - Articles 3 and 32 of the UN Declaration on the Rights of Indigenous Peoples'.¹¹ Nonetheless, in its informal dialogue with States, several States were critical of the limited opportunities in the programme for 'spontaneous dialogue' with indigenous participants.¹² This is a long-standing problem that has proven difficult to address given the session only lasts two weeks, the Forum's work load continues to grow, and several thousand indigenous people participate each year.

IMPLEMENTING THE DECLARATION: THE ROLE OF TREATY BODIES

For the first time, the Forum directed a number of detailed and concrete recommendations to the UN treaty bodies.¹³ These are intended to draw States' attention to their treaty

obligations in respect of human rights of indigenous peoples (as set out in the Declaration), and the fact they should be reporting on these matters under the treaties. This could prove an effective means of countering the misperception that the Declaration is 'aspirational,' rather than much of it being grounded in binding international human rights obligations.

For example, the Human Rights Committee (the Committee), which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR), was asked by the Forum to 'require' States parties to report on how they are giving effect to indigenous peoples' right to self-determination under Article 1 of the ICCPR and Article 3 of the Declaration. The Forum also asked that States 'consult and cooperate' with indigenous peoples when drafting their reports.¹⁴ Further, the Committee was encouraged to update a range of its general comments that pre-date the adoption of the Declaration, such as General Comment no. 12 on the right to self-determination. The Forum also made itself available to 'work closely' with the treaty bodies to assist them with operationalising the Declaration,¹⁵ and issued a standing invitation to several of them to participate in future sessions.

Given the role of treaty bodies in developing jurisprudence and interpretation of international human rights law, this direct cooperation between the two entities could be mutually beneficial. It would allow for sharing of perspectives, experiences, and best practices. Together with the Forum's more established practice of encouraging UN agencies, and more recently UN country teams, to use the Declaration to inform their work with indigenous peoples, this cooperation with the treaty bodies could add an important new dimension to the goal of improving indigenous peoples' daily lives.

INDIGENOUS PEOPLES' RIGHTS IN AFRICA: A MORE CONCRETED RESPONSE NEEDED

Concern about the alarming level and serious violations African indigenous peoples experience was prominent throughout the session. It was a point emphasised by: the Special Rapporteur and the Chairperson of the Expert Mechanism on the Rights of Indigenous Peoples;¹⁶ the Congolese member of the Forum;¹⁷ and the African Caucus.¹⁸ All speakers emphasised that tradi-

10 For an overview of visits undertaken and requested, see <http://bit.ly/98NL9N>.

11 The theme was particularly relevant to the upcoming High-level summit at the General Assembly on the Millennium Development Goals. Recommendations related to the MDGs are in paras. 14, 15, 39, 46, 49, 62, 123, 124, 162 of the Forum's report of the 9th session. The special theme also prompted the Forum to recommend to the UN Development Programme (UNDP) that all of its Human Development Reports 'should reflect indigenous peoples' views of development' and be written 'with the participation of indigenous peoples themselves' (para. 36 of the Forum's report of the 9th session).

12 Switzerland was frustrated that the dialogue segments require all speakers (States, indigenous peoples, UN agencies) to join the speakers' list, and all interventions are prepared statements. Australia, Brazil, Thailand shared this frustration.

13 The Forum has made recommendations to treaty bodies previously, but they have been quite general in scope.

14 Paras. 42, 49 and 50 of the Forum's report of the 9th session.

15 The treaty bodies dealing with: civil and political rights; economic, social and cultural rights; children's rights, and racial discrimination. Para. 49 of the Forum's report of the 9th session.

16 Both experts drew attention to their cooperation with the African Commission on Human and Peoples Rights and its Working Group on indigenous populations/communities in Africa.

17 Ms Liliane advised that although awareness of the adoption Declaration was growing in Africa, States were taking their time to incorporate it into domestic law and policy, even though atrocities still occurred and most indigenous peoples suffered extreme poverty and marginalisation. She spoke of Africa being 'taken over' by corporations that neither respected indigenous land and resource rights, nor their right to free prior informed consent for development on their land.

18 The caucus is an informal group of African indigenous peoples who are registered participants at the Forum. During the session they

tional practices and land rights of Africa's indigenous peoples, if they were recognised at all, frequently come into conflict with the objectives and policies of States, corporations, and the surrounding dominant societies, threatening the very survival of indigenous cultures and communities. Namibia¹⁹ encouraged the Forum to engage in greater depth with the African Commission on Human and Peoples' Rights and to develop more direct and regular contact with the States of the region. Further, Namibia recommended the Forum work with indigenous organisations in the region to build their capacity, as 'States alone cannot do it all'.

Although a handful of recommendations in the outcome document of the session noted the concern about the situation in Africa and encouraged UN agencies to direct resources and capacity-building programmes to the region,²⁰ this is not sufficient to address the level of need.

FUTURE WORK: CRITICAL ISSUES ON THE HORIZON

Forum members are increasingly undertaking research projects on a range of complex problems that confront indigenous communities. This session there were ten such reports on issues ranging from the 'doctrine of discovery',²¹ to indigenous peoples and corporations, and the impact of the global economic crisis on indigenous communities. The consideration of these reports took up much of the second week of the session. Given the breadth of the problems they address, each of these issues will be the subject a further report at the next session. In addition, six new studies have been commissioned for the 10th session.²² The Forum also agreed to hold a three-day expert meeting in January 2011 on 'indigenous peoples and forests'.²³

meet to discuss issues, prepare statements and make recommendations to the Forum.

19 Namibia included an indigenous chief in its official delegation to the Forum, and submitted a report to the both the eighth and 9th sessions.

20 Paras. 49, 73, 110 and 132 of the Forum's report of the 9th session.

21 This doctrine, also known as the 'Doctrine of Christian Discovery' has its roots in a 'papal bull', a legal decree issued by the Pope in 1455. The Holy See firmly rejected this suggestion when the report was presented at the 9th session. The doctrine allowed the Christian states and monarchies of Europe that 'discovered' land, territory, and resources to assume sovereignty over them, providing the inhabitants were 'heathens' or 'pagans'. The doctrine resulted in the dominance of indigenous peoples in Africa, Asia, and North and South America, as well as centuries of virtually unlimited resource extraction from their traditional territories. This in turn resulted in their dispossession, impoverishment, and the myriad of problems they face today. See E/C.19/2010/13 available at <http://bit.ly/ccR6oa>.

22 Paras. 18, 139-144 of the Forum's report of the 9th session. The studies will cover: indigenous peoples' model of development; impact of land management practices and climate change on reindeer herding; forced labour; forests; international criminal law and the judicial defence of indigenous peoples' rights; and the Chittagong Hill Tracts Accord.

23 Paras. 153-161 of the Forum's report of the 9th session. This theme was the focus of a half-day discussion during the 9th session of the Forum. The expert meeting will bring together the Forum's work on a range of related issues, including extractive industries on indigenous lands, climate change mitigation and adaptation strategies, carbon offset schemes in forests, biodiversity conservation and in-

The 10th session of the Forum will be held in New York from 16 to 27 May 2011. It will review recommendations from previous sessions related to the themes: economic and social development; environment; and free, prior and informed consent.²⁴ The half-day discussion will be on indigenous peoples' right to water. The Forum will also focus on the situation of indigenous peoples in Latin America and the Caribbean. Looking further ahead, the special theme for the 11th session in 2012 will be 'The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the Declaration)'. ■

indigenous traditional knowledge.

24 At the 6th session of the Forum (2007), it decided that each even numbered year would hold a thematic dialogue, and each odd year would review a number of recommendations from previous sessions.

COMMITTEE AGAINST TORTURE

Ineffective accountability mechanisms in Syria, Jordan, and Yemen



REUTERS / Darrin Zammit Lupi

The Committee against Torture (the Committee) held its 44th session in Geneva from 26 April to 14 May 2010. The Committee considered the reports of seven State parties to the *Convention against Torture, and other cruel, inhuman or degrading treatment or punishment* (the Convention): Austria, Cameroon, France, Jordan, Liechtenstein, Switzerland and Syria. The Committee also heard replies from Yemen to the provisional concluding observations adopted by the Committee during the 43rd session following a review in the absence of the State delegation.

Although to different degrees, States generally engaged cooperatively with the Committee. Austria and Liechtenstein were very forthright in their engagement, even in instances where they chose to disagree with the Committee. France and Switzerland gave thorough responses to most questions, but seemed selectively vague on problematic issues. Cameroon was open with the Committee, but lacked factual information to answer questions effectively. A final pattern of engagement was exhibited by the delegation from Jordan, which demonstrated a desire to cooperate, but did not respond directly to Committee members' questions, using much of its time on long and detailed but general statements. Only Syria argued that some of the Committee's questions fell outside the scope of its mandate.

NGO AND NHRI PARTICIPATION: WORRYING ATTEMPTS AT INTIMIDATION

The Committee continued its established practice of meeting with NGOs and national human rights institutions (NHRIs) concerned with each State examined during the session. NGOs made presentations to the Committee on six of the eight States examined: France, Cameroon, Switzerland, Jordan, Syria and Yemen.¹ Thirty-nine NGO reports were submitted to the Committee prior to the session. NGOs were especially active in reporting information on the situation in France (11 reports), Syria (8 reports), Switzerland (6 reports), and Jordan (6 reports), while only one NGO reported information on Liechtenstein and two reported on Yemen.

The Committee is facing serious challenges due to its very heavy workload. This is unfortunately also affecting its engagement with NGOs and NHRIs. It seemed somewhat unfair, even if due to time constraints, that the time given to NGOs varied between more than one hour (on France) and around 15 minutes (on Cameroon). The Committee at this session decided that in the future only the country rapporteurs would meet with NHRIs.

