

HUMAN RIGHTS MONITOR

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ISHR | INTERNATIONAL SERVICE FOR HUMAN RIGHTS

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With 3 April 2011 marking the fifth anniversary since the creation of the Human Rights Council (the Council), it was greatly encouraging to see significant positive developments unfolding at its 16th session (28 February – 25 March). The Council began to demonstrate its potential prior to the regular session, when it moved swiftly to call for a special session on the crisis unfolding in Libya. This decisive move ultimately led to the suspension of Libya's membership rights in the Council, demonstrating the body's ability to move quickly to address critical situations when sufficient political will exists.

Among the key developments at the 16th session (p. 1) was the establishment of a new Special Rapporteur on Iran (the first country-specific special procedure established by the Council), and a new Commission of Inquiry on Côte d'Ivoire. Several special procedures mandates were renewed, including on human rights defenders, and a reinforced Special Rapporteur on safe drinking water and sanitation was established. A ground-breaking statement, presented to the Council on ending violence based on sexual orientation and gender identity, was signed by 85 States – the greatest number to have ever supported a statement of this kind. Finally, the Council adopted the outcome document of its five-year review (p. 7). While the review outcome itself was disappointing, the 16th session overall marks one of the most successful to date, and what ISHR hopes will be the beginning of a more positive dynamic for the future.



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

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.

Founded in 1984, we have established ourselves in supporting and facilitating the work of human rights defenders with national, regional and international human rights systems.

OUR VISION

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.

OUR MISSION

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.

The *Human Rights Monitor Quarterly* was launched by the International Service for Human Rights in April 2010. It replaces the former annual *Human Rights Monitor*, *New York Monitor*, *Treaty Body Monitor*, *UPR Monitor* and *Council Monitor* publications, and presents a global picture of developments in the international and regional human rights systems. The *Quarterly* also highlights events, meetings and opportunities for engagement by non-governmental organisations and national human rights institutions in the upcoming quarter and beyond. This publication is issued four times a year, in January, April, July, and October.

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A child has his face painted as part of a Libyan demonstration in Boston, USA.

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HUMAN RIGHTS COUNCIL 16TH SESSION

Council marks five-year anniversary with notable success



Photo: UK Department for International Development

Displaced people cross a river border from Côte d'Ivoire to Liberia, attempting to escape fighting and political unrest. A Commission of Inquiry has been set up to investigate the circumstances surrounding human rights violations committed in Cote d'Ivoire since the presidential election.

The Human Rights Council (the Council) ended its 16th session (28 February – 25 March 2011) with the adoption of a series of resolutions that many would have thought to be out of its reach just a few months ago.¹ From the creation of a new Special Rapporteur on Iran, to the establishment of a Commission of Inquiry to investigate human rights violations in Côte d'Ivoire, and important developments on human rights defenders and the right to water, the 16th session can be considered one of the most successful to date. While there were some setbacks in relation to the continuing struggle for the universality of human rights, and potentially dangerous developments on the consideration of sexual orientation and gender identity in the UN system, the overall outcome of the session is notable.

The session thereby followed the tentative steps of positive change observed at the 15th session (September 2010), when the Council had created two key new special procedures mandates (on freedom of peaceful assembly and association, and on discrimination against women).

The 16th session followed an unusually intense period of Council deliberations in late 2010 and early 2011. In December 2010, the special session on Côte d'Ivoire, called for by the African Group, set a new standard in reacting to urgent situations in a timelier and less 'political' manner than previous special sessions. The ongoing process of the review of the Council's work and functioning – of which the Council's capacity to react to urgent and chronic situations of human rights violations was a central part – further increased the pressure on delegations in January and February.²

With all eyes turned to the gross and systematic human rights violations unfolding in Libya, via worldwide television broadcasts, the Council's swift reaction on 25 February in initiating a special session on Libya visibly influenced the mood at the beginning of the regular session. The high-level segment held during the first three days of Council meetings clearly demonstrated this, with most dignitaries focusing their comments on Libya and the wider series of protests in the Middle East and North Africa.

This article provides an overview of developments at the 16th session. It does not attempt to exhaustively discuss the session. For more detailed information see the report of the session, UN press releases and ISHR news stories published throughout each regular session.³

INSTITUTIONAL DEVELOPMENTS

As the main institutional development, and after almost one year of negotiations, the Council adopted the outcome of its review process. You can read more about this development in the article on p. 7 of this publication.

At its 15th session in September 2010, the Council adopted a controversial Presidential statement, which risks undermining the independence of the Office of the High Commissioner for Human Rights (OHCHR).⁴ It invited the High Commissioner to present

1 See <http://bit.ly/gWq0oC> for all adopted resolutions and voting records.

2 For more information, see the article on p. 7 of this publication.

3 The report of the session containing details about the proceedings and co-sponsors is available at <http://bit.ly/fzt1nM>. UNOG press releases: <http://bit.ly/hOrtRd>. ISHR stories: www.ishr.ch/council.

4 See ISHR's *Human Rights Monitor Quarterly* issue 3/2010, available at www.ishr.ch/quarterly/previous-editions.

OHCHR's human rights programme (Programme 19), part of the UN's strategic framework, to the Council, and to pass the views of States and relevant stakeholders to the Committee for Programme and Coordination in New York for its consideration. Initially, the President planned to submit a follow-up text during the 16th session.⁵ However, the initiative has been postponed until June, officially due to lack of time. During her interactive dialogue with the Council at the 16th session, the High Commissioner affirmed that 'a meeting [will] be organised with me by the (...) President', indicating her preference for a dialogue outside the formal Council agenda. It remains to be seen by whom and in what form the proposal of formalising consideration of Programme 19 by the Council will be pursued.

UN headquarters developments: Libya

On 26 February 2011, the Security Council unanimously adopted resolution 1970 referring Libya to the International Criminal Court (ICC), and imposing sanctions against Libyan leaders, including an arms embargo, travel bans and an asset freeze. Security Council Resolution 1973, adopted on 17 March, authorised enforcement of a no-fly zone over Libya and use of 'all necessary measures', including military force, to protect civilians. Ten members voted for the resolution (Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal, South Africa, France, the United Kingdom, and the United States), and five members abstained (Brazil, China, Germany, India, Russia).

On 1 March, following the adoption of the resolution by the Human Rights Council on 25 February which, *inter alia*, recommended that the General Assembly consider suspending the country's membership in the Council, the General Assembly adopted by consensus resolution 65/265, which suspended Libya's membership rights in the Human Rights Council.

IMPORTANT ACHIEVEMENTS IN RESPONSE TO COUNTRY SITUATIONS

The special session on **Libya** held just prior to the 16th session set the tone for several of the country-specific initiatives pursued. It showed how the Council can add value to the coordinated response of the international community to the situation.

In follow-up to the special session on **Côte d'Ivoire**, the Council also set up a Commission of Inquiry tasked with investigating 'the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2010'.⁶ The President of the Council appoint-

ed Mr Suliman Baldo, Ms Reine Alapini Gansou and Mr Vitit Muntarbhorn to the Commission of Inquiry.⁷ Importantly, the resolution expresses concerns about all violations committed, without prejudicing the findings of the Commission of Inquiry on who may have committed them. This stands in contrast with earlier drafts, which primarily blamed, now arrested, President Gbagbo and his followers for human rights violations. It remains to be seen if this balanced approach will prevail, particularly now that the troops of elected President Alassane Ouattara have been victorious. It will be crucial for the credibility of the Council that the Commission of Inquiry can effectively investigate all violations, even those that may have been committed by forces loyal to President Ouattara.⁸ The Council will consider an update on the situation by the High Commissioner at the 17th session in June.

UN headquarters developments: Côte d'Ivoire

The High Commissioner for Human Rights, Ms Navi Pillay, briefed the Security Council on 13 April 2011. It was the first time in several years that the High Commissioner was invited to brief the Security Council on a country situation, and she welcomed the 'growing recognition' that human rights concerns are central to the issues of peace and security.

OHCHR completed a mission to Côte d'Ivoire from 2 to 9 April, led by the Assistant Secretary-General Ivan Šimonović. Ms Pillay's briefing followed the arrest of former President Laurent Gbagbo, and the mission's discovery of evidence of large-scale human rights violations including extra-judicial killings, enforced disappearances, torture, and sexual violence in Abidjan and the rest of the country in the course of the conflict. The High Commissioner welcomed the pledge on 7 April by President Ouattara to establish a Truth and Reconciliation Commission and to punish those who committed crimes or acts of vengeance, but stressed that reconciliation would not be accomplished without 'meaningful accountability', including through bringing perpetrators to justice, regardless of their affiliation. She also voiced hope that the Commission of Inquiry, set up by the Human Rights Council, would receive full cooperation.

A press statement (SC/10224) issued by the Security Council following the briefing echoed many of the High Commissioner's calls, including encouraging the Government to cooperate closely with the Human Rights Council's Commission of Inquiry. The Security Council also welcomed President Ouattara's commitment to investigate alleged human rights abuses and reaffirmed that those responsible for the violations must be held accountable for their crimes regardless of their political affiliation. The Security Council further encouraged President Ouattara to form an inclusive, broad-based Government.

5 Notes of the Bureau meeting of 2 March 2011, available at <http://bit.ly/gDXtfN>.

6 A/HRC/RES/16/25. It is notable that, despite the general support of the Government of Côte d'Ivoire, the resolution was adopted under the Council's agenda item 4 (human rights situations that require the Council's attention).

7 See <http://bit.ly/fOqr9D> for more information.

8 This test for the Council's credibility comes at a time when the results of a previous Commission of Inquiry, that on the Gaza conflict, have been called into question by its most prominent member, Justice Richard Goldstone. See for instance <http://bit.ly/gW9yWU>.

Among the most significant outcomes of the 16th session is a **Special Rapporteur on the situation of human rights in Iran**, the first-ever, new, country-specific mandate to be created by the Council. This milestone in the Council's history is an important signal for human rights defenders that their plight is not lost on the international community, and to the Government of Iran that more scrutiny of its actions enjoys wide political support. Although the mandate was not created by consensus, support is much more significant than, for instance, the creation of the Independent Expert on the situation of human rights in the Sudan,⁹ and several States who had voted against the Independent Expert on Sudan changed their positions to abstention.¹⁰ This may indicate more readiness within the Council to use the tool of country mandates. The resolution on Iran was spearheaded by Sweden, on behalf of a broad cross-regional group of co-sponsors.¹¹

The creation of the mandate is only the first step in what is likely to be a renewed and more long-term engagement by the Council on Iran.¹² In June, the President will appoint an individual to serve in the position and, at this stage, it is doubtful whether the Government will cooperate with the mandate. It has reportedly called the new mandate 'illegal'. A visit by the High Commissioner, although agreed to in principle, has not yet been scheduled.

The Council also adopted resolutions on **Tunisia and Guinea** respectively. Both texts were adopted under Item 10 and are framed in a spirit of supporting the governments in their political transition.¹³ The texts recognise the important role the High Commissioner and her Office play in that regard, and through this provide an avenue for further follow-up. It is notable that in relation to Tunisia, States salute 'the courage of the people of Tunisia', a focus that is rarely found in resolutions of the Council.

Unfortunately, the Council has not been able to respond so constructively to the situation in the **Democratic Republic of the Congo (DRC)**. Along the lines of previous resolutions, the text adopted in March emphasises efforts by the Government to end human rights violations but does not set up a mechanism to follow the situation. The group of seven special procedures who reported to the Council had suggested the creation

of a dedicated mandate to assist the Government. Despite such clear advice, the Council decided not to prolong the mandate of the joint group of special procedures and has not created new follow-up mechanisms. This essentially ends consideration of the human rights situation in the DRC by the Council.

As expected, the Council renewed the mandates of the Special Rapporteurs on **Myanmar** and the **Democratic People's Republic of Korea (DPRK)**. Both resolutions are relatively strong in substance and enjoyed broad support. Since neither of the two States has cooperated with the respective mandates, the Council has slightly escalated its calls urging the governments to do so. However, the two resolutions also show the limits the Council currently has. Apart from reporting more regularly, including both to the Council and the General Assembly, the Special Rapporteurs do not have specific tools at their disposal to increase cooperation. Positively, while the resolution on Myanmar was adopted by consensus (with usual reservations expressed by China and Cuba), the mandate on DPRK was extended with the largest ever positive vote count.¹⁴ Even Cuba, although it voted against the resolution on grounds of its principled opposition to country mandates, was keen on showing its support for the substantive condemnation of human rights violations contained in the resolution.

MIXED RESULTS ON THEMATIC DEVELOPMENTS

In recent years, one of the most contentious topics at the Council has been the initiative by Pakistan (on behalf of the OIC) on '**defamation of religions**'. In 2010, the resolution lost a significant amount of support at the Council, a trend that continued into the General Assembly's discussion of 'defamation of religions'. Faced with such declining support, Pakistan opted for a new approach, replacing its traditional resolution on 'combating defamation of religions' with a focus on combating intolerance and discrimination.¹⁵ The Council adopted the text by consensus, sending a clear and united message against religious hatred that constitutes incitement to discrimination, hostility or violence, and in favour of measures fostering tolerance. While Pakistan was adamant that its previous resolutions 'remain valid', it seems the discourse within the Council will be less polarised. The resolution provides for the holding of a panel debate during the 17th session on 'a global dialogue for the promotion of a culture of tolerance and peace' based on human rights. A positive debate during the panel may help to cement progress on overcoming this divisive debate, and pave the way for a similarly positive approach at the General Assembly later this year.

For human rights defenders around the world, the renewal of the mandate of the **Special Rapporteur on human rights**

9 The Special Rapporteur on Iran was established by a vote of 22 in favour, 7 against (Bangladesh, China, Cuba, Ecuador, Mauritania, Pakistan, Russian Federation), with 14 abstentions. The mandate of the Independent Expert on Sudan was created with only one vote difference: 20 votes in favour, 19 against and 8 abstentions.

10 Bahrain, Cameroon, Djibouti, Gabon, Jordan, Malaysia, and Saudi Arabia.

11 Sweden, US, Moldova, Macedonia, Zambia, and Panama. This model has proven its merit in terms of building necessary political support across regional boundaries.

12 The Commission on Human Rights created (1984) and then abolished (2002) a Special Rapporteur on Iran, but the Council has never systematically dealt with this situation.

13 Item 10 of the Council's agenda approaches country situations from the angle of technical assistance and capacity building, while Item 4 on situations that require the Council's attention is sometimes perceived as more confrontational.

14 It was adopted with 30 votes in favour, 3 against (China, Cuba, Russian Federation), and 11 abstentions. In 2010, 28 voted in favour, 5 against (China, Cuba, Egypt, Indonesia, Russian Federation), and there were 13 abstentions. This was partly due to the change in membership, as Indonesia and Egypt have left the Council. It is notable that Thailand took the 'extremely difficult' decision to support the resolution.

