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As seasons changed for the Arab Spring, the United Nations General Assembly's Third Committee struggled but ultimately succeeded in giving a nod to the popular uprisings. Beyond a breakthrough resolution on human rights in Syria, current events were also referred to in a number of thematic resolutions: on human rights defenders, torture, women's political participation, and the role of the UN in enhancing democratisation. An important change was witnessed in the behaviour of certain States undergoing transition; Tunisia and Libya shifted their traditional positions against country-specific resolutions, voting in favour of resolutions on Myanmar, Iran, and the Democratic People's Republic of Korea. Egypt acted in a contradictory manner, but ultimately supported the Syria resolution. Other positive developments included increased attention to the issue of reprisals; disposal of a polarising text on defamation of religions – replaced by one on religious tolerance; and adoption of the *Declaration on Human Rights Education and Training*, and a third optional protocol to the *Convention on the Rights of the Child* on individual communications.

Despite this progress, the Third Committee was not without challenges. The session saw the coalescing of an unofficial group of 11 States, united in an anti-civil society agenda. These hard-line governments fought with some success to undermine the independence of certain UN mandate holders, and the contributions of civil society and NGOs. Though the positions come as no surprise, the intensified collaboration of these States will require sustained work and new strategies on the part of more progressive governments and civil society.

Photo: United Nations Secretary-General, Mr Ban Ki-moon participates in a panel discussion on stopping reprisals against those that cooperate with the United Nations, together with UN experts and ISHR, during the General Assembly's 66th session. Source: UN Photo/Mark Garten.

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 presents a global picture of developments in the international and regional human rights systems. The publication also highlights events, meetings and opportunities for engagement by non-governmental organisations and national human rights institutions in the upcoming quarter and beyond. The *Human Rights Monitor Quarterly* is issued four times a year, in January, April, July and October.

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GENERAL ASSEMBLY 66TH SESSION

Developments at the Third Committee



Photo: Gwenael Piasser

A resolution on human rights defenders recommended by the Third Committee highlights the State's role in protecting defenders from human rights violations in the context of peaceful protests.

As the so-called 'Arab Spring' turned to summer and then autumn, the United Nations General Assembly's Third Committee struggled but ultimately succeeded in giving a nod to the popular uprisings. Beyond a breakthrough resolution on the situation of human rights in **Syria**,¹ which represented the first new country situation examined since 2007, the Third Committee also referred to current events in some thematic resolutions, including on **human rights defenders, torture, women and political participation, and the role of the UN in enhancing periodic and genuine elections and democratisation**.

The Arab Spring also resulted in an important shift in the behaviour of certain States undergoing transition. Both Tunisia and Libya shifted their positions this session to vote in favour of resolutions on the situation of human rights in specific countries (**Myanmar, Iran, and the Democratic People's Republic of Korea (DPRK)**). However, Egypt continued to act in a contradictory manner, maintaining its pre-revolution position against country-specific resolutions, but ultimately succumbing to pressure and voting in favour of the resolution on Syria. On thematic resolutions, Egypt appeared to struggle between pushing old 'hard-line' positions without the authority and influence it used to command,² and shifting to a more progressive stance on some issues. In a welcome move, Egypt joined Libya and Tunisia in objecting to the removal of language on the role of youth during political transitions in a resolution on **policies and programmes involving youth**.³

Other positive developments included increased attention paid to reprisals in the torture resolution⁴ and at a high-level side event attended by the Secretary-General and the High Commissioner for Human Rights. The General Assembly (GA) also maintained positive gains made by the Human Rights Council (the Council) in 2011, dropping a polarising text on defamation of religions, and moving instead towards a consensus text on **religious intolerance**.⁵ A significant change in the voting pattern on the previously polarising resolution on **follow-up to the Durban Declaration and Programme of Action** may signal improved cooperation between the Group of 77 and the European Union (EU) on how to address racism. Two standard setting instruments were adopted without controversy: the *Declaration on Human Rights Education and Training*,⁶ and a third optional protocol to the *Convention on the Rights of the Child*.⁷

Despite these positive trends, the Third Committee meetings (October - November 2011) were not without their challenges. The session saw the coalescing of an unofficial group of hard-line States, known to others as the Group of 11 or G-11,⁸ which first emerged during the review of the Council by the GA in the first half of 2011. Though hardly homogeneous in their positions on all issues, G-11 members appear to be united by an anti-civil society agenda and a drive to curtail the independence of the special procedures. Though the positions taken came as no surprise, the intensified coordination between members and pseudo-burden sharing in negotiations required sustained work and new strategies on the part of more progressive States.

1 A/RES/66/176.

2 For example, Egypt was behind a resolution on the Human Rights Council report, which contained language deriding some of the Council's recommendations. Though the resolution was sponsored by the African Group, apparently the text was tabled without consulting all its members. Following a poor reception in the Third Committee, the African Group amended the offending language. See section in this article on budgetary and institutional matters.

3 A/RES/66/121.

4 A/RES/66/150.

5 <http://bit.ly/xMqXXO>.

6 A/RES/66/137.

7 A/RES/66/138.

8 Syria, Russia, China, Cuba, Yemen, Venezuela, Pakistan, Iran, Nicaragua, Belarus, and Vietnam.

This year the battleground over the independence of UN mandate holders appeared to shift away from interactive dialogues with States to the text of resolutions. In particular, the Special Representative of the Secretary-General on Children and Armed Conflict, Ms Radikha Coomaraswamy, was targeted in both the resolution on the Rights of the Child and a new Thai initiative on **strengthening of the coordination of the UN system on child protection**.

Another negative trend worth noting was the increase in attacks on civil society and non-governmental organisations (NGOs) in resolutions, including on **human rights defenders**, and the **High-level Meeting of the GA on the realisation of the Millennium Development Goals (MDGs) for persons with disabilities**.

COMMITTEE STRIVES FOR RELEVANCE IN CONTEXT OF ARAB SPRING

The Third Committee referred to current events in the Arab world in several thematic resolutions. Despite sharp opposition, the biannual **human rights defenders resolution**⁹ calls on States to 'ensure that human rights defenders can perform their important role in the context of peaceful protests' and implies the role of social media by recognising that 'new forms of communication can serve as important tools for human rights defenders'. The resolution also includes strong language on the State's role in protecting human rights defenders from specific violations in the context of peaceful protests, including the excessive and indiscriminate use of force, arbitrary arrest and detention, and abuse of criminal and civil proceedings or threats of such acts. Though these timely references are notable achievements, it is regrettable that detractors were able to gain additional references in the 2011 text to the requirement that human rights defenders operate in the framework of national legislation.¹⁰ States opposed to civil society engagement seek to include such references in order to limit the rights of defenders to those prescribed by domestic law, which often is not in line with international human rights law.

The session's **resolution on torture**¹¹ mentions current events by expressing deep concern at acts that can amount to torture and other cruel, inhuman or degrading treatment or punishment committed against 'persons exercising their rights of peaceful assembly and freedom of expression'.

A **resolution on women and political participation**¹² includes numerous references to situations of political transition. Despite staunch resistance from several States,¹³ the US-sponsored resolution was adopted by consensus. Notably,

the new language was supported by States currently undergoing significant transitions, including Egypt, Libya and Tunisia.

Lastly, the biannual resolution on **the role of the UN in enhancing periodic and genuine elections and the promotion of democratisation** included new language highlighting the importance of fair, periodic and genuine elections in 'new democracies and countries undergoing democratization'.¹⁴

COUNTRY-SPECIFIC RESOLUTIONS

Despite 'in principle' objections raised by the Non-Aligned Movement (NAM) and others (DPRK, China, and Kazakhstan) to the consideration of any country-specific resolutions by the Third Committee, the GA adopted four such texts at the 66th session, mostly with large margins.¹⁵

Only the resolution on **Syria** faced a no-action motion¹⁶ in the Third Committee, which was defeated by an overwhelming majority of 118 to 20, with 29 abstentions. Only the resolution on **Iran** faced a no-action motion in the GA Plenary, which was defeated 100 to 35, with 42 abstentions. The sustained progress against no-action motions in the GA is encouraging; especially considering a no-action motion on Iran was defeated by only one vote as recently as 2007 and by two votes in 2006.¹⁷

In the case of Iran and the DPRK, the votes in favour of the resolutions increased from 2010.¹⁸ Unfortunately, the resolution on Myanmar had two fewer 'yes' votes in 2011. However, the margins increased from the last session for all.¹⁹

The resolution on **Syria** passed with the largest margin of 'yes' to 'no' votes (a 122 vote difference). It was marked by strong regional support with Bahrain, Jordan, Kuwait, Morocco, Qatar, and Saudi Arabia cosponsoring, and no Arab country voting against it. Russia and China, which vetoed an earlier Security Council resolution on Syria, abstained from the vote despite opposing all other country-specific resolutions. At the time of writing, the Security Council is meeting to discuss a resolution tabled by Morocco, which calls for an end to the violence in Syria and supports the Arab League's Action Plan of 2 November 2011 and its decision of 22 January. This includes calling for Mr Bashar Al-Assad to cede power to his

9 A/RES/66/164.

10 China, Russia and Iran.

11 A/RES/66/150.

12 A/RES/66/130. This resolution was last seen at the GA in 2003, A/RES/58/142.

13 Syria, Russia, China, Cuba, Yemen, Venezuela, Pakistan, Iran, Nicaragua, Belarus, and Vietnam.

14 A/RES/66/163.

15 The vote in the GA plenary on the DPRK resolution was 123 in favour, 16 against, with 51 abstentions; on Iran, 89 in favour, 30 against, with 64 abstentions; on Myanmar, 83 in favour, 21 against, with 39 abstentions; and on Syria, 133 in favour, 11 against, with 43 abstentions.

16 A no-action motion is a procedure that prevents member States at the UN from continuing to debate a resolution. It allows countries to avoid taking a position on politically sensitive issues, such as human rights in specific countries, and allows the country in question to escape scrutiny.

17 In 2006, the vote on the no-action motion was 75 in favour, 77 against, 24 abstentions, and in 2007 it was 78:79:24.

18 Comparing this session's plenary votes to the last's, the resolution on Iran gained 11 additional 'yes' votes, and the resolution on the DPRK gained 17.

19 <http://bit.ly/xMqXXO> and <http://bit.ly/zQwCWw>

vice president, who would help form a unity government that would prepare for elections.

Ultimately, the increased support for country-specific resolutions, coupled with dwindling opposition and the groundbreaking resolution on Syria, beg the question whether to expect additional resolutions on unfolding country-specific situations from the GA in future years. The other possibility is that the increased support was a 'one-off', given the extraordinary events of 2011. Unfortunately, regardless of political will and/or the situation of human rights in a country, the significant resources required of a sponsor to run a successful country-specific resolution is sure to weigh heavily in any future decisions.

HUMAN RIGHTS DEFENDERS

Negotiations on the human rights defenders resolution demanded significant time and energy from co-sponsors, and produced mixed results.²⁰ The initially strong text lost some bite during the negotiations, and States critical of human rights defenders blocked important new language. The main controversy revolved around the role of defenders in peaceful protests. Co-sponsors were split on whether to put the text up for adoption without the reference to national legislation, and thus face the possibility of a hostile amendment from the Third Committee floor with similar or worse language.²¹ In the end Norway (the main sponsor) included the reference to national legislation in the final text put forward for adoption. This decision was made despite the fact that a vote on a hostile amendment would likely have ended in a defeat for the hardliners.

Significant concessions were made in other provisions. Language from Human Rights Council resolution 13/13, recognising the importance of an 'enabling environment' for human rights defenders²² was dropped in the face of pressure to include a national legislation reference.²³ Reflecting the ongoing argument about whether journalists can meet the definition of 'human rights defenders', language referring to journalists was removed from a new preambular paragraph expressing grave concern for the 'targeting of human rights defenders for reporting and seeking information on human rights violations'.²⁴ The title of the resolution was modified to include

'promotion' of human rights, although a proposal to also add the word 'implementation' was rejected by G-11 States.

In the future, sponsors and stakeholders may need to carefully consider whether the gains made in the resolution outweigh the losses, and decide whether the price of consensus is becoming too high. Co-sponsors could commit to a substantially strengthened resolution, and refuse to fold to pressure from a few hardliners that seek to restrict the activities human rights defenders, even if it means a paragraph (or the resolution) will be voted upon.

NEW INITIATIVES AND TROUBLING TRENDS

Threats to the independence of human rights mandate holders

This session saw several new initiatives, including a resolution by Thailand on **strengthening of the coordination of the UN system on child protection**.²⁵ This initiative was widely viewed as a rebuke of the Special Representative of the Secretary-General for Children and Armed Conflict, Ms Coomaraswamy, for mentioning Thailand in her annual report on the same subject.²⁶ Framed by Thailand as an initiative to strengthen the UN child protection system, the resolution came across to many States and NGOs as a thinly-veiled attempt to undermine the independence of mandate holders working on child protection through a new evaluation mechanism and a focal role for UNICEF in coordination. In the end, a much watered-down text was adopted by consensus. A number of States²⁷ expressed concern at the dishonest intent of the resolution.

The controversy also spilled into the **rights of the child** resolution, where the resolution's sponsors succumbed to pressure from Thailand and other States that objected to the extension of Ms Coomaraswamy's mandate from the usual three years to four. An initial draft was revised to merely 'recognise' rather than 'take note with appreciation' of the work of Ms Coomaraswamy's office. Despite these concessions, Pakistan proposed an amendment that all mandate holders perform their functions in 'strict observance of their mandates upholding the principles of impartiality, objectivity and non-selectivity, as well as avoiding politicisation.' The amendment was defeated by a vote: 78 against, 48 in favour, 21 abstentions. The plenary later adopted the resolution without a vote.

There were concerns that the report of the Special Rapporteur on the right to health, which links decriminalisation of abortion to the right to health, would provoke criticism from numerous States and would result in attacks on the Special Rapporteur's independence in his dialogue with

20 The resolution's full title is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. It was sponsored by a cross-regional group of 77 States. A smaller number of co-sponsors were active in negotiations, including US, EU and Mexico. The co-sponsors new proposals were consistently blocked by China, Russia, Singapore, Iran, Egypt, and Pakistan, which were backed by Cuba, Venezuela, and Syria.

21 One looming threat was that China would propose an amendment seeking to add 'lawful' to peaceful protests.

22 Operative Paragraphs (OP) 2 and 4.

23 OP3 of HRC 13/13 in fact also includes language on national legislation, with the qualifier 'consistent with the Charter of the United Nations and international human rights law.'

24 An earlier draft expressed grave concern about 'reports that human rights defenders, including journalists, are often targeted for investigating, monitoring and reporting on human rights abuses.'

25 A/RES/66/139.

26 A/65/820-S/2011/250.

27 The US, Norway on behalf of Lichtenstein and Switzerland, Poland on behalf of the EU, Costa Rica, and Chile.

the Third Committee. However, the report was received surprisingly positively.²⁸

Nordics run procedural resolutions on CEDAW/ International Covenants

Resolutions have traditionally been brought in the GA on the topic of treaty bodies to raise awareness about key developments in relation to the treaty bodies, such as the adoption of new optional protocols and general comments. This session, Sweden (on behalf of Nordic countries) tabled much shorter 'temporary' procedural resolutions on the Committee on the Elimination of Discrimination against Women (CEDAW) and the International Covenants on Human Rights.²⁹ Running temporary, procedural texts is said to give States time to reflect on the purpose of the biannual resolutions and how they may continue to fulfil the original objectives, including increasing ratification of the conventions and the optional protocols, and minimising the number of reservations. The ongoing treaty body reform process may also inform the direction of a substantive resolution in future years.