It is of serious concern that NGO representatives from Yemen who attended the 43rd session reported being harassed by the Government in the time since the review. Members of the Government delegation reportedly also attempted to photograph

¹ The Committee was disappointed that no NGOs from Austria and Liechtenstein presented information.

NGO representatives present at the 44th session. The Committee addressed the serious issue of intimidation of human rights defenders in its concluding observations by calling on the Government to ‘ensure that all persons, including those monitoring human rights, are protected from intimidation or violence as a result of their activities’. It also asked the Government to ‘ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts.’ It remains to be seen how the Committee may follow up on alleged reprisals against persons that cooperate with it.

NGOs were also invited to brief the Committee during the discussion on follow-up to concluding observations and individual complaints, which is a welcome new development. However, the economic barriers to participation faced by non-Geneva based NGOs highlights the challenge for the Committee, secretariat and Geneva based NGOs to ensure that the process is inclusive.

INSTITUTIONAL DEVELOPMENTS

‘The dictatorship of time’²

The fact that the Committee against Torture does not have sufficient time to carry out its mandate was a recurring issue at the 44th session. In the meeting with State parties, Mr Grossman noted that the Committee does not have the capacity to examine reports at the rate they are submitted. The Committee has received 19 reports that are pending consideration, and constitute a backlog requiring three additional sessions to reverse. The Committee also faces a backlog of nearly 100 pending individual complaints. As Mr Marino noted, in many of these cases individuals are waiting in detention for a decision to be made.

Activities that the Committee has not been able to engage in because of resource and time constraints include the development of more General Comments, and (most urgently), investing more time in each country examination.³ In order to resolve the latter concern, the Committee decided to review six instead of seven States per session in the future. In addition, it repeated its request to the General Assembly for additional resources allowing for extended sessions in 2011 and 2012.

Working methods

At the meeting with State Parties on 27 April, the Committee explained its new optional reporting procedure, adopted in May 2007.⁴ Liechtenstein and the US were supportive of the

new procedure. The procedure was developed to assist States in the production of timely and focused reports, though Mr Grossman raised concerns that it will require more preparation time from the Committee. The Committee is the only treaty body to apply such a procedure, but the Human Rights Committee is in the process of developing a similar method. The 11th Inter-Committee Meeting (ICM) in June this year discussed this new procedure at length.⁵

During the 44th session, it was problematic that States’ responses to the list of issues were not translated from the original language, except for Jordan’s response, which is available in English and Arabic. This is an issue hampering the work of the treaty bodies in general.

Cooperation with other bodies such as the special procedures of the Human Rights Council, the European Committee for the Prevention of Torture and the UN Voluntary Fund for the Victims of Torture continued to be a major theme of discussion in the Committee. This manifested itself through both discussions of institutional developments and cross-referencing these bodies’ findings and recommendations during the examination of State reports.

Membership: latest member is no stranger to the Committee

The 44th session of the Committee saw the induction of one new member, Mr Alessio Bruni, who has previously served as Secretary of the Committee for thirteen years. Mr Bruni participated actively in the session, drawing on his previous experience with the Committee’s work.

Mr Claudio Grossman was re-elected as Chairperson for another four-year period. Mr Grossman plays an active leadership role within the Committee, and his re-election marks a vote of confidence.

Follow-up

The 44th session included discussion of follow-up to the Committee’s previous work, both on past concluding observations and to individual complaints.⁶ Ms Gaer, the Rapporteur on follow-up to conclusions and recommendations, presented analysis on State participation, follow-up procedures and the impact of recommendations.⁷ According to her findings, of the 66 States due to respond to the follow-up procedure, 50 have provided information on time. There is a correlation between States that are late in submitting their periodic reports and those that do not respond to this procedure. Ms Gaer also conducted

² Mr Grossman often referred to the ‘dictatorship of time’ as being the only dictatorship affecting the work of the Committee.

³ Currently, the Committee spends five hours to examine one State report. This time did generally not allow for sufficient dialogue and for adequate responses to be provided by the State. Meetings also often ran over into time scheduled for other activities, such as meetings with NGOs or NHRIs. The Chairperson invited delegations to submit additional information in writing within 24 hours after concluding their replies.

⁴ According to the new procedure, the Committee will submit a list of

issues to each State party one year prior to the expected submission of its periodic report. The State party’s response to these questions will replace its periodic report.

⁵ See the article on the ICM in this edition of the *Human Rights Monitor Quarterly*.

⁶ Articles 19 and 22.

⁷ The report will be available in the annual report of the Committee. See also <http://bit.ly/c3BN6z>.

research on the types of recommendations made by the Committee. This revealed both the most frequently addressed issues and those that are specific to a particular region, such as compliance with Article 3 (*non-refoulement*)⁸ in Europe, or the investigation of disappearances in Latin America. Broadly, Ms Gaer's report concludes that CAT is making more recommendations and asking for more follow-up than in the past. She was also concerned with the quality of States' engagement with the Committee. According to Ms Gaer, no State replied fully to every question posed by the Committee.

Mr Fernando Marino Menendez, the Rapporteur on follow up to individual communications, presented an update on developments since the previous session.⁹ He emphasised that Canada, Serbia and Montenegro, and Tunisia have not responded to requests for follow-up information on pending cases. Mr Marino focused most of his presentation on the case of Mr Ahmed Hussein Mustafa Kamil Agiza, an Egyptian national extradited from Sweden to Egypt in violation of Article 3 of the Convention. Positive developments in the case include Sweden's new domestic legislation, the Aliens Act, which recognises the decisions of international tribunals, including the CAT. Yet Sweden has not granted Mr Agiza a residence permit and his release has not been secured, thus the Committee decided to keep the case open.

An exceptional case: follow-up to review in absence of State delegation

At the 43rd session Yemen did not send a delegation for the Committee's examination of its report. Apparently it did not see the need for to attend the CAT examination after its review under the universal periodic review (UPR) in May 2009.¹⁰ The decision to review Yemen in the absence of the delegation had enjoyed the support of all Committee members except Mr Wang, who refused to participate in the review.¹¹ At the previous session, the Committee adopted provisional concluding observations and invited the State to submit written comments. It adopted the final concluding observations at the 44th session after hearing oral replies from the State delegation, which decided to turn up for this unusual process.¹² During its one-hour reply, the delegation of Yemen merely read prepared statements that lacked concrete information. The atmosphere of the review was stiff and the Committee did not respond or engage in dialogue with the delegation.

8 *Non-refoulement* refers to the principle that no individual can be expelled to a country where he or she is at risk of torture.

9 The report will be available in the annual report of the Committee. See also <http://bit.ly/c3BN6z>.

10 See ISHR's *Human Rights Monitor 2009* at p.54. Available at www.ishr.ch/hrm.

11 The review took place in accordance with rule 66 of paragraph (2) (b) of its rules of procedure.

12 The Committee had only reviewed one other State in the absence of a delegation before (Cambodia during the 30th session in 2003).

Subcommittee on Prevention of Torture

The Subcommittee on Prevention of Torture (SPT), presented its third annual report to the Committee. The SPT is an expert body with a mandate to visit any place of detention in States that have ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Its work is carried out in strict confidentiality. A major development in the SPT is its upcoming expansion from 10 to 25 members due to increased ratification of OPCAT. The SPT is interested in seeing a more diverse representation of professional expertise among its members, including doctors, psychologists, police, lawyers and experts in detention centres. It will be up to State parties when electing the new members to ensure that this is considered. The SPT also expressed its hope for continued increased ratification of OPCAT, particularly by States in Asia and Africa.

The SPT conducted visits to Paraguay, Honduras and Cambodia during the period covered by its third report. Of the seven visit reports issued, three have been made public in accordance with OPCAT Article 16. The SPT's programme of work for 2010 includes visits to Lebanon, Liberia and Bolivia.

Other topics discussed were the working relationship of the Committee and the SPT. Both bodies are considering how better coordination of the timing of visits and preparatory processes could enhance their respective work. Committee members inquired as to how the SPT could share information with it from its country visits. The SPT was reserved in its response, arguing that confidentiality should not be seen as destructive and is essential for building the relationships that are critical to the SPT's preventative work. The SPT sees its added value in the fight against torture as identifying causes and high-risk environments in order to strengthen prevention.

THEMES

Legal status of torture

The Committee posed questions on the legal status of the Convention and other torture related domestic law to all States examined during the session. Of particular interest to the Committee was whether a definition of torture exists in domestic law and whether torture is criminalised specifically. The lack of a specific criminal provision proved to be one of the main concerns of the Committee in States where torture is not systematic such as France, Liechtenstein and Switzerland.¹³ In response to arguments from France and Liechtenstein that their legislation is sufficient, the Committee emphasised that a legal distinction between torture and other crimes is important. It can ensure that torture is not subject to a statute of limitations and that perpetrators receive appropriate sentences. It can also contribute to raising public awareness and recognition of the crime of torture.

13 Austria was the only State at the 44th session incorporating a definition of torture into its criminal code.

The Committee was also generally interested in the practical application of existing domestic legislation, asked for citations of specific cases in which laws were applied, and raised questions on exceptions in law and practice.