15 *Resolution 16/18*, available at <http://bit.ly/gxUizV>.

defenders is reassuring. The consensus on this mandate is a clear acknowledgment of the important role human rights defenders play in improving the protection of human rights at the national level. Of particular significance is the addition of several co-sponsors who had never supported or had ceased to support the resolution renewing the mandate.¹⁶

Unlike in 2010, when the thematic resolution on the 'security and protection' of human rights defenders led to drawn-out negotiations,¹⁷ the simple procedural renewal of the mandate went smoothly. The cautious approach taken by Norway safeguarded the essential characteristics of the mandate but also limited the scope for improving it. The renewed mandate remains weak in terms of the cooperation it asks States to extend to the Special Rapporteur, particularly in terms of country visits.¹⁸ It also fails to recognise the increasing phenomenon of reprisals against those cooperating with the UN.

One of the key elements discussed during the negotiations was the level of recognition given to the work of Ms Margaret Sekaggya, the current Special Rapporteur. The focus of her last report was on the situation of women human rights defenders and defenders working on gender issues, including those working on the rights of lesbian, gay, bisexual and transgender (LGBT) persons.¹⁹ Although it was never openly discussed during informal negotiations on the mandate, it was clear that some States are reluctant to welcome or even appreciate this particular aspect of her work. Egypt was most concerned about this issue, wanting to merely 'note' the work of the Special Rapporteur, while Ireland (on behalf of the EU) in particular wanted a higher level of recognition.²⁰

The second key theme of negotiations on human rights defenders was the reporting line the Special Rapporteur would have to the General Assembly and to the Council.²¹ Algeria and the Russian Federation were most vocal in suggesting the Special Rapporteur should only report to the General Assembly if specifically requested by that body. Algeria later articulated its concern more clearly, by suggesting a system of informing the Council of consideration of special procedures reports by the General Assembly and vice-versa. While a better flow of information would be useful, for instance through an update prepared by OHCHR on reports

considered by each body since the last session, it will be key to avoid misuse of that system to compromise the independence of special procedures mandate holders. Mandate holders should remain free in their choice of topics to be presented to either body.

Since the renewal of the mandate was purely procedural, the negotiations remained free of the usual calls for a more restrictive definition of human rights defenders. However, in a right of reply, Nigeria raised the concept of 'human rights contractors';²² seemingly an attempt at reinvigorating debates on limitations to the right to access funding.²³ Such limitations are often used to restrict the legitimate work of human rights defenders, and have been at the centre of negotiations on previous human rights defenders resolutions.

The Council also renewed several **other special procedures mandates**, including:

- Independent Expert on minority issues
- Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on the human right to safe drinking water and sanitation
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Special Rapporteur on the sale of children, child prostitution and child pornography
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- Special Rapporteur on violence against women
- Working Group on Enforced or Involuntary Disappearances

Of particular note is the resolution on the human **right to safe drinking water and sanitation**, which was adopted by consensus. It replaces the current Independent Expert with a Special Rapporteur mandate for three years, with a clearer mandate to monitor the realisation of this right. In addition the resolution marks a substantive move forward in the recognition of the right to water and sanitation. Whereas previous resolutions have framed the issue more restrictively as 'human rights obligations related to access to safe drinking water and sanitation', the latest resolution explicitly and consistently refers to the 'right to safe drinking water and sanitation.' The resolution also positively refers to the Committee on Economic, Social and Cultural Rights' General Comment 15 on the right to water. This is significant because many States are often reluctant to acknowledge in the political arena the role of the treaty bodies in interpreting the substantive content of treaties. Coupled with the growing list of co-sponsors

16 The total number of co-sponsors grew from 46 in 2008 to 64 in 2011. Although some States stopped co-sponsoring, notable additions include Jordan, Mauritius, Indonesia, Thailand, Zambia, Senegal, and Uganda. The resolution on the protection of human rights defenders at the 13th session was co-sponsored by 55 States.

17 For more information, see the ISHR article at <http://bit.ly/aBbany>.

18 The resolution only 'calls upon Governments to *give serious consideration to responding favourably* to the requests (...) to visit their countries.'

19 See the ISHR news story at <http://bit.ly/dWluoB>.

20 In the end, the Council took 'note with appreciation' of the work of the Special Rapporteur. In UN language, 'taking note' of a report is the very least the Council can do, and has a generally negative connotation, whereas 'noting with appreciation' is more positive than neutral.

21 Early drafts and the final text ask the Special Rapporteur to 'report regularly to the Council and the General Assembly'.

22 Distinguishing between those human rights defenders that work without external support, and those that receive funding and other support for their work (Nigeria referred to the latter as human rights 'contractors').

23 See <http://bit.ly/e9zc0b>.

that recognise both of these rights as being derived from the right to an adequate standard of living, this is an important achievement for the Council.²⁴

The Council also adopted the new United Nations **Declaration on Human Rights Education and Training**. Although the General Assembly still has to adopt the Declaration formally, and despite some shortcomings, it is an important step forward in setting a common standard for human rights education in all States.²⁵ Like the Declaration on Human Rights Defenders, this text has the potential to be used as a practical tool for the promotion and protection of human rights on the ground. It provides a basis for human rights defenders to demand the provision of and access to human rights education from their States, and recognises defenders' legitimate role in promoting and providing human rights education.

The consultation process leading up to the first draft of the declaration prepared by the Advisory Committee was exemplary in terms of its inclusive approach.²⁶ However, access for civil society decreased slightly when the process moved to the intergovernmental stage.

On behalf of a large group of 85 States, Colombia presented a joint statement on ending violence against persons on the basis of their **sexual orientation or gender identity**.²⁷ The current joint statement followed a statement on behalf of 66 States in the General Assembly in 2008 and a statement supported by 54 States in the Council in 2006. Notably, in the most recent joint statement, signatories came from all regions and also included South Africa.

This was significant because, despite its progressive constitution, South Africa had so far not supported initiatives around sexual orientation and gender identity at the UN. Lobbied to support the statement, South Africa tabled a surprise resolution just days before the reading of the joint statement, which would have created an intergovernmental working group with the exclusive competence to discuss 'new concepts' such as sexual orientation, and a mandate to clarify the meaning of sexual orientation in the context of international law. Attempting to use the resolution as leverage, South Africa made a last minute call for the inclusion of the need for more space for dialogue in the joint statement. Although this proposal was not taken up, South Africa eventually joined the statement.

Through a combination of domestic and international pressure, South Africa was convinced to postpone its resolution to

the June session. It is currently unclear in what form the proposal will re-emerge. According to the State, the resolution is an attempt to provide a platform for further dialogue on this issue, as many States are uncomfortable with discussing sexual orientation and gender identity.

Reactions to the joint statement clearly showed that the consideration of the rights of lesbian, gay, bi-sexual, transgender and intersex (LGBTI) persons remains contested in the Council, with several States expressing their disapproval of the joint statement. Pakistan (on behalf of the OIC) saw it as an attempt 'to shift the focus from the real issues that constitute marginalisation and exclusion'. It also argued that notions of sexual orientation and gender identity had no legal foundation in any international human rights instrument, and it was concerned about 'attempts to create new rights' or 'new standards', by misinterpreting the Universal Declaration and international treaties to include such notions that were never articulated or agreed to by the general membership'. The OIC furthermore described advocacy for decriminalisation of same-sex relations as an intervention in the domestic affairs of States, violating the principle of non-intervention contained in the United Nations Charter.

Indeed, many have recognised that the current tit-for-tat approach of statements and counter statements in the Council and the General Assembly may have hardened the lines between opposing States and not yielded the desired results.²⁸ In that context, the initiative by South Africa to create a space for dialogue, if genuine, could be a way of moving the substance of the debate forward. In pursuing this debate, it will however be important to resist calls for 'definitions', and instead ensure a focus on the protection of all persons against human rights violations.

Despite the pitfalls associated with a more formalised debate on sexual orientation and gender identity by the Council, there are signs that positive engagement can emerge. For instance, Nigeria said all citizens should be equal before the law and that 'any law [that] criminalizes sexual orientation (...) should be expunged'.

A negative development that continued through the March session is the resolution initiated by the Russian Federation on **traditional values**. Many see this as an attempt to undermine the universality of human rights. In October 2010, OHCHR organised an expert seminar on this issue. Among the conclusions of the workshop was that 'there was a danger in making something as undefined and constantly evolving as "traditional values" the standard for human rights'.²⁹ The resolution does not address this and other fundamental concerns, which were reiterated during the single public informal consultation on this resolution. Instead, it tasks the Advisory Committee with the preparation of a study on 'how a better understanding and appreciation of traditional values of dignity, free-

24 In particular, Albania, Austria, Ireland, Israel, and Sweden have co-sponsored the resolution, recognising the right to sanitation for the first time. All EU States except Czech Republic, Malta and UK co-sponsored the resolution. See also <http://bit.ly/eM6r7T>.

25 See also the ISHR news story on the adoption of the Declaration at <http://bit.ly/fmph4B>.

26 See ISHR's *Human Rights Monitor 2009*, chapter on the Advisory Committee, available at <http://bit.ly/gSUeEN>.

27 See the ISHR news story at <http://bit.ly/gJYZ3P>.

28 See also the ISHR reporting on the statements in the General Assembly the *Human Rights Monitor 2008*, available at <http://bit.ly/fSUBm7>.

29 See A/HRC/16/37 available at <http://bit.ly/dU1F7D>.

dom and responsibility can contribute to the promotion and protection of human rights'.

Unsurprisingly, the resolution was adopted by a vote.³⁰ Several countries expressed their continuing concerns with the concept of traditional values in general, and the specific values identified in the resolution.³¹ The explanations of vote will be important when the Advisory Committee commences its work. It will also be key for the Committee to pay attention to the good practices of previous initiatives with regards to consultations with all stakeholders.

During their interactive dialogue with the Council, several special procedures reiterated concern about **reprisals against persons that cooperate with them**.³² Mr El Hadji Malick Sow, the Chairperson of the Working Group on arbitrary detention, highlighted in particular the case of Venezuelan judge Afuni Mora, who has been detained since December 2009 after ordering the conditional release of an individual whose detention had been declared arbitrary by the Working Group.

At its 17th session, the Council will consider a report of the Secretary-General on reprisals. In a notable statement, Norway called on the States mentioned in the report to inform the Council of steps taken to investigate cases of reprisals.³³ The June session will be an opportunity for the Council to develop a more concrete, timely and meaningful response to cases of reprisals.

CONCLUSION AND NEXT STEPS

Several elements have influenced what may be the beginning of changing dynamics at the Council. First of all, the changing geopolitical context triggered by the protests in the Middle East and North Africa has shaped the spirit of the 16th session to a large extent. In particular, the engagement of the Tunisian and Ivorian delegation in relation to the respective resolutions has shown the Council has a legitimate and useful role to play in holding governments to account for human rights violations, and in assisting countries in efforts to improve their human rights records. In addition, the challenges to repressive governments seen in the region may over time lead to an improvement of the role of these States in multilateral human rights diplomacy. The defection of the Libyan mission in Geneva during the special session and the similar move by the Yemeni delegation towards the end of the 16th session point in that direction. Although no clear shift in the position of Egypt in Geneva is visible to date, Egyptian diplomats have referred on numerous occasions to their 'homemade revolution' to boost their legitimacy. While the

credibility of such claims is questionable, it is interesting to see these States adopt a human rights narrative.

The second element of success was the consistent and positive engagement of the US. The mixture of constructive engagement, principled positions and pressure where needed, deployed over the past two years, is beginning to pay off. In September 2009, when the US and Egypt managed to re-establish consensus on the freedom of expression resolution, it became clear that the sustained involvement of the US in the Council could bring fresh air into old debates. Prior to that, the extension of the country-specific mandate on the Sudan at the June 2009 session was also a testimony to this new role.³⁴ The consistent and inclusive cross-regional approach brought by the US to the creation of a new Special Rapporteur on the rights to freedom of peaceful assembly and of association, in September 2010, was another important milestone.³⁵

Finally, the recently concluded review has contributed its part to the changing dynamics witnessed at the March session. Although the outcome of the review process can be considered a lost opportunity for the Council, the months of thinking and discussions on how the Council could improve its response to such situations have proven useful. Perhaps it was the failure to agree on any concrete outcome to improve the Council's response to country situations, which highlighted the centrality of this issue for the Council's credibility. Throughout the review process, and particularly in its final phase, many delegations from middle-ground countries attempted to present innovative and creative solutions to this problem.³⁶ Although no agreement was reached as part of the review, the successive special sessions on Côte d'Ivoire and Libya and the positive outcome of the March session have shown what many have argued from the beginning: that given the necessary political will, the Council's institutional arrangements are largely sufficient to implement its mandate of addressing violations.

3 April 2011 marked the five-year anniversary since the creation of the Council by General Assembly *Resolution 60/251*. The direction shown by developments at the March session lend hope to those wishing to see the main UN human rights body become more effective, and may indicate that the next five years of the Council's work will be more meaningful for human rights defenders on the ground. ■

30 Adopted with 24 in favour, 14 against, and 7 abstentions. The previous resolution on this topic, A/HRC/RES/12/21 was adopted with a slightly wider margin of 26:15:6.

31 For instance, it is unclear on what basis the resolution elevates 'responsibility' as a value on an equal footing with freedom and dignity, while deliberately omitting equality, which underpins all international human rights instruments. Chile (on behalf of several Latin American countries), Hungary (on behalf of the EU), US and Switzerland made explanations of vote.

32 See the ISHR news story at <http://bit.ly/i6zIO2>.

33 See a webcast at <http://bit.ly/eTdoFl>.

34 See ISHR's *Analytical overview of the 11th session of the Human Rights Council*, available at <http://bit.ly/fj1ZCz>.

35 US, Czech Republic, the Maldives, Nigeria, Lithuania, Mexico, Indonesia, and Latvia.

36 For more information, see the article on p. 7 of this publication.

REVIEW OF THE COUNCIL

Months of discussions lead to a disappointing outcome



Photo: Kevin Utting

On 25 March 2011 the Human Rights Council (the Council) adopted by consensus the outcome document of the five-year review of the Council's work and functioning.¹ The resolution states that the outcome will form a supplement to the institution-building package of the Council.² The review process is continuing in New York, where it is predicted that a final text on issues related to the status of the Council will be presented to the General Assembly in early May.

THE PROCESS

The review process officially began with the first meeting of the Open-ended Intergovernmental Working Group on the review (the Working Group).³ In the months leading up to this meeting, however, there had been a series of informal and formal consultations concerning the modalities by which the review process would be conducted. More information on those discussions can be found in the July 2010 edition of the *Human Rights Monitor Quarterly*.⁴

Timeline

- First session of Working Group, 25-29 October 2010
- Series of informal consultations, November 2010
- Ambassadorial retreat, Bangkok, 8-10 December 2010⁵
- Series of informal consultations, January 2011
- Second session of Working Group, 7, 17-18, 23-24 February 2011
- Adoption of outcome document by the Working Group, 24 February 2011
- Adoption of the outcome document, 25 March 2011

The process was structured around thematic clusters of issues. The five issues identified were: special procedures, the universal periodic review (UPR), agenda and programme of work, methods of work, and the Advisory Committee and complaints procedure. After the first meeting of the Working Group, each issue was assigned a facilitator who led informal discussions and reported to the second meeting of the Working Group.⁶

1 A/HRC/RES/16/21, at <http://bit.ly/eASgGi>.

2 A/HRC/RES/5/1, Institution-building of the United Nations Human Rights Council, at <http://bit.ly/i0GGvn>.

3 A/HRC/RES/12/1, at <http://bit.ly/eWF2sv>.

4 Available at <http://bit.ly/eSG32M>.

5 This was held at the initiative of the President of the Council, and was intended as an opportunity for States to reflect on the discussions to date and begin to move beyond reiterating their proposals. The President asked ambassadors to focus their deliberations on three questions: how can we make the Council more effective and efficient and improve the culture of work? How can we increase the impact of the Council on the ground? And, how can the Council better respond to emergency country situations? The format represented an opportunity for States to think beyond the review process's five thematic issues and to develop innovative ways of addressing country situations. Unfortunately this outcome did not materialise.