In reality, the resolutions on treaty bodies have achieved few concrete gains in recent years and have become dangerous battleground on contentious issues. In that regard, the move to streamline the resolutions was an important strategy to avoid the controversy that befell the International Covenants resolution when it was put to a vote in 2009, for the first time in its forty-year history. This was in part because it sought to 'take note' of General Comment No.20 of the Committee on Economic, Social and Cultural Rights on non-discrimination.³⁰

Both the resolutions on CEDAW and the International Covenants risked facing similar opposition this session, as both CEDAW and the Human Rights Committee recently produced general recommendations/comments that engendered opposition.³¹

While the 2011 resolutions do not draw specific attention to the controversial texts, the resolutions 'welcome' the annual reports that contain the general recommendations/comments produced that year.³² In the case of CEDAW, the effect is thus to welcome General Recommendations 27 and 28.³³ Due to bureaucratic delays, the report of the Human Rights Committee to the 66th GA was not available in time for the adoption of the International Covenants resolution. Therefore, the resolution only welcomes the report by the Human Rights Committee to the 65th GA, leaving General Recommendation No. 34 without explicit welcoming by the GA.

India, Brazil and South Africa (IBSA) 'group' makes its Third Committee debut

A new resolution on **the universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights and fundamental freedoms** was most notable for its main sponsors: India, Brazil and South Africa, otherwise known as the 'IBSA' countries.³⁴ As three emerging countries or 'middle powers', IBSA are increasingly coordinating on matters such as climate change, sustainable development and UN Security Council reform, 'determined to contribute to the construction of a new international architecture'.³⁵ As IBSA are most recently notorious for abstaining on a Security Council resolution on Syria in October 2011, some States and NGOs feared what might result from the group's joint action in the Third Committee. Regardless of whether the resolution was designed more for posturing than to achieve concrete objectives, in the end the text was adopted by consensus; this was despite comments by Switzerland and Poland (on behalf of the EU) during the text's adoption that expressed concern about its overemphasis on the right to development.

Egypt abandons initiative on human rights and information technology

One negative possibility that never eventuated was an Egyptian resolution on **human rights and information technology**. Apparently Egypt wanted to highlight the negative use of media, including for anti-Islamic purposes, and in that regard included obligations for media in its draft text. Though the draft text was shared with a select cross-regional group of States, it was never discussed in informals, nor was it tabled. Several delegations expressed concern about any language limiting freedom of expression, especially in the current context of media crackdowns across the world. The US was especially adamant not to lose ground achieved through the US/Egypt co-sponsored resolution on freedom of expression, adopted at the Human Rights Council.³⁶ A similar resolution on freedom of expression had apparently been planned for

28 See <http://bit.ly/rNTZKo>. Several NGOs that described the report as a 'milestone in the struggle for the full realisation of the right to health for all', were active in advocating for a positive outcome. Supporters included the EU, Netherlands, Switzerland, Norway, US, Belgium, Sweden, Finland, Denmark, and South Africa. Egypt, Swaziland and Chile reacted more negatively. The Holy See rejected the report.

29 The International Covenants resolution covers the work of both the Human Rights Committee (which monitors the implementation of the *International Covenant on Civil and Political Rights*) and the Committee on Economic, Social and Cultural Rights (which monitors the *International Covenant on Economic, Social and Cultural Rights*).

30 General Comment No.20 on 'Non-discrimination in economic, social and cultural rights (Art.2, Para.2)', Para. 32 provides that State Parties should ensure that neither a person's sexual orientation nor their gender identity can be used as a barrier to their enjoyment of Covenant rights. For a more detailed account of the deliberations, visit <http://bit.ly/xr5XmW>.

31 CEDAW General Recommendation No. 27 on older women (CEDAW/C/GC/27), and CEDAW General Recommendation No.28 on the core obligations of States Parties under Article 2 of the *Convention on the Elimination of Discrimination against Women* (CEDAW/C/GC/28), both reference discrimination on the basis of sexual orientation and gender identity. Human Rights Committee General Comment No. 34 of Article 19: 'Freedom of opinion and expression' (CCPR/C/GC/34), stipulates that blasphemy laws are incompatible with the *Covenant on Civil and Political Rights*, except in specific circumstances.

32 Because the resolutions are biannual, normal practice is to consider the reports of both the current and previous year (in this case the annual report to the 66th and 65th General Assembly).

33 A/66/38(Supp.).

34 A/RES/66/151.

35 www.ibsa-trilateral.org.

36 A/HRC/RES/12/1.

the 18th session of the Council in September 2011, but negotiations broke down due to Egypt's approach to media freedom. A Uruguayan-sponsored GA resolution met a similar fate in July 2011, this time due to calls by Russia and Syria for 'responsible' freedom of expression.³⁷ Clearly, the issue is far from settled, there is concern the Egyptian resolution will reappear at the Human Rights Council in coming sessions.

'G-11' unite to restrict civil society access at UN headquarters

In the human rights defenders resolution, the so-called 'G-11' States focused their energy on including language on restricting defenders' activities to those allowed under national legislation. They also united in limiting civil society access and participation at the international level.³⁸ In negotiations for a **high-level meeting of the General Assembly on the realisation of the MDGs for persons with disabilities**, set to take place in 2013,³⁹ the group pushed for the inclusion of the 'no-objection' rule in procedures for selecting civil society participants, which allows States to object to an NGO's participation. A concerning aspect of this process is that States can anonymously object to an NGO, without giving the rejected organisation a reason for the denial or a chance to contest the decision.⁴⁰ However, EU attempts to introduce an element of transparency to the procedure were blocked.⁴¹ The final language of the resolution on the high-level meeting is vague. It provides more details on the GA's role in the NGO selection process, but ultimately does not change the no-objection practice.

Historically, civil society, and in particular, organisations representing persons with disabilities, have enjoyed good participation and broad access to UN inter-governmental processes related to disability. It was therefore particularly disappointing that States were unable to draw on these precedents to bridge their differences on the no-objection rule. Unfortunately, this reflects the general state of affairs at UN headquarters, where access by NGOs to UN buildings and meetings has become increasingly restrictive over recent years. Despite rhetoric supporting the vital role that civil society plays within the UN, several States consistently flout basic

principles of accountability, transparency, and due process. This is particularly true in the Economic and Social Council (ECOSOC) Committee on NGOs that deals with applications for accreditation to ECOSOC, and where governments play 'gatekeeper' to NGOs seeking to engage with the UN.

INCREASED ATTENTION ON REPRISALS AGAINST DEFENDERS

Building on the 2010 reprisals language in the resolution against torture,⁴² this session's resolution⁴³ featured additional language stressing that national legal systems must ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment, obtain redress without suffering any retribution for bringing complaints or giving evidence, and have access to justice.

The issue of reprisals also received attention during a side event on 'Stopping reprisals for cooperating with the United Nations in the field of human rights'.⁴⁴ The panel discussion involved ISHR, the Secretary-General, the High Commissioner for Human Rights, the Special Rapporteur on human rights defenders, and a former Special Rapporteur on extrajudicial, summary or arbitrary executions. The event highlighted that reprisals affect the credibility of the UN, deterring defenders from cooperating and providing information, thereby compromising its ability to respond effectively.

BUDGETARY AND INSTITUTIONAL DEVELOPMENTS

General Assembly split on Human Rights Council report

The Third Committee addressed several recommendations of the Human Rights Council's report through separate resolutions, including two standard setting instruments. The Committee also considered a general resolution on the report, a process that generated some controversy. The African Group-sponsored resolution initially noted with concern some of the recommendations contained in the Council's report, without referring to any particular resolution or decision. Co-sponsors from other regional groups pushed for more neutral language that would not send a negative message to the Council. The final resolution, which was adopted with 122 in favour to 3 against (Belarus, Syria and DPRK), and with 59 abstentions, 'notes the report ... and its recommendations.' Most of those abstaining expressed that the General Assembly Plenary, and not the Third Committee, should consider the report. Several States that voted in favour of the resolution qualified their positions by citing the 'politicisation' and double standards within the Council, particularly on country-specific resolutions.⁴⁵

37 Informals for 'International Day of Freedom of Expression' under GA agenda item 15: Culture of Peace.

38 China appeared to take the lead for the group in these negotiations, backed up by Pakistan.

39 A/RES/66/124.

40 The same rule was applied to the selection of NGOs for the September 2011 high-level meeting of the GA to commemorate the 10th anniversary of the adoption of the Durban Declaration and Programme of Action. Controversy had flared at the meeting when one organisation was denied access without a fair process.

41 For example, language requesting the GA to 'consider' the final list was rejected. China and others also dismissed a suggestion to use the much broader list of civil society representatives that had participated in the Ad Hoc Committee for the *Convention on the Rights of Persons with Disabilities*, in addition to the ECOSOC-accredited NGO list. The suggestion that organisations only be required to go through the no-objection vetting process, and a proposal for a civil society representative to co-chair some of the roundtables were also rejected.

42 A/RES/65/205 para 9.

43 A/RES/66/150.

44 See <http://bit.ly/q7FhH0>.

45 <http://bit.ly/xMqXXO>.

Ongoing debates on sexual orientation and gender identity surfaced in discussions on the Human Rights Council's resolution on the issue.⁴⁶ Several States expressed concern at the Council's request that the High Commissioner oversee a study and convene a panel on discriminatory laws and acts of violence against individuals based on their sexual orientation and gender identity.⁴⁷ While a few States voiced their support for the Council's initiative,⁴⁸ others registered their concern about its focus on 'sexual preferences' and notions that they felt were 'undefined'.⁴⁹

Russian initiative usurps High Commissioner-led treaty body reform

A report on treaty body strengthening⁵⁰ was considered by the GA. The report proposes a system whereby the resources needed by the treaty bodies would be reviewed periodically, instead of relying on ad-hoc requests for additional meeting time.⁵¹

Although States examined treaty body reform during the interactive dialogue with the High Commissioner for Human Rights and in a side event, the Third Committee did not formally address the report through a resolution. However, in January 2012, following up on its complaint to the High Commissioner⁵² that States had not been properly consulted during the High Commissioner-led Dublin process on treaty body reform, Russia attempted to initiate a new inter-governmental process on treaty body reform.⁵³ Given the High Commissioner-led process has yet to conclude, some States⁵⁴ expressed reservations about the initiative's timing.⁵⁵ Others showed enthusiastic support.⁵⁶

46 Resolution 17/19. See <http://bit.ly/xdNnLL>.

47 Russia and Pakistan.

48 US and Israel.

49 The African Group and the Holy See.

50 Report of the Secretary-General on measures to improve further the effectiveness, harmonization and reform of the treaty body system (A/66/344).

51 As they did in 2010, several treaty bodies requested additional meeting time, including the Committee on the Rights of the Child and the Committee on Rights of Persons with Disabilities. Only the latter was granted one week of additional meeting time.

52 Russia made this point during the interactive dialogue with the HCHR in the Third Committee

53 At the time of writing in January 2012, informals were underway to discuss the establishment of a working group on treaty body reform.

54 The EU and Switzerland.

55 A consultation on treaty body strengthening began in Dublin in November 2009, and progressed with meetings with different stakeholders in Marrakech, Poznan, Seoul, Sion, and Pretoria. Further consultations on treaty body strengthening took place in October 2011 and a wrap-up meeting was held in Dublin in November. The High Commissioner for Human Rights, Ms Navi Pillay, is scheduled to present her report compiling the various proposals in early 2012, with consultations to take place in Geneva and New York. For more information see <http://bit.ly/ifOFOt>.

56 China, Belarus and Syria. The Caribbean and African groups may also support the initiative as they often view New York-centred UN processes as providing greater opportunities for their engagement. This is despite the fact that the Dublin process is open to all Member States and consultations are due to be held in 2012 in Geneva and New York.

The Third Committee also rectified the long-standing issue of the lack of uniformity in reporting by treaty body chairpersons. In previous years, the GA had omitted to invite the Chair of the Human Rights Committee, among others, and had only requested the Chair of the Committee on the Rights of the Child to present an oral report. The GA addressed this disparity by inviting all chairpersons to present reports and engage in interactive dialogues at the 67th session of the Third Committee in late 2012.

OHCHR budget

Despite the Secretary-General's call for budget reductions across the UN Secretariat for 2012-13, the Office of the High Commissioner for Human Rights (OHCHR) requested an increase relative to the 2010-2011 budget. This left Member States in the Fifth Committee, which deals with UN budgetary matters, weighing the call for uniform cuts against the factors that have led to the need for an OHCHR budget increase. These include the expansion of the UN human rights machinery over recent years, such as the quasi-standing nature of the Human Rights Council, the Universal Periodic Review, and the new treaty bodies, which have led to a massively increased support role for OHCHR. Without commensurate budget increases to accompany the additional workload, an undue burden had been imposed on the Office. Another consideration was that OHCHR's budget remains small compared to the other main pillars of the UN: development and security. In her dialogue with the Third Committee, the High Commissioner for Human Rights,⁵⁷ Ms Navi Pillay described the three percent of the total UN budget allocated to OHCHR as 'scandalous', saying the financial management and planning 'cannot continue at this pace.' In the end, OHCHR did receive an unknown increase,⁵⁸ while the overall UN budget took a five percent cut. This is only the second time in 50 years that the UN budget has declined over the previous one.

The Fifth Committee also considered a report of the Secretary-General on options for financing 'unforeseen and extraordinary expenses' of the Human Rights Council.⁵⁹ Until now, OHCHR was forced to carry out unforeseen tasks, such as fact-finding missions, by diverting funds away from other activities, due to the lack of a clearly-defined procedure to assess and approve resources for 'unpredictable' Council decisions. During the GA's review of the Council, some States⁶⁰ had proposed the creation of a 'contingency' mechanism for unexpected expenses,⁶¹ which would be managed by the Secretary-General. However, this did not find broad

57 <http://bit.ly/zDj9ci>.

58 It appears OHCHR received USD 142,743,800 in the overall 2010-2011 budget (A/RES/64/244 A-C) and USD 154,315,400 in the overall 2012-2013 budget (A/C.5/66/L.20), representing an approximate increase of 8 percent. However, it is not yet clear how a further USD 17 million cut called for across the UN for 2012-2013 will affect OHCHR.

59 A/66/558.

60 Kazakhstan, Peru, Mexico, Chile, Iceland, and Switzerland.

61 The type of mechanism the Security Council uses for 'unforeseen and extraordinary' activities that fall under the need to maintain peace and security.

support because many States preferred that budgetary decisions remain in the inter-governmental forum of the Fifth Committee. The GA postponed addressing the issue during the Council review process, and instead requested the Secretary-General to provide the aforementioned report to its Fifth Committee in the GA's 66th session. To the surprise of many, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) shared in its review of the report that there is already a procedure for financing unforeseen expenses (not related to peace and security). This applies to expenses for which no provision has been included in the approved programme budget and for which the Secretary-General cannot await the approval of the GA.⁶² The ACABQ said this mechanism does not appear to have been utilised since the establishment of the Human Rights Council.

The ACABQ therefore concluded that the proposal to change the 'current' arrangement is premature, suggesting that the GA maintain the existing procedure. It also recommended that the GA not take action on the Secretary-General's report, and instead request the Secretary-General to report back at the 68th session of the GA in 2013, on the utilisation of the existing procedure. Though some delegations, including the EU and Norway, agreed with the recommendation, others (G77) preferred to defer the consideration of the issue. Cuba in particular said a discussion was needed but disagreed with the ACABQ recommendation. In the end, further discussion was deferred to March 2012.