Combating impunity - prevention, safeguards and accountability

The Committee stressed the importance of three overlapping strategies in combating the scourge of torture; accountability, prevention and safeguards.¹⁴ It expressed concern about the effectiveness of accountability mechanisms during the examination of States where torture and related crimes, such as arbitrary detention, extrajudicial executions, and enforced disappearances, seemed to occur with impunity.¹⁵ For instance, the Committee questioned the independence and effectiveness of investigative and judicial process in Jordan, given the delegation's claims that 'no single incident' of torture had occurred in the past three years. Committee members called on States to establish effective investigative processes, criminal sanctions, and complaint and redress procedures for victims. In a particularly memorable moment, Mr Grossman asked the Syrian delegation how the penalty for torture in Syria compared to the penalty for stealing a chicken. Concrete examples of the application of sanctions were of great interest to the Committee.

Secondly, the Committee was concerned with the status of legal safeguards against torture in the examination of all States, and particularly whether detainees are guaranteed full access to a doctor and lawyer throughout their detention. Finally, the Committee encouraged preventative measures such as training for law enforcement officers, monitoring, and human rights education. Of the States reviewed all were asked to provide information about visits to prisons by independent monitoring mechanisms, including international ones.

In States where torture occurs on an exceptional basis, the Committee was concerned about legalised exceptions to the implementation of safeguards and accountability mechanisms. For instance, the Committee raised questions about exceptional circumstances when access to a lawyer is denied (Austria, France, Liechtenstein). The Committee was also concerned with Liechtenstein's revision of the law regarding the right to access a doctor. The new law defines access to a doctor as a procedural requirement but no longer a legal right.

Non-refoulement and asylum procedures

The principle of *non-refoulement* continued to be a major issue of discussion and particularly during the examinations of Austria, France, Liechtenstein and Switzerland. Particular attention was given to how States determine the risk of torture in a destination country. The Committee objected to the increasingly common State practice of developing a 'safe list' of countries

to which a detainee may be extradited without individual consideration of the case.

Mr Marino and other Committee members emphasised the importance of ensuring that asylum seekers can appeal asylum decisions, particularly in cases related to national security (France) or highly criminal persons (Switzerland), where States sometime restrict the right to appeal. The Committee was also concerned about detention of asylum seekers, in violation of international obligations (Switzerland, Liechtenstein, France). Finally, the Committee was interested to learn about investigations of cases of mistreatment and emphasised the importance of monitoring during expulsion procedures to prevent the disproportionate use of force. The death of Nigerian asylum seeker Joseph Ndukaku's Chiakwa during his deportation from Zurich airport raised many questions about Switzerland's record in this regard. Regrettably, this issue was only scarcely addressed by the delegation.

Detention

The issue of detention conditions was discussed within the framework of prevention mechanisms (such as independent monitoring of detention centres) and safeguards (such as video cameras in cells). States' negative detention practices fell largely into two camps. In some States poor detention conditions and violations of detainee's rights are widespread and systematic.¹⁶ In the examination of Cameroon the Committee noted severe prison overcrowding, prolonged detention, and lack of respect for basic rights.¹⁷ In other States, infrequent cases of detainee mistreatment illustrate discrimination against particular groups or the justification of violations in exceptional circumstances.¹⁸ In France's examination, the Committee requested more information about both the circumstances surrounding deaths and ill treatment of detainees, and proceeding investigations. The Committee was also concerned about over-crowded detention centres in France's territories overseas.

Vulnerable groups

The Committee continued to pay particular attention to torture and cruel, inhuman and degrading treatment committed against vulnerable groups, by both State and non-State actors. Thus violence against women and children, including rape, female genital mutilation, honour crimes, domestic violence, trafficking, corporal punishment and low legal marriage age were addressed repeatedly. These issues were central to the Committee's examination of Jordan, Syria and Yemen. While Jordan denied most claims about these practices, Syria argued that women's issues do not fall within the Committee's mandate. Abuse of other powerless groups such as persons with disabilities, persons in psychiatric institutions, migrant workers, and domestic workers was also included in the discussion. ■

14 For instance, safeguards such as the right to access a doctor may serve to prevent torture and function as an accountability mechanism where torture has occurred.

15 Yemen, Jordan, Syria.

16 Cameroon, Jordan, Syria and Yemen.

17 Prisoners are often chained and pre-trial detention is known to exceed a detainee's longest possible sentence.

18 Austria, France, Liechtenstein and Switzerland.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Discrimination against women a common obstacle to enjoyment of economic and social rights



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Girls participate in classes being held at an all-girls school in Afghanistan, one of the five States examined by the Committee in May 2010.

The Committee on Economic, Social and Cultural Rights (the Committee) held its 44th session in Geneva from 3 to 21 May 2010. It reviewed reports from five State parties to the *International Covenant on Economic, Social and Cultural Rights* (the Covenant), namely Afghanistan, Algeria, Colombia, Kazakhstan, and Mauritius. The Committee focused on: the legal status of the Covenant in the domestic legal system, women's human rights, the right to work, the right to an adequate standard of living, and the right to health.

While all States seemed to approach the dialogue with the Committee in a spirit of co-operation, the delegation of Colombia, and to some extent Kazakhstan, seemed to lack the necessary expertise to provide the Committee with pertinent information and specific answers to its questions. While delegations were all high-level, Kazakhstan had the largest delegation (18 members) and Colombia had the highest representation of women (eight out of 12).

NGO PARTICIPATION

On the first day of the session, and prior to consideration of State reports, the Committee was briefed by NGOs in relation to all of the countries examined.¹ The briefing was somewhat dominated by Colombian NGOs² (six of them took the floor), who took up two thirds of the time allocated to NGOs. In a very well organised and comprehensive briefing, they highlighted a range of concerns including discrimination against women in society and in the job market; the situation of indigenous peoples, people of African descent, and people living with HIV/AIDS; and problems of internally displaced persons.

The topic receiving most attention during the NGO briefing was the increase in drug abuse, and related HIV/AIDS infections and growing crime and corruption. The International Harm Reduction Association, in association with local NGOs, presented information on drug abuse in all States being examined. While Committee member Mr Sa'di commented that too much focus was given to drug issues, the Committee highlighted these issues in all the countries but Algeria.

Several NGOs made valuable written submissions, some of which were taken up by Committee members during the reviews. The International Disability Alliance submitted information on all of the countries examined but the Committee only took up disability issues in Afghanistan, Kazakhstan, and Mauritius. The issue of corporal punishment only received attention in the cases of Afghanistan, Algeria, and Mauritius, although it had been highlighted in relation to all countries.

1 The NGOs were: International Harm Reduction Association, Colombian Coalition for Human Rights, Colombian Commission of Jurists, FIAN International, Coordinacion Regional del Pacifico Colombiano, Wayuu de Wepiapaa Indigenous Community, Seeds Group, Tamazgha, Collectif Urgence Toxida, Global Health Research Centre, International Disability Alliance and Afghan Council for Reconstruction and Development.

2 Also the number of NGO reports submitted to the Committee was highest for Colombia (eight reports), with six reports for Kazakhstan, four for Algeria and two for both Afghanistan and Mauritius.

THEMES

Status of the Covenant in domestic legal systems

A theme raised with every State being examined was the legal status of the Covenant in the domestic legal system. The Committee was particularly concerned with the lack of incorporation of the Covenant into domestic laws in several States and the fact that Covenant rights have not been invoked before domestic courts in Afghanistan, Algeria, Kazakhstan or Mauritius. It recommended that Afghanistan and Kazakhstan provide detailed information on relevant court decisions in their next reports. The Committee consistently referred to its General Comment No. 9 (1998) on the domestic application of the Covenant. The Committee also criticised Mauritius for not including economic, social and cultural rights in its Constitution. In the case of Colombia, the Committee requested that the State, in its next periodic report, provide information on the practical application of the Covenant as well as disaggregated data and relevant statistics on a comparative annual basis regarding measures taken to implement the rights enshrined in the Covenant.

Women's human rights

Issues relating to women's human rights and discrimination against women were brought up systematically by the Committee in each State examination, and particularly in that of Afghanistan. While noting Afghanistan's efforts to promote gender equality (e.g. a new law criminalising violence against women, a new minister for women's affairs, and an increase in the number of women in parliament to 28%), Committee members were critical of the inadequate realisation of economic, social and cultural rights for women. They were concerned about reports of violence against girls and female teachers, 'honour killings', and low representation of women in decision-making positions.

Committee member Ms Barahona Riera focused on women's human rights in many of the reviews. She was particularly concerned about the lack of specific provisions criminalising violence against women, domestic violence, and marital rape in Mauritius, Algeria, and Kazakhstan. In the review of Colombia, she focused on the alarming rate of sexual violence against women and girls by both members of the armed forces and illegal armed groups, and violence against women forcibly displaced by the conflict. The Committee also expressed concern that perpetrators of violence against women remain unpunished (Colombia, Afghanistan, Kazakhstan), and that traditional justice mechanisms in Afghanistan are not compatible with international human rights standards for protecting women.

In the cases of Afghanistan, Mauritius, and Algeria, the Committee highlighted laws which discriminate against women such as in relation to guardianship, inheritance, underage marriage and restrictions on movement outside the home (Afghanistan); discrimination in the areas of adoption, marriage, divorce, burial or devolution of property on death (Mauritius); and the prohibition

of marriage of Muslim women to non-Muslims, legal polygamy, and inheritance laws which unfairly favour men (Algeria).

Other issues discussed were lower literacy rates of women and low numbers of women in public and political life (Mauritius, Colombia, Algeria); sexual harassment in the workplace (Mauritius); human trafficking (Afghanistan, Kazakhstan) and sexual exploitation (Afghanistan, Mauritius); and low marriage age (Afghanistan, Colombia).