6 The five facilitators were Mr Omar Hilale, Morocco (UPR), Ms Maria Ciobanu, Romania (Advisory Committee and complaint procedure), Mr Hannu Himanen, Finland (special procedures), Mr Gopinathan Achamkulangare, India (agenda and programme of work), and Ms Maria Nazareth Farani Azevêdo, Brazil (working methods). Mr Idriss Jazairy, Algeria, was appointed to coordinate with the process in New York.

NGO PARTICIPATION

The process was in general open to the participation of all stakeholders, however this was not always taken for granted and non-governmental organisations (NGOs) often felt they had to fight for their place in meetings. The tone was set early on in the discussions on the modalities for the Working Group, when the Russian Federation presented a paper according to which NGOs would not be able to speak during the Working Group's meetings.⁷ While the proposal did not gain wide support, it was nevertheless indicative of the attitudes of a number of States in the Council towards civil society contributions. Unfortunately, the President was not as strong as he should have been in support of NGO and NHRI participation and, as a result, this remained an issue throughout the review process.

Further challenges were faced during the second round of informal meetings, held in January 2011. Unlike the November 2010 informal discussions, which were planned in a transparent manner and publicised well in advance, scheduling for the second round of informal discussions was left in the hands of the various facilitators. The result was that meetings were often announced to civil society with very little notice, sometimes as late as the evening before the meeting, making it difficult to ensure attendance. The fact that the second meeting of the Working Group was split into three 'mini-sessions', rather than one full week, created further logistical difficulties.

There was also a failure to create a genuine negotiating space, which made it difficult for NGOs to gain any traction with their own proposals. Negotiations instead took place bilaterally or in small groups outside the plenary meetings, with the result being a lack of real discussion in the sessions where constructive proposals could be properly considered. Consequently it was difficult for NGO proposals to become a part of the review discourse. Despite NGOs offering detailed suggestions on the negotiating text and States referring to these during the second meeting of the Working Group, the outcome document failed to reflect those suggestions.

Meanwhile, NGOs in New York have effectively participated in the review process. NGOs even enjoyed and exercised speaking rights in the informal discussions, an unusual development for General Assembly meetings addressing human rights issues. This was largely due to the commitment to accountable and transparent proceedings by the co-facilitators of the New York review process, Ambassador Christian Wenaweser (Liechtenstein) and Ambassador Mohammed Loulichki (Morocco).

⁷ Russian Federation non-paper on modalities of the review of the Human Rights Council, 18 May 2010 at <http://bit.ly/e0QHTZ>.

KEY DISCUSSIONS

Chronic and emergency human rights situations

One of the most contentious areas of discussion was the issue of the Council's responsiveness to emergency and chronic human rights situations. Many, including NGOs and NHRIs, held this to be the key benchmark against which the success of the review in improving the Council's effectiveness would be judged. For States on both sides of the divide, the way in which this issue would be handled became crucial to whether or not they could join consensus on the final outcome.

However, concrete proposals in this area were only discussed late in the process, immediately prior to the second meeting of the Working Group. At this point, the facilitator of the cluster of issues on methods of work, the Ambassador of Brazil, presented her own suggestion for discussion. The suggestion was put to the Working Group and incorporated by the President in the negotiating text that he developed on the basis of all proposals made to the Working Group. The mechanism would have been a loose one, whereby the President would, at the request of one or several States, consult both member States and the concerned State to reach a decision, within 72 hours, on the Council's response to the situation of concern. Crucially, in the negotiating text, that response was held to require the consent of the concerned State. In addition, the description of the process as 'intergovernmental' was cause for concern, especially given the obstacles faced in ensuring NGO participation within the 'intergovernmental' process of review.

Several States did take NGO concerns on board. Hungary (on behalf of the EU), Argentina, Canada, France, Ireland, Japan, the Netherlands, and the UK called for the proposal to ensure space for NGOs and NHRIs to participate. The States also called for removal of the consent requirement in favour of calling on the concerned State to cooperate with the process. However, for others the proposal already went too far. These States (Nigeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Cuba, the Philippines, and the Russian Federation) called for the deletion of the proposal, claiming that existing tools for addressing urgent situations are sufficient.

In light of the Council's often weak and divisive responses to urgent or chronic situations, the claim that existing tools are sufficient was unconvincing. Interestingly, however, the day after the outcome was adopted by the Working Group, the Council held a special session on Libya, which demonstrated just what it is capable of doing with the tools it already has. In contrast to previous special sessions, this session was notable for its unanimous condemnation of Gaddafi's regime and the adoption of a strong resolution by consensus. While this offers hope that existing tools are sufficient, the Council needs to demonstrate this point by consistently responding to future urgent or chronic situations in a strong and unified manner.

As far as the final outcome is concerned, it was the Council's responsiveness to emergency and chronic human rights situations that had the greatest impact on the debate. In the final days and nights before adoption of the outcome by the Working Group, discussions broke down on this issue, with the consequence that agreement was also lost on other less controversial proposals. The result is the very limited outcome that the Council finally adopted.

Special procedures

The cluster of issues on special procedures was similarly divisive. The Ambassador of Finland presented an ambitious package of proposals to the second meeting of the Working Group, including a strong section on the need for State cooperation with special procedures. During the meeting, however, the NAM, OIC and African Group, made repeated efforts to weaken the text. In particular, they requested that language saying States be 'urged' to cooperate with special procedures be replaced by 'encouraged', and that a proposal that the Office of the High Commissioner for Human Rights (OHCHR) should compile statistics on cooperation by States with special procedures, backed by Japan and the US, be removed. Additionally the NAM, OIC and the Russian Federation repeated their continuing calls for the creation of a legal committee to report on compliance with the Code of Conduct for special procedures. While this latter proposal did not make it into the outcome, the section on cooperation was significantly weakened.

A proposal to de-cluster⁸ interactive dialogues with special procedures, a suggestion that was said to have unanimous support throughout almost the entire process, was one of the sacrifices of the breakdown in negotiations prior to the adoption of the outcome.

Ultimately, the most significant change to the work of the special procedures to be included in the outcome document was to the appointments procedure. A requirement was added that those nominated to a mandate must submit a letter of motivation and undergo an interview.

Advisory Committee and complaint procedure

In the case of both the Advisory Committee and the complaint procedure, the final document represents business as usual. Proposals on the Advisory Committee ranged from abolishing the Committee altogether, to improving the appointments procedure so the Committee would have relevant expertise available to it. These proposals stood in contrast to calls to maintain the status quo, put forward by Nigeria (on

behalf of the African Group), Pakistan (on behalf of the OIC), Egypt (on behalf of the NAM), Indonesia (on behalf of ASEAN), Azerbaijan, China, Cuba, Lebanon, Nepal, the Philippines, the Russian Federation, Saudi Arabia, South Africa, and Vietnam. The main outcome to emerge is the rescheduling of the current January meeting to immediately prior to the March session of the Council each year, in an attempt to improve interaction between the two bodies.

Regarding the complaint procedure, two key proposals were made: to abolish the Working Group on situations, and to increase the transparency of the procedure by requiring regular reports to the Council. This latter proposal faced broad opposition from Indonesia (on behalf of ASEAN), Nigeria (on behalf of the African Group), Egypt (on behalf of the NAM), Pakistan (on behalf of the OIC), China, Lebanon, Nepal, the Philippines, Saudi Arabia, and Vietnam. The outcome sees the status quo maintained in every respect.

Agenda and programme of work

For some weeks during the discussions on the agenda and programme of work it appeared that the Working Group might be moving towards agreeing to have two rather than three sessions of the Council a year. Opposition to this proposal came from Hungary (on behalf of the EU), Australia, Canada, and the US, who felt that any reduction in the number of sessions would be unacceptable unless alternative mechanisms were put in place to ensure a prompt response to emergency situations in the periods while the Council was not sitting.

A proposal was also made to hold UPR adoptions outside the regular plenary sessions of the Council. Opposition to this proposal came largely from NGOs. They expressed concern at the impact this may have on civil society participation since many NGOs may be reluctant to travel to Geneva to deliver short statements when they have no guarantee of being able to speak.

Neither of these proposals was included in the outcome, which sees the agenda and programme of work maintained as in the institution-building package. The dropping of these proposals is likely to have also been part of the fall-out from the final few days of negotiations. One particularly contentious issue, which may cause further difficulties now that the process has moved to New York, was the US's opposition to Item 7, on Palestine and other occupied Arab territories. The US proposed that Item 7 be abolished and that all country situations of concern be discussed under item 4.⁹ The lack of support for this proposal caused the US to disassociate itself from the outcome document.

⁸ At present, interactive dialogues in the Council are held with between two to three special procedures at a time. The statements delivered by States and NGOs will then refer to any one or more of the reports presented, making it difficult at times to follow the dialogue. The proposal to 'de-cluster' the interactive dialogues envisaged each special procedure being given a dedicated slot to present their report and receive comments and questions from States.

⁹ Human rights situations that require the Council's attention.

Other areas of interest

The UPR was one of the most disappointing discussions of the review. Further information can be found in the article on the UPR in this edition of the *Quarterly* (p. 11).

The issue of reprisals gained a certain degree of prominence during the review process, in particular in the discussions on special procedures facilitated by the Ambassador of Finland. NGOs made efforts to broaden the scope of discussions on this issue and to have it included as a cross-cutting issue in the outcome document. Some States, including Switzerland, the UK, and the US, did pick up on the proposal, however lack of further State support means mention of reprisals remains confined to the context of cooperation with special procedures.

The outcome document also calls on the Council to explore the feasibility of the use of information technology, such as video-conferencing and video-messaging, in order to enhance participation by all stakeholders, including NGOs and NHRIs. A task force, which will also examine issues relating to access of persons with disabilities and the improvement of the Council's secretariat service, will be created to study the issue further and will report to the 19th session of the Council. One issue to be addressed by this taskforce in relation to the use of video-conferencing will be the concern raised during the second meeting of the Working Group, by NAM, OIC and African Group, about how to ensure, at a distance, that a person purporting to speak on behalf of an accredited NGO does indeed represent that NGO.

THE ADOPTION

The outcome of the review of the work and functioning of the Council was adopted by consensus at the 16th session of the Council in March 2011. Many States (including Hungary on behalf of the EU, Nigeria (on behalf of the African Group), Argentina, Brazil, Japan, and Switzerland) expressed dissatisfaction with the outcome. However, only the US disassociated itself from the document. The US's key concern is with the agenda and programme of work of the Council, in particular with Item 7 on the situation in the human rights situation in Palestine and other occupied Arab territories. The US holds that singling out one country situation on the agenda is a severe detraction from the supposed objective and non-selective approach of the Council.

THE NEW YORK PROCESS

The review process is continuing in New York, where discussions have focused over the last four months on issues related to the review of the status of the Council.

The General Assembly has held a series of informal meetings on topics including the financing of Council decisions by the General Assembly; the relationship between the Council and

the General Assembly, including the reporting lines from the Council to the General Assembly; membership issues, including better respect of membership standards and election procedures set out in General Assembly Resolution 60/251,¹⁰ which established the Council.

The membership issue has proved to be the most divisive topic of the review in New York. Some States¹¹ argue that election-related issues fall outside of the review mandate of the General Assembly, while many others¹² advocate that the review is an appropriate forum to elaborate how States can best implement the election-related provisions of *Resolution 60/251*. A key proposal in this respect is the call for the establishment of a public 'pledge review' mechanism to improve Council members' accountability for fulfilling pledges and the standards in *Resolution 60/251*, and to encourage candidates that have made a serious and demonstrable commitment to human rights to run for election to the Council.

Following informal consultations with States and NGOs, the co-facilitators (the Ambassador of Liechtenstein and the Ambassador of Morocco) presented a draft paper on 12 April¹³ in an informal meeting of the General Assembly. It is expected that States will provide comments on the draft, and more informal consultations will follow. The co-facilitators will convene another meeting to discuss the revised draft on 15 April, after which further consultations and further revisions of the text may take place. They predicted that a final text could be presented to the General Assembly in early May.

At the seventh informal meeting on 24 March, the co-facilitators reiterated their hope that the General Assembly would adopt the text – as a supplement to *Resolution 60/251* – by consensus. It is envisaged that the Geneva outcome will be adopted without amendment as part of the General Assembly resolution. ■

10 A/RES/60/251, at <http://bit.ly/euhYvW>.

11 China, Cuba, Iran, Nicaragua, Non-Aligned Movement (NAM), Philippines, Syria, and Venezuela.

12 Albania, Australia, Bulgaria, Canada, Chile, Costa Rica, Croatia, EU, Hungary, Israel, Italy, Japan, Republic of Korea, Ireland, Macedonia, Moldova, New Zealand, Norway, Peru, Russia, Sweden, UK, and US. This representation of State positions is accurate at date of publication, but there continues to be movement. Russia's position, for example, appears to be weakening.

13 A copy of the paper is available at <http://bit.ly/f6N3oV>.

UNIVERSAL PERIODIC REVIEW

10th Session of the UPR – An Overall Positive Outcome



Photo: Dominic Alves

Origami lotus flowers created to represent political prisoners currently held in Myanmar (Brighton Festival 2011, United Kingdom). A recommendation by the Working Group on the Universal Periodic Review (UPR) calling for the immediate release of political prisoners in Myanmar was rejected by the State.

The Working Group on the UPR held its 10th session from 24 January to 4 February 2011, during which 16 States were examined: Australia, Austria, Estonia, Georgia, Mozambique, Myanmar, Namibia, Nauru, Nepal, Niger, Oman, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, and Sao Tome and Principe.

While mostly free of controversy, the 10th session witnessed some instances of tension based mainly on territorial disputes and use of proper UN terminology when referring to States. The former involved disputes between Georgia and the Russian Federation regarding whether or not the human rights situation in Abkhazia and South Ossetia should be discussed during Georgia's review.¹ The latter related to Myanmar's objection to the term 'Burmese delegation' used by the United States. The President of the Human Rights Council (the Council) had already encouraged all delegations to use the term officially recognised by the UN, following the use of 'Burma-Myanmar' by the Czech Republic.