Adoption of a new complaints mechanism for children's rights violations

On 19 December 2011, more than twenty years after the adoption of the Convention on the Rights of the Child (the Convention), the General Assembly took a landmark step for children's rights and adopted a new optional protocol on a communications procedure (the Protocol).⁶³ The new Protocol allows children and their representatives to submit complaints to the Committee on the Rights of the Child (the Committee) about child rights violations.⁶⁴

The adoption marks the end of the drafting process that started at the Human Rights Council in 2009 and involved more than 70 States, several regional organisations, UNICEF, the Committee, national human rights institutions, child ombudspersons, and civil society.⁶⁵

This long-awaited instrument effectively puts children's rights on an equal footing with other human rights, as it recognises that children too have the right to appeal to their specific international mechanism. The Committee on

the Rights of the Child was the only treaty body deprived of this competence so far. The new Protocol therefore completes the UN human rights framework by providing the Committee with the power to receive and examine allegations of violations under the Convention, the OPSC and the OPAC, committed by a State party to the Protocol if it has ratified the respective text.⁶⁶

Fifty-six States from all regions, including States that have not yet accepted any existing communications procedure,⁶⁷ expressed their formal support for this new instrument.⁶⁸

While the final outcome fails to explicitly include all the innovations called for to address the specific status of children,⁶⁹ the *chapeau* provision in Article 2 offsets this by enabling the Committee to interpret the Protocol in light of the best interests of the child and to take into account the views of the child complainant. The Committee also has *carte blanche* to guarantee the communications procedure is child-sensitive and prevents the manipulation of the child by those acting on his or her behalf.⁷⁰ These practical aspects of the Protocol will be found in a new set of rules of procedure, which the Committee is expected to discuss and draft in 2012.

The Protocol will be opened for signature and ratification at an official ceremony in 2012 and will enter into force upon ratification by at least ten Member States.

The coalition of 80 international and national NGOs established under the NGO Group for the Convention on the Rights of the Child, which campaigned for the establishment of a communications procedure for child rights, will now become an international coalition for the widespread ratification and effective use of the new Protocol. All interested organisations are invited to join. For more information please contact Anita Goh at goh@childrightsnet.org. ■

62 A/66/7/Add.16.

63 For the final text of the Optional Protocol, see <http://bit.ly/yZyBqm>.

64 See resolution A/RES/66/138.

65 For more information on the drafting process, see <http://bit.ly/hpoB3G>.

66 See Article 1 of the Protocol at <http://bit.ly/yZyBqm>.

67 Such as Japan, Jordan, Kenya, and the US. The US is also one of the three States that has not yet ratified the Convention.

68 See resolutions A/HRC/RES/17/18 and A/RES/66/138.

69 For more detail on key provisions of the Protocol, see <http://bit.ly/peiM8o>.

70 See Article 3 of the Protocol at <http://bit.ly/yZyBqm>.

UNIVERSAL PERIODIC REVIEW

Latest session demonstrates good and bad practices of State and NGO participation



Photo: UN/Jean-Marc Ferré

Mr Faysal Mekdad, Vice-Minister for Foreign Affairs of Syria, addresses the Human Rights Council during the Universal Periodic Review of his country.

The first cycle of the Universal Periodic Review (UPR) came to a close in October following the conclusion of the UPR Working Group's 12th session (3 to 14 October). During the session, attendees were treated to a selection of the best and the worst examples of State engagement with the UPR, with many lessons learned along the way. Seventeen States were under review: Tajikistan, Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syria, Venezuela, Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, the Republic of Moldova, and Haiti.

A full review and analysis of the first cycle of the UPR will appear in the next issue of the *Human Rights Monitor Quarterly*.

PARTICIPATION OF STATES UNDER REVIEW

Most States under review were cooperative with the Working Group and actively participated in the interactive dialogues. The review of Timor Leste stood out as an example of best practice in this regard.

The most notable feature of the review of Timor Leste was the State's recognition of the areas in which it could do more to promote and protect human rights. With regard to the justice system, for example, it accepted criticisms of the public prosecutor and delays in judicial courts. A similar attitude was displayed in the national report presented by Timor Leste, which advised the Working Group on improvements to the human rights situation in the country while acknowledging the areas in which further work was needed. The delegation's openness to receiving recommendations during the interactive dialogue led to a fruitful discussion between participating States and Timor Leste. This was particularly evident in the fact that Timor Leste accepted the constructive comments made by Indonesia and Portugal, despite its difficult history with these States.¹ This is to be contrasted with the review of Lithuania, during which the State took issue with a comment made by the Russian Federation that it had made attempts to falsify history.² Lithuania responded that no such falsification had occurred and challenged the Russian Federation to provide assistance with prosecuting Russian citizens responsible for war crimes in Lithuania during the occupations by Soviet forces in 1941 and 1944.

In the spirit of cooperation, Timor Leste received offers of continued financial support from other States and expressed gratitude for all the recommendations and assistance provided. It was evident that the interactive dialogue had been conducted in accordance with the objectives of the UPR process. The success of the dialogue can be attributed to the contributions of both Timor Leste, as the State under review, and States that provided comments and recommendations during the interactive dialogue.

Conversely, the UPR of Syria was tense and unproductive. Both the national report of Syria and the Syrian delegation headed by the Vice-Minister of Foreign Affairs, Dr Faysal Mekdad, were heavily critical of 'Western interference' and of certain Western States said to be 'bent on discrediting and weakening the Syrian Arab Republic'.³ Much of the address from the Syrian delegation was political and accusatorial, with criticisms made against several States (particularly the United States and Israel) and the

1 The comments made by both Indonesia and Portugal appeared to be made in a spirit of cooperation and did not seem to be controversial nor politically motivated.

2 Soviet Russia occupied Lithuania by military force in 1940 and again in 1944. Lithuania was then annexed by the Soviet Union. Lithuania declared independence from the Soviet Union in March 1990.

3 National Report of Syria, A/HRC/WG.6/12/SYR/1, para 1.

media. Comments from the Syrian delegation on its human rights situation were limited to promoting what it described as a positive human rights record, and on rejecting claims made in the media and by other States about human rights violations. While the UPR is a legitimate forum for States to discuss their human rights achievements, it is disappointing that Syria failed to recognise any scope for improving human rights protections. If the State under review cannot itself be honest and open to suggestions from its peers then the UPR mechanism will not fulfill its functions and objectives.

However, other States also contributed to the excessively political nature of the interactive dialogue with Syria. In particular, the US called for the Syrian Government to step aside. Canada also noted that it had called on the Syrian President and his supporters to step down immediately. Cuba interjected and stated that the UPR was an inappropriate forum for such requests. The Syrian delegation responded by referring to the US as a 'dictatorship', saying no country has the right to judge a sovereign State's actions, and labeling the interference by States in Syria's internal affairs as a 'crime in international law'.

During the adoption of Syria's report, it was revealed from the draft report of the Working Group that of the 179 recommendations received, 27 were considered by the State under review to have already been implemented.⁴ Several States, including the United Kingdom and Norway, objected to this and expressed their concern that their recommendations, (for example Norway's recommendation to immediately release all those arbitrarily detained in Syria),⁵ had clearly not been implemented.

The classification of some recommendations by the reviewed State as having already been implemented or in the process of implementation, when there is evidence to suggest otherwise highlights a principal weakness of the UPR process. Clearly, reviewing States seem to consider the recommendations not or insufficiently implemented. Recording such recommendations as 'accepted and in the course of implementation' is somewhat misleading, because the State under review in fact *rejects* the notion that insufficient efforts towards implementation have been made. This type of classification may also prove to be problematic during the second UPR cycle. States under review are likely to dismiss renewed recommendations on the same issue, by referring to the previous report of the Working Group, which contains the State's earlier position. Whereas, if recommendations are simply rejected, there is still an opportunity for NGOs to lobby the relevant State to reconsider the issue in time for the second review.

Unlike the UPR of Timor Leste therefore, the UPR of Syria did not live up to the objectives of the mechanism, with both

Syria and other participating States leading the process down an unproductive path.

THE FIGURES

During the 12th session, a total of 2,389 recommendations were made by the Working Group to States under review, with 1,392 of those recommendations accepted, or considered to have already been implemented or in the process of being so. This represents an 'acceptance' rate of 58.3 percent of the total recommendations made. There were 262 recommendations (or 11 percent) rejected. The remaining 599 recommendations (30.7 percent of the total recommendations), were left pending for further consideration by the States under review, with responses to be provided by the relevant States at the 19th session of the Human Rights Council (March 2012). These figures indicate that States under review were generally amenable to criticisms and open to suggestions about how to best improve their human rights records. However, there remains a concern that there are still too many instances of States declaring certain recommendations to be already in the process of implementation or having already been implemented, when this is often not the case in reality.

An increasingly common way in which peer States are involved in the UPR process is to submit written questions to States under review prior to the interactive dialogue. The questions must be provided at least 10 days before the interactive dialogue, to enable the State concerned to consider them and provide detailed responses. During the 12th session, there were 594 questions submitted to States under review prior to the interactive dialogues. Many States under review, including Ireland, Lithuania, Swaziland, and Zimbabwe, attempted to respond to the questions. However, while it is encouraging that such a large number of questions were submitted, they continue to be submitted by a small group of only 12 States. Furthermore, 11 of those States were from Europe, with Canada being the sole exception. It is disappointing that there is not a wider group of countries actively utilising the opportunity to submit questions. This represents a missed opportunity, not only for peer States, but also for the State under review, preventing the latter from responding with in-depth analysis and reporting to the specific queries of a range of other countries.

PARTICIPATION BY NGOS

The UPR allows the participation of non-governmental organisations (NGOs) at various stages of the process, in a variety of ways. This can include lobbying States on particular recommendations or issues (generally two to three months before the Working Group meets), holding side events during other UN meetings, such as the Human Rights Council, (ideally one to two months prior to the UPR), holding side events during the UPR to bring last-minute attention to issues, or holding a media conference or issuing a news release during the Working Group session.

⁴ Draft report of the Working Group for Syria, A/HRC/WG.6/12/L.9, paras 109.1 – 109.27.

⁵ Draft report of the Working Group for Syria, A/HRC/WG.6/12/L.9, paras 109.12.

While there were numerous written submissions by NGOs, only a handful of side-events were organised by civil society during the 12th session of the UPR Working Group. Those that were held were not heavily promoted, thereby limiting attendance numbers and publicity of the issues represented. Side events held included one organised by Civicus, focusing on the human rights situation in Uganda, and another organised by a number of Zimbabwean NGOs, regarding human rights and elections in Zimbabwe.

Even though the scope for influencing the content of the review in the Working Group at this late stage is limited, side events can provide useful context and background to the formal review. As such, the lack of promotion of side events during the UPR is regrettable. It is notable that, unlike during the Human Rights Council, the Office of the High Commissioner for Human Rights does not produce a bulletin of informal meetings providing information about upcoming side events.

The *Your Rights Right Now* coalition (the coalition) (coordinated by the Irish Council for Civil Liberties), in conjunction with Amnesty Ireland, held a side event on 12 September 2011. The event took place during the 18th session of the Human Rights Council and one month before the UPR of Ireland on 6 October. This provided an opportunity for the coalition and its partner NGOs to provide information to attendees on cooperation between the Government and civil society during the UPR process, and specifically Irish civil society's role in the UPR process. With an introduction from the Irish Ambassador to the United Nations, the side event had 25 attendees, with a mixture of mission representatives and representatives from Geneva-based NGOs and other non-Irish NGOs. Attendees were provided with a range of materials, including the coalition's UPR report and briefing papers. Representatives of the coalition also interacted with attendees so as to lobby for their interests. Separate meetings with diplomats were arranged by the coalition's representatives following the side event. Ms Deirdre Duffy from the Irish Council for Civil Liberties said that the coalition's presence in Geneva before and during the UPR, its ability to lobby directly with diplomats, and the strengthening of its relationship with the Irish mission and other Geneva-based NGOs, made the event worthwhile and an important component of the *Your Rights Right Now* project.

It may be that NGOs underutilised media engagement opportunities during the 12th session of the UPR, both in Geneva and in their respective countries. Judging from anecdotal evidence, the media was used to draw attention to the UPR in only a small proportion of the State reviews.⁶ Although media organisations use news releases and story ideas at their discretion, failing to prepare and adequately distribute information to the media limits potential publicity around the UPR and the opportunity to increase State accountability at the national level. Since NGOs are not allowed to speak during the interactive dialogue in the Working Group, media engagement tools, such as news releases and media conferences, offer an important avenue through which to draw attention to an NGO's perspective on the human rights situation of a State under review.

CONCLUSION

With the conclusion of the first cycle of the UPR, the international community as a whole – States, the UN system, civil society and other stakeholders – seems increasingly focused on identifying good practices that can be adopted for the second cycle. This article has sought to highlight some examples of how States and NGOs have used the 12th session of the UPR, and may illustrate ways to improve engagement with the process. The second cycle of the UPR, set to commence in May 2012, provides an opportunity to use and build on some of these practices. ■

6 This is based on an Internet search at the time of writing and anecdotal evidence, and not on a comprehensive media review. Examples of news releases issued by NGOs include: Ireland (<http://bit.ly/y8EKLW>, <http://bit.ly/y4yAtM>), India (<http://bit.ly/zXFZue>), Tanzania (<http://bit.ly/xBNQRA>).

COMMITTEE ON THE RIGHTS OF THE CHILD

Committee demonstrates an interest in understanding challenges in Italy, Republic of Korea, Panama, Syria, Iceland, the Seychelles, and Sweden



Photo: I.Timmy

The Committee on the Rights of the Child (the Committee) has traditionally set a high bar among the treaty bodies for its receptive approach to civil society engagement and sensitivity to State specific challenges. The 58th session saw the continuation of this trend, and new ground was broken as a Day of General Discussion drew international attention to the overlooked topic of 'Children of Incarcerated Parents'.

During the session, held between 19 September to 7 October 2011, the Committee met with State representatives to review Italy, the Republic of Korea, Panama, the Syrian Arab Republic (Syria), Iceland, and the Seychelles under the *Convention on the Rights of the Child* (the Convention). The Government of Sweden was also reviewed for its initial report under the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*.

Behind the scenes, the Committee is also making healthy progress in the drafting process of several significant General Comments to better define the proper interpretation of various articles of the Convention for States. As the texts are elaborated in the coming months, the NGO Group for the Convention on the Rights of the Child (the NGO Group) will be reaching out to civil society when there are opportunities to contribute suggested content to these valuable documents.

ENGAGEMENT BY CIVIL SOCIETY AND STATES

All public sessions were attended by national-level civil society organisations, who said they found it useful to listen to the dialogue and witness the responses given to the Committee by their governments. Witnessing the dialogue serves as a point of departure for future discussions with the State on the advancement of children's rights and follow-up to the Committee's concluding observations.

To increase awareness about and access to the work of the Committee, the 58th Session was the first time that a Committee session was broadcast live on the internet. The NGO Group, in partnership with the International Child Rights Centre (InCRC) from the Republic of Korea, webcast the reviews of Panama, the Republic of Korea, and Syria.¹ All States reviewed at the 59th session were also webcast through the NGO Group website, and broadcasts of future sessions are planned.²

The *Convention on the Rights of the Child* has been ratified by all countries except the United States and Somalia, making it the most widely ratified international human rights treaty. The Committee enjoys a high level of engagement with States Parties as almost all States have reported to the Committee; with the exception of Nauru, Tuvalu and Tonga, which have yet to submit their initial reports. Some States have reported to the Committee as many as five times. This is significant in the sense that even States that may not typically engage with international human rights mechanisms have reported to the Committee and entered into a dialogue on children's rights at the international level. It would appear that most States do not perceive the topic of children's rights as controversial or threatening; therefore, their willingness to engage on issues related to children opens a significant window for the international community and for civil society to discuss ongoing and emerging issues in the country, and in particular to advance the children's rights agenda at the national level.