The right to work

Unemployment was a recurrent issue in all reviews, especially high levels of youth unemployment. Afghanistan was unable to quantify its unemployment rates due to lack of relevant and reliable labour statistics. With regard to Colombia, the high unemployment among indigenous communities was a concern. The Committee was skeptical that minimum wages ensure an adequate standard of living (Afghanistan, Algeria, Kazakhstan), and was concerned by the absence of a minimum wage in Mauritius. Another issue of concern was the disparity between wages of men and women (Afghanistan, Algeria, Colombia, Mauritius) and the concentration of women in low-wage and unskilled labour sectors (Kazakhstan, Mauritius).

The Committee expressed concern regarding the limitations on the right to strike (Algeria, Colombia, Kazakhstan) and the absence of a right to strike in the Labour Code of Afghanistan. Forced or compulsory labour was brought up with respect to Afghanistan, where persons have been subjected to forced or compulsory labour as punishment for holding or expressing political or ideological views, and Kazakhstan, where courts can sentence someone to forced labour.

Protection of migrant workers was exposed in the case of Mauritius, where migrant workers face difficult living and working conditions and risk deportation if they go on strike. The Committee was concerned that in Kazakhstan migrant workers in some sectors are often forced to work long hours for little or no remuneration and have their passports taken away to prevent them from seeking other work or leaving the country. The Committee also noted with concern the issue of child labour in several States and asked what they were doing to combat it (Afghanistan, Algeria, Colombia, Kazakhstan).

The right to an adequate standard of living

The Committee devoted significant attention to access to adequate housing, focusing on persons displaced due to internal conflicts who live in informal settlements with no running water or electricity or access to educational facilities (Afghanistan, Algeria, Colombia), and persons facing forced evictions without adequate compensation or alternative accommodation (Afghanistan, Kazakhstan, Algeria, Colombia). The issue of forced evictions came up the most with Colombia, where indigenous communities and people of African descent face forced evictions due to use of land for production of bio fuels and mining. In the case of Algeria, the Committee was

seriously concerned about housing shortage and the State's disproportionately low budget for housing (in 2010, it was 40 times smaller than that for national defence).

Poverty was an issue common to all State reviews, particularly in rural areas where people lack access to basic services such as drinking water, waste removal, sanitary facilities, and electricity (Afghanistan, Algeria, Kazakhstan, Colombia, Mauritius). Committee member Ms Bras Gomes was particularly concerned with high poverty rates among Mauritian Creoles, and the fact that the poverty rate among Colombians of African descent and indigenous peoples in Colombia is double that of the general population.

The right to health

The Committee was generally concerned about women's access to health services. It noted Afghanistan's and Colombia's high maternal mortality and morbidity as a result of lack of female health workers and access to health services in rural areas. The Committee found that provision of sexual health services were severely lacking in Colombia, Kazakhstan, Mauritius,³ and Afghanistan. It recommended that such health services be made more widely available and that sexual and reproductive education be provided in schools. The Committee also recommended that Mauritius de-criminalise abortion when the mother's life is at risk and where the pregnancy is a result of rape. It also requested Algeria, Mauritius, and Kazakhstan to provide additional information on sexual and reproductive health services in their next reports.

The Committee, presumably because of substantial written information from NGOs on drug issues, examined the negative effect of drug use on health in all States but Algeria (where no NGO submission had been made). It was particularly alarmed at the high level of drug consumption in Colombia and Mauritius and widespread drug production and drug trafficking in Kazakhstan,⁴ Colombia, Mauritius, and Afghanistan. The Committee also addressed related problems such as HIV/AIDS, corruption, violence, and internal displacement. The Committee relied heavily on the very specific recommendations made in the written submission of the International Harm Reduction Association with regard to Mauritius, which resulted in specific concluding observations on this topic.

Other issues touched upon were malnutrition (Colombia, Afghanistan), general access to health services (Colombia, Algeria); inadequacy of mental health services in Afghanistan; and Kazakhstan's forcible internment of psychiatric patients.

Other thematic issues

Throughout the review of States, the Committee focused on vulnerable groups. Issues relating to children, women, the dis-

abled, indigenous peoples, migrant workers, minorities, refugees and asylum seekers, and internally displaced persons were addressed in all of the reviews.

Other important issues raised by the Committee included high numbers of orphaned and street children (Afghanistan, Kazakhstan, Colombia), corruption (Kazakhstan, Mauritius), access to education (Afghanistan, Algeria, Colombia, Algeria), poverty (Afghanistan, Mauritius, Kazakhstan, Colombia), environmental issues (Kazakhstan), social security (Kazakhstan), and cultural heritage (Afghanistan).

Committee members

While most of the Committee members were active in the dialogue, particularly Mr Sa'di, Mr Kedzia, Mr Pillay, and Ms Bonoan-Dandan, others were less involved, and some could even be seen taking short naps during sessions. Some Committee members showed strong interest in particular themes. For example, Ms Barahona Riera focused on a wide range of women's issues while Ms Bras Gomes tackled social security. Mr Riedel was among the very active Committee members seeking information on concrete results of laws, policies, and programmes. Some Committee members seemed very deferential to States, while others only made infrequent interventions, which were cursory and added little to the dialogue.

OTHER DEVELOPMENTS

Mr Aslan Khuseinovich Abashidze (Russian Federation) replaced Mr Yuri Kolosov (also Russian Federation), who resigned in August 2009, as a member of the Committee. Mr Abashidze, a professor in international law, seemed reticent to speak during his first session as Committee member.

The session was hampered by the fact that translations of the replies to the lists of issues were not available (except Kazakhstan's translated from Russian to English).

During closed sessions, the Committee discussed the draft General Comment on sexual and reproductive health rights and a new General Comment on protection of the family and children (Article 10 of the Covenant).

The Committee also began preliminary discussions on the draft rules of procedure for its new complaint procedure under the Optional Protocol to the Covenant and looked at improving its working methods.

Finally, the Committee adopted lists of issues on Moldova, the Russian Federation, Sri Lanka, Turkey, and Yemen. Sri Lanka will be examined during the Committee's upcoming session in November, while the other countries will be examined at subsequent sessions. ■

³ The Committee was disappointed with the lack of information provided by Mauritius on this subject, as well as on strategies to combat chronic diseases.

⁴ Kazakhstan did not supply the Committee with enough information and was requested to provide more information in its next report.

COMMITTEE ON THE RIGHTS OF THE CHILD

Corporal punishment, torture, and juvenile justice raise controversy during State reviews



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Mother and child in Japan. The Committee on the Rights of the Child reviewed 18 State reports during its 54th session in May-June 2010, including Japan.

The Committee on the Rights of the Child (the Committee) met in Geneva from 25 May to 11 June 2010 for its 54th session and from 14 to 18 June for its 55th pre-session. In addition to reviewing 18 State party reports during the 54th session, it also discussed its treaty-specific guidelines and three general comments, and followed the elaboration of a new optional protocol for a communications procedure. During the 55th pre-session the Committee conducted a preliminary review of State party reports and the alternative reports in the presence of NGOs and certain UN agencies. Both sessions were held in parallel chambers of nine Committee members each. The two chambers will be maintained until September 2010, after which the Committee will meet in one chamber once again.

During the 44th session, the Committee examined Argentina (CRC, OPSC and OPAC), Belgium (CRC and OPSC), Colombia (OPAC and OPSC), Grenada (CRC), Japan (CRC, OPSC and OPAC), Nigeria (CRC), the Former Yugoslav Republic of Macedonia (CRC, OPSC and OPAC), Serbia (OPSC and OPAC), and Tunisia (CRC). It was due to review the report of Guatemala, but the session was postponed until September due to natural disasters in the country.

The work of the Committee was hampered by delays in translation. The Committee consistently raises concerns about the impact of late translations on its work, especially since the situation appears to be worsening. For instance, the written replies for Colombia were not translated in time for the dialogue with the State. Given the seriousness of the issues under the OPAC and OPSC in Colombia, the Committee considered postponing the session to allow time for translation.¹ In the end, it decided to spend one of its closed meetings getting the document translated orally.

NGO PARTICIPATION IN THE SESSION AND PRE-SESSION

Although NGOs can only participate as observers in the session, there was a high turnout of national NGOs from Argentina, Belgium, Colombia, FYR of Macedonia, Grenada, Japan, and Serbia. Japan saw record NGO participation with over 130 persons attending the session. This resulted in creative logistical arrangements, including a second room for the overspill and shifts to attend the session.

The reactions from State delegations to the presence of national NGOs varied greatly. Some States such as Nigeria, Grenada, Belgium, Serbia, and Japan specifically mentioned the NGOs present and the work they do, while others such as Colombia and Argentina appeared to be surprised to see national NGOs at this international meeting. Due to their limited human and financial

¹ The first examination of implementation of the Optional Protocols is particularly important because only then does the Committee do an in-depth and detailed review.

resources to implement the CRC, the delegations of Grenada and Nigeria noted their reliance on NGOs or the UN Children's Fund (UNICEF) to provide services to children.

As the pre-session takes place three months before the relevant session, most NGOs send larger delegations to the pre-session, where they are the Committee's main interlocutors for the preparation of upcoming State examinations. National NGOs from Burundi, Bosnia and Herzegovina, Mexico, Montenegro, Nicaragua, Spain, Sri Lanka, Sudan, and Ukraine attended the 55th pre-session.² There were no NGOs from Angola, as they preferred not to engage in the reporting process.

How to participate in the CRC reporting process

The NGO Group for the CRC facilitates the effective participation of national and international NGOs in the reporting process of the CRC and its Optional Protocols. If you would like to find out more about the process, please contact the NGO Group secretariat at: secretariat@childrightsnet.org.