ENGAGEMENT BY STATES UNDER REVIEW

Austria brought the largest delegation with 36 representatives, followed by Oman (35) and Myanmar (28), while Sao Tome and Principe and Saint Lucia brought only three and two respectively. High-level representatives, including several foreign ministers, attorney generals and ministers of justice, headed the majority of delegations. Despite the predominance of large delegations with different areas of expertise, questions were often responded to entirely by the head of the delegation, limiting the utility of specialised delegates.²

The level of interaction varied across the dialogues with States examined; while some States under review strove to respond to all the questions submitted in advance and raised during the review,³ others failed to provide thorough responses or even completely ignored the questions posed. Oman, for instance, avoided responding to questions on the death penalty and the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. In a similar vein, Nepal avoided answering questions regarding future steps to ratify the *Optional Protocol to the Convention Against Torture*, the *Convention on Enforced Disappearances*, and the *Convention on the Status of Refugees*. Moreover, in response to multiple concerns raised over the existing culture of impunity, the delegation claimed that 'there is no systematic torture in Nepal'. The delegation of Myanmar, following extensive criticism of its grave human rights record, called upon the international community to also take positive steps into account and to respond 'with encouragement, support and understanding'.

1 In a similar vein, during its intervention at Saint Lucia's review, China complained about the reference made earlier by Saint Lucia to Taiwan as a country.

2 During the reviews of Austria and Oman, it was only the head of the delegation who spoke. Delegation members were more involved during the reviews of Georgia, Myanmar, Australia, and Paraguay.

3 Austria acknowledged all the comments made and the questions raised during its review. Austria is currently seeking membership of the Council for the period 2011 to 2014.

HIGH LEVEL OF INTEREST IN THE WORKING GROUP

The level of State engagement remained high, with 718 interventions made by 127 States during the 10th session.⁴ Seven States intervened in all of the 16 reviews.⁵ The majority of the States (83 percent) spoke more than once and 32 percent spoke during more than half of the reviews. The number of States submitting written questions in advance increased slightly for the 10th session. Eighteen States, the majority of which were European as already observed at previous sessions, submitted 106 questions in advance.⁶

For some reviews, there was very active participation by 'friendly States'. During the review of Oman, for example, more than half of the participating States belonged to the Organisation of the Islamic Conference (OIC),⁷ most of whom either praised the areas of progress or simply encouraged the continuation of measures already undertaken. In addition to these attempts at filibustering, the length of speakers' lists continued to remain largely dependent upon the profile of the State examined. While countries such as Austria, Australia, Myanmar, and Nepal benefitted from the highest levels of engagement by other States, smaller States continued to see limited participation, with the reviews ending one hour earlier than the allocated three hours.

Common issues were raised during all reviews despite the particularities of the States examined: numerous calls for ratifying and/or implementing core international human rights treaties (all States examined), discrimination against minorities and ethnic groups, excessive use of force by public officials and the persistence of a culture of impunity,⁸ over-crowded detention centres,⁹ the death penalty,¹⁰ and restrictions on freedom of expression including harassment of journalists and human rights defenders.¹¹ Other concerns raised included LGBTI rights,¹² the lack of comprehensive legislation on human rights

protection,¹³ hate speeches by politicians against Muslims and other minorities,¹⁴ harmful traditional practices against women and girls,¹⁵ de facto discrimination against women,¹⁶ widespread violence against children including sexual violence,¹⁷ and recruitment of children under 15 years old by the army.¹⁸

NGO ENGAGEMENT IN THE UPR PROCESS

A total number of 161 stakeholder submissions were made, with Myanmar attracting the most (24) and Sao Tome and Principe the least (two). In terms of side events, a number of international and national non-governmental organisation (NGOs) hosted meetings on Estonia, Mozambique, Myanmar, Nepal, and Rwanda prior to their reviews. Moreover, several briefing sessions by the Australian NGO coalition – representing 70 human rights organisations – and the Australian Human Rights Commission were held ahead of Australia's review. Representatives from the Burma Forum on the UPR, a coalition of 14 human rights and civil society organisations, held a public event immediately after Myanmar's review, expressing disappointment with the delegation's categorical denial of ongoing State-orchestrated human rights violations and with the approval of Myanmar's November elections by members of the Association of Southeast Asian Nations (ASEAN).

OUTCOMES AND RECOMMENDATIONS

The number of recommendations ranged from 73 (Rwanda) to 190 (Myanmar), with an average number of 131 recommendations per review.¹⁹ Small States continued to receive fewer recommendations.²⁰ Reflecting the higher level of participation by 'friendly States' in some reviews, the number of relatively weak recommendations made by these States was also higher. During the review of Oman, for example, OIC members made 45 percent of the recommendations.

State responses to recommendations were marked by significant disparity. Australia, Nauru and Saint Lucia left all recommendations pending until the 17th session of the Council in June 2011. While Sao Tome and Principe accepted the majority of recommendations and rejected none,²¹ Myanmar, Estonia and Nepal had the highest rate of rejected recommendations.²² Among the recommendations rejected by Myanmar were calls

4 The 10th session witnessed a higher level of State participation compared to the 9th session, in which 643 interventions were made by 115 States. Myanmar received the largest number of State interventions (57), followed by Nepal (55), Austria and Georgia (each 54), and Australia (53). By contrast, the review of Nauru had the lowest number of interventions (30) followed by Sao Tome and Principe (31).

5 Canada, China, France, Germany, Sweden, UK, and USA.

6 Canada, Czech Republic, Denmark, France, Germany, Ireland, Japan, Latvia, Lithuania, Maldives, Netherlands, New Zealand, Norway, Russian Federation, Slovenia, Sweden, Switzerland, and the UK. Sweden submitted written questions to all the 16 States under review, followed by Netherlands (12), Czech Republic, Denmark, and Germany (each 11). Myanmar received the largest number of submissions (13), followed by Nepal (11), and Austria and Oman (seven each).

7 Twenty-six out of 51 participating States during the review.

8 Austria, Estonia, Georgia, Mozambique, Myanmar, Namibia, Nepal, Niger, Paraguay, Saint Lucia, Sao Tome and Principe.

9 Australia, Georgia, Mozambique, Namibia, Paraguay, and Rwanda.

10 Myanmar, Niger, Oman, and Saint Lucia.

11 Georgia, Myanmar, Namibia, Nauru, Nepal, Oman, Rwanda. The Genocide Ideology Law in Rwanda was criticized for limiting freedom of expression.

12 Austria, Namibia, Oman, Saint Lucia. Austria was criticised over inequalities concerning family rights i.e. limiting the right to adopt a child to heterosexual couples.

13 Australia

14 Australia and Austria.

15 Mozambique and Niger.

16 Oman and Rwanda.

17 Namibia, and Sao Tome and Principe.

18 Myanmar and Rwanda.

19 A total of 2094 recommendations were made during the 10th session. States receiving an above-average number of recommendations were: Nepal (135), Australia (145), Austria (161), Georgia (163), Oman (166), Mozambique (169), and Myanmar (190).

20 Sao Tome and Principe (82), Nauru (102), Niger (112), Saint Kitts and Nevis (113), and Saint Lucia (116).

21 Sao Tome and Principe accepted 72 out of 82 recommendations.

22 Myanmar rejected 70 of 190, Estonia 20 of 124, and Nepal 15 of 135 recommendations.

for the immediate release of 2,200 political prisoners, and for renewed cooperation with the International Committee of the Red Cross (ICRC).²³ Estonia rejected the majority of recommendations calling for the ratification of the *International Convention on the Protection of All Migrant Workers and Members of their Families* (CMW), as well as those calling for the recognition of same-sex partnerships. Nepal rejected multiple recommendations on amending legal provisions that grant immunity to State officials for acts of torture, arguing that neither such legal provisions nor any systematic torture exist. In addition, Nepal rejected the recommendations contained in OHCHR's 2010 report on extrajudicial killings in the Terai region, indicating it objects to the report in its entirety.

Reasons cited for not accepting recommendations varied between States. Small States²⁴ pointed to financial and capacity constraints as the main reason for not becoming party to additional human rights treaties. On the other hand, as many States have argued before, Australia maintained that it only joins treaties once the necessary legislation is in place. Austria defended its reservations to some international conventions as a means to harmonise its international obligations. Moreover, it stated that it has no intention to ratify CMW, as it considers the Convention to be in contradiction with other international obligations. Certain States used 'public opinion' as a pretext for not accepting certain recommendations (on the decriminalisation of homosexuality in Mozambique and the abolishment of the death penalty in Saint Lucia).

Similar to previous sessions, many recommendations were considered by the States examined to be either 'already implemented' or 'in the process of implementation'.²⁵ Rwanda rejected several recommendations, considering them 'either inapplicable or irrelevant'. The validity of these claims remained questionable in some cases. For instance, while Rwanda maintained that steps are already being taken to ensure journalists are neither harassed nor intimidated, concerns were raised by some delegations about threats to and murders of journalists. While countries including Mozambique, Myanmar, and Nepal claimed to have already undertaken sufficient measures to combat impunity and extrajudicial killings, numerous concerns were raised over the persistence of such issues in the States examined.

Despite the rejection of several recommendations, the majority of States under review made good use of the process by accepting most recommendations. A critical examination by the State under review of its own human rights record and the acceptance of constructive guidance by its peers constitute

key elements of the UPR process. However, follow-up to and implementation of recommendations is equally important, as it leads to the concrete realisation of the UPR's ultimate goal of improving the human rights situation on the ground. While implementation remains the main responsibility of the respective governments, civil society organisations and other relevant stakeholders play an important role both in promoting and supporting this implementation. This is also recognised in the outcome of the five-year review of the Council's work and functioning, which encourages all stakeholders to include information on implementation in their submissions for the second cycle.²⁶ With the UPR approaching the end of its first cycle, States, national human rights institutions and NGOs will need to shift their focus to develop concrete assessments of the level of implementation of previous UPR recommendations.

The UPR and the Review of the Human Rights Council

The outcome of the review of the work and functioning of the Human Rights Council (the Council)²⁷ was adopted at the Council's 16th session. While the outcome as a whole was disappointing, the UPR in some ways epitomises the missed opportunity represented by the review.

Many interesting and practical suggestions relating to the UPR were presented during the first meeting of the Working Group, including appointing a legal expert to ensure recommendations made are in accordance with international human rights law, having the High Commissioner verbally present the compilation report and the stakeholders report from OHCHR, and making midterm reporting and the submission of implementation plans compulsory. None of these made it into the outcome document. Instead States are merely 'encouraged' to submit midterm reports and implementation plans.

Those proposals that were included in the outcome document are mostly technical in nature, including an extension of the cycle from four years to four and a half years. There will also be an extension of the time allocated for each State review (specific modalities to be decided at the 17th session of the Council) and a solution to the problem of the speakers' list, ensuring that all States that want to speak during a State review are able to do so.

There was however one significant gain for national human rights institutions (NHRIs), perhaps the only really new element of the entire outcome. This is that any 'A-status'²⁸ NHRI of the country being reviewed will now be able to speak immediately after the State under review. ■

23 The delegation mentioned that the so-called 'political prisoners' are in prison for having breached the law and not for their political opinions. In addition, the delegation claimed that despite the absence of an MOU between ICRC and the Government, ICRC made 406 visits to camps and prisons between 1999 and 2005.

24 Nauru, Saint Kitts and Nevis, and Sao Tome and Principe.

25 Mozambique considered 92 of the recommendations to have been already implemented, or in the process of implementation; Paraguay 73, Rwanda 35, and Nepal 28.

26 See <http://bit.ly/gnNa5T> and the article on the review of the Council on p. 7 of this publication.

27 For more information see the article on the Review of the Council on p. 7.

28 As assessed by the International Coordinating Committee of NHRIs.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

New Chair elected; reviews of Bangladesh, Belarus, Israel, Kenya, Liechtenstein, South Africa, and Sri Lanka



Photo: Charles Hutchins

The Committee on the Elimination of Discrimination Against Women (the Committee) held its 48th session in Geneva from 17 January to 4 February 2011. It considered the reports of seven State parties to the *Convention on the Elimination of All Forms of Discrimination Against Women* (the Convention): Bangladesh, Belarus, Israel, Kenya, Liechtenstein, South Africa, and Sri Lanka. State delegations varied in size, from Israel with five representatives, Bangladesh and Liechtenstein with eight, to South Africa with 16.

In general, the delegations did not stray far from their well-prepared statements and, despite asserting their willingness to cooperate and participate in an open dialogue with the Committee, they tended to respond to questions selectively, avoiding certain topics and issues. Furthermore, the information provided was of varying quality and reliability.¹

The Committee raised a diverse array of issues but, despite often vague or otherwise inadequate responses by delegations, Committee members did not in general pose follow-up questions (with the exception of the subject of the application of the Convention and other international human rights instruments in the Israeli-occupied Palestinian territories).

Among the most active Committee members were Mr Niklas Bruun, Ms Nicolce Ameline, Ms Ruth Halperin-Kaddari, Ms Dubravka Simonovic, and Ms Meriem Belmihoub-Zerdani. Mr Bruun, Ms Ameline and Ms Halperin-Kaddari made pointed interventions and did not shy away from more controversial topics. This was the first session for five members,² all of whom kept a low profile. The Committee also elected a new Chairperson, Ms Silvia Pimentel, who took over from Ms Naéla Gabr.

NGO PARTICIPATION

Non-governmental organisations (NGOs) submitted between five and ten reports for each State examined³ and several NGO representatives briefed the Committee during the session. In accordance with the Committee's practice, these briefings took place on the Monday of the week of the relevant review. The Committee appeared receptive to the issues raised and, during the reviews, highlighted many of the key issues raised by NGOs.⁴

Notably, during the review of Belarus the Committee expressed its concern about the issue of reprisals, which had been raised by NGO representatives. Mr Niklas Bruun said organisations attending the review of Belarus should not face any negative consequences once they return home. While the Committee, in its concluding observations, was clear on the need to 'create an enabling environment and ensure adequate funding opportunities for women associations' and recommended

1 During the review of Belarus, Ms Olinda Bareiro-Bobadilla noted that the information offered by the delegation concerning women's participation in the economic and social sphere was not comprehensive enough. She asked the delegation to, in future, provide this information in the form of percentages.

2 New members: Ms Ayse Feride Acar (Turkey); Ms Olinda Bareiro-Bobadilla (Paraguay); Ms Ismat Jahan (Bangladesh); Ms Maria Helena Lopes de Jesus Pires (Timor Leste); Ms Patricia Schulz (Switzerland).

3 Bangladesh: 6; Belarus: 6; Israel: 9; Kenya: 7; Liechtenstein: 5; Sri Lanka: 8; South Africa: 10.

4 Particularly during the reviews of Belarus, South Africa, and Israel.

the de-criminalisation of ‘participation in activities of unregistered public associations’, it did not issue specific recommendations against reprisals. Other treaty bodies, such as the Committee Against Torture (CAT), have responded more directly to cases of actual or feared reprisals. In the case of Ecuador, for instance, CAT has asked the State to follow up within one year on protection afforded to those combating torture, which presumably includes organisations submitting information to the UN.