1 Link to archived webcast videos from the 58th Session: <http://bit.ly/yjwhpX>.

2 For more information visit <http://bit.ly/xVFbq3>.

A further indicator of a State's willingness to engage with the Committee is the make-up of the delegation it selects to represent it at the review. In order to carry the reporting process forward in a meaningful way, it is important that all relevant ministries are represented. More importantly, they should be represented by individuals who are able to respond to the Committee's questions in detail and who are in a position to implement change at the national level, in follow-up to the review. At the 58th session, non-governmental organisations (NGOs) expressed the feeling that States had generally selected strong delegations. However, in some cases, such as Iceland and the Seychelles, which were represented by small delegations, delegations were sometimes unable to respond in sufficient detail to the Committee.

A detailed account of each country's review is set out in the country reports produced by the NGO Group.³

COMMITTEE UNDERSTANDS STATE SPECIFIC CHALLENGES

The Committee goes to great lengths to understand the particular challenges faced by each State reviewed. It approaches each State review in a constructive manner and receives contributions from a range of stakeholders allowing it to develop a deeper understanding of the particular challenges being faced by a State, in its efforts to implement the Convention and/or the optional protocols.

The Committee's review of the Syrian State report was a unique opportunity for an international human rights body to hold open discussion with the Government at a time when international presence in the country was not permitted. Although attention was given to the current unrest in the country, especially amidst allegations of the arbitrary arrest of children and other violations of children's rights by government forces, it provided an opportunity for the Committee to emphasise the on-going obligation of the Government to protect and uphold children's rights.

During the review of Seychelles, government representatives spoke openly about the challenges the State faces in implementing the Convention. On one hand, the Seychelles is a small country where one might expect amendments to legislation and policy, and the advancement of cultural attitudes to be more easily addressed. However, the Government faces difficulties in implementation of laws and policies, distribution of resources, and in dealing with corruption. These difficulties are the result of physical challenges, including being an archipelago, and the population's limited access to information which can restrict cultural change and openness to new ideas.

Iceland is another country with a small population and a strong institutional framework for implementing law and policy. The delegation cited the impact of the financial

crisis on the Government's work, and it explained how it had addressed the prioritisation of children's rights in its budget restructuring and allocation of resources during the recovery period.

Panama highlighted poverty as a major barrier to the full realisation of children's rights in the country, a problem that is widespread and part of an overarching social and economic issue. The delegation noted that, as a result, the State has difficulty in meeting the specific needs of particularly vulnerable groups of children, since programme and policy discussions come back consistently to the issue of poverty, which is deeply-rooted and affects many areas of the country.

The Republic of Korea is a country known to have made great strides in economic and social development in recent decades. However, according to its Government, the success and growth of the country has presented new challenges. High levels of competition among school students from an early age, together with a lack of time and physical space given for free play, have contributed to heightened stress levels among children of all ages, and even addiction to computer use and video games.

By being better informed about these particular challenges faced by governments, the Committee is able to consistently improve its concluding observations and recommendations, making them more relevant to specific country contexts and thus, a more effective tool for follow-up and concrete progress towards national implementation of the Convention and its optional protocols.

THE 59TH PRE-SESSION

The Committee is an example of best practice among the different treaty bodies for how it interacts with NGOs, national human rights institutions (NHRIs) and ombudspersons, and United Nations agencies. During the pre-session week, the Committee sets time aside to meet with these stakeholders from countries due to be reviewed in a future session. The Committee considers written inputs from all stakeholders, together with State reports, to gain a better understanding of the situation of children in a given country. Because of the Committee's level of engagement with NGOs and the other non-governmental stakeholders, it receives information from the majority of countries, including geographically isolated States.

At the 59th pre-session, the Committee met in separate private meetings with national NGOs from Australia, Algeria, the Cook Islands, Thailand, Turkey, Vietnam, and Nepal. In the weeks following the meetings, contributions were also received from NGOs in Cyprus. Many NGOs and other stakeholders that have submitted reports and been invited to attend pre-session meetings with the Committee describe their participation as very useful for their work; it provides an opportunity to help the Committee better understand national situations. With attendance by national NGOs and coalitions from as far away

³ Country Reports available at <http://bit.ly/wMoDTL>.

as the Cook Islands, Australia and parts of southern Asia, this pre-session demonstrated the importance that many NGOs place on being closely and physically involved in the reporting process, despite financial, political, social and even geographical challenges.

As of the 59th session, with the signed consent of the authoring organisations, written submissions provided to the Committee by NGOs are now made available on the Committee's website, along with State reports and other official documents.⁴ NGO contributions are also still available through the Alternative Report Database managed by the NGO Group.⁵ These can act as a helpful reference for those wishing to gain information about a particular country, or for other organisations interested in preparing written reports for submission to the Committee.

2011 DAY OF GENERAL DISCUSSION

The topic of the 2011 Day of General Discussion was 'Children of Incarcerated Parents', an often neglected or unknown issue. The event marked the first international meeting to discuss the topic. Participants considered how criminal and administrative justice systems can better respect the rights of children whose parents are incarcerated, and account for their needs. The NGO Group's Working Group on Children of Incarcerated Parents supported the Committee in developing the underlying concepts and raising awareness of the event. There were 273 participants present on the day from all over the world and representing a range of professional backgrounds.

The discussion took South Africa as one example of good practice, where Article 30 of the State Constitution addresses the impact of the imprisonment of parents on children. Participants were asked whether the incarceration of parents was a viable solution when considering the best interests of children, or whether alternative means of sentencing parents could be found. Input from two young people who each have a parent in prison shed light on some of the realities facing children and young people striving to forge ahead with their own lives, while seeking to maintain relationships with parents in prison without being socially ostracised. A full report of the Day of General Discussion will be adopted at the 59th session of the Committee and made publicly available on the website of the Office of the High Commissioner for Human Rights (OHCHR) in March.⁶

An exhibition displayed in the UN Palais des Nations in Geneva complemented the Day of General Discussion. It featured drawings and quotes by children from around the world, and highlighted initiatives at community and national levels that seek to address the needs and promote the rights of children whose parents are incarcerated. Located in one of the main gathering points for UN workers and State

representatives, the exhibition caught the attention of many people. Some of them remarked that they had never thought about the children of incarcerated parents and how those children are impacted by their parents' situation.

In September 2012, the Committee's Day of General Discussion will focus on the rights of children in migration situations. The Committee is currently working with partners to develop a concept note. The concept note, along with more information on how to register or make a written submission, will be available on OHCHR's website in the coming months.⁷

GENERAL COMMENTS

The Committee adopts General Comments in order to provide States with guidance on how specific articles of the Convention or its optional protocols should be interpreted and applied in law and in practice, to give children access to their rights. Currently, the Committee is drafting General Comments on Article 3, the best interests of the child; Article 24, the right to health; Article 31, the right to play; and the cross-cutting issue of business and child rights. Furthermore, for the first time, the Committee is collaborating with another treaty body, the Committee on the Elimination of Discrimination against Women, to produce a joint General Comment on harmful practices. All of these General Comments are currently at the drafting stage and there will be opportunities for civil society to engage with the process in the near future. Contact the NGO Group for further information. ■

Article by Roisin Fegan, NGO Group for the Convention on the Rights of the Child.

4 Information on sessions of the Committee available at <http://bit.ly/fjetvW>.

5 NGO Alternative Report Database available at <http://bit.ly/we0f92>.

6 See <http://bit.ly/mSJ2Jd>.

7 <http://bit.ly/mSJ2Jd>.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

NGOs play a crucial role in reviews of Oman, Paraguay, Montenegro, Mauritius, Lesotho, Chad, Kuwait, and Côte d'Ivoire



Photo: Alfred Weidinger

During its 50th session, the Committee on the Elimination of Discrimination against Women (the Committee) confronted many brutal and prevalent abuses of women's rights including female genital mutilation (FGM), the prohibition of abortion, and domestic violence. The session took place from 3 to 21 October 2011, during which the reports of eight States Parties to the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention) were reviewed: Oman, Paraguay, Montenegro, Mauritius, Lesotho, Chad, Kuwait, and Côte d'Ivoire.

Although some delegations were small, exchanges between State representatives and the Committee were predominantly open and constructive. Contributions from NGOs came to the fore in the process with many of their concerns underlying the Committee's questions. The Committee acknowledged that a number of barriers to full implementation of the Convention still remain and States must continue to strive for more male involvement in the struggle. Any remaining reservations to the Convention based on culture must be addressed, and legislation must be refined to ensure the complete prohibition of FGM and better protection for victims of domestic violence.

ENGAGEMENT OF STATES UNDER REVIEW

State delegations varied in size and gender representation.¹ The Committee was concerned by the delegation of Chad, which consisted of only two representatives, both male, from its Permanent Mission in Geneva. This contrasted starkly with the delegations sent by other States. For example, the high-ranking 24-person delegation from Kuwait was comprised of 15 men and nine women, and the high-level delegation from Paraguay had strong female representation, with nine of the 12 delegates being women.

The composition of delegations had an evident effect on the dynamics of each review. Members of the delegation for Paraguay were open and honest in their responses, admitting the concerning state of affairs for women in their, self-confessed, patriarchal society. Unlike other States under review, the delegation did not attempt to give excuses or side-step questions. It admitted the difficulties it faced in improving women's rights in Paraguay due to resistance in the legislature and the conservative nature of Paraguayan society. The responses provided gave the impression that Paraguay was struggling to implement women's rights, and welcomed the Committee's input. This could have been due to the fact that the head of the delegation, Ms Gloria Rubin, was female, and the delegation as a whole was predominately female. However, a Committee member noted that this suggested the promotion and protection of women's rights in Paraguay was largely left to women, and was therefore likely lacking in requisite support and resources in what the delegation said was a male-dominated and sexist society.

The dialogue with Chad, on the other hand, was somewhat limited, with only the two male delegates present. The Committee was concerned by the lack of experts present. The delegation apologised, saying this was due to the local elections in Chad, which meant other potential delegates were too busy to attend.

¹ A full list of delegates from each of the eight States is available at <http://bit.ly/xO8Ot7>.

NGO PARTICIPATION

In her opening statement, Chairperson Silvia Pimentel noted the important role played by non-governmental organisations (NGOs) in the work of the Committee. In reference to meetings held with NGOs and other civil society organisations during the 50th session, she paid 'particular tribute to these stakeholders who provide such valuable input into our work'.²

The concerns raised by NGOs came through clearly in the Committee's dialogues with each of the eight States reviewed. Almost every issue raised by participating NGOs was included in the questions the Committee posed to the States. Impressively, the Committee raised all thirteen NGO issues in its dialogue with Paraguay, though the issue of obstacles faced by women in accessing the justice system was only mentioned briefly. Similarly, in the review of Oman, the Committee raised all of the issues highlighted in a prior meeting with NGOs.

The influence of NGOs on the Committee's discussion with the delegation from Montenegro was clear, with the Committee making direct reference to NGO information and pointing to discrepancies between the State's report and information provided by NGOs. The delegation only replied that the Government tried to 'harmonise' its work with that of NGOs, and noted the limited financial support the Government could offer such organisations. Its response did not explain the discrepancies, and seemed to suggest that NGOs operating in the country would need to operate in line with the Government in order to gain support or recognition.

The issues raised by NGOs were also clearly present in the concluding observations and recommendations.³ Almost all of the NGOs' issues were present in the recommendations. Many were also highlighted as being of the utmost importance in requests for follow-up information regarding States' progress on specific recommendations. This clearly shows the value of the engagement of NGOs in the work of treaty bodies.

MAIN THEMES

Reservations to the Convention

The Committee raised the issue of Oman's reservation to Article 16 of the Convention,⁴ which broadly impacts the equal rights of women in family and marriage. The delegation replied by saying that Oman would work towards withdrawing its reservations, but could not give an estimated time frame for doing so. It said work would be needed to gain the support of the people and of both houses of parliament. However, it gave no details as to what steps would be taken towards this.

Kuwait's reservations to Article 9 (2) of the Convention,⁵ which grants women equal rights to men in passing their nationality on to their children, and Article 16 on issues of marriage and family,⁶ were both raised. In response, the delegation repeatedly referred to culture and religion in Kuwait as barriers to potential withdrawal of these reservations. While the Committee seemed sensitive to this issue, it did not accept that Sharia law should provide a reason for the many violations of women's rights that came from these reservations, including polygamy and early marriage. The Committee pushed the delegation to address these issues as other Islamic States have managed to do.

Domestic violence

When questioned about domestic violence, the Omani delegation admitted there is no specific mechanism to protect women suffering from domestic violence and no sanctions against the perpetrators. Yet, it repeatedly argued that there was no need to address the problem, claiming domestic violence was not a widespread issue in Oman. It failed to provide any data to support this claim, giving the excuse that methodological errors had occurred in the study that had been carried out, and a new study would need to be conducted before information became available. The Committee continued to emphasise the seriousness of the issue, which was evident in the concluding observations on Oman.

The Committee highlighted the epidemic levels of domestic violence in Paraguay. Committee members questioned the delegation on what was being done to address this, and stressed the need to change legislation, train law-enforcement officials, magistrates and others working with domestic violence, and provide better support for victims.

In the case of Montenegro, the Committee highlighted unclear responses on the issue, and the general failure of the State to deal with the problem of domestic violence in Montenegrin society. NGOs had raised the concern that there are only two shelters available to women in Montenegro. The Committee addressed this in discussion with the delegation, asking for specific details on the standard of the shelters, and stressing the need for an increase in the number and capabilities of these services for women victims of domestic violence.

The Committee raised domestic violence in the dialogue with Mauritius, where it had also been included in NGO submissions. The members emphasised their view that violence against women is one of the most serious violations of women's rights. They questioned the delegation on aspects of Mauritius' attempts to tackle the problem, prosecute offenders, and support victims; including the need to provide more women's shelters. The Mauritian delegation was open about the need to address domestic violence, and assured the Committee that steps were being taken towards establishing

² The opening statement by the Chair is available at <http://bit.ly/xO8Ot7>.

³ The concluding observations and recommendations for each State are available at <http://bit.ly/nAM47v>.

⁴ The text of Article 9 is available at <http://bit.ly/yixy84>.

⁵ The text of Article 9 is available at <http://bit.ly/yixy84>.

⁶ The text of Article 16 is available at <http://bit.ly/z106o6>.

more shelters and other forms of support for victims. However, it also noted that the resources assigned to this issue were limited, and admitted that the current processes lacked enforcement or protection capacity.

The delegation from Lesotho admitted that domestic violence was not specifically addressed in its legislation, and that attempts to change this were made difficult by a lack of finances. It also revealed that, at present, work on the possibility of including the issue in legislation was being left to NGOs. The delegation explained that the goal of government policy was to resolve problems between the female victim and the perpetrator as quickly as possible and return her home on the same day.

The Committee made specific reference to information provided by other sources, including NGOs, on the failure of Kuwaiti law to specifically criminalise domestic violence, and asked the delegation what steps were being taken to address this. Members raised the issue of domestic violence numerous times as they were unsatisfied with the delegation's response. The delegation claimed that the law did not need to include domestic violence specifically, as violence generally was a crime.