We are currently looking for information on Cuba and Lao PDR for the October pre-session. If your organisation works in either of these countries and is willing to prepare an alternative report on the CRC, please write to myers@childrightsnet.org.

COMPOSITION AND PERFORMANCE OF STATE DELEGATIONS

With the exception of Grenada, which sent a two person delegation, States sent large, senior and varied delegations (e.g. Argentina, Belgium, Colombia, Japan and FYR of Macedonia). While the delegations often covered all the areas of the CRC and its OPs, the absence of certain key State actors was visible in the delegations of Serbia (no Ministry of Education), FYR of Macedonia (no representatives from the Department for Social Centres and the Ministry of Finance), and Belgium. Colombia, Japan, and Serbia sent representatives from the Ministry of Defence to discuss the OPAC. Some delegations also included 'resource persons' who are non-State representative (Argentina and Nigeria), and a child representative from the Children's Parliament (Nigeria). The Colombian delegation manoeuvred through questions on child soldiers with considerable ease. While admitting that the disarmament process was not perfect, it asked the Committee to demand that armed groups stop using children in armed conflict. Meanwhile the delegations from Argentina, Serbia, and Tunisia often only provided general answers to the more sensitive issues.

THEMES

To cover the issues in the three treaties, the Committee uses a system of clusters. This section will only cover a few themes which were discussed.³

² The NGO reports which have been made public can be found on the NGO Group and CRIN alternative report database, see www.crin.org/NGOGroupforCRC/search.asp.

³ For more detailed information, and reports on each country exam-

General measures of implementation

The challenge of translating the CRC and its Optional Protocols into national legislation, policies, and programmes was discussed at length. In some cases, the CRC was considered to be a 'vision for children's rights' for the legislative framework, rather than a legal instrument (Japan). Other countries, such as Argentina and Nigeria, had developed comprehensive children's codes or legislation. The Committee was particularly concerned by the fact that some federate States had not adopted specific child rights legislation, which led to different standards and levels of implementation throughout the country. The federal or community structures were discussed at length in relation to Argentina, Belgium and Nigeria, as the delegations struggled to provide clear answers on the harmonisation of legislation, coordination, and provision of financial resources.

A common problem for most of the States in implementing the CRC was coordination. Belgium had a coordinating body, but it was challenging to coordinate the different communities. Meanwhile, in most other States, children's issues were dispersed amongst different ministries or buried in an under-resourced ministry, such as the Ministry of Women's Affairs in Nigeria. This led to scattered budgets for children and weak data collection, which made it difficult to assess the implementation of the CRC.

When it came to the Optional Protocols, especially the OPSC, there had been limited efforts to incorporate them into national legislation. Due to the misinterpretation of the term 'sale' which was confused with 'trafficking' (including by Argentina, Belgium, Colombia, and Serbia), the offences related to sale of children were not fully covered under penal law and data was therefore not collected on the offences relevant to the OPSC.

Definition of a child and birth registration

There were many inconsistencies when it came to the definition of the child. For instance, while Nigeria's Child Rights Act (2003) defined a child as a person under 18, some of its federate states had used the age of 16 to define a child. There were also many discrepancies in the age of sexual consent (13 years old in Japan), marriage for girls and boys, criminal responsibility (seven years old in Grenada), and age of voluntary recruitment to the armed forces.

The issue of definition was not helped by the lack of free universal birth registration in certain countries. For instance, in Grenada birth registration was related to religious rituals such as baptism. If parents were not of the dominant religion or non-practicing, children could go unregistered. The issue of unregistered children was of even greater concern when the death penalty existed (Nigeria), and when undocumented children were at risk of being conscripted into the army (Colombia). By not being able to prove their age, children were being tried or treated as adults.

ined, see www.childrightsnet.org.

Civil and political rights and juvenile justice

While States spoke openly and at length about children's access to health and education, they were less receptive to discussing corporal punishment, torture, and juvenile justice. The Committee covered these issues in depth during the reviews of Argentina, Colombia, Japan, Grenada, Nigeria, and Tunisia. Some of the more contentious issues included: the length of pre-trial detention (e.g. Argentina, Tunisia, Japan); heavy sentences for children (life sentences in Argentina); ill-adapted detention facilities for youth and detention with adults (e.g. FYR of Macedonia, Grenada, Nigeria); use of corporal punishment in detention (e.g. Grenada); low or lowering of the age of criminal responsibility (e.g. Argentina, Grenada, Japan, FYR of Macedonia); and inhumane and degrading treatment of children (e.g. Argentina, Nigeria, Tunisia). Argentina reacted strongly to allegations of ill-treatment and torture and emphasised its zero tolerance of torture. Meanwhile, the Committee was concerned by allegations of the unwillingness of the police or judges to register complaints of children (of human rights defenders or political opponents) who were ill-treated or tortured in Tunisia.

OTHER DEVELOPMENTS

General Comments and guidelines

Some progress was made in developing the new general comments and treaty-specific guidelines. The Committee reviewed a draft of the guidelines for the CRC and its Optional Protocols.

A third draft of the general comment on the abuse and neglect of children (Article 19), which was the initiative of a group of NGOs, will be discussed by the Committee in its 55th session in September 2010. The Committee is also working on a General Comment on the best interest of the child (Article 3). The Committee's interpretation of this article is anticipated, as it often appears to be misunderstood or misused. Public authorities, families, and professionals working with children, while often well-intentioned, have used the argument of the best interests of the child in ways that contravene other rights under the Convention. In addition, the Committee together with CEDAW have been drafting a joint General Comment on harmful traditional practices.

Day of general discussion

As the Committee is taking advantage of the two chambers to examine as many reports as possible, it will not be holding its usual day of general discussion in September. The Committee will decide about the 2011 day of general discussion during its 55th session.

Changes in the Committee's composition and upcoming elections

Ms Moushira Khattab, the Committee member from Egypt officially stood down before the session as she had become the Minister of State for Family and Population. The Committee officially approved the appointment of Ms Azza El Ashmawy to

see out the mandate of Ms Khattab which is due to expire in February 2011.

The next elections of Committee members will be on 21 December 2010. To achieve a high level of expertise among the members and ensure the broadest representation of different regions and legal systems, the NGO Group has written to States parties. It is also collaborating with NGOs in different regions to ensure the nomination of highly qualified candidates from every region.

To find out more about the nominees, visit the OHCHR website at:

www2.ohchr.org/english/bodies/crc/elections13th.htm. ■

The NGO Group for the CRC is a global network of 77 national and international NGOs that works through its Secretariat and thematic working groups to promote the monitoring and implementation of the UN Convention on the Rights of the Child and its two Optional Protocols. The NGO Group provides a coordinated platform for NGO action in relation to the Committee on the Rights of the Child and plays a central role in key child rights developments at the international level.

For more information about the NGO Group for the CRC and its activities: www.childrightsnet.org.

Facts about the Committee

Number of members:	18
Treaties it covers:	<i>Convention on the Rights of the Child (CRC)</i> , <i>Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)</i> and <i>Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)</i>
Total number of ratifications:	462: CRC 193, OPAC 132, OPSC 137
NGO participation:	With a three-hour pre-session per country, the Committee has one of the best models for NGO involvement in the reporting process
General Comments:	12 adopted and 3 under development

INTER-COMMITTEE MEETING

Focus on CAT's new optional reporting procedure



Creative Commons

The 11th Inter-Committee Meeting of the UN Human Rights Treaty Bodies (ICM) was held in Geneva from 28 to 30 June 2010.¹ The ICM brings together the treaty body Chairpersons and one member from each Committee and provides a forum for discussing issues relating to the harmonisation of working methods.² In her opening statement, the Deputy High Commissioner for Human Rights, Ms Kyung-wha Kang, drew attention to the way in which rapid growth of the treaty body system and the related structural challenges were beginning to ‘overwhelm’ the whole system, and the associated need to rationalise the ‘unwieldy’ reporting process.

AREAS OF DISCUSSION

List of issues prior to reporting

The key area of discussion was the new optional reporting procedure, known as ‘list of issues prior to reporting’, adopted by the Committee against Torture (CAT) and the Human Rights Committee (HRC).³ Under this procedure a State’s periodic report comprises the responses provided to a list of issues drawn up by the treaty body.⁴ This is distinct from the current process whereby a treaty body sends a list of issues to the State *after* the State has submitted its report. Committee members generally agreed that the new process would facilitate more focused State reports and more targeted concluding observations. However the discussions also highlighted the ongoing difficulties the ICM faces in promoting harmonisation of working methods, as many members commented that welcome as the new procedure was, it would not be appropriate in their particular case.

Ms Pimental from the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the focus on the list of issues would undermine the attention given to deeper cross-cutting issues, which she felt to be of particular significance for CEDAW. Mr Romero, member of the Committee on Economic, Social and Cultural Rights (CESCR) felt that the list of issues may be more appropriate for those committees with more targeted mandates than CESCR’s, such as CAT. He worried that the procedure would force committees with broader mandates to selectively prioritise certain rights over others, thus violating the principle of universality. He added that ‘caution is the best approach in dealing with innovation’, a principle reiterated by Ms Gaer (CAT) who advised waiting until CAT has reviewed its first States under the new procedure before proceeding with the discussion. It was agreed that CAT and the HRC would report back to the 12th ICM in June 2011 on lessons learned with the new procedure.⁵ The ICM also agreed to encourage all treaty bodies to consider whether the new procedure would be relevant to their work.