MAIN THEMES

Integration of the Convention in the domestic legal system

South Africa faced criticism from the Committee for failing to include in its Constitution or relevant legislation a definition of discrimination that is in accordance with the Convention. The delegation responded openly by acknowledging this problem but did not give any commitment to follow it up.

The lack of information on the application of the Convention by national courts, and the unsatisfactory nature of that application where information is available, was raised by the Committee during several reviews. It requested more information from Belarus with respect to this issue. Committee members also questioned whether national legislation was being amended in line with the Convention. The delegation responded that the nature of the legislative process in the country means it will take time for amendments to come into effect. Bangladesh was requested to take steps to ensure the decisions of its courts respect the Convention, particularly with respect to family law.

Kenya was condemned for its slow implementation of laws for the promotion of the rights of women in line with the Convention. The delegation responded defensively, repeatedly claiming that women’s rights are protected under the new 2010 Constitution, which touches on all areas of the Convention.

The withdrawal of reservations to the Convention was an important issue in many reviews. Several members of the Committee asked that Bangladesh consider removing its reservations on articles 2⁵ and 16(1)(c).⁶ The delegation responded by stating its commitment to the full implementation of the Convention but reiterated there may be difficulties with the withdrawal of the reservation on this article. Israel

was criticised for reservations on articles 16 and 7(b)⁷ of the Convention. The Committee asserted that these reservations, in particular on article 16, one of the core articles of the Convention, block the full implementation of the Convention. The delegation responded that the State has no intention of removing these reservations, and rejected the Committee’s recommendation to ratify the Optional Protocol (allowing for individual complaints to the Committee).

Violence against women

The issue of the stereotyping of women and its contribution to violence and lack of access to justice was raised in the reviews of several countries. In Belarus, stereotyping was said by the Committee to contribute to most ‘minor’ crimes being committed against women. The delegation did not provide a direct response, instead claiming that for serious crimes such as murder, women form a minority of victims.⁸ The delegation blamed the high rate of alcoholism in the male population for the high level of domestic violence against women. The Committee did not follow up on this statement.

For South Africa, the Committee pointed to tradition as the root of many stereotypes, particularly in rural areas, where women are considered exclusively responsible for child-care, and are seen as objects for curing diseases such as AIDS (resulting in many cases of rape). It also highlighted the significant levels of violence against women, including sexual harassment of girls on their way to school. The Committee cited a recent survey in South Africa that revealed the need for public education around violence against women, as many college students believed that sexually violent conduct with someone you know does not constitute rape.

Problems identified by the Committee in relation to Bangladesh included acid attacks on women, the wide acceptance of marital beating, and the lack of recognition in law of marital rape. The delegation responded that the rate of acid attacks had decreased since the introduction of the Acid Control Act in 2002. The Committee pointed out, however, that only a fraction of cases are reported. Responding to the Committee’s claim that the rate of violence against women had increased overall, the delegation suggested this may be due to better reporting of cases, and the fact that women no longer remain at home and are therefore more exposed to violence. They reaffirmed the Government’s zero-tolerance policy on violence against women. Despite the unhelpful nature of this response, the Committee failed to question further.

Finally, for Sri Lanka, the Committee identified the need for better implementation of legal provisions on domestic violence, including the Domestic Violence Act of 2005. It also pointed to information received on the lack of government

5 Article 2 is a core article of the Convention requiring States to take measures to end discrimination against women. Bangladesh issued a reservation on the account that article 2 conflicts with Sharia law. Several other State parties objected to this reservation as being against the object and purpose of the treaty. See <http://bit.ly/h787cs> for more information on these reservations and <http://bit.ly/f4j4pE> on core obligations under article 2.

6 Article 16 aims at eliminating discrimination against women in relation to marriage and the family, and paragraph (1)(c) emphasises the equality of women and men with regards to their rights and responsibilities during, and at the dissolution of, marriage.

7 Article 7(b) deals with the participation in political and public life.

8 According to statistics from the Government of Belarus, 57 of 199 reported murder cases in 2010 were of women.

shelters for victims of domestic violence, which it seemed to see as a way of giving better effect to existing legal provisions.

Questions across the board in relation to healthcare

The impact of traditional stereotypes on women's health in South Africa, including the persistence of forced virginity tests, inadequate measures to address domestic and sexual violence, lack of abortion facilities, and female genital mutilation (FGM), was of concern to the Committee. The delegation argued that FGM was practiced only by immigrants, but gave no information as to how it intended to address the problem.

The Committee welcomed the fact that Israel provided information on Bedouin women, something it had failed to do in previous reviews. However the continuing discrepancy between Arab and Jewish populations in terms of infant mortality and life expectancy was highlighted. The delegation responded that it had taken steps to address infant mortality, such as by making efforts to ensure pregnant women have physical access to healthcare, despite roadblocks for example, but women chose not to access those services.⁹

The delegation of Belarus presented a glowing report of the healthcare situation for women, including an increase in funds allocated from the Government's budget, free condoms and HIV/AIDS tests, longer maternity leave, and a low child mortality rate. NGO alternative reports offered a different picture, according to which many healthcare problems for women worsened during the period 2007-2010.¹⁰ Unfortunately, the Committee did not raise these discrepancies with the delegation.

The Committee criticised Bangladesh for lack of data on the health of women. It called such information 'essential' if the high mortality rate of women is to be tackled, and considered the information provided in the State report 'irrelevant'. Committee members expressed concerns about access to pre-natal health care and asked whether there were plans to increase the healthcare budget. The delegation responded that resources were limited and, unfortunately, the State had to prioritise some areas over others.

Liechtenstein was criticised for retaining penal provisions for abortion, contrary to previous recommendations by the Committee. It was pointed out that there was also a failure to provide free contraception. The Committee regretted that the report did not include specific information on the health of women, and requested data disaggregated by sex.

Mixed success on education and employment

The Committee expressed concern about the high unemployment rates amongst women, particularly migrant workers, in

Sri Lanka. Women dominate the informal labour market, but there are inadequate protections in this sector, including for disabled women, and a lack of respect for 'equal pay for equal work' (despite the ratification of relevant International Labour Organization (ILO) conventions).

The delegation of Kenya reported that initiatives undertaken by the Government and civil society are producing positive results, for example primary school enrolment has increased to 93 percent for girls, and there has been an increase in university enrolment, although there are still twice as many men at university as women. Women represent 34 percent of Government employees; however, the Committee noted that the majority of women employees in local authorities are low-level.

The Committee expressed concern about the large pay gap between men and women in Israel (despite the ratification of relevant ILO conventions), and gender segregation in the labour market, with women working mostly part-time jobs.

The Committee referenced NGO reports when questioning the delegation of Belarus about high unemployment rates amongst women. The delegation responded that the rate had been reduced from 60 percent five years ago to 20 percent currently. These figures were contradicted by NGOs during the briefing prior to the review. Questioned further, the delegation became even more defensive, claiming there was no unemployment problem and that there were more jobs than people to fill them.

There was criticism of Bangladesh's failure to provide statistical information on employment. The Committee noted that according to ILO reports, the principle of equal wage for equal value is recognised, but the narrow definition of 'wage' was considered problematic and created discrimination.

The Committee referenced Liechtenstein's universal periodic review (UPR) of 2008, when the issue of the rights of female migrant workers was raised. However, the reference to the UPR remained vague and made little attempt to raise specific recommendations or State commitments. The Committee regretted that there was no further information on migrant workers in the State report. The high number of women working part-time jobs was also raised. The delegation claimed this was due to women's desire to reconcile work with family obligations, which the Committee seemed to accept as an adequate explanation. The delegation also stated that the lower level of education that older women tended to have explained why they had a harder time finding either full- or part-time employment.

OTHER DEVELOPMENTS

During the review of Israel, a recurring concern was the delegation's failure to accept the applicability of the Convention in the occupied Palestinian territories (OPT). The Committee emphasised that the obligations assumed under

⁹ See also the OHCHR report on Palestinian women giving birth at Israeli checkpoints, available at <http://bit.ly/f7BbMV>.

¹⁰ Alternative report on Belarus, at <http://bit.ly/ekJU7B>.

the Convention do not cease in times of conflict. As it has argued many times before, Israel said it has no effective control in the OPT and therefore cannot impose its jurisdiction on these territories.

With respect to Belarus, the Committee noted that the right to freedom of assembly is limited through national legislation and regulations.¹¹ Indicative of this was the 'liquidation' of Belarus's only women's political party 'Nadzieja' in 2007. The Committee emphasised that this contravenes international human rights obligations. The head of the Belarusian delegation, Ms Shchotkina responded that 'there can be no problem with political parties in Belarus, it is simply not possible'. Ms Shchotkina went on to explain that if a political party, NGO, or NHRI breaks the law, then it would have to be liquidated in order for the rule of law to be maintained.¹²

The Committee noted that the criminalisation of same-sex relations in Sri Lanka, and the lack of protection against violence (in particular, corrective rape) for lesbians in South Africa (despite constitutional provisions against discrimination on the basis of sexual orientation) are not in line with the Convention. Neither delegation offered a response to these points.

Draft General Recommendations

The Committee continued its work on the joint general recommendation on harmful traditional practices¹³ with the Committee on the Rights of the Child and met with that committee and its working group during the session. The recommendation will highlight harmful practices including FGM, forced marriage, and child marriage with a view towards eliminating these problems. The joint nature of this recommendation is in line with efforts to intensify coordination between treaty bodies. While some other treaty bodies have displayed resistance towards joint general comments (as they are referred to in other treaty bodies) the Committee has made particular efforts to seek out opportunities for collaboration.

The Committee also further elaborated its draft general recommendation on the economic consequences of marriage and its dissolution.¹⁴ It hopes to adopt this recommendation by the end of 2011.

11 According to the civil society report by Belarus's *Women's Independent Democratic Movement*, at least three women are being detained as political prisoners in Belarus.

12 The head of the delegation said the liquidation of 'Nadzieja' was based on specific information and clear proof after issuing multiple warnings to the party and 'there has been no interference or distortion of any kind and if anyone has suggested that this was the case then that is unethical and wrong'.

13 General recommendations elaborate the Committee's interpretation of articles or themes in the Convention. They are often developed by the Committee to direct States' attention to issues of pressing concern. The Committee decided to work on a joint general recommendation on harmful traditional practices at its 47th session, in October 2010.

14 The Committee began work on this draft general recommendation at its 42nd session in October 2008.

Members were appointed by the Committee to a working group that will draft a general recommendation on women in situations of armed conflict. The Committee made the decision to develop this new general recommendation at its 47th session in October 2010. It will focus on the disproportionate and unique impact of armed conflict on women, in particular the gender-based violence that often accompanies armed conflicts. The general recommendation will highlight the need for women to play an active role in the promotion of peace, security, and reconstruction. As an initial stage, and in order to gather ideas for inclusion in the general recommendation, the Committee will hold a half-day general discussion and exchange of views on women in armed conflict and post-conflict situations in an open meeting at its 49th session in New York.

The Committee also decided to elaborate a draft general recommendation on access to justice. The decision reflects the fact that women face difficulties in accessing justice and protecting their rights through national courts or tribunals, or other public institutions. The Committee's view is that access to justice, in terms of appropriate and effective legal remedies, is a first and fundamental step towards addressing discriminatory acts against women.

During an address to the Commission on the Status of Women,¹⁵ on the outcomes of the Committee's 46th, 47th, and 48th sessions, the newly elected Chair, Ms Pimental, further highlighted the Committee's collaborative intentions. She noted that Committee members intend to work with UN Women on two draft general recommendations, and emphasised the Committee's desire to work closely with this new UN body. Ms Pimental also drew attention to meetings held between the Committee and relevant special rapporteurs, including the Special Rapporteur on violence against women, the Independent Expert in the field of cultural rights, and the Special Rapporteur on the human rights of internally displaced persons.

At the previous session of the Committee, members expressed some concern about the creation of a new working group on discrimination against women in law and practice¹⁶ (one of the Human Rights Council's special procedures). There were particular worries this would lead to duplication and undermine the credibility of the Committee. The members of this working group were appointed at the 16th session of the Human Rights Council. It remains to be seen whether the Committee will continue its efforts to work collaboratively with this new body. ■

15 CEDAW Committee Outcomes Statement: <http://bit.ly/dS8Tf9>.

16 A/HRC/RES/15/23. See also ISHR's news piece at <http://bit.ly/i7FK9m>.

COMMITTEE ON THE RIGHTS OF THE CHILD

A shift in discussions towards coordination and monitoring of CRC implementation



Photo: Michael Hayes

Article by Roisin Fegan, NGO Group for the Convention on the Rights of the Child. For more information about the organisation visit www.childrightsnet.org

During its 56th Session (17 January – 4 February 2011), the Committee on the Rights of the Child (the Committee) examined State parties' reports from eight countries:¹ Afghanistan,² Belarus,³ Lao People's Democratic Republic,⁴ Mexico,⁵ New Zealand,⁶ Ukraine,⁷ and Singapore.⁸

In the course of the pre-sessional working group week, from 7 to 12 February, the Committee developed lists of issues for eight countries, based on inputs from States, UN agencies, civil society and child-led organisations:⁹ Cambodia,¹⁰ Costa Rica,¹¹ Czech Republic,¹² Egypt,¹³ Finland,¹⁴ Iceland,¹⁵ Republic of Korea,¹⁶ and Syrian Arab Republic.¹⁷

The session and pre-session were intoned with a mixture of emotions, as several longstanding Committee members participated in their final meetings, while news of incoming members was well received. Information on new members and a description of the election process and outcomes can be found in a separate report produced by the NGO Group for the Convention.¹⁸

STATE REVIEWS

At the 56th Session, the Committee had the opportunity to meet with State representatives of Afghanistan to discuss the country's initial report. Many Committee members felt a sense of anticipation about the dialogue, given the time lapse between the 1994 ratification of the Convention and this initial review. This was compounded by the particular situation in the country and the subsequent challenges being faced by the State in implementing the Convention. The Committee saw the submission of the State report as a sign that the Government was developing its capacity to address its obligations under international human rights law, but regretted the report did not provide insight into the impact of the ongoing conflict on the realisation of the rights of children in the country. Overall, the dialogue was positive and the Government representatives spoke openly about the challenges Afghanistan faces in fulfilling its obligations under the Convention.

1 See the OHCHR Website for more info <http://bit.ly/idb2FD>.

2 Convention on the Rights of the Child (the Convention).

3 The Convention, Optional Protocol on Children in Armed Conflict (OPAC), and Optional Protocol on the Sale of Children (OPSC).

4 The Convention.

5 OPAC and OPSC.

6 The Convention.

7 *ibid* and OPAC.

8 The Convention.

9 At the 57th pre-session, children from the Republic of Korea and from Cambodia represented their national youth organisations, which had produced alternative reports based on input from children of all ages throughout the two countries. Youth representatives travelled to Geneva to present their reports and express their views to Committee members.

10 The Convention.

11 *ibid*.

12 *ibid*.

13 *ibid*, OPAC and OPSC.

14 The Convention.

15 *ibid*.

16 *ibid*.