Sexual violence

The issue of rape in Côte d'Ivoire was given much attention by the Committee, both in reference to the Government's failure to prosecute the crime, and to the multitude of physical, psychological and other sufferings that women face as victims of rape. It should be noted that rape has been so systematic and widespread in Côte d'Ivoire that the International Criminal Court has classified it as a crime against humanity. Committee members made specific reference to information they had received on this issue from the written reports of NGOs. The delegation said Côte d'Ivoire has legislation against rape, but also admitted that the judicial system in the country is flawed and sometimes fails victims, not only of rape but of other crimes as well. The failure of the justice system was also raised in the case of Chad, particularly in relation to the failure to prosecute the crime of rape, which is widespread in the country.

Traditional practices and patriarchy

During the dialogue with Côte d'Ivoire, the Committee pressed the delegation for more satisfactory responses on the issue of female genital mutilation (FGM). Committee members were dissatisfied with the delegation's justification that FGM is prohibited under legislation, and wanted to know what else was being done to abolish the practice. The delegation said public awareness programmes and discussions were being carried out in regions where the practice continues, however it failed to provide any data or specific information beyond this.

The Committee also questioned the Omani delegation on the practice of FGM. The delegation repeatedly responded to criticism by saying that it is illegal for FGM to be carried out in medical institutions in Oman. The Committee did not accept this response, and asked what was being done to stop the practice being carried out in all contexts. The delegation also

failed to provide statistics on the extent to which FGM is practiced in Oman.

The delegation from Lesotho strongly rejected the idea that FGM was occurring in its country and therefore refused to respond to questions on the subject. As FGM did not appear specifically in the Committee's recommendations to Lesotho, it seems that members accepted this response. In response to a number of other issues related to patriarchy, such as inequalities in marriage laws and the fact that women cannot accede to the throne, the Lesotho delegation said the country should not have to alter its culture to abide by the Convention. The delegation said that in Lesotho's culture, men married women into their families, therefore women could not, for example, pass their citizenship onto their spouses. Instead, they are integrated into the family of their husband and therefore take on his status and nationality.

Chad's delegation lacked detailed information or data to respond to the Committee's questions, perhaps because of its small size and limited expertise. In some cases, it argued that culture made it difficult to address women's rights issues. For example, the delegation stated that abducting women for marriage in Chad was viewed as an honourable, masculine act. Likewise, it explained that the age at which a girl is seen to become a woman is ten years old; as such early marriage is culturally acceptable. The delegation also said the country's problems should be considered within the context of its civil war and related difficulties. While the Committee recognised some of the difficulties faced by Chad, it seemed reluctant to accept these as an excuse, saying other countries in similar situations were making improvements. The Committee sought information beyond the delegation's assurance that there was legislation banning FGM and early marriage. Members also raised the issue of polygamy, which the delegation argued was not of high importance, since the legal status of the second wife is not recognised. However, the Committee continued to press the issue and included it in its final recommendations to Chad.

Abortion

The need to legalise abortion was raised in the review of Mauritius. The delegation responded that the issue was being discussed but was very sensitive. It expressed hope that a solution would soon be found, but gave no real indication of whether this is likely or what such a solution might be. NGOs also expressed concern about Mauritius' need to legalise abortion, with a specific focus on the worrying effects on women's health caused by unsafe abortions.

Members of the Committee raised the same concern in the review of Paraguay, where unsafe abortions cause a quarter of maternal deaths in the country. This was an issue that the Committee had raised with Paraguay in its previous review in 2005, and which NGOs stressed the State had still failed to address. ■

HUMAN RIGHTS COMMITTEE

103rd session examines Iran, Jamaica, Kuwait, Norway, and Malawi



Photo: Nilbaq

Women's rights protest, Kuwait.

The 103rd session of the Human Rights Committee (the Committee) saw a rich diversity of human rights themes being addressed, including gender equality, torture, the death penalty, and the rights of ethnic and sexual minorities. The session took place between 17 October and 4 November 2011 in Geneva and the reports of the following countries were examined: Iran, Jamaica, Kuwait, Norway, and Malawi (discussed in the absence of a State report).

Tardiness on the part of States in submitting their reports was notable. Delays ranged from an extraordinary 18 years since Iran's last appearance before the Committee, to a one month delay in the submission of Norway's report. The 'short' length of Norway's delay was in fact commended, indicating the chronic nature of the issue of late reporting.

Each delegation included some high level officials, and the delegations were generally large. This was with the exception of Jamaica, whose three-member delegation and lack of representation from the capital attracted criticism from the Committee. The gender balance of the delegations was mostly even, however Iran's 18-member delegation included only two women, drawing comments from the Committee and putting a further spotlight on gender inequality within the State. Conversely, Mr Michael O'Flaherty described Norway's delegation as a 'model' for the type of representative delegation the Committee would like to engage with.¹

STATUS OF THE COVENANT IN NATIONAL LAW

The status of the *International Covenant on Civil and Political Rights* (the Covenant) in national law was raised for every State except Norway. It was discussed at length in the reviews of Iran and Kuwait in the context of Sharia law and the law's place in relation to Covenant provisions. This was a clear point of contention between the Iranian and Kuwaiti delegations and the Committee experts, with Kuwait in particular stating that it could not place Covenant provisions above Sharia law. The delegation showed little flexibility in its attitude on this point, despite repeated comments from Committee members on the precedence of international treaty obligations. The issue was followed up in the concluding observations of Kuwait's review, with a call for the State to 'ensure that domestic laws, including those based in Sharia law, are compatible with its obligations under the Covenant'.

Iran's opening statement drew attention to the fact that the State became a party to the Covenant before the 1979 Revolution but the new Government had decided to remain a party, and it claimed to have a 'general policy' of collaboration with the UN. This was clearly intended to show the country's commitment to the Covenant. However, this policy of adherence was questioned by Committee members who wanted clarification of the status of the Covenant compared to domestic law and religious doctrine. The delegation stated several times that the hierarchy of international law and domestic law in Iran was not made clear by the Constitution. This apparent confusion gave the impression that the Covenant is not viewed as relevant in Iranian legal proceedings, with one delegate even saying that attorneys see the Covenant as 'redundant'. The Committee pressed Iran on this point, but ultimately the issue was left unaddressed by the delegation and resulted in two strongly worded recommendations in the concluding observations.

¹ <http://bit.ly/zpYzeC>.

THEMES

Gender equality

Gender inequality was discussed at length, ranging from the status of women in Iranian and Kuwaiti society, to concerns about rape and domestic violence in Norway and Jamaica.

Kuwait's repeated assertion that Sharia law was the only law governing 'family life', and that men and women are equal except where Sharia dictates otherwise, made a constructive dialogue on women's rights difficult. The delegation responded to some extent to questions on female judges, vaguely suggesting the law may make this possible in the future. The Committee made four separate recommendations in its concluding observations on women's rights, including one calling for an end to the discriminatory rule equating two women's testimonies to that of one man's in national courts.

The dialogue with Iran was somewhat different. Instead of stating Sharia law as the basis for legislation regarding women's rights, the delegation claimed that the role of women in the home and family was in itself a 'right', and that women were treated differently due to 'physiological differences'. However, the delegation's response, that there was nothing in the Quran to prevent women occupying decision-making positions, showed that religious doctrine still forms the basis of laws on this issue. Despite strong and continued questioning on this subject by Committee members, Iran was generally unresponsive. Ultimately the Committee made several detailed recommendations in its concluding observations; although questioning on Iran's failure to ratify the *Convention on the Elimination of All Forms of Discrimination against Women* was not followed up with a recommendation to this effect.²

Lesbian, gay, bisexual and transgender rights

Lesbian, gay, bisexual, and transgender (LGBT) rights were raised as a serious issue in most countries under review, and gained a considerable amount of Committee attention. Unfortunately, Iran's view, as stated in its written responses, that the issue is beyond the mandate of the Committee, blocked the possibility of constructive engagement with the delegation. Iran denied allegations of forced gender reassignment surgeries. Kuwait's response to Committee questions on decriminalisation of homosexuality was that homosexuality is 'against Islamic traditions'. Detailed recommendations on ending discrimination against and criminalisation of LGBT persons were made by the Committee to both States, however given the blanket rejection of questions or compromise on the issue during the dialogue, it seems unlikely these will have effect in the near future.

Jamaica was slightly more responsive to questions on this issue. It had made contradictory statements in its written responses: on the one hand that LGBT persons did not face discrimination, but on the other hand, that Jamaica retains laws criminalising consensual homosexual acts between men. Initially the delegation avoided any extended response to this issue by saying it 'noted' the Committee's observations. However, after follow-up questioning, it said the country has no current intention to decriminalise homosexual acts. The delegation also denied that LGBT persons face attacks or harassment. Whilst there is clearly little legislative or policy movement on this issue, the delegation did demonstrate some willingness to address it when it said training on LGBT rights is included in general human rights training of police officers (thus recognising LGBT rights as human rights).

Conditions of detention and use of torture

The dialogue with Jamaica took a pragmatic approach to prison over-crowding, with both Committee members and delegates recognising this as a resource issue that can currently only be dealt with through interim measures. However, extrajudicial killings and torture by law enforcement officials (both in detention and elsewhere), with apparent impunity, was a major concern for Committee members that was less well addressed by the delegation. The issue of solitary confinement was addressed in the Norway review, with reference to a recent statement by the UN Special Rapporteur on torture. The issue of excessively long pre-trial detention for juveniles was also raised, however the delegation insisted this occurs only in exceptional circumstances.

Iran responded to allegations of torture by police by saying that torture is a crime under the constitution and perpetrators are prosecuted. However, when pressed on abuses committed by security forces during the 2009 electoral unrest, the delegation denied claims of impunity but failed to provide any evidence of investigations or prosecutions.

Death penalty

Although Norway was the only country reviewed to have abolished the death penalty, Jamaica has had a *de facto* moratorium since 1988, which the Committee was keen to discuss as a potential step towards abolition. However, the delegation was firm in its unwillingness to accede to the Second Optional Protocol.³ The delegation later admitted that, in amending the Constitution to provide for a Charter of Rights, it had reversed a common law rule commuting death sentences to life imprisonment after five years had elapsed on death row.⁴ In her closing comments the Chair urged Jamaica to reconsider its position on the death penalty. However, the concluding observations were relatively weak on the issue.

² While the Committee has increasingly started questioning States on the non-ratification of other treaties, such criticism is generally not included in the concluding observations as it may be perceived as stretching the mandate of the Committee to comment on other treaties.

³ *Second Optional Protocol on the International Covenant on Civil and Political Rights* aiming at the abolition of the death penalty <http://bit.ly/9yn7Kq>.

⁴ *Pratt and Morgan v Attorney General for Jamaica*, JCPC 1993.

Iran and Kuwait were both criticised for the excessive use of the death penalty, despite claims, particularly by the Iranian delegation, that it is only used for very specific, serious crimes. Kuwait once again justified its use of the death penalty and non-accession to the Second Optional Protocol by referring to Sharia law, further frustrating the Committee. Iran was specifically questioned on the execution of juveniles. Its response that the State is 'trying to reduce' this was deemed unacceptable by Committee members.

Rights of minorities and asylum seekers

Minority rights were raised in particular in reference to the Saami and Roma people in Norway, the Baha'i in Iran, and a variety of foreign ethnic groups and Bedouin in Kuwait. The Norwegian delegation responded openly on this issue, saying it was aware that four in ten Saami people have experienced harassment or discrimination, and that there is a need for a new policy to combat this. Of similar concern to the Committee was the country's treatment of asylum seekers, which was said to require more sensitivity. Failure to carry out medical assessments on persons who experienced torture in their country of origin, and to provide legal aid in certain cases, and the lack of support provided to unaccompanied minors beyond the age of 15, were highlighted as specific areas of concern. The delegation provided information on its use of the Istanbul Protocol⁵ in response, and said provision of legal aid was individually assessed; however, the Committee did not deem this to be an adequate response.

Kuwait's attitude to minorities was concerning. It denied the existence of different ethnicities in Kuwait. Not only did the delegation not recognise the existence of minority ethnic groups among Kuwaiti nationals, but it also failed to address concerns about Stateless persons in the country being denied their human rights. The delegation justified unreasonable restrictions on Kuwaiti nationality by saying that citizenship awarded its people so many benefits that the State must be 'careful' in granting it.

NGO PARTICIPATION

It was clear throughout each dialogue that NGO information played a key role in forming Committee questions and drawing attention to specific cases of human rights violations. For example, during the Kuwait dialogue, NGO claims were cited by Committee members on issues such as female judges, and failures to investigate claims of official torture made by non-Kuwaiti citizens. The Committee was also able to refer to the details of a case highlighted by an NGO, of a man who had converted from Islam and had had his citizenship revoked. The delegation of Kuwait was unable to respond to this allegation, claiming it had no knowledge of the case. Detailed case

studies such as this are effective in exposing flaws in general or vague responses provided by delegations. In particular it makes it more difficult for delegations to avoid an issue if experts have specific facts at hand.

The short NGO meeting that precedes State reviews is the only formal opportunity NGOs have to focus Committee members' attention on their priority concerns. Issues raised in the forum can have a genuine effect on Committee questioning. This was clear in Norway's review, where Committee members took up specific questioning as a result of NGO presentations. However, it was noticeable in the meeting that discussions were somewhat rushed, with participants having to quickly provide a list of their main concerns towards the end. Given the results produced by even such short meetings, it may be beneficial if more time was provided to enable NGOs to fully inform Committee members of their concerns. It would also be valuable if the process was formalised in the Committee's programme of work, as is the case, for example, with the Committee against Torture, which schedules a formal hour long briefing with NGOs prior to each country review.

Representatives from an NGO present for Jamaica's dialogue appreciated the opportunity for NGOs to communicate with the Committee directly, but expressed the view that the time devoted to NGO engagement in these meetings was limited. The effectiveness of the NGO's engagement was clear, as Committee members repeatedly raised questions on the issues set out in the document. Many of the conclusions made in the NGO document correspond directly to the Committee's concluding observations on the State. As stated by the organisation's representatives, it is invaluable for national NGOs to have their concerns 'validated by the international community' in Committee sessions, and effective engagement by NGOs is crucial to achieve this goal.

During both the meeting on working methods and the meeting with States Parties, Committee members showed an interest in improving communication with NGOs. Ms Iulia Antoanella Motoc said it would be advantageous for NGOs if the Committee held more of its meetings publicly, and that the Committee was currently preparing a plan for increasing NGO engagement. Mr O'Flaherty drew attention to the lack of confidence among NGOs in the 'secretive' procedure of reviewing States that have not submitted reports through private meetings. Sustained pressure from NGOs and the support of key Committee members has contributed to a change in Committee procedure, as put forward by Mr Fabián Omar Salvioli. This change makes public those reviews taking place in the absence of a State report, thus making them essentially the same as those for States who have submitted a report. This is likely to be welcomed by NGOs from such non-reporting countries, who are seeking a public forum through which to voice their concerns before the international community. ■

⁵ The Istanbul Protocol, or *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was produced by the Office of the High Commissioner for Human Rights in 1999. It is a set of minimum international standards in the investigation and documentation by medical and legal professionals of situations of torture.

COMMITTEE AGAINST TORTURE

A focus on prevention in the reviews of Belarus, Bulgaria, Djibouti, Germany, Madagascar, Morocco, Paraguay, and Sri Lanka



Photo: Dave Reed

Basic safeguards against torture in prisons was a recurring topic in State reviews.