Translation and page limits

The difficulties experienced by treaty bodies in having their documents translated on time, or indeed at all, was also a key point of discussion in the meeting. It was noted that the list of issues produced by Committees after a State report has been submitted is not mandated, and hence the UN does not set aside a budget for the translation of the written replies (Mr Iwasawa, HRC), with the result that those replies are often not translated.⁶ Mr Al Tarawneh, member of the Committee on the Rights

1 For a list of participants see: <http://bit.ly/c3cdZ0>.

2 For more information on the ICM see www.ishr.ch/inter-committee-meetings.

3 CAT adopted the list of issues prior to reporting in 2007 and implemented it on a trial basis in 2008. Of the eleven States parties whose periodic reports were due in 2009, nine opted to use the new procedure. Of these six have already submitted their reports, and four will be reviewed in November 2010 (Bosnia Herzegovina, Cambodia, Ecuador and Turkey).

4 For more information on the process see ‘Treaty bodies’ list of issues prior to reporting’, HRI/ICM/2010/3: <http://bit.ly/aeuq45>.

5 ‘Points of Agreement of the 11th Inter-Committee Meeting’, 1(e): <http://bit.ly/c3C8G8>.

6 At the 99th meeting of the HRC, the written replies of Colombia were not translated by the UN, and the State party provided its own translations.

of Persons with Disabilities (CRPD), also drew attention to the need for documents to be translated to meet the needs of disabled persons, such as braille for the blind.

Lengthy discussions about applying page limits to State reports drew attention to the ICM's lack of institutional memory. After exhaustive deliberations, spanning an entire afternoon, about whether page limits were appropriate, particularly for complex issues, Ms Gaer queried whether the ICM had not had this discussion five years ago. In fact at its 5th meeting the ICM had agreed harmonised guidelines for reporting, including a limit of 40-80 pages for State reports.⁷ In their points of agreement the ICM referenced this report, calling on States to comply with those guidelines.⁸ As a result of lack of time, the more difficult issue of how to ensure State compliance was barely discussed. However, while recognising the risk in delaying the reporting process even further, committee members recommended that State parties whose reports did not meet these guidelines should be asked to resubmit a shortened version.⁹

Other issues

The question of cross-referencing the decisions of other treaty bodies was another recurring discussion. At previous ICMs members had agreed to strive to cross-reference where appropriate. However not all committees do this, and some members expressed concern that this undermined the integrity of the treaty body system. This discussion also highlighted the ICM's lack of decision-making power, with points of agreement marking the start of further discussions within the individual treaty bodies.

The failure of the General Assembly¹⁰ to take note of CESCR's General Comment 20¹¹ was held to reflect negatively on the integrity of the treaty bodies. This concern was reflected in the ICM's points of agreement.¹²

DIALOGUE WITH STATE PARTIES

The dialogue with States was restricted as a result of Committee Chairs taking up far more than their allotted two minutes to introduce the work of their respective treaty body. Consequently States had just over one of the two scheduled hours to make their interventions. Some States expressed dismay that they were not given time to make a full statement (Algeria, South Africa). The lack of an agenda resulted in States raising a wide variety of issues.

The dialogue revealed widespread support for CAT's optional reporting procedure. Finland stated that it had submitted its report to CAT under the new procedure and the initial experience had been positive; facilitating national dialogue and enabling more focused work. However Pakistan expressed concern that it is premature to evaluate the effectiveness of the new optional reporting procedure and Switzerland requested more substantive reflection before other committees adopt the new procedure. There was support for joint general comments from the treaty bodies,¹³ coupled with a concern that such comments might cause confusion for States not signed up to all the conventions to which the comment applies (USA). The treaty bodies were also encouraged to engage more with the UPR (Chile) and to consult UPR recommendations when drawing up lists of issues (Japan) or concluding observations (Austria, Canada). This last point was countered by reservations from South Africa that closer association between the Human Rights Council and the treaty bodies would compromise the non-politicised nature of the treaty bodies, and from Pakistan that given the relative newness of the UPR it was premature to link the two processes.

NGO INVOLVEMENT

As agreed at the ICM in December 2008, NGOs were permitted to speak under each agenda item, except for the dialogue with States, although the final adoption of the points of agreement was changed into a closed meeting. Few NGOs took advantage of the opportunity to intervene, four speaking on the first day and two on the second day. In response to a suggestion from NGOs that a master calendar of treaty body deadlines should be made available to NGOs, Ms Lee noted that this was the third year that this issue had been raised. The ICM reiterated its earlier recommendations on this point.¹⁴

One positive point was the recognition by the ICM of the role played by civil society in the preparation of lists of issues prior to reporting.¹⁵ Other points of discussion included the desirability of moving away from the negative terminology of 'shadow reports' in preference for 'civil society' or 'parallel' reports when referring to NGO reports (Mr Grossman, CAT and Mr Al Tarawneh CRPD).¹⁶ Mr El-Borai, member of the Committee on Migrant Workers (CMW), raised the possibility of holding future ICM meetings in developing countries, as a means to increase awareness of the treaty bodies in these countries, and to facilitate national civil society involvement. This was not, however, included in the points of agreement. ■

7 Compilation of Reporting Guidelines including the guidelines on common core document and treaty specific reports, HRI/GEN.2/Rev.6, paragraph 19: <http://bit.ly/aBbACN>.

8 'Points of Agreement of the 11th Inter-Committee Meeting', 1(m): <http://bit.ly/c3C8G8>.

9 'Points of Agreement of the 11th Inter-Committee Meeting', 1(n): <http://bit.ly/c3C8G8>.

10 General Assembly resolution A/RES/64/152 adopted on 18 December 2009.

11 CESCR General Comment 20 on non-discrimination in economic social and cultural rights <http://bit.ly/9W45bq>.

12 'Points of Agreement of the 11th Inter-Committee Meeting', 1(k): <http://bit.ly/c3C8G8>.

13 Brazil, Egypt, Finland, Switzerland. The point was made in reference to the joint general comment being drafted by CRC and CEDAW.

14 'Points of Agreement of the 11th Inter-Committee Meeting', 1(k): <http://bit.ly/c3C8G8>.

15 'Points of Agreement of the 11th Inter-Committee Meeting', 1(f): <http://bit.ly/c3C8G8>.

16 'Points of Agreement of the 11th Inter-Committee Meeting', 1(r): <http://bit.ly/c3C8G8>.

REGIONAL DEVELOPMENTS

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

47th ordinary session and the preceding NGO Forum



Commissioner Soyata Maiga, ACHPR Special Rapporteur on Women's Rights in Africa.

The three-day NGO Forum provides an opportunity for analysis of key human rights issues across the African continent. It provides space for civil society to reflect upon how to maximise its influence on governmental and inter-governmental processes, including at the African Commission on Human and Peoples' Rights (ACHPR). It aims to highlight the need for the protection of human rights defenders, and to press for State implementation of relevant human rights obligations. The 47th session of the ACHPR exposed some continuing challenges to participation of non-governmental organisations (NGOs). However, NGOs were able to make effective contributions that influenced key ACHPR debates and resolutions.¹

Hosted by the African Centre for Democracy and Human Rights Studies, the NGO Forum, held from 8 to 10 May in Banjul, the Gambia, was well attended, with more than 164 representatives from 30 African countries and 21 participants from Europe, the United States, and Latin America. This reflected the general growth in the number of participants over the last years. The Forum also included representation from national human rights institutions (NHRIs), and several ACHPR Commissioners who participated in thematic working groups.

NGO PARTICIPATION

Ensuring the voice of NGOs is carried from the Forum, and elsewhere, to the ear of the ACHPR, continues to be a challenge. For the third session running the ACHPR failed to grant observer status to the Coalition of African Lesbians (CAL). This despite an unequivocal call from the NGO Forum for accreditation of NGOs representing all human rights struggles. The granting of observer status is the first step for active NGO participation at the ACHPR. NGOs seeking such status must have objectives and activities in line with the fundamental principles and objectives of the *African Charter on Human and Peoples' Rights*.² Such principles and objectives include the promotion of gender equality, respect for human rights and the promotion of social justice.

During its session the ACHPR focused on many of the challenges faced by lesbian, gay, bisexual, transgender and intersex people and those who defend their rights across the continent. The ACHPR has been developing a draft paper on sexual orientation to guide it on these issues. However, once again it failed to finalise and adopt the draft paper. The Commission may do well to keep in mind that having organisations such as CAL accredited might be of assistance to it as it considers how to challenge all discrimination based on sexual orientation and gender identity.³ This would also be in line with the ACHPR regarding observers engaging in regular consultations with the Commission on all matters of common interest.

¹ For analytical reports on the sessions of the African Commission and further information on the NGO Forum see: <http://bit.ly/cIBMsU>. Information on the ACHPR is available in French at www.ishr.ch/section-francophone.

² Resolution on the criteria for granting and enjoying observer status to non-governmental organisations working in the field of human rights with the African Commission on Human and Peoples' Rights, available at <http://bit.ly/9VausB>.

³ Resolution on the cooperation between the African Commission on Human and Peoples' Rights and NGOs having observer status with the Commission. Chapter III includes 'Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest'.

Despite continuing challenges to effective NGO participation in the ACHPR's work, the impact of NGO contributions is evident. 'Without alternative reports or information presented by NGOs, a large number of questions would not be examined,' stated Commissioner Maiga, ACHPR Special Rapporteur on Women's Rights in Africa. Several ACHPR Commissioners have also acknowledged the importance of NGO contributions for the examination of Rwanda's State report.