17 *ibid*.

18 <http://bit.ly/fRFBmJ>.

Three State Parties are yet to submit their initial reports: Nauru, Tuvalu and Tonga. Initial reports have recently been received from the Cook Islands and Niue, which will be reviewed by the Committee in the course of 2011, as a matter of priority. Since the end of the 56th Session, the report of Uzbekistan has also been submitted.

Reports submitted under the two Optional Protocols (OPs) represented five of the 13 reports reviewed by the Committee at the 56th Session. Confusion over the distinction between trafficking and sale of children was raised with both States being reviewed for their OPSC reports (Belarus and Mexico). Coordination and monitoring was a consistent theme discussed with States, both concerning the effective implementation of the Convention, as well as the two OPs.

NGO participation at the session and pre-session

Representation of non-governmental organisations (NGOs) was secured at the public reviews of all States during the 56th Session. Although NGOs are not entitled to speak during these meetings, many of those attending said it was of great value for their work to observe the make-up of State delegations, witness the dialogue, and learn more about who was responsible within their respective governments for particular aspects of implementation of the Convention and its OPs. They felt it was particularly valuable with a view to the follow-up to the reviews.

While reviews of States by the Committee are consistently attended by international NGOs, the participation of national NGOs and coalitions is not always as regular. This is linked to the particularities of their operating contexts and the burden of having to travel to Geneva. However, the 57th pre-sessional working group was very successful, with national NGO representation from seven out of the eight countries discussed. The Committee consistently expressed its gratitude for the work of all stakeholders and highlighted the value of their input for an informed review of each State, ultimately resulting in targeted and relevant concluding observations.

Coordination and monitoring of the Convention and OP implementation

At the 56th Session, the Committee raised the issue of coordination and monitoring gaps in different ways with all eight States under review, often in conjunction with concerns around national action plans, allocation of resources, and independent monitoring mechanisms.

This issue is not new, but the Committee's approach to it has evolved. Previously, the Committee simply requested the creation of coordination and monitoring mechanisms, whereas now it is trying to find out – both from NGOs in the pre-session and from delegations at the session – how these work, where they are placed in the State structure, and how they interact with the rest of the government and with civil society. While at first the Committee may have mostly welcomed these bodies, it has become increasingly inquisitive about the role of such

mechanisms and takes a nuanced approach to discussions on the issue. This reflects its sensitivity to the particularities of each State's governance structure and available resources, and the fact that there is no 'one size fits all' solution to the effective functioning of coordination and monitoring mechanisms.

'General Measures of Implementation' is not the most obvious source of interesting discussion on the spectrum of provisions covered in the Convention and its OPs. However, effective coordination and monitoring of implementation of the Convention and its OPs is a significant indicator of governments' commitment to fulfilling the whole range of obligations under these three treaties and, as such, the corresponding provisions act as a tool to guide effective implementation.

In dialogue with States, the Committee has routinely sought to draw a distinction between the emphasis it places on internal coordination and monitoring by a government body, and external monitoring by an independent mechanism such as a national human rights institution (NHRI) and/or child ombudsman. In past sessions, the Committee has reiterated the importance of the latter: with specific recommendations to States in this regard often being met with mixed responses. Less economically-advanced States, for example, tend to focus first on internal government coordination and monitoring, while even in industrialised countries where independent mechanisms have been established, these external mechanisms are given little power and minimal resources, rendering them ineffective.

The Committee considers that effective coordination and monitoring entails a multi-pronged approach: internal coordination and monitoring by the government; independent monitoring by a recognised mechanism, such as a NHRI; and the role of civil society organisations working in collaboration, or not, with government. The result has been that the Committee gives equal weight to the role of all three stakeholder groups and emphasises collaboration and dialogue accordingly.

According to the Committee, a strong coordinating body should preferably be established under the office of a Prime Minister, or equivalent, rather than under the auspices of one particular ministry, 'which may limit its cross-sectoral impact'. This body should typically be made up of representatives from all the different ministries that have a part to play in the implementation of the Convention and its OPs. In some cases, such bodies also include civil society representatives. The nature and functioning of this type of body will naturally vary across countries, depending on the level of decentralisation of powers from the national to the local levels.

In dialogues with States, the Committee addresses the establishment of an independent monitoring mechanism as an entirely separate issue from that of internal government coordination and monitoring structures. For example, the Committee systematically recommends that an independent monitoring mechanism such as a NHRI should have an entirely different set of tools at its disposal for the purposes of monitoring implementation of the Convention and its OPs.

Specialised competencies include the capacity of an independent ombudsman or NHRI to receive complaints from individual citizens regarding human rights or child rights violations.

The NGO Group for the Convention sees that the role of NGOs can be to advocate for the creation of an inter-ministerial body that coordinates and monitors the various ministries' activities for the implementation of programmes and policies, and thus the fulfilment of the government's obligations under the Convention and either of the OPs it may have ratified. Furthermore, as part of their ongoing work in reporting to the Committee, NGOs can monitor implementation and collect data as part of their follow-up activities. When the State Party is preparing its subsequent periodic report, this information can be used to highlight successes and identify gaps in implementation.

ADDRESSING THE BACKLOG OF REPORTS

The Committee is proactive about addressing the backlog of reports and improving the efficiency of its working methods. In 2010, the Committee met in two separate chambers for two consecutive sessions in an effort to clear the backlog of reports; however, this was only sanctioned by the General Assembly to take place for two sessions, therefore the Committee has now moved back to one-chamber sessions.

To address the quantity of reports received but not yet reviewed, the Committee has formally requested that it be permitted to meet in two chambers for one session per year, while remaining in one chamber for its other sessions. If this request is accepted, the Committee will be in a position to review up to an additional ten countries per year, many of which are likely to include more than one treaty/OP.

The Committee is streamlining the drafting of Concluding Observations and Lists of Issues. According to its working methods, the adoption of these documents must be done in plenary. For the Lists of Issues, Committee members now meet in private during the final half hour of the pre-session meeting, immediately after consultations with civil society organisations and other specialised UN agencies. Consequently, the additional day at the end of the pre-session, traditionally used to adopt all Lists of Issues, was removed. Therefore, two additional countries can be reviewed at each pre-session. The downside is that the duration of the pre-session per country has been *de facto* reduced from three to two-and-a-half hours.

To address situations where delays are compounded by translation needs, the Committee now holds some pre-session meetings two sessions in advance, to allow for translation of the Lists of Issues and written replies. The Committee Secretariat also attempts to provide more transparency in this process, and is now posting information about the pre-session meetings for each country on its website.¹⁹ Work is currently underway to ensure the new information is clear, so all stakeholders wishing

to participate can be informed of appropriate timelines and have an equal opportunity to take part.

GENERAL COMMENTS

General Comment 13 on 'Article 19: The right of the child to freedom from all forms of violence' was adopted at the 56th Session.²⁰ Work continued on the draft joint general comment on harmful practices through a joint meeting with members of the Committee on the Elimination of Discrimination Against Women (CEDAW),²¹ and on the draft general comment on the best interests of the child. Upcoming work will include the elaboration of general comments on the right to play and the right to health.

Currently, the Committee does not have a systematic procedure for drafting general comments. In contrast, CEDAW has an established three-step approach, which includes consultation with civil society at the outset of the process.²² This is something that has been raised by a range of stakeholders at recent inter-committee meetings.²³

DAY OF GENERAL DISCUSSION

On 30 September, the Committee will host the annual Day of General Discussion, focusing on Children of Incarcerated Parents. Discussions will look at two different realities confronting children whose parents are in some form of detention or imprisonment: children who live with, or visit, their parents during incarceration; and children who live outside but whose parents are incarcerated.

The NGO Working Group on Children of Incarcerated Parents is working alongside the Committee taskforce²⁴ to attract broad participation from a range of stakeholders. This will include the presentation of a peer-to-peer research project being conducted by young people. Information on written submissions and registration will be available on a dedicated page of the OHCHR website²⁵ as of May 2011. The day is expected to be supplemented by external events, including an exhibition of artworks and video excerpts, and a workshop on the next steps to be taken.

This work will be complimentary to the recently adopted theme for the next Annual Day on the Rights of the Child of the Human Rights Council. The theme in 2012 will be on 'Children and the Administration of Justice'.²⁶ ■

19 <http://bit.ly/g0KnZ5>.

20 <http://bit.ly/fhEXcZ>.

21 <http://bit.ly/9CL7jc>. See also the article on CEDAW on p. 14 of this publication.

22 <http://bit.ly/e6kt35>.

23 See also the interview on treaty body reform on page p. 25 of this publication.

24 The Committee taskforce was set up to represent the Committee in planning for the Day of General Discussion. It is made up of five members: Mr Awich Pollar (Uganda), Ms Hadeel Al-Asmar (Syrian Arab Republic), Ms Kamla Devi Varmah (Mauritius), Mr Sanphasit Koompraphant (Thailand) and Ms Yanghee Lee (Republic of Korea).

25 www.ohchr.org.

26 See Human Rights Council *Resolution 16/12* at <http://bit.ly/i9nU8z>.

HUMAN RIGHTS COMMITTEE

Reviews of Mongolia, Slovakia, Serbia, and Togo



Photo: Stefano Corso

The Human Rights Committee (the Committee) held its 101st session in New York City from 14 March to 1 April 2011, during which it reviewed reports from Mongolia, Serbia, Slovakia, and Togo.¹ The Committee reviewed the human rights situation in the Seychelles during closed sessions, even though the State did not provide a report. Key themes of the public reviews included the legal status of the *International Covenant on Civil and Political Rights* (the Covenant), judicial reforms, the rights of women and minorities, and prison conditions and treatment in police custody.

ENGAGEMENT BY STATES UNDER REVIEW

Only the Slovakian delegation was not led by a high-level official from the country's capital; instead it was headed by the UN Ambassador of the New York mission. However, all delegations, ranging from the small (Mongolia and Slovakia) to medium-sized (Togo and Serbia, which had 11 and 10 delegates respectively), included either a high-level minister (Mongolia) and/or a few relatively high-ranking government officials.² In Togo's case, members of the opposition party were also present. The Serbian delegation was praised for its gender-balance.

To the Committee's questions, Mongolia provided frank and precise answers, which seemed to foster the respect of the experts and engender a constructive dialogue. However, the ten-year gap between the current and previous reports was noticed by the Committee, and Mongolia promised to report with greater frequency in the future. Togo and Serbia,³ though not as cooperative as Mongolia, each gave frank assessments of their respective country's human rights problems. At times, however, the Committee expressed displeasure at inadequate answers by Togo to questions on political violence and detention conditions. A recurring theme in the Serbian dialogue involved the large gap between the impressive set of legislative measures taken, and the actual situation on the ground.

The Slovak delegation was the least cooperative and would often not admit that problems existed. Representatives provided few direct answers on some issues despite repeated questioning from Committee members. Slovakia focused on new legislation and action plans for improving the human rights situation, while the Committee's questions stressed the impact of government policy, particularly in regard to the treatment of Roma. Though claiming to value NGO input into its report, Slovakia often answered defensively and dismissively to questions derived from NGO allegations, especially regarding the Roma.

NGO PARTICIPATION IN THE 101ST SESSION

In relation to the countries under review, the pre-session NGO meeting was characterised by limited Committee interaction with a small group of NGOs. A Togolese NGO⁴ provided the most substantive presentation, providing information on official investigations of political violence, the electoral process, the rights of detainees, freedom of assembly, and freedom of expression. On behalf of NGOs from the Seychelles, the Centre for Civil and Political Rights (CCPR Centre) flagged problems

1 All documents can be found at <http://bit.ly/eRqGvl>.

2 The delegations' composition is available at <http://bit.ly/eRqGvl>, under the column title 'delegation list'.

3 Serbia's report did not cover human rights issues in Kosovo, but the delegation said that the Government would fully cooperate if the UN Interim Administration Mission in Kosovo (UNMIK) submitted one, and suggested it do so.

4 Collectif des Associations Contre l'Impunité au Togo (CACIT). The Togolese National Human Rights Commission also made a presentation.

with pre-trial detention and lack of independence of the national human rights institution. Only one NGO interacted with the Committee during the pre-session NGO meeting on Mongolia,⁵ focusing on conscientious objection. No NGOs focusing on Slovakia or Serbia participated in the pre-session meeting. During the first and second week, some Committee members also attended side events or video-conference briefings by NGOs. These included side events on the situation in Mongolia,⁶ in Serbia,⁷ and Slovakia.⁸

The Committee commended Amnesty International for using the pre-session NGO meeting to call attention to thematic issues: Pakistan's reservations regarding the Covenant, including to Article 40 which obliges States to report to the Committee. In a statement issued in the last week of the session, the Committee indicated it might examine Pakistan's actions to promote and protect human rights regardless of this reservation.

The Committee cited NGO reports during the review of Mongolia and Togo, and frequently referred to national and international NGO reports during their discussion with Slovakia, particularly in regard to Roma. With Serbia, the Committee referred to reports of NGOs and the national ombudsman, including on the status of prosecution of war criminals, and trafficking, but did not follow up adequately with hard-hitting comments or more probing questions.

THEMES

Legal status of the Covenant

In all countries under review, the Committee expressed concern that the national courts were not invoking the Covenant in their decisions. Though the Slovak delegation sidestepped most questions related to this issue, the Committee suggested the Government consider a constitutional amendment to give the Constitutional Court jurisdiction to evaluate the compatibility of national laws with international treaties. The Committee noted that Togolese laws do not always conform to the principles of the Covenant, and questioned whether lawmakers and judges have adequate knowledge of international law. The Committee had received no individual communications from Mongolian citizens, which pointed to a lack

of awareness of Covenant procedures. This comment prompted Mongolia to acknowledge the need for additional training for court and administrative staff, and Togo to indicate that the Government holds special seminars to instruct judges and court officials on human rights conventions and treaties to which Togo is a State Party.

Legislative and judicial reform

The Committee was particularly concerned about the speed of legislative reform in Togo, given the long list of draft laws awaiting passage by the National Assembly, and suggested the delays were indicative of a lack of government commitment to reform. While acknowledging some steps taken, such as the abolishment of the death penalty, the Committee preferred faster progress.

The theme of judicial corruption dominated throughout the Committee's reflections on Mongolia.⁹ The Government acknowledged a strong public perception of judicial corruption and a weak oversight of the judiciary.¹⁰ To address this issue, the delegation announced a legal forum would take place in April 2011, with the intention of bringing academics, judges and other practitioners together to discuss a possible anti-corruption strategy.

The Committee requested more information on a report by the Serbian national ombudsman that showed problems in the Serbian judicial system: citizens have complained about the length of proceedings, the absence of judges, untimely decision-making, and an absence of legally-based decision-making. Serbia was also put under pressure about the ongoing pursuit of war criminals in Serbia and the former Yugoslavia, and Sir Nigel expressed particular concern about witness intimidation, which occurs despite the Government's commitment to providing protection.