Article 2 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) reinforces the fundamental importance of preventative mechanisms to combat torture and related crimes.¹ The importance of prevention in the context of torture, rather than intervention after torture has occurred, is evident. This article analyses the attention given to preventative mechanisms during the 47th session of the Committee against Torture (the Committee). It examines the Committee's focus on making torture punishable by law, the eradication of loopholes in criminal codes, investment in human rights training, clearly distinguishing torture from ill-treatment, and basic guarantees to those deprived of their liberty.²

The session took place from 31 October to 25 November 2011. The Committee reviewed Belarus, Bulgaria, Djibouti, Germany, Madagascar, Morocco, Paraguay, and Sri Lanka. It accepted Greece's request to postpone consideration of its 5th and 6th reports to the next session.³

The level of State cooperation during the 47th session fluctuated. On the one hand, Bulgaria and Germany showed great interest in the advice of the Committee on their prevention mechanisms, whereas Djibouti, Madagascar, Morocco and Paraguay mostly focused on the achievements they were confident they had already made. Belarus and Sri Lanka, however, not only dismissed any criticism but also disapproved of the Committee's practice of taking other sources of information than the State report into consideration. NGO information was evidently useful however, especially in the case of Sri Lanka. Although the State's report contains five pages about efforts made in the context of Article 2 of the Convention,⁴ the information provided was vague.

ASPECTS OF PREVENTION HIGHLIGHTED

Prosecution and punishment

The issue of effective prosecution and punishment of those who have been found guilty of torture was a widely discussed topic in most of the reviews. The Committee focused on the requirements set out in articles 2 and 4, and evaluated the efforts made by the States Parties accordingly. Especially in the case of Belarus, the Committee expressed dissatisfaction with the lack of investigations into allegations of torture committed against protesters in December 2010. The delegation stated that no criminal cases relating to the Convention have been recorded in the last two years.

In the case of Djibouti, the national report and the delegation explain the occurrence of torture and lack of prosecution by an 'ignorance of the law'. According to Mr Alession Bruni, however, this demonstrated a lack of commitment to, or understanding of the need for, prevention mechanisms.

1 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'

2 United Nations Committee against Torture (2008) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2 - Implementation of Article 2 by States Parties*, Geneva, United Nations: 3-4.

3 Due to the economic and political crisis affecting the country, there was no government in place at the time of the session, and therefore Greece was unable to send a delegation to Geneva.

4 State Party report of Sri Lanka, available at <http://bit.ly/yPaQPI>. See p. 26.

Madagascar's delegation was particularly interested in highlighting efforts made towards prevention of torture in its new Constitution.⁵ In this context, it gave numerous examples of police officers that had been found guilty of breaching these new provisions in cases of deaths in custody. This was in an effort to underline the determination of the Government of Madagascar to eliminating torture, however it also demonstrated that prevention measures had not been effective to date.

Although 'Moroccan law provides for a set of legal, judicial and administrative measures intended to prohibit torture on Moroccan territory',⁶ and although the delegation repeatedly expressed its deep commitment to the Convention, implementation is still problematic. This was illustrated by the numerous cases before the Committee. Rather than deal with the general practice of prosecution as a measure of prevention, the Committee in this instance chose to focus on the specific cases. It expressed concern about, and requested more information on, various cases of people who had died in custody, or committed suicide after being subjected to torture, and on 11 cases of people who were tortured in order to extract information about acts of terrorism.⁷

In the review of Sri Lanka, the Committee's attention was predominantly dedicated to criticism of the report itself, with members openly expressing their dissatisfaction. The information included in the report seemed limited and often irrelevant. For example, although the Government had not included data on allegations of a severe lack of investigation in cases of torture by security personnel, it submitted an annex containing information about Sri Lanka's planned investments in the rural economy and infrastructure, holding it up as a source of information about post-conflict development.⁸ Due to the urgent need to deal with allegations of torture committed by security forces, time spent by the Committee on discussing prevention measures was limited.

Training for public officials

The Committee put great emphasis on human rights training as a means to prevent torture. This was especially evident in cases where there is a lack of current prevention mechanisms. In the case of Djibouti for example, although torture is prohibited in the Constitution and some legal provisions grant rights to detainees, 'very few measures have been taken' to prevent torture. This was acknowledged in the State report. The Committee's response to this lack of measures was to emphasise the need for effective human rights training. This illustrates the importance members attach to such training as a fundamental means of torture prevention. Mr Alessio Bruni questioned the effectiveness of the training provided to Belarusian security forces in light of torture allegations

following mass protests in 2011.⁹ Chairperson Mr Claudio Grossman further highlighted the need to evaluate these trainings and to ensure civil society can participate in the development of their content.

The importance of training schemes for those in positions of power, to help prevent torture, also featured prominently in the review of Paraguay. The delegation outlined its recently implemented training schemes for security forces and judges.

Basic safeguards in places of detention

The question of basic safeguards for prisoners was a recurring topic. In addition to the provisions lined out in the State reports, the Committee also referred to NGO information on prisoner complaints. In the case of Belarus, Ms Felice Gaer enquired about the allegation that the authorities usually do not investigate the complaints prisoners make to the prosecutor's office. Ms Gaer also enquired about whether key safeguards¹⁰ for those deprived of their liberty are effective. These questions were met by little cooperation from the delegation which provided insufficient details and a lack of concrete examples in response. Ms Gaer requested more information on allegations in NGO reports that lawyers had been harassed and denied access to detention facilities. The delegation's only response was criticism of the Committee for relying on information sources other than the official report.

The Committee's sternest criticism, however, was directed at the delegation of Sri Lanka. NGOs have repeatedly reported alleged cases of torture that have especially been inflicted on detainees accused of terrorism.¹¹ However, the State failed to provide data on the reasons for detention and the numbers of those detained. As a result, the Committee was unable to address these allegations in detail and requested more information.

Poor prison conditions were an issue of concern in the review of Madagascar, where the Committee asked questions about the lack of health care, lack of access to legal representation, sexual violence against prisoners, and the poor human rights education of guards. The delegation was generally responsive, but despite the specificity of these questions the answers given were vague and lacked substance.

Paraguay went into detail describing its progress on torture prevention through new safeguards. It noted that special courts for procedural safeguards and a Constitutional

5 Ratified in 2010.

6 State Party report of Morocco, available at <http://bit.ly/xpTs09>. See p. 7.

7 ICJ (2011) available at <http://bit.ly/At5wmF>.

8 *Sri Lanka: the emerging wonder of Asia* at <http://bit.ly/zlFT00>.

9 Large protests already began in 2010 when President Guelleh changed the constitution and allegedly won 80 percent of the votes in the 2010 election, which was boycotted by opposition parties and overshadowed by arrests of opposition leaders.

10 Such as registration of detainees, their access to health care and legal representation, means of identification of police personnel, and an independent complaints mechanism.

11 See, for example, Amnesty International (2011) *Sri Lanka: Briefing to the Committee against Torture*, available at <http://bit.ly/zfSXbu>, accessed 16 December 2011.

Guarantees Office had been established to monitor the safeguards guaranteed to detainees¹² and to deal with complaints. As a special measure to prevent torture and to assist victims, a 24-hour system dealing with urgent cases has been launched.¹³ The Committee was interested in the establishment of these new bodies, and requested further information on their work, together with examples of cases and complaints that have been filed and dealt with.

In the debate with the delegation from Bulgaria, the Committee pinpointed the living and working conditions for prisoners and guards in overcrowded prisons as a key weakness in efforts to prevent torture. The Committee felt that these elements contribute to inciting guards and officers to resort to torture.¹⁴ The delegation was responsive to the Committee's concerns and admitted shortcomings. It referred to a new action plan and the introduction of alternatives to imprisonment¹⁵ as attempts to solve this problem. Additionally, its report points to an expanded legal framework 'aimed at eliminating conditions and possibilities for the commission of any acts banned by the Convention',¹⁶ highlighting the criminalisation of torture and provisions relating to medical assistance for detainees.

Fine-tuning existing prevention efforts

In contrast to the other States under review, for the reviews of Bulgaria and Germany the Committee concentrated on increasing efficiency and removing weaknesses in already established prevention mechanisms. In the dialogue with Bulgaria, the Committee focused on the rules applying to solitary confinement, living conditions in mental health institutions, and the risk of torture of refugees¹⁷ sent back to Lebanon.

The large German delegation focused on introducing the new monitoring offices created to supervise relevant national and private institutions detaining people. Although the Committee stated broadly that Germany was not a country where torture occurs, and that police officers and prison personnel are educated and aware of their responsibilities under international and domestic law, members did pick out specific weaknesses in some prevention measures. One of these

issues is the visible identification of police officers.¹⁸ The delegation referred to the legal obligation on police officers to self-identify upon request, but the Committee expressed doubt as to its practicality, especially during violent protests. The delegation, which was generally open to criticism, responded by raising its concerns about the effect of having name-badges on uniforms, following a case in Berlin in which officers were harassed after their personal data appeared on websites.

CONCLUSION

In general, the issue of prevention received solid attention by the Committee, with almost all reviews dedicating a substantial amount of time to the issue. However, it was evident that in the reviews of States where torture is allegedly regular and on-going, the Committee prioritises discussion of torture cases, such as in the reviews of Sri Lanka and Morocco. As time is limited the Committee is then not always able to move beyond those cases to discuss prevention mechanisms.

The effectiveness with which the Committee addresses prevention depends heavily on the cooperation of the State concerned. In the reviews of Belarus, Madagascar and Sri Lanka significant time was dedicated to the issue, but there were no satisfactory commitments from these delegations. This contrasts with Bulgaria and Germany, which seemed open to constructive engagement with the Committee. In both cases, there were already prevention measures in place and the Committee effectively pinpointed any existing weaknesses. In the case of countries with few prevention measures, such as Djibouti, the Committee put an emphasis on training as the most important initial measure to implement effectively. ■

12 State Party report of Paraguay, available at <http://bit.ly/wk2KRX>. See p. 4.

13 Ibid, p. 5.

14 Prisons seem to be fertile grounds for abuse because they are closed institutions from which detainees cannot leave. This leads to them being completely exposed to the will of the guards or other prisoners, making them extremely vulnerable. An additional point is that being imprisoned renders the prisoner as somebody who has to be taught to behave differently, which may prove an invitation for abuse and justification for abuse through guards.

15 Such as house arrest or electronic tagging.

16 State Party report of Bulgaria, available at <http://bit.ly/zetvAg>. See p. 6.

17 The issue of refugees has come up as a main topic in the Committee's work because of the living conditions in refugee camps and the problem of sending refugees back to countries where they may suffer torture.

18 Visible identification of police officers' names is currently only available in the city-state Berlin. Other states have identification numbers attached to the uniforms. However, it was questioned whether, for example, protesters would be able to write down or memorise such a number in heated situations.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

NGOs heard in reviews of Argentina, Cameroon, Estonia, Israel, and Turkmenistan



Photo: Christian Ostrosky

Pilagà children, Argentina.

Debates on indigenous rights, labour laws, corruption, and gender equality dominated the 47th session of the Committee on Economic, Social and Cultural Rights (the Committee). The session, which ran from 14 November to 2 December 2011, gave considerable room for the voices of international NGOs to be heard. Unfortunately, many of the States reviewed failed to show the same level of motivation as civil society in preparing their reports or in responding to Committee questions. The States reviewed were Argentina, Cameroon, Estonia, Israel, and Turkmenistan

This article compares the information provided by NGOs on the examined States with the debates that took place during the session, and assesses to what extent NGO reports were considered by the Committee.

NGO SUBMISSIONS

The Human Rights and Tobacco Control Network (HRTCN), the Global Initiative to End Corporal Punishment of Children (the Global Initiative), and the International Disability Alliance (IDA) submitted information on all of the countries under review, and were also the only organisations to submit information on Estonia.

Submissions by non-governmental organisations (NGOs) for Israel covered a number of issues. Generally speaking, these included the implementation of the *International Covenant on Economic, Cultural and Social Rights* and the State's ability to guarantee the full respect of these rights for every citizen, particularly vulnerable social groups such as women, Bedouins, and Arab Israelis. The rights of the Palestinian and Bedouin populations were discussed at length, especially the failure of the Government to grant Palestinians with full Israeli citizenship or the right to return to their land, and its failure to identify Bedouins as an indigenous population. NGOs also requested information on the rights of women; the Arab-Israeli population; persons with disabilities; Palestinians in the West Bank and their access to civil services, employment opportunities, and just and favourable employment conditions.

The reports provided by NGOs on Turkmenistan depicted a country facing numerous human rights challenges. Submissions were made from local civil society representatives, such as the Turkmen Initiative for Human Rights (TIHR). TIHR submitted a report outlining the problems faced by the population; violations identified include racism against citizens of Russian origin, who have been pressured into giving up one of their citizenships and 'warned that if they give up their Turkmen citizenship they will not be allowed to return upon leaving the country'.¹ The right to freedom of religion and political rights in general are reported to be severely hampered. The patriarchal society and stereotypical attitudes towards women are said to be obstacles to the implementation of international conventions ratified by the Turkmen Government. Other important issues presented included the expropriation,² eviction, and demolition of houses particularly in the area of Ashgabat, under the pretext of the 'National Program of Improvement of Social Conditions for the Population of Villages, Settlements, Towns, Districts and Rural Centres through 2020'.

¹ TIHR: 2011, p. 2.

² Human Rights Watch, 'Human Rights Watch Letter to President Berdymukhamedov', 25 October 2011, p. 2.

Cameroon's human rights situation was well documented in the report submitted by Plateforme des organisations de la société civile pour les droits économiques, sociaux et culturels au Cameroun (Plateforme DESC). It provided an overview of Cameroon's status of compliance with most of the articles in the Covenant. According to Plateforme DESC, Cameroon is violating the rights of indigenous populations in the Fako Division, and those of other minorities. Furthermore, gender equality programs are not implemented effectively and, as a result, women's rights are infringed upon in all sectors of the economy and society; for example, in the case of evictions and expropriations, men have easier access to complaint mechanisms and public housing. In addition, problems exist in terms of access to universal primary education and access to employment for persons with disabilities.

In Argentina, the issues presented by NGOs ranged from the right to adequate food, affected by the spread of genetically modified organisms in agriculture, to discrimination in the labour market directed at women, particularly indigenous women. Amnesty International brought attention to sexual and reproductive rights, as abortion is still partially criminalised in Argentina.³ The NGO also analyses the rights of the indigenous Pilaga population to adequate housing and food. The people suffer from flooding as a result of infrastructure work carried out without their consent, and from pollution caused by the widespread use of pesticides. Concerns on this issue were echoed in the report submitted by the Grupo de Reflexion Rural, which argued that 'devastating traditional crops and farming life, [...] also destroyed centuries of culture and traditions that make the diversity of [Argentina]'.⁴

STATE ENGAGEMENT WITH THE COMMITTEE

The Committee expressed dissatisfaction with responses provided by the delegations of Turkmenistan and Cameroon. Turkmenistan was under review by the Committee for the first time, but as noted by the experts, the report was presented 10 years late. The delegation avoided the issue of 'Turkmenisation',⁵ ignoring questions regarding discriminatory State policies against minorities in general and the Uzbek ethnic minority in particular. Most of the answers provided by the delegation were not in line with the questions asked and simply described general Government programmes. Furthermore, the head of the delegation made regular appeals for international experts and donors to provide

financial and technical support. While this may signal a willingness by Turkmenistan to improve its human rights record, the reference to the need for financial support could be seen as an attempt to avoid responsibility.

The Committee was dissatisfied by the report of Cameroon. This was submitted late and consisted of a repetition of the issues addressed during its last review. The answers provided during the dialogue were also weak. The Committee's rapporteur for Cameroon noted the absence of an independent national human rights institution, which, if it existed, could improve the human rights situation and contribute to the overall development of a country strongly affected by corruption. Furthermore, the responses of the delegation to the expert's questions generally focused on presenting bills and projects that have been under review for years, but failed to provide evidence that anything concrete had been implemented. This suggests no real change has taken place.