NGO Forum resolutions to the ACHPR are one way of communicating the most pressing concerns of participants to the Commissioners, with the aim of informing the content of resolutions the ACHPR itself approves. As expressed in the statement at the opening of the ACHPR session, 'The intention of naming is not to shame but a call to action in order to address potentially deteriorating observance of human rights'.⁴

Ongoing challenges for NGOs

Sustaining NGO presence throughout the ACHPR sessions is a challenge, particularly for those with limited financial or human resources. After the third day of the ACHPR session, for example, only a few NGOs were still present to take part in the examination of State reports and intervene during the presentation of special procedures' thematic reports. Given the key role played by civil society actors in ACHPR deliberations, as acknowledged by Commissioners, maximising NGO participation is critical.

The NGO Forum has urged the ACHPR to ensure that it is 'disability friendly' including through the provision of Braille version documentation, the use of sign language, and the improved physical accessibility of ACHPR meeting rooms. The NGO recommendation further urges the ACHPR to consult and involve people with disabilities in its work, particularly in addressing disability rights.

KEY OUTCOMES AND DISCUSSIONS

The ACHPR issued four resolutions at the conclusion of its session.⁵

New Committee on persons living with HIV

It establishes a Committee on the Protection of Persons Living with HIV and Those at Risk to address that issue. The ACHPR has invited nominations of independent experts to serve on the committee from African Union (AU) member States, NHRIs, NGOs, and other interested individuals and institutions by 31 August 2010.⁶

Freedom of expression

The ACHPR adopted a resolution on the 'Deteriorating Situation of Freedom of Expression and Access to Information in Africa'. Amongst other things, it urges AU Member States

to adopt legislation that promotes and protects the rights to freedom of expression and access to information.

The NGO Forum resolution on freedom of expression raises concern about the experience of journalists and of restrictions on freedom of the press in Cameroon, Eritrea, Somalia, Tunisia, Uganda, and Zimbabwe. It calls on States '...to bring to an end the fear of journalists to be killed, tortured, injured, kidnapped and being held hostage, especially in conflict areas'. This call recognises the fact that the essential role of human rights defenders in pressing for the respect of international standards at domestic level depends upon their ability to operate without hindrance.

Resolution on elections in Africa

The ACHPR resolution on 2010 elections in Africa revealed some shared concerns with the NGO Forum, which also adopted recommendations on this topic.⁷ Both the ACHPR and the NGO Forum reiterated the need for States to ratify the *African Charter on Democracy, Elections and Governance* and ensure its implementation without delay.

The resolution noted the recurrent nature of election-related violence and other human rights violations in Africa. Furthermore, it called on States to ensure the protection from intimidation and other human rights abuses of journalists, human rights defenders, election observers and monitors, before, during, and after the elections. Concern about the protection of human rights defenders was also expressed in resolutions emerging from the NGO Forum, and in NGO contributions to the examination of State reports. The heightened risk to human rights defenders during election periods is also an issue highlighted in the latest report of the UN Special Rapporteur on the situation of human rights defenders to the Human Rights Council.⁸

Human rights defenders

In his report to the ACHPR, the Special Rapporteur on human rights defenders in Africa indicated that amongst the many challenges human rights defenders face across the continent, freedom of association remains one of the most pressing. As such, his office is in the process of drawing up terms of reference for a study on freedom of association. The study is being undertaken to follow up on an ACHPR resolution that found that violations of the freedom of association of human rights defenders 'put democratic values at risk in our African societies'. The Special Rapporteur expressed himself committed to involving human rights defenders in the drafting of the study.

A workshop held at the NGO Forum organised by ISHR highlighted many other obstacles to the work of human rights defenders including cumbersome procedures for the

⁴ <http://bit.ly/8YFgro>.

⁵ For full texts of all ACHPR resolutions, see <http://bit.ly/duxUEG>.

⁶ <http://bit.ly/9lmuCD>.

⁷ For full texts of all the resolutions adopted by the NGO Forum, see <http://bit.ly/bl82Ep>.

⁸ A/HRC/13/2, available at <http://bit.ly/cJaEqy>.

registration of associations, and legal obligations on the media to reveal their sources. NGO country resolutions, in particular one focusing on Ethiopia, underlined the difficulties faced by human rights defenders in carrying out their work. Despite the international legal framework and the regional mechanisms put in place to monitor the implementation of these standards, the risks faced by human rights defenders in carrying out their work continue to be high.

Women's human rights

The anniversaries of two key international instruments – UN Security Council Resolution 1325, and the *Convention on the Elimination of all form of Discrimination against Women (CEDAW)* – prompted the NGO Forum and ACHPR to reflect upon the continuing huge discrepancy between these commitments and the reality of women's lives.⁹ An NGO Forum recommendation called for the organisation of a regional forum on the implementation of Resolution 1325.¹⁰ Additionally, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* was the focus of much attention.¹¹ The importance of universal ratification of the Protocol as a means of giving vital momentum to efforts towards gender equality, and to give substance to the AU's upcoming African Women's Decade, was noted by the NGO Forum in its statement to the ACHPR. Aimed at targeting specific problems and challenges faced by women in Africa and to eradicate systemic and systematic discrimination, the Protocol includes articles underlining State responsibility to ensure equality between women and men at 'all levels of development and implementation of States' policies and development programmes'. The Rwandan women of the Batwa echoed the need for implementation of this article in their call to the Government during the examination of the State report.

This session saw the launching of the Guidelines for State Reporting under the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. The adoption of these guidelines reflects the need to improve the quality of State reports, including by providing disaggregated data. The Commissioners have frequently noted that this is lacking in State reports. The Guidelines also make clear reference to the need for involvement of civil society, in particular individuals and organisations working on gender issues, in the preparation of the report. The Special Rapporteur on the rights of women noted that women's lack of knowledge of their own rights was a key challenge. She also noted some positive steps by States, including Zimbabwe's ratification of the Protocol and Rwanda's commitment to disseminate the recommendations of the Committee on the Elimination of Discrimination against Women.

⁹ UN Security Council Resolution 1325 was adopted in 2000; CEDAW was adopted 30 years ago.

¹⁰ TREC/005/05/2010. For all NGO Forum recommendations and resolutions, see <http://bit.ly/9OLOhB>.

¹¹ <http://bit.ly/drlON0>.

The ACHPR also adopted a resolution on 'the Protection and Prevention of Women and Child Trafficking and Sexual Exploitation in South Africa During the 2010 World Cup'.

Regional meeting on women human rights defenders in Africa

The need to highlight and address the particular challenges faced by women human rights defenders to ensure their protection was the spur for the international campaign on women human rights defenders launched in 2005. The campaign brought together activists from human rights organisations, women's groups, and those working with a particular focus on the human rights of lesbian, gay, bisexual, transgender, and intersex persons. The centerpiece of the campaign was a consultation with women human rights defenders from across the world. This was preceded by regional consultations, including one held in Dakar, to support the engagement of African women human rights defenders in the campaign. A further regional consultation, organised by ISHR, will be held from 3 to 5 November 2010. With the presence of the UN Special Rapporteur on human rights defenders and other international and regional mechanisms, this consultation will provide the opportunity for women human rights defenders from across the continent to share experiences and analyses and to draw up joint advocacy and campaign strategies. For more information about the campaign, see: www.defendingwomen-defendingrights.org.

STATE REPORTING: THE DRC AGAIN FAILS TO SHOW UP

The Democratic Republic of Congo (DRC) for the third time failed to send a representative to appear before the ACHPR for the examination of the State report. This prompted NGOs to petition the ACHPR about the consequences of this lack of cooperation. They pressed the ACHPR to inform the DRC that its report would be considered at the next session with or without its attendance. This recalls the ACHPR's own State reporting procedure which provides the State with two notifications for attendance after which the Commission will go ahead with the examination of the State's report.¹² The NGOs insisted that the DRC update the State report with the input of civil society prior to attending the next session. The readiness of civil society groups to engage with national human rights issues through the ACHPR reporting system contrasts with the State's failure to do so. It was disappointing that the ACHPR's statement on the session's outcomes made no mention of the DRC's failure to appear nor took up the NGOs' recommendations.

The ACHPR also considered and adopted concluding observations on Cameroon, Rwanda, Botswana, and Ethiopia. ■

¹² Information about the ACHPR State reporting procedure is available at <http://bit.ly/aXaTZT>.

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OPPORTUNITIES FOR NGO ENGAGEMENT

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For more detailed and up to date information, please consult the relevant treaty body pages at: <http://bit.ly/d07u3s>.

COMMITTEE AGAINST TORTURE

What's coming up?

At its 45th session in Geneva, from **1 to 19 November 2010**, the Committee against Torture will consider the reports of Bosnia and Herzegovina, Cambodia, Ecuador, Ethiopia, Mongolia, and Turkey. Please note that Bosnia and Herzegovina, Cambodia, Ecuador, and Turkey will be reviewed using the new list of issues prior to reporting procedure. At this session the Committee will also adopt a list of issues for the 3rd periodic report of Slovenia.

What can you do?

If you are working on issues related to torture in any of the countries above, you can submit information to the Committee by **15 October 2010**. Information can be sent to the Secretariat at jnataf@ohchr.org and registry@ohchr.org. NGOs who have submitted information to the Committee on a State Party may meet with the Committee to brief it prior to the dialogue.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

What's coming up?

The Committee on Economic, Social and Cultural Rights will hold its 45th session from **1 to 19 November 2010** in Geneva. It will examine the reports of the Dominican Republic, the Netherlands and the Netherlands Antilles (considered jointly), Sri Lanka, Switzerland, and Uruguay. It will also hold a day of general discussion on sexual and reproductive health.

The Pre-sessional Working Group will take place from **22 to 26 November 2010** to prepare the lists of issues for the upcoming examinations of Cameroon, Estonia, Germany, Israel and Turkmenistan.

What can you do?