Rights of women and minorities

Discrimination against the Roma community was a major topic during the review of Serbia and Slovakia. Despite the enactment by the Serbian Government of an official strategy for the advancement of Roma, the Committee was very concerned about how to realise the rights of the so-called 'legally invisible' in Serbia, which includes the Roma. Discussions about the rights of the Roma dominated the Slovak review, and the question of whether some Roma women were forced to undergo sterilisation without their consent was the most contentious issue of the session. Some of the Committee experts, including Ms Christine Chanet, suggested

5 Conscience and Peace Tax International (CPTI) highlighted the confusing nature of conscientious objection in Mongolia. Sir Nigel Rodley emphasised the need for clarity on this issue during several rounds of questions, asking who is able to object, how long their service is, whether they need to provide payment, and how many people have objected.

6 The Center for Human Rights and Development, and Globe International.

7 The Belgrade Center for Human Rights and the Humanitarian Law Center. The briefing focused on the overcrowding of prisons, the deprivation of the rights of disabled people in the national courts, the inadequate compensation for victims of abuse, and the lack of prosecutions of middle and high-ranking officers for war crimes in Serbia.

8 The International Disability Alliance, CPTI, Center for Civil and Human Rights (Pordona) and the Mental Disability Advocacy Center.

9 The Committee experts noted examples that highlight the problems facing the judiciary, including the case of a human rights defender who was jailed for criticising the conviction of his client. The delegation said the criminal code was being redrafted to address such cases in the future.

10 The Government noted only one formal case of judicial corruption, but insisted it was aware that the lack of formal cases might itself indicate corruption.

the practice was tantamount to genocide. The Government dismissed these allegations, touting a law that requires all women undergoing sterilisation to wait 30 days after signing a consent form to have the surgery. They explained that initial monitoring efforts have revealed no cases of forced sterilisation, and expressed scepticism about NGO allegations to the contrary. The delegation also voiced frustration that this issue was previously covered by other treaty body reviews.¹¹

The protection of the rights of sexual minorities was also raised with several delegations. In response to Committee concerns about hate crimes targeting individuals based on sexual preferences, Mongolia indicated that it had instituted public awareness campaigns and trainings at the police academy, and requested advice from the Committee on how best to incorporate hate crimes into its criminal code. The Committee criticised the criminalisation of homosexuality in Togo, which contravenes the Covenant, and asked about plans to revise the criminal code. In a failed effort to deflect the Committee's disapproval, Togo said the Government was focused on building awareness and breaking down stereotypes rather than repealing laws, which they said is 'counter-productive'. Mr O'Flaherty argued that such a law creates an 'atmosphere of fear and discrimination,' regardless of whether it is actually used in prosecutions. In response to concern expressed by Ms Chanet about the economic and social rights of sexual minorities, Slovakia said non-discrimination provisions had been built into Slovak law, and a draft amendment to the law of equal treatment, regardless of sexual orientation, was under development.

In all countries under review, the Committee voiced concern about the rates of violence against women, including domestic violence. In response to questions from Ms Hellen Keller and Mr Cornelis Flinterman, Mongolia conceded that rapes were widely underreported. The Government was debating whether marital rape should be considered a crime, but current public perception on this issue precluded any rapid change. The Committee pushed Serbia to elaborate on how the Government is breaking down patriarchal stereotypes in society and taking steps to end trafficking in women.

Prison conditions and the treatment of people in police custody

The Committee asked Mongolia and Slovakia for more information about the process for detaining suspects and the mechanisms for monitoring that process. Both delegations indicated that mechanisms were in place for viewing video or audio recordings of interrogations, but the Slovak Government acknowledged that the recording is not compulsory. Despite Slovakia arguing that it has sufficient monitoring mechanisms (for example, complaints about police behaviour can be submitted to the Ministry of Interior, the prosecution office, and

the ombudsman), the Committee expressed scepticism that the relevant bodies could be independent monitors of the police force and requested the Government provide written responses on the number of complaints. The Committee pressed Serbia and Mongolia further on abuse and torture in police custody. Sir Nigel noted that in 2009 and 2010, Serbian internal police records show 299 complaints of abuse, yet only four were deemed valid. The Committee requested the Government provide them with more statistics. Mongolia noted that its high number of dismissed torture cases and lack of compensation to victims was a result of too narrow a definition of torture, which requires revision in line with recommendations made by the Committee Against Torture.

Overcrowding in prisons was also a recurring theme with several countries under review, but Togo received the harshest rebuke for its prison conditions. Sir Nigel compared the prisoners' conditions to that of farm animals, calling them deplorable and inhumane, and amounting to a serious violation of Article 7 of the Covenant. The delegation acknowledged prison overcrowding as a key challenge, and indicated that new prisons are being built to international standards, including adequate separation between men, women and minors. Mongolia also claimed the Government was closing the Denjiin Myanga detention centre and building a new facility, and underscored that international organisations such as Amnesty International visited their prisons. Slovakia was asked what institutional steps it had taken to alleviate overcrowding, such as creating alternatives to prison.

OTHER DEVELOPMENTS

At its 101st Session, the Human Rights Committee appointed the following officers:

- Chairperson:
Ms Zonke Majodina
- NGO Liaison Focal Point:
Ms Iulia Motoc
- Rapporteur for Follow-up to the Concluding Observations:
Ms Christine Chanet
- Rapporteur for New Communication and Interim Measures:
Mr Krister Thelin
- Rapporteur on the Admissibility of Communications:
Sir Nigel Rodley

The Committee began its second reading of draft General Comment 34 on article 19 on the freedom of expression, and approved 24 paragraphs of the text. A news article on the discussion is available on ISHR's website. ■

¹¹ In their 2008 review of Slovakia, CEDAW 'remain[ed] concerned' about the disparity between NGO reports and the government responses to this issue. See paragraphs 36-37. <http://bit.ly/gmhfEQ>.

THEMATIC FOCUS

TREATY BODY REFORM P. 25

TREATY BODY REFORM

Interview with treaty body experts – taking stock of the reform process



Photo: ISHR

Left to Right: Rachel Brett (Quaker United Nations Office), Heather Collister (ISHR), and Tania Baldwin-Pask (Amnesty International).

While the treaty body system continues to grow and develop, coordination and harmonisation of working methods between the treaty bodies remains a challenge. The quality of the work of the treaty bodies also depends on the quality of the individual Committee members, which until now has been uneven, with members often not showing the requisite independence from their governments or sufficient expertise in carrying out the responsibilities entrusted to them.

In order to improve implementation of the human rights obligations of States parties, discussions around the reform of treaty bodies and the treaty body system have been ongoing for a number of years. These have included the annual meeting of Chairpersons of Treaty Bodies and Inter-Committee meetings to discuss harmonisation of working methods. Other significant discussions have been held between treaty body members, in Dublin (Ireland, November 2009)¹ and Poznan (Poland, September 2010),² and national human rights institutions in Marrakech (Morocco, June 2010).³

ISHR spoke with **Tania Baldwin-Pask** (International Advocacy Programme, Amnesty International) and **Rachel Brett** (Representative for Human Rights and Refugees, Quaker United Nations Office, Geneva), to find out their views on treaty body reform. They tell us what's working, what's not and where the opportunities for a more effective system lie.

ISHR: *ISHR and other NGOs have engaged with the process of treaty body reform through participating in the Inter-Committee Meetings and through submitting various joint statements – such as the joint NGO statement to the 7th Inter-Committee meeting in 2008, and the response to the Dublin statement presented in November 2010.⁴ Have you engaged with the process in any additional ways and do you have plans for similar engagement in the future?*

Brett: Tania and I were both invited to the Poznan meeting and I think that was extremely useful, and the Poznan statement is actually pretty good. It was slightly odd because we were then told we were observers, not participants. In practice we were allowed to participate fully but not to endorse the statement. Being able to engage in the meeting was probably one of the most useful opportunities to date, in addition to the submissions NGOs have been making and the statements at the Inter-Committee Meetings.

ISHR: *Do you feel that NGOs have been given sufficient space to contribute to the process?*

Baldwin-Pask: The Dublin statement initiative has been very important, but meetings where NGOs are able to contribute have not flowed automatically from that process. Because of that we [at Amnesty International] decided to try and create our own process with the NGOs that we work with regularly. We wanted to reach out as far as possible to regional and national partners but that's been very difficult. When you look at the statements and submissions that are available at this point, what's missing is a national NGO perspective.

1 <http://bit.ly/dKktpX>.

2 <http://bit.ly/hjr8cd>.

3 <http://bit.ly/dXLOot>.

4 <http://bit.ly/ffFt87>.

Brett: I would endorse that because, after all, the whole purpose of the system is to try and improve the situation ‘in country’. Everyone acknowledges that one of the crucial elements to do this is the local and the national, and regional to some extent, NGOs. If they’re not engaged then there’s a real possibility that the end result is something that is designed to assist States and the OHCHR [Office of the High Commissioner for Human Rights] secretariat, but does not improve the human rights situation in the country.

Baldwin-Pask: I think one of the interesting aspects of the discussions is an increased focus on steps that can be taken to connect the treaty bodies directly to what is happening at the domestic level. So from the Poznan statement, and certainly in the NGO submission, came the idea of the treaty bodies being more active on the ground, whether that’s in relation to follow-up or other initiatives. I think there is some recognition that there has to be a more outward-looking focus overall. However, the proponents of this reform initiative haven’t yet reached out to national NGOs in order to get their input.

ISHR: *Do you think reform is best undertaken on an ad hoc basis, taking into account financial and resource constraints, or would you favour a holistic approach?*

Brett: I don’t think the two are necessarily mutually exclusive. This particular process [i.e. the meetings that have taken place since Dublin in 2009] is one element of what has been a much longer, ongoing effort to improve the treaty bodies and their ways of operating. There have been steady improvements in many respects, but if you don’t look at some of the very core elements, such as quality of membership, then you’re not going to make a lot of progress. The system of governments nominating and electing individuals to the treaty bodies as part of a bargaining process means focus on the quality of the individuals gets lost. Whatever results the reform has, if the way in which individuals become members remains the same, without any other safeguards, then the system is not really going to improve.

ISHR: *We’ve heard a lot of talk about harmonisation to give some uniformity to the way the different treaty bodies operate. Do you think this detracts from the main objective of reform, which should be to improve impact on the ground?*

Baldwin-Pask: I don’t think harmonisation should be at any cost. The harmonisation efforts came out of more radical proposals made in previous reform discussions, because it was one thing the treaty bodies could successfully change, and was much needed from an NGO perspective. The value of harmonisation is that it makes the system more accessible and more understandable. It’s incredibly difficult for NGOs trying to find their way around all the different treaty bodies that have slight variations in their working methods.

I’m not sure harmonisation will necessarily be the only focus of this reform effort. I think it has to go further than that. Membership, as Rachel was saying, would be one aspect. I

think we also need some reflection at this time about a system that keeps expanding. States are saying from one side of their mouths ‘we don’t want proliferation’ and from the other side ‘we need more treaties and (inevitably) more treaty bodies’. There really does need to be some reflection about the overall impact of that approach.

Brett: The only thing I’d add to that is that it was really only when there started to be discussions about treaty body reform that individual treaty bodies started discovering what the other treaty bodies did. There was so little connection between them that it was quite a revelation to many of them (and continues to be because the membership turns over) that they don’t all behave in the same way. Even quite recently, it came out that most of the treaty bodies do not have a handbook of their own practice to give to their new members. So they then wonder why some of their new members don’t ‘behave properly’.

ISHR: *There does seem to be resistance from the treaty bodies to harmonising their working methods. Do you have thoughts on the source of that opposition?*

Baldwin-Pask: The treaty bodies have all developed at different times and in different ways and I think some of them hold very dear, and actually sometimes for very good reason, a particular way of working. For example, some treaty bodies are more open about disclosing which member is leading the review of a particular country while others aren’t. There is a history behind that, which is why I think harmonisation can go so far but shouldn’t necessarily be across the board.

Brett: But there are also other issues too, for example insofar as the focus is on harmonising reporting well, we have one treaty body⁵ that doesn’t receive reports at all. So you’ve even got as fundamental a problem as that.

ISHR: *In parallel to discussions about more fundamental reform of the treaty body system, several committees have developed specific elements to improve their work, such as the list of issues prior to reporting (LOIPR) adopted by the Committee Against Torture and the Human Rights Committee. What are your thoughts on the LOIPR?*

Brett: I think it would be very interesting to see how it works. In particular, I can see the advantages in terms of helping to guide the kind of report that you’re hopefully going to get from the State. Potentially, it could be problematic in terms of the additional work that has to be done to produce the list of issues prior to receiving a report – how do they select that list of issues? With that comes the question of how NGOs input to that list of issues. So we’re going to have to see how it works in practice and do a real evaluation. This may be one of the places where different treaty bodies may legitimately do things differently, because if you’ve got a more focused treaty, like the *Convention against Torture*, the list of

5 The Sub-committee on the Prevention of Torture.

issues prior to reporting might work. If you've got a broader one, like even the *Covenant on Civil and Political Rights*, let alone the *Convention on the Rights of the Child*, it might not work. I think that's the kind of differentiated evaluation that would need to be done.

Baldwin-Pask: And in fact the Committee Against Torture is going to be evaluating how it's been working so far, I think at its upcoming session. It will be really important for NGOs to share their experiences.

ISHR: *In terms of increasing impact on the ground, follow-up to recommendations is crucial. What do you think are some possible ways of improving follow-up?*

Baldwin-Pask: If there was a way for the treaty bodies to identify from amongst all of the recommendations that they are producing what the priorities are, I think that would be incredibly helpful for focusing attention of all parties on these priorities. Implementation plans have been very much talked about in the context of the universal periodic review (UPR) but surely there's a space there for treaty body recommendations as well.

Brett: I'm really pleased that there is more focus on follow-up, because this has been one of the weaknesses of the system. One of the key things is having 'in country' or regional OHCHR offices fully engaging in follow-up to the treaty body recommendations. If the States can be persuaded to produce an implementation plan, that would really help because it would be easier to add additional recommendations as they are made by other treaty bodies.

ISHR: *How could the individual communications procedure be improved?*

Brett: I think with more openness. The one that we've been involved with is the Optional Protocol to the *Covenant on Civil and Political Rights* and, to some extent, we know about the cases because we're in contact with the people submitting them. But even then it's quite hard to get information. I understand the confidentiality rule⁶ is needed in some respects, but at a certain point, I'm no longer clear why it needs to be confidential throughout. There's a huge gap in terms of getting cases into the public domain in a way that makes them accessible and comprehensible. If there was a little more transparency, you could start having amicus briefs or third party interventions, which at the moment is effectively impossible.

ISHR: *Do you think the individual communications procedure is being well-utilised?*

Brett: I think it's well-utilised by those who know about it and know how to use it. The problem is that there are a lot of people who simply do not know about it. The Human

Rights Committee on some issues at least is actually far more advanced in terms of its jurisprudence than the European Court of Human Rights or the Inter-American system. But the regional NGOs are much more used to taking their cases to the regional bodies and there is an assumption that the regional bodies are more advanced. There's also, particularly in the European system, the benefit that decisions made by some regional bodies would be legally binding judgments and so people are still preferring to take cases to them. However they would get a better substantive outcome if they took the cases to the Human Rights Committee.