The review of Argentina was also problematic. The delegation appeared open to a dialogue with the Committee, showing commitment to the improvement of human rights and outlining various programmes implemented to do so. However, the Committee's work was severely hampered by the fact that the State's replies to the list of issues were provided only two weeks in advance of the review, and only in Spanish, thus limiting the opportunity to analyse the document to only the Spanish-speaking experts.

MAIN THEMES

Indigenous rights and discrimination against ethnic minorities

The rights of indigenous populations and other ethnic minorities appeared to be a topic affecting most of the countries under review. In Estonia the discriminated population is not an indigenous population, but rather the Russian and Roma minorities. Israel and Argentina were both accused of discriminating against their indigenous populations.

In this regard, the atmosphere during Israel's review by the Committee was tense, especially in relation to the rights of the populations living in the Occupied Palestinian Territories (OPT). The delegation expressed concern that the State of Israel has no responsibility to apply the Convention in the OPT, because effective internal control was transferred to the Palestinian Authority and Hamas in 2005. The Committee disagreed and quoted the 2004 International Court of Justice Advisory Opinion, which says Israel exercises territorial jurisdiction over the OPT, and 'is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities'.⁶ In his concluding remarks, Chairperson Mr Ariranga Govindasamy Pillay reiterated this interpretation, and expressed concern

3 The organisation reports: 'misinterpretation of the criminal code by judges and health service providers has resulted in pregnant rape survivors facing serious obstacles in obtaining legal abortions'; See Amnesty International, 'Argentina: Briefing to the Committee on Economic, Social and Cultural Rights', 4 April 2011, p. 1.

4 Grupo de Reflexion Rural, *Parallel Report to the Third State Report of Argentina on the Implementation of the International Pact on Economic, Social and Cultural Rights; Violations of Human Rights as a result of the Genetic-Modified Soya-Monocultures - the Right to Food and Health for the Argentinean Population, Farmers and Bee-Keepers*, 30 July 2011 p. 9.

5 'Turkmenisation' refers to a State policy of discrimination against ethnic minorities, often playing out in the educational and religious field. For example: <http://bit.ly/zqyzHU>.

6 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 48.

that the issues discussed in Israel's review were the same as those considered at Israel's last review in 2003.

In Argentina, the Committee identified the rights of indigenous populations as one of its primary concerns, saying the indigenous communities should be consulted whenever decisions on their land are being made. The Committee also noted that the issue of genetically-modified organisms and chemical pesticides, which NGOs had also raised, needed to be addressed by the State. According to the delegates, efforts are being made to ensure that education addresses the shortcomings of Argentina's traditional cultural mindset, particularly in terms of the relationship with indigenous populations and the integration of women in all aspects of society.

As mentioned earlier, Turkmenistan avoided answering questions on 'Turkmenisation', Estonia was accused of discriminating against Russian and Roma minorities, while the Committee questioned Cameroon on the discrimination against the indigenous population and ethnic minorities, particularly the Pygmy people.

Labour and economic rights

Much of the debate in the review of Argentina surrounded legislation that aims to ensure fair competition in the labour market, the provision of social security, and prevention of discrimination. Indigenous populations, ethnic minorities and women are reportedly discriminated against in the job market. Law No. 23551 on Trade Union Associations is said to hinder the freedom of association. The Committee's rapporteur for Argentina, Mr Zdzislaw Kedzia said the country suffers from 'slave-like employment conditions'. He said there are issues regarding access to social security and employment, where gender inequalities are aggravated by a lack of data on women's access to work.

Similarly, unemployment and labour rights were discussed with the delegation of Estonia, also in relation to persons with disabilities, an issue NGOs had raised. The Committee expressed concern and enquired about the existence of a government action plan to tackle these problems.

Corruption

Cameroon was questioned on the extent of corruption in the country, and responded by saying that the National Anticorruption Commission is addressing the problem. This Commission released its first report on 10 November 2011,⁷ and the delegation of Cameroon pledged to forward the report to the Committee.

Similarly, the Committee saw corruption in Estonia as a crucial factor contributing to human rights violations in the country. It emphasised the impact of corruption on gender inequality,

discrimination against women in the labour market, and racism against Roma minorities and people of Russian origin. The Committee therefore recommended further training for Estonia's judicial branch on the provisions contained in the treaty, which may also enhance the overall application of the Covenant in the country.

Gender equality

The Committee showed particular interest in the existing provisions in Estonia aimed at improving gender equality, and asked specifically whether the Government has provided educational programmes to tackle domestic violence. The delegation said gender policies, education, and cultural programmes are in place, as well as programmes to address discrimination against ethnic minorities. It said its emphasis on education was yielding positive results.

Gender discrimination was also addressed during the review of Cameroon, where women face major discrimination in property ownership. The Committee was also particularly concerned with the practices of female genital mutilation (FGM) and breast mutilation. The delegation surprisingly dismissed the Committee's claim that there had been a lack of dialogue with civil society in preparing for the review, and denied that FGM and breast ironing were problems. It argued that there is gender equality in the country, but remained unclear about how much education on gender rights currently takes place. In addition, there is no specific legislation in Cameroon on FGM or breast ironing, but only some provisions in the penal code and sensitisation exercises to educate on the dangers of the practices.

CONCLUSION

Not surprisingly, the reviews for which a larger number of NGOs submitted reports were also those where the Committee engaged more actively with the delegation. In these instances, the Committee was better at following up the delegations' responses and in pressing for more satisfactory answers. It could be expected that these reviews would lead to more lively and informed exchanges between the experts and the delegations. However, this was not always the case. While the review of Argentina saw contributions from a number of NGO coalitions, the dialogue remained disengaged and non-controversial. One of the experts suggested the State report was less than satisfactory, as were the State's responses to the list of issues.

On the other hand, the reviews of Estonia, Israel, Cameroon and Turkmenistan saw an intensity of review proportional to the number of NGO submissions received. The Committee received only three NGO reports on Estonia, and there was a measured exchange. Israel, on the other hand, saw reports from 19 different NGOs, and numerous NGO concerns were discussed. Overall, there is clearly a strong correlation between the number of NGO reports submitted and the level of attention experts give to the civil society issues. ■

⁷ CONAC, *First report on the state of the fight against corruption in Cameroon out*, 22 November 2011, available at <http://bit.ly/zT0uou>.

COMMITTEE ON ENFORCED DISAPPEARANCES

Inaugural session attracts significant NGO interest



Photo: Arianna Marchesan

The inaugural meeting of the Committee on Enforced Disappearances (the Committee) saw the induction of the Committee's ten new members, and launched discussion on the body's programme of work and rules of procedure. The session took place in Geneva from 8 to 11 November 2011, when meetings were held with non-governmental organisations (NGOs), State Parties,¹ and with the Human Rights Council's Working Group on Enforced Disappearances.

All meetings, except those with NGOs and State Parties, and the opening of the session, were closed to the public. While there is arguably a need for new committees to first establish themselves in closed sessions, it became clear during the Committee's meeting with NGOs that there is a great deal of interest in its work, and confusion about the new body's mandate. An increased number of public sessions would have assisted all stakeholders to become more familiar with the new Committee.

MEMBERSHIP AND OFFICERS

The Committee has ten members, nine men and one woman.² They come from a mixture of civil society, government, academic, and legal backgrounds. The two members with a government background, Mr Mohammed Al-Obaidi (Iraq) and Ms Suela Janina (Algeria) have both previously been involved in drafting the State reports of their respective countries for previous treaty body reviews. It will be interesting to see how they approach their new roles of examining such reports.

Mr Rainer Huhle (Germany) and Mr Enoc Mulembe (Zambia) have roles within their countries' national human rights institutions (NHRIs), Mr Huhle as Deputy Chairman of the Board of Trustees and Mr Mulembe as Director. Both NHRIs comply with the Principles relating to the Status of National Institutions (the Paris Principles),³ which are aimed at ensuring the independence of NHRIs. Mr Lucian Hazan (Argentina) currently works as a lawyer for a human rights NGO, which works to find child victims of enforced disappearance. He also holds the posts of legal counsel within the Ministry of Justice and Human Rights, and faculty member at the University of Buenos Aires. Mr Emmanuel Decaux (France), a professor of law, has a long track record of working within the UN human rights system, and is also likely to value NGO engagement with the Committee. During the meeting with NGOs Mr Huhle and Mr Decaux were particularly appreciative of the need to ensure the Committee works closely with NGOs.

Of the other members of the Committee, Mr Yakushiji Kimi (Japan) is a professor of law, Mr Alvaro Garcé García y Santos (Uruguay) is a lawyer, currently working as Ombudsman for the Penitentiary System, and Mr Mamadou Badio Camara (Senegal) and Mr Juan José López Ortega (Spain) work within the judiciary. The majority of the members have no obvious work experience in the field of enforced disappearances. Only Mr Hazan can claim to have some expertise on the issue, due to his eight years working as a lawyer on enforced disappearance cases within an NGO. Mr Decaux and Ms Janina have carried out some academic work on the *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention).

At the opening session, Mr Decaux was elected as the first Chair of the Committee. Mr Al-Obaidi, Ms Janina, and Mr Camara were elected Vice-Chairs, and Mr Hazan was elected as rapporteur.

1 The provisional rules of procedure are available here: <http://bit.ly/wpUGAN>.

2 For more information on the members and their backgrounds see: <http://bit.ly/z51Y4s>.

3 Principles relating to the Status of National Institutions are available at <http://bit.ly/aaLzVS>.

MEETING WITH NGOS

The meeting held between the Committee and NGOs was exceptionally well attended, with approximately 50 representatives present, demonstrating a high level of interest in the Committee's work. However, NGO interventions revealed a lack of awareness about its mandate. There is a need in particular to distinguish the work and mandate of the Committee from that of the Working Group on Enforced Disappearances. For example, several NGO speakers were unaware of the need for a State to have ratified the Convention in order for the Committee to have authority to consider the situation in that State. It would have been particularly useful if at least part of the meeting with the Working Group had been held in public, in order that those interested could take the opportunity to ask questions of both bodies and establish which would provide the most appropriate forum for their work.

Around eight NGOs spoke during the meeting. They raised the need for the Committee to take seriously concerns about reprisals against NGOs that engage with the Committee; and questions about the cooperation envisaged with the Working Group on Enforced Disappearances. The Chair, Mr Decaux, was responsive to comments and expressed the Committee's commitment to working closely with NGOs. However, the significant NGO interest was a missed opportunity for the Committee to cement a working relationship with NGOs in Geneva, given the vast majority of the meetings at this first session were closed. In future sessions the stated commitment to closely collaborate with NGOs can become a reality by increasing the transparency of the Committee's work.

OTHER DEVELOPMENTS

At its next session the Committee will hold a Day of General Discussion on women and children victims of enforced disappearance, and on non-State actors and their involvement in the crime of enforced disappearance. The latter subject is particularly important, as the Convention has been criticised for not including the responsibility of non-State actors in the definition of enforced disappearance.⁴ The Committee will also continue to develop its rules of procedure and reporting guidelines, and will work on a 'user's manual' on its communications procedure. A working group led by Mr Yukushiji and Mr Mulembe will draft the manual, which will include proposals for changing the existing model complaint form for submission of cases. This manual could potentially be a useful tool for NGOs and will be most effective if NGOs are consulted during the drafting process. The second meeting of the Committee will be held from 26 to 30 March 2012.

The Convention on Enforced Disappearance

In 2005, the *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention) was adopted by the General Assembly. Six years later, the Committee created to implement the Convention held its first session, after the minimum number of ratifications by State Parties was reached.⁵ The Convention marks the first time that enforced disappearance has been explicitly prohibited in international law.

There are several international instruments that deal with one or more aspects of enforced disappearance, such as the *Convention against Torture* and the *International Covenant on Civil and Political Rights*. Prior to the Convention coming into force, it was through these instruments that the issue was addressed. Thus, while the passing of a new and specific treaty on enforced disappearance was a welcome development, the creation of an additional treaty body has raised questions on the best use of finite resources. Arguably, the monitoring of new provisions could have been entrusted to an existing treaty body along with additional resources.

On the other hand, there are many aspects to enforced disappearance that cannot be captured by existing provisions. Only focusing on those that can be tackled under existing treaties would mean the wider implications of enforced disappearance are missed. The creation of a dedicated instrument allows for a more targeted response.⁶ The Committee has as its main mandate to oversee the implementation of the treaty through regular examination of State reports. In addition, if States recognise the competence of the Committee in this regard, individuals can make use of an individual communication procedure. If the Committee receives information that a State Party is seriously violating the Convention, it may request for a member or members to visit the country concerned.⁷

The Convention mandates its Committee with two additional functions.⁸ Article 30 establishes an urgent action procedure, for relatives or the legal representatives of a disappeared person to submit as a matter of urgency a request that a 'person should be sought and found'. This allows for a response to alleged enforced disappearances even when a State is not currently reviewed by the Committee. Another innovation is Article 34, which grants the Committee the power to bring violations of the Convention by a State Party before the General Assembly through the Secretary-General, after seeking information from the State concerned. This provides the international community with an additional entry point to pressure States to refrain from enforced disappearances. ■

4 See for example, <http://bit.ly/zrmLtY>.

5 The Convention entered into force on 23 December 2010, one month after it was ratified by 20 nations.

6 See ISHR's review of the Convention at <http://bit.ly/w70PYJ>.

7 Article 33 of the Convention, available at <http://bit.ly/bURQ9Y>.

8 States must make a declaration under articles 31 and 32 before these optional procedures become applicable. See <http://bit.ly/bURQ9Y>

THEMATIC FOCUS

THE ISSUE OF REPRISALS P. 29

THE ISSUE OF REPRISALS

Exploring the need for the United Nations Human Rights Council to strengthen its response



Photo: iStockphoto

This article is an extract of a forthcoming report on reprisals, published jointly by independent researcher Jo Baker and ISHR. The full version of the report, including sources and footnotes, will be released in February 2012.

For the Human Rights Council (the Council) to strengthen the international promotion and protection of human rights effectively, it must work with a diverse range of independent sources and stakeholders; many of these are external, such as non-governmental organisations (NGOs) and national human rights institutions (NHRIs), victims of human rights violations, and other civil society actors. Yet each UN communication, country report, or high-level international inquiry carries risks for those involved. Since 2009 at least three people have been killed because they cooperated with Council mechanisms, and many more have been assaulted, arbitrarily detained, threatened, defamed, or otherwise harmed. It is rare to see governments properly investigate and prosecute those responsible for these harms, even when the acts have not been visibly sponsored by a State.

The Council has acknowledged its reliance on external cooperators and the risks involved for those that contribute to its work since at least 1984, with the drafting of the *UN Declaration on Human Rights Defenders*. The text formally defined the defense of human rights as a right in itself. Article 5 of the Declaration explicitly protects a right to access and communicate with international bodies about human rights issues. Article 12(2) meanwhile, frames the ‘violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action’, from which human rights defenders may need protection. The Declaration also paved the way for the mandate of the Special Representative of the Secretary-General on human rights defenders, which was established in 2000 and has since evolved into the mandate of the Special Rapporteur on the same issue.