If you are working on economic, social and cultural rights in any of the countries to be examined at the 45th session in November, you can submit relevant information to the Secretariat by **17 September 2010**, to Ms Susan Matthews at smatthews@ohchr.org. NGOs are scheduled to brief the Committee at 3pm on **Monday 1 November**. Please inform the Secretariat in advance if you intend to submit information.

Please submit information on countries for the Pre-Sessional Working Group in November, to the email address above by **18 October 2010**. NGOs can attend a meeting with the Working Group on the afternoon of **Monday 22 November** to give information on those countries.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

What's coming up?

The 47th session of the Committee on the Elimination of Discrimination Against Women will be held from **4 to 22 October 2010** in Geneva. Reports from the Bahamas, Burkina Faso, Chad, the Czech Republic, Malta, Tunisia, and Uganda. The Committee will also consider the exceptional report on India dealing with Gujarat. The Pre-sessional Working Group preparing for the 49th session where Costa Rica, Djibouti, Ethiopia, Italy, Nepal, the Republic of Korea, Singapore and Zambia will be reviewed will be held from **25 to 29 October 2010**.

What can you do?

If you are working on discrimination against women in any of the countries under review, you can submit information to the Committee by 20 September 2010 to cedaw@ohchr.org. The Committee will meet with NGOs on Monday 4 October and Monday 11 October at 3pm; and with NHRIs on Monday 4 October at 4.30pm and Monday 11 October at 4pm.

To submit information to the Pre-sessional Working Group, send information to cedaw@ohchr.org by 11 October 2010. A meeting with NGOs is organised for Monday 25 October 2010.

More detailed information is available on: <http://bit.ly/9UQgII>. Alternately, IWRAW Asia Pacific can help NGOs submit reports to CEDAW. Please contact IWRAW Asia Pacific on iwraw-ap@iwraw-ap.org or iwraw_ap@yahoo.com.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

From **13 September to 1 October 2010**, the Committee on the Rights of the Child will hold its 55th session in Geneva. It will review reports from Angola, Burundi, Guatemala, Montenegro, Nicaragua, Spain, Sri Lanka and the Sudan under the Convention on the Rights of the Child; Bosnia and Herzegovina, Montenegro, Nicaragua and Sierra Leone under the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC); and Bosnia and Herzegovina, Montenegro, Nicaragua, Sierra Leone, Sri Lanka and the Sudan under the Optional Protocol on the involvement of children in armed conflict (OPAC).

What can you do?

If you would like to submit information for upcoming examinations, you can contact the NGO group on the CRC for advice: www.childrightsnet.org. Information on NGO participation can be found in 'A Guide For Non-Governmental Organizations Reporting to the Committee on The Rights of the Child' which is available at: <http://bit.ly/bNIdR3>.

HUMAN RIGHTS COMMITTEE

The Human Rights Committee's 100th session will take place from **11 to 29 October 2010** in Geneva. It will review Belgium, El Salvador, Hungary, Jordan and Poland. The Country Report Task Force will consider and draft lists of issues for: Bulgaria, Guatemala, Iran, Jamaica and Kuwait (to be reviewed in 2011).

What you can do?

If you are working on issues related to civil and political rights in any of these countries, you can submit information to the Committee for its examinations and to assist it in drafting the lists of issues. Please send information to Ms Nathalie Prouvez, nprouvez@ohchr.ch on the lists of issues before **31 August 2010**, and for the review of States by **19 September 2010**.

Information on NGO participation can be found in the 'NGO Guidelines on the Reporting Process of the UN Human Rights Committee' which is available at: www.ccprcentre.org/en/ngo-guidelines.

If you would like to submit information for upcoming examinations, you can contact the Centre for Civil and Political Rights on info@ccprcentre.org.

UNIVERSAL PERIODIC REVIEW

What's coming up?

The UPR Working Group's 11th session will be held from **2 to 13 May 2011** (See below for countries to be reviewed).

What can you do?

If you would like to submit information on any of the countries to be examined, please follow these guidelines:

<http://bit.ly/d07u3s>.

The deadline is 12pm (Geneva time) on **1 November 2010** for submissions on Palau, Papua New Guinea, Samoa, the Seychelles, Sierra Leone, Singapore, Somalia and Sudan; and 12pm (Geneva time) on **8 November 2010** for submissions on Belgium, Denmark, Greece, Hungary, Latvia, Saint Vincent and the Grenadines, the Solomon Islands, and Suriname.

Your submission should be sent to: uprsubmissions@ohchr.org.

MEETINGS

HUMAN RIGHTS COUNCIL, 15th Session

What's coming up?

The Council will hold its 15th session from **13 to 1 October 2010**. The Council will hold interactive dialogues with special procedures, including on the subjects of indigenous peoples, international solidarity, toxic waste, contemporary forms of slavery, access to safe drinking water and sanitation, children and armed conflict, extreme poverty, mercenaries, racism, Sudan, Somalia, Cambodia and Burundi. The Council will also consider reports of the UPR Working Group: Armenia, Belarus, Grenada, Guinea, Guinea-Bissau, Guyana, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Spain, Sweden and Turkey.

What can you do?

If you work with an ECOSOC accredited NGO you can submit written statements to the Council and make oral statements under all agenda items. For written submissions and side-event room requests, the deadline is **Monday 23 August 2010**.

For more information on NGO participation, see: <http://bit.ly/d07u3s>.

WORKING GROUP ON HUMAN RIGHTS COUNCIL REVIEW

The Human Rights Council, Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council will be held from **25 to 29 October 2010**. NGOs with ECOSOC status will be able to attend and participate in the working group's session.

SPECIAL PROCEDURES' VISITS

You can stay up to date about upcoming visits by the special procedures to countries around the world at: <http://twitter.com/unrightswire>, or alternatively, subscribe to email updates at <http://conta.cc/can6Gf>.

ELECTIONS AND APPOINTMENTS

APPOINTMENT OF SPECIAL PROCEDURES MANDATE HOLDERS

What's coming up?

At the 15th session of the Human Rights Council (13 to 30 September 2010), the President of the Council will appoint new mandate holders to the following mandates: special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The Consultative Group will present a list of recommended candidates to the President at least one month before the beginning of the session. The recommendations will be made available on the HRC Extranet: <http://portal.ohchr.org/portal/page/portal/HRCExtranet>.

What you can do?

For the mandates to be appointed in September, you can submit your views on the candidates shortlisted by the Consultative Group to the President at hrcpresidency@ohchr.org.

ISHR ACTIVITIES:

TRAINING FOR HUMAN RIGHTS DEFENDERS FROM EAST AND HORN OF AFRICA
23 – 27 August 2010

TRAINING FOR HUMAN RIGHTS DEFENDERS FROM BURUNDI AND DRC
17 – 21 August 2010

TRAINING FOR HUMAN RIGHTS DEFENDERS IN THE PACIFIC REGION
6 – 10 September 2010

REGIONAL MEETINGS:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
10 - 24 November 2010

UN MEETINGS:

CERD
2 – 27 August 2010
(Geneva)
Australia, Bosnia and Herzegovina, Denmark, El Salvador, Estonia, France, Iran, Morocco, Romania, Slovenia, Uzbekistan

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE
2 - 6 August 2010
(Geneva)

HUMAN RIGHTS COUNCIL
13 September – 1 October 2010
(Geneva)

CRC
13 September – 1 October 2010
(Geneva)
Angola, Burundi, Guatemala, Montenegro, Nicaragua, Spain, Sri Lanka, Sudan
OPSC: Bosnia and Herzegovina, Montenegro, Nicaragua, Sierra Leone
OPAC: Bosnia and Herzegovina, Montenegro, Nicaragua, Sierra Leone, Sri Lanka, Sudan

GENERAL ASSEMBLY 65TH SESSION
starts on 14 September
General debate from 23-25 September and 27 – 30 September 2010

HUMAN RIGHTS COUNCIL, ORGANISATIONAL MEETING
30 August 2010
(Geneva)

HIGH-LEVEL PLENARY MEETING ON THE MILLENNIUM DEVELOPMENT GOALS
20 – 22 September 2010
(New York)

THIRD COMMITTEE OF THE GENERAL ASSEMBLY
4 October – end of November 2010
(New York)

CEDAW
4 – 22 October 2010
(Geneva)
Bahamas, Burkina Faso, Czech Republic, Malta, Tunisia, Uganda

CRPD
4 – 8 October 2010
(Geneva)

SOCIAL FORUM
4 – 6 October 2010
(Geneva)

HUMAN RIGHTS COMMITTEE
11 – 29 October 2010
(Geneva)
Belgium, El Salvador, Hungary, Jordan, Poland
Task Forces: Bulgaria, Guatemala, Iran, Jamaica, Kuwait

AD HOC COMMITTEE ON THE ELABORATION OF COMPLEMENTARY STANDARDS
11 – 22 October 2010
(Geneva)

CAT
1 – 19 November 2010
(Geneva)
Bosnia and Herzegovina, Cambodia, Ecuador, Ethiopia, Mongolia, Turkey

CESCR
1 – 19 November 2010
(Geneva)
Dominican Republic, Netherlands, Sri Lanka, Switzerland, Uruguay

UPR WORKING GROUP
1 - 12 November 2010
(Geneva)
Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, United States of America, Marshall Islands, Croatia, Jamaica, Libya, Micronesia, Lebanon, Mauritania

WORKING GROUP ON THE REVIEW OF THE HUMAN RIGHTS COUNCIL
25 – 29 October 2010
(Geneva)

SPT
15 – 19 November 2010
(Geneva)

AUG 2010

SEPT 2010

OCT 2010

NOV 2010

UPCOMING EVENTS AUGUST - NOVEMBER 2010