ISHR: *In terms of the process as a whole, given all the talk about financial constraints, what can realistically be achieved?*

Baldwin-Pask: I'm always very cynical about the message that there's no more money. One of the treaty body members described the system as in 'crisis' and I think that's absolutely clear. For example, there are real issues around the UN being able to have States' reports translated in time for treaty body considerations, and that threatens to undermine a process that is dependent on a dialogue based on a State's report. If States are serious about this system, they have to come up with the goods. They have to provide it with adequate resources. ■



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Amnesty International



Rachel Brett
Representative for Human Rights
and Refugees,
Quaker United Nations Office,
Geneva

⁶ The confidentiality rule of the Human Rights Committee means oral deliberations and summary records must remain confidential.

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OPPORTUNITIES FOR NGO ENGAGEMENT

May – September 2011

COUNTRY EXAMINATIONS AND REVIEWS

For more detailed and up-to-date information, please consult the relevant treaty body pages at <http://bit.ly/feFwjo> or the UPR page at <http://bit.ly/ea8LRG>.

A tentative 2011 calendar of country reports to be considered by UN human rights treaty bodies and the UPR can be found at <http://bit.ly/dOruUl>.

UNIVERSAL PERIODIC REVIEW

What's coming up?

The Universal Periodic Review (UPR) will hold its 11th session from 2 to 13 May in Geneva. The countries under review are Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone, Singapore, Suriname, Greece, Samoa, Saint Vincent and the Grenadines, Sudan, Hungary, and Papua New Guinea.

It will also hold its 12th session from 3 to 14 October, when the countries under review will be Tajikistan, United Republic of Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syrian Arab Republic, Venezuela, Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, the Republic of Moldova, and Haiti. The 12th session will be the final session of the first cycle of the UPR. The first session of the 2nd cycle will start in June 2012.

What can you do?

The deadlines for submissions of information to the 12th session have now passed. If you would like to submit information on any of the countries to be examined in June 2012, when the 2nd cycle starts, please follow the guidelines found at <http://bit.ly/d07u3s>.

The countries to be examined in June 2012 will be Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa, Czech Republic, and Argentina. Your submission should be sent to uprsubmissions@ohchr.org following the above-mentioned guidelines. Submissions should be sent at least five months before the relevant session of the UPR. Exact deadlines will be posted in due course at <http://bit.ly/dJJoOb>.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

What's coming up?

The Committee on Economic, Social and Cultural Rights (CESCR) will hold its 46th session from 2 to 20 May in Geneva. It will examine the reports of Germany, Republic of Moldova, Russian Federation, Turkey, and Yemen.

At its pre-session working group, from 23 to 27 May, the Committee will prepare the lists of questions for Argentina, New Zealand, Peru, Slovakia, and Spain, which will be reviewed at a later session.

What can you do?

NGOs may participate in parts of both the 46th session and the pre-session working group following it. See <http://bit.ly/hkv5nJ> for more information.

COMMITTEE AGAINST TORTURE

What's coming up?

The Committee Against Torture (CAT) will hold its 46th session from 9 May to 3 June in Geneva. It will consider the reports of Finland, Ghana, Ireland, Kuwait, Mauritius, Monaco, Slovenia, and Turkmenistan. At the same session, it will adopt lists of issues for Bulgaria, Germany, Morocco, Sri Lanka, and Tunisia, which will be reviewed at the 47th session.

The Committee will hold its 47th session from 31 October to 25 November. In addition to the States mentioned above, the Committee will review Greece, Paraguay, Djibouti, and Madagascar. For more information see <http://bit.ly/eknkCG>.

What can you do?

If you are working on the issue of torture, you can submit information to the Committee at any time, but preferably six weeks before the session.

The deadline for submissions of information to the 46th session has now passed. Information on the States to be reviewed at the 47th session is due by 14 October. Information should be sent in electronic Microsoft Word format to registry@ohchr.org, jnataf@ohchr.org, and bcorvalan@ohchr.org, and will be posted on the Internet.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

The Committee on the Rights of the Child (CRC) will hold its 57th session from 30 May to 17 June in Geneva. It will examine the reports of Bahrain, Cambodia, Costa Rica, Cuba, Czech Republic, Egypt, Finland, and Iceland. It will also review Egypt under the Optional Protocol on Children in Armed Conflict and under the Optional Protocol on the Sale of Children.

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 Organisations Reporting to the Committee on The Rights of the Child*', which is available at <http://bit.ly/gNbare>.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

What's coming up?

The Committee on the Elimination of Discrimination against Women (CEDAW) will hold its 49th session from 11 to 29 July in New York. It will examine the reports of Costa Rica, Djibouti, Ethiopia, Italy, Nepal, Republic of Korea, Singapore, and Zambia. For more information see <http://bit.ly/fRdoiC>.

The Committee's pre-session working group will meet from 23 to 27 May to prepare lists of issues for the 51st session. The following countries will be examined at that session: Algeria, Brazil, Comoros, Grenada, Jordan, Norway, Republic of Congo, and Zimbabwe. For the latest information see the Committee's webpage: <http://bit.ly/a3Ud11>.

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 in Microsoft Word format to BSmith@ohchr.org, indicating whether the materials may be published on the Committee's website; and also in hard copy to Mrs Gaynel Curry, Gender and Women's Rights Advisor, OHCHR, New York Office, Room DC1-0511, UN New York 10017, USA. All submissions should arrive by 27 June. The Committee will meet with NGOs at 3pm on 11 and 18 July, and with national human rights institutions (NHRIs) at 4:30pm on 11 July and 4pm on 18 July.

To submit information to the pre-sessional working group, send information to BSmith@ohchr.org by 9 May. A meeting with NGOs will be organised, however the dates are not yet publicised. Please check the Committee's website for the latest information: <http://bit.ly/ecR3cb>.

More detailed information on NGO participation is available at <http://bit.ly/dayPAF>. Alternatively, IWRAP Asia Pacific can help NGOs submit reports to CEDAW. Please contact IWRAP Asia Pacific on iwraw-ap@iwraw-ap.org or iwraw_ap@yahoo.com.

HUMAN RIGHTS COMMITTEE

What's coming up?

The Human Rights Committee (the Committee) will hold its 102nd session from 11 to 29 July in Geneva. It will examine the reports of Bulgaria, Ethiopia, Jamaica, Kazakhstan, and Dominica (in the absence of a report). Lists of issues will be prepared on Angola, Maldives, Turkmenistan, and Mozambique (in the absence of a report).

What can you 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 examination, to assist it in drafting the lists of issues. Please send information to Ms Nathalie Prouvez, nprouvez@ohchr.org on the lists of issues before 21 April and for the review of States by 3 June. 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.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

What's coming up?

From 8 August - 2 September, the Committee on the Elimination of Racial Discrimination will hold its 79th session and examine the reports of Albania, Czech Republic, Georgia, Kenya, Maldives, Malta, Mexico, Paraguay, Ukraine, and the United Kingdom.

The Committee will hold an open meeting with NGOs to discuss their participation in the Committee's work. See the NGO information note for more details: <http://bit.ly/egaJB6>.

What can you do?

If you are working on issues related to racial discrimination in any of the above countries, you can submit information to the Committee through the Secretariat: Ms Gabriella Habtom, ghabtom@ohchr.org. The deadline for submissions is 22 July.

MEETINGS

PERMANENT FORUM ON INDIGENOUS ISSUES

What's coming up ?

The UN Permanent Forum on Indigenous Issues will hold its 10th session from 16 to 27 May in New York. The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

What can you do?

The Special Rapporteur on the rights of indigenous peoples, Mr James Anaya, will hold individual meetings with representatives of indigenous peoples and organisations. The meetings are an opportunity to raise issues relevant to the Special Rapporteur's mandate. The meetings will be held from 18 to 20 May. Requests for a meeting should be sent by 29 April to indigenous@ohchr.org. Further information is available at <http://bit.ly/fBMUz3>. To meet with the Special Rapporteur you will also need to pre-register for the 10th session. For more information on pre-registering and the session in general, consult the website here: <http://bit.ly/gQlvKj>.

HUMAN RIGHTS COUNCIL

What's coming up?

The Human Rights Council (the Council) will hold its 17th session from 30 May to 17 June in Geneva. An organisational meeting will take place on 16 May. An organisational meeting for the 7th cycle of the Council will be held on 20 and 21 June in Geneva.

What can you do?

If you work with an ECOSOC accredited NGO you may attend all sessions of the Council. You may also submit written statements and request rooms to organise parallel events (deadline 16 May). You may also register to deliver oral statements under all agenda items. The speakers' list for oral statements opens at 8am Geneva time on 30 May. More information about the Council and NGO participation is available at <http://bit.ly/dSkbHC> and at www.ishr.ch/council.

ANNUAL MEETING OF SPECIAL PROCEDURES

What's coming up?

The 18th Annual Meeting of special procedures will take place in Geneva from 27 June to 1 July. More information on the meeting will become available at <http://bit.ly/hgYzMP>.

INTER-COMMITTEE MEETING AND MEETING OF TREATY BODY CHAIRPERSONS

What's coming up?

The 12th Inter-Committee meeting will take place in Geneva from 27 to 29 June. This will be followed by the 23rd meeting of Chairpersons from 30 June to 1 July.

What can you do?

The Inter-Committee meeting provides an opportunity to discuss the work of all the treaty bodies and provide input on ways to enhance the effectiveness of the treaty body system as a whole. More information on the meeting will be made available here: <http://bit.ly/hbKhWO>

EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The 4th meeting of the Expert Mechanism on the Rights of Indigenous Peoples will be held from 11 to 15 July in Geneva. For more information on this meeting consult the website: <http://bit.ly/ek3DpT>

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The Human Rights Council Advisory Committee will hold its 7th session from 8 to 12 August, in Geneva. NGOs can participate in all public sessions. More information on this meeting will be made available here: <http://bit.ly/byzWQz>.

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 join the OHCHR Civil Society mailing list at <http://conta.cc/c4paEC>. At the time of writing, information about the following forthcoming visits was available:

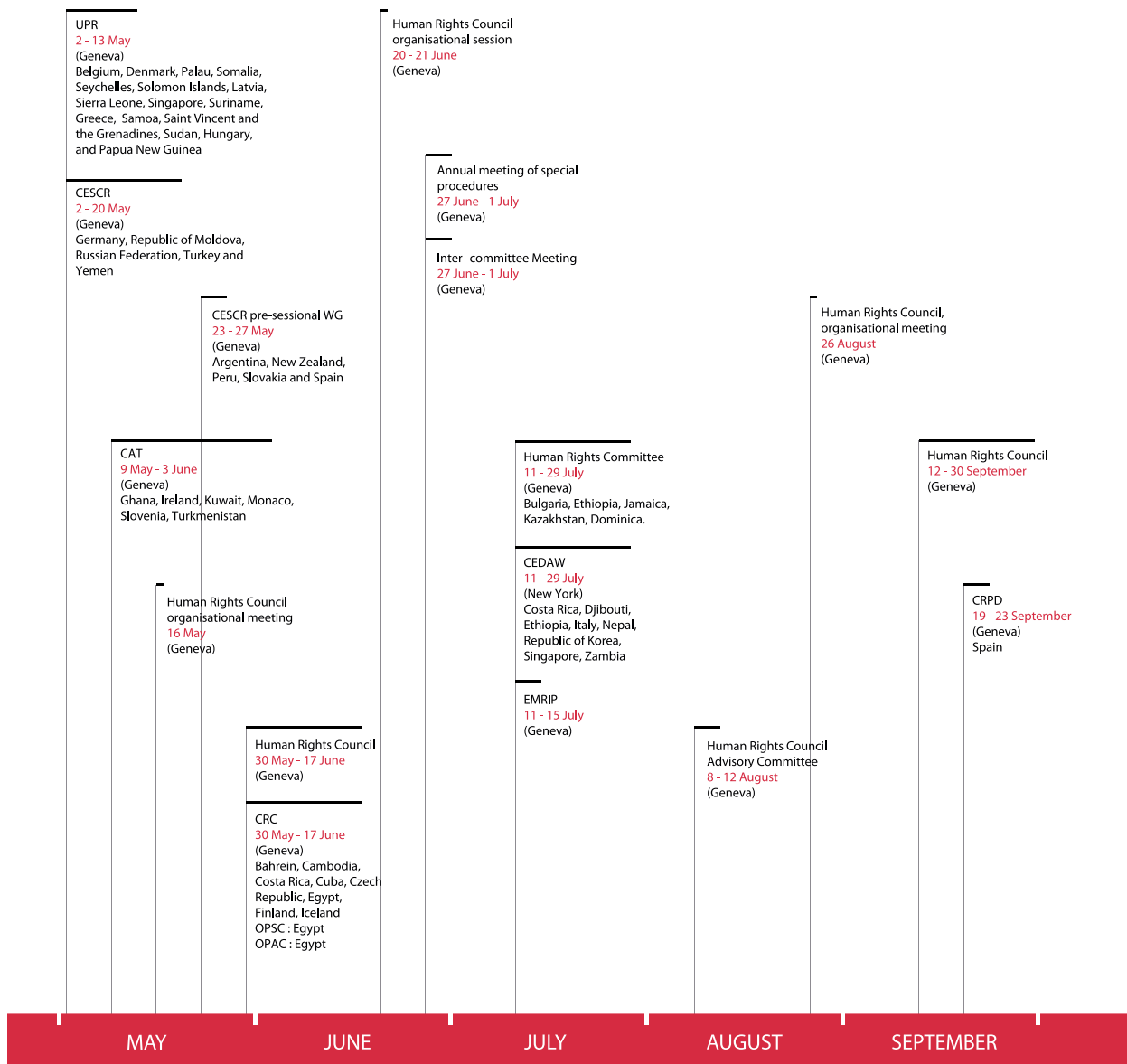
- The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Ms Raquel Rolnik, will visit Argentina from 13 to 22 April. See <http://bit.ly/hQVylk>.
- The Special Rapporteur on the rights of indigenous peoples, Mr James Anaya, will visit Costa Rica from 18 to 22 April. See <http://bit.ly/gWh46a>.
- The Special Rapporteur on the sale of children, child prostitution and child pornography, Ms Najat Maalla M'jid, will visit Mauritius from 2 to 10 May. See <http://bit.ly/flvhey>.
- The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms Gulnara Shahinian, will visit Peru from 9 to 20 May. See <http://bit.ly/eqHMq7>.
- The Working Group of Experts on People of African descent will visit Canada from 16 to 20 May. See <http://bit.ly/fqOzMM>.
- The Special Rapporteur on the independence of judges and lawyers, Ms Gabriela Knaul, will visit Romania from 17 to 24 May. See <http://bit.ly/eZm4vl>. ■

REGIONAL MEETINGS:

ACHPR
28 April - 13 May
(Banjul, the Gambia)

APF annual meeting (TBC)
6 - 9 September
(Bangkok, Thailand)

UN MEETINGS:



UPCOMING EVENTS MAY – SEPTEMBER 2011