The Council has recently explicitly condemned reprisals and the intimidation of those it works with, for example in its 2011 Outcome Document of the Review of the Work and Functioning. However, the issue has been most seriously and consistently addressed in a series of resolutions entitled ‘Cooperation with representatives of United Nations human rights bodies.’ These have enjoyed significant, annual cross-regional support since they were first passed in 1990. Key aspects include the request that all representatives of the UN and the treaty bodies report on allegations of intimidation or reprisal, and that the Secretary-General compile recent cases in an annual report. The most recent resolution, passed in September 2011, gave significant additional attention to this issue at the Council by deciding that a dedicated panel discussion should be held during its 21st session, in September 2012. However these responses have yet to be translated into protective action, and compared to the possibilities available, they do not come close to a sufficient institutional response. This sends a negative message to those at risk, and may affect their willingness to work with the Council.

GAPS AND LIMITATIONS: THE DISTANCE BETWEEN PROMISE AND PROCEDURE

Of the Council protection mechanisms that are currently available for cooperators, most operate through the special procedures branch of the Office of the High Commissioner for Human Rights (OHCHR). This is one of the strongest and most flexible Council mechanisms, thanks largely to the way it can address individual cases. For example, if a cooperator is thought to be in imminent danger, its urgent appeal system can encourage a State’s swift intervention. Mandate holders also need not prove that domestic remedies have been exhausted, or that their mandate has been accepted by the State in question, which are conditions that often prevent treaty bodies from responding quickly.

This system also aims to serve cooperators who feel endangered during country visits by special procedures representatives. Mandate holders can insist that a State accepts their terms of reference before a visit, which includes the assurance that no ‘threats, harassment or punishment’ will be used against those they speak with. If reprisals nevertheless follow, the cases can

be included in the mission report to the Council. Special procedures may also use press statements to give visibility to violations.

As a means of addressing reprisals, there are, however, some major shortcomings in this framework. One is the lack of proactive contact and follow-up between branch staff and their civil society sources and complainants. Cooperators often give information about human rights cases remotely, and most are not informed when their cases are taken up. It is rare for special procedures to request more detailed information, or ask about a victim's situation after a UN communication has been sent. Since early 2010 an email address has enabled cases to be transmitted directly to OHCHR,¹ which holds promise for being developed into a venue for reporting; however as a recent initiative, it still has a low profile.

The Special Rapporteur on human rights defenders has strongly advocated for these weaknesses to be tackled, and some mandate holders have made personal efforts to follow-up with cooperators during missions. The former Special Rapporteur on torture, Mr Manfred Nowak, for example, would often return to an area to speak with a cooperator a few hours or days after his first visit, or ask that NHRI or UN country office staff do so. Yet return visits are not always possible and are not consistently practised, partly due to limits in staffing, budgets, and general reach of the special procedures. The conduct of mandate holders during missions is another area that needs consideration, particularly the way they outline the risks and protection available to those engaging with the UN system. The former Special Rapporteur on extrajudicial killings, Mr Philip Alston, has strongly recommended that UN staff be trained in this area, and that confidential contingency plans be developed for contexts where reprisals are likely.

There have been small recent signs of improvement in the way the Council follows up on reprisal reports, with several cases contained in the Secretary-General's 2009 report being updated in the 2010 report. Yet such follow-up seems to take place on an ad hoc basis, when special procedures has chosen to take new steps, or the government has supplied information. In the cases of Algeria, Colombia, the Democratic Republic of Congo, Israel, and Sri Lanka, no new information has been provided, thus cases of reprisals have not been adequately addressed. Meanwhile, the Council is failing to systematically act or follow-up when States do not cooperate. Acts of non-cooperation can include denying an incident has taken place, failing to respond adequately, or claiming an investigation is in progress without providing further details. During Mr Alston's tenure as Special Rapporteur, he repeatedly recommended the development of a 'mechanism for seeking explanation from the governments concerned and (...) expressing public concern when a government's response is inadequate'. This could be tackled through the inclusion of a running list of all cases received, along with the respective

status of each, in the Secretary-General's next report or on the OHCHR website.

Thanks to the growing sensitivity of States to international opinion, publicity is one of the strongest protections for human rights defenders, and in 2010 the Secretary-General reported that 'Denouncing such acts publicly and reporting them to the appropriate human rights mechanisms will also contribute to combating related impunity'. Yet, because communications between the special procedures and States are confidential, cases only become public during the mandate holders' reports to the Council. This is sometimes several months after an incident, and sees the case compete with numerous other issues for visibility. The focus given to cases of reprisal in the Secretary-General's report also comes too late for those at immediate risk. If threats against a cooperator, or a State's inaction to protect them, were to be strategically published, NGOs and other stakeholders could use that information to lobby the State concerned more effectively. OHCHR press releases could facilitate this.

In developing their responses, the Council and OHCHR can learn from the practices of other organisations. At the Inter-American Commission on Human Rights, the Human Rights Defenders Unit is credited for its analysis and monitoring of precautionary measures in the region, and for its active press department. In Africa, the Special Rapporteur on human rights defenders at the African Commission on Human and Peoples' Rights has developed a close relationship with defenders in the region, through biannual reports and bulletins that encourage contributions. Further, a number of the International Criminal Tribunals have established Victims and Witness Units to develop and help to implement risk-mitigation strategies, often in consultation with victims.² This is a methodology that could be considered by OHCHR.

Since the Human Rights Council has built a system driven largely by moral authority and the good-faith cooperation of civil society, its weak response to reprisals is both self-defeating and disrespectful to those who risk their lives in its service. Lately, the Council has sent some positive signals, for example, through the creation of a panel debate on the subject under Resolution 18/19, and by requesting greater follow up on cases in the Secretary-General's report by the OHCHR. While this may instill some confidence in those that cooperate with the UN or wish to do so, there remains much room for improvement and plenty of options still unexplored. ■

1 reprisals@ohchr.org

2 In 2009 the ICC organised an expert meeting to explore this issue. See ICC, *Summary Report 2009*.

REGIONAL DEVELOPMENTS

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

P. 32

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Marking the 30th anniversary of the African Charter



Photo: Blas Brains

In 1981, members of the Organisation of African Unity (the OAU) came together to compose a decisive document aimed at securing the progressive realisation of basic human rights standards on the African continent. Thirty years later, the African Charter on Human and Peoples' Rights (the African Charter or the Charter) remains a vital instrument. Written with a sensitivity towards African history and culture, the document compiles civil and political rights and economic, social and cultural rights in a single treaty.

The 30th anniversary celebrations of the Charter coincided with the 50th ordinary session of the African Commission for Human and People's Rights (the African Commission or Commission), the monitoring body set up to interpret and promote the rights contained within the document. The African Commission session was hosted in Gambia from 24 October to 5 November 2011, and provided an opportunity for various actors to reflect on human rights protection within the African human rights system.

Both the African Commission session and the NGO Forum that preceded it focused on assessing the fulfillment of the Charter's mandate of protecting and promoting human rights on the continent. A two-day colloquium dedicated to in-depth reflection on the status of the Charter was held by the African Commission from 22 to 23 October. It attracted prominent African human rights lawyers and practitioners who analysed the Charter for its normative gaps and strengths, and its ability to respond to human rights violations.

The Charter was adopted with apparent gaps, partly addressed later through the creation of a number of mechanisms such as the Protocol to the African Charter, which established the African Court on Human and Peoples' Rights (the African Court or the Court), the Protocol to the African Charter on the Rights of Women, and the African Charter on the Rights and Welfare of the Child. The Charter also allows for its interpretation, addition and adaptation in light of international human rights law.¹

With regard to its effectiveness, a significant challenge is the lack of political will demonstrated by the African Union, the organ responsible for allocating funds to the African Commission and which approves the Commission's activity report, including resolutions and recommendations. As a result, the Commission suffers from a lack of adequate resources. On the other hand, States fail to domesticate the Charter through the adaptation of national laws and implementation of the decisions issued by the African Commission.

Ongoing political crises in Africa have tested the African Commission's ability to fulfill its protection mandate. The Commission was almost completely absent during mass human rights violations in Sudan, Somalia, Rwanda, Burundi, and Sierra Leone. The Commission has no budget to hold extraordinary sessions or to carry out fact finding missions, and failed to do so in the cases of Guinea, the Ivory Coast, and Libya. News releases issued by the Commission have so far been disregarded by the concerned States. However, it was successful in referring a case on Libya's human rights situation to the African Court.

¹ Article 60 of the African Charter: "The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members".

In her opening remarks at the Commission's 50th session, Mrs Reine Alapini Gansou, the former chair of the body, deplored the reduction of the Commission's budget by the African Union at a time when it needed more funds than ever to address human rights violations.

COMMUNICATION PROCEDURES

One of the main functions of the African Commission is to examine communications on alleged human rights violations. The Commission may receive complaints from a State against another State (inter-state complaints) or by individuals and NGOs against one or more States (individual complaints), in accordance with its mandate under articles 48, 49 and 55 of the Charter. During each ordinary session, the African Commission considers and makes decisions on a number of communications. Until October 2011, the African Commission had received some 400 communications. Of these, 196 were examined by the Commission on merits² and only ten countries implemented, either in full or in part, the Commission's decisions or recommendations.³

An individual or group of individuals whose rights enshrined in the Charter have been allegedly violated may submit a communication (case) to the African Commission if they have exhausted all the available domestic legal remedies.⁴ For example, Zimbabwean human rights defenders considered that justice was not working in their country, and since the Southern African Development Community (SADC) tribunal has been suspended, the African Commission provided their only hope of legal remedy.⁵

Filing communications with the African Commission is easier than filing communications with United Nations bodies. The communication does not have to be in writing, and the Commission can conduct oral hearings and use live testimonies. The victim can be represented by an organisation or any person, regardless of nationality. NGOs do not have to have observer status to submit a complaint, and individuals need not to be African citizens.⁶

EXAMINATION OF STATE REPORTS

The African Commission monitors the implementation of the Charter through States' initial or periodic reports, which are examined during ordinary sessions.

Article 62 of the Charter requires States to submit reports to show policy and legislative measures taken to give effect of the Charter.⁷ However, thirty years after the Charter's establishment, only 12 States have regularly submitted their periodic reports, while 29 have submitted one report with more overdue, and 12 have never submitted a report.⁸

After each State report is examined, the African Commission issues concluding observations. However, it can happen that the Commission does not issue concluding observations when it deems that crucial information is missing from a report and from State replies during the interactive dialogue. Thus, out of 41 countries examined, 37 received concluding observations.

Unfortunately, few States explicitly provide responses to concluding observations in their subsequent periodic reports. To date, only four States have referred to their concluding observations in their reports: Cameroon, the Democratic Republic of Congo, Rwanda, and Uganda.

The African Commission adopted new rules of procedures in 2010, establishing follow up mechanisms to concluding observations. Under the new rules, the Commission can specify issues that require urgent attention on the part of the State Party, and can stipulate a date for the next report. Commissioners are called on to follow up on the implementation of concluding observations during their human rights promotion activities.⁹

THE SPECIAL PROCEDURES MECHANISM

Over the years, the African Commission has established a number of special mechanisms on specific human rights issues. Currently, there are 14 special procedures, working groups and study groups.¹⁰ Commissioners assume the role of special rapporteurs. They investigate human rights violations in line with their mandates, research human rights issues and undertake country visits upon invitations by States. They can also attend NGO events. Special rapporteurs may issue urgent appeals or press releases in case of human rights concerns.

Unfortunately, special mechanisms also suffer from a lack of resources and absence of State compliance to the conclusions

² For more information on the caselaw, see <http://bit.ly/AurD8L>.

³ Two countries in Southern Africa, two in Central Africa, one in East Africa, four in West Africa and one in North Africa.

⁴ <http://bit.ly/EZuGZ>, articles 48, 49 and 55.

⁵ Ex: 1. Communication submitted by the Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa on behalf of Mr Andrew Barclay Meldrum. The communication alleged that Mr Meldrum's rights of freedom of expression and freedom to disseminate information were violated by the Republic of Zimbabwe. See <http://bit.ly/ztQeDa>. 2. Communication submitted by the Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa dealing with the Zimbabwean Government's failure to expedite administration of justice, the functioning of the judiciary and alleged violations of the right to participate in government. See <http://bit.ly/yliBZA>.

⁶ For more information see <http://bit.ly/yXbVVS>, p. 63. See also guidelines for submission of communications at <http://bit.ly/zYkbZo>.

⁷ Article 62 of the Charter: "Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter."

⁸ <http://bit.ly/wVh8Pw>.

⁹ <http://bit.ly/AEKRLy>.

¹⁰ <http://bit.ly/gB2Utu>.

and recommendations issued. Moreover, special rapporteurs rarely receive responses from States to their urgent appeals.

THE AFRICAN COURT

A major development of the African Charter was the establishment of the African Court, created through the Protocol on the African Charter (the Protocol). The Protocol was adopted in Burkina Faso on 9 June 1998 and entered into force on 25 January 2004. The African Court consists of 11 judges, elected by the African Union Assembly from a list of candidates nominated by its member States.

The African Court was created to reinforce the protection mandate of the African Commission. The Court deals with matters related to the interpretation and application of the Charter and any other human right instrument ratified by the State. Its decisions are final and binding to States that have ratified the Protocol. As the first judicial body with responsibilities to ensure respect and effectiveness of the Charter and other human rights standards, the Court has the potential to play an essential role in the development of the African human rights system.

The African Commission, States Parties to the Court's Protocol, African inter-governmental organisations, NGOs with observer status before the Commission, and individuals are permitted to submit communications to the Court. However, for NGOs and individuals to be able to submit communications to the Court, the State against which the complaint is brought must have made a declaration accepting the competence of the African Court to receive such complaints.¹¹ Today, 26 States have ratified the Protocol, but only five States have made the declaration.¹²

The relationship between the African Court and the African Commission is defined under rule 29 of the Interim Rules of the Court,¹³ and part IV of the Interim Rules of Procedure of the Commission.¹⁴ Through these provisions, the Court may transfer a matter that it is unable to successfully address to the Commission. The African Commission may submit a communication to the Court in case of massive human rights violation. For example, on 3 March 2011, the Commission brought a case against Libya before the Court,¹⁵ and the Court ordered for provisional measures.¹⁶

The Court has the obligation to transmit its decisions to the Commission and the latter can seize the Court at any stage of examination of a communication. The two bodies are called to collaborate in a constructive manner and mutually reinforce each other.

CHALLENGES

The African Charter is still unknown to a great number of African citizens and the African Commission is a remote entity for the majority of human rights defenders.

The greatest challenge to the Charter and Commission's effectiveness is the absence of enforcement of decisions made by the Commission, since it has not set up any procedure to supervise the implementation of its recommendations. As such, States do not feel compelled to abide by the Commission's decisions, which they consider to be only recommendations. The African Commission has a responsibility to establish standards and working methods to ensure the implementation of its recommendations.

Civil society should put in place a follow up strategy that utilises the media, publicises the Commission's decisions, translates decisions into local languages, uses these decisions in court, monitors their implementation by governments, and reports back to the Commission.

The Commission is ill-equipped, with its current status, composition and mandate, to respond to the multitude of human rights challenges in Africa. The 11 commissioners are unrealistically tasked multiple mandates at once: the promotion and protection of human rights, to act as special rapporteurs, to examine communications, and to examine State reports.

However, Article 60 of the African Charter does provide the necessary latitude to the African Commission to establish workable operating systems and standards in line with best practice in international law. Commissioners need to remove problems contained in the Charter and make efforts to effectively interpret and apply it.

To be more effective, the African Commission should establish a separate system of special procedures, like that of the UN. The African Union should also allocate sufficient budget to the Commission to allow it to address human rights in the region.

The African Court is little-known by most African citizens, and more than half of African States have not yet ratified the Protocol establishing the Court and its jurisdiction. The Court also suffers from structural inadequacies; it lacks a sufficient number of legal officers, and the administration of the Court is 'weak' since several key positions, such as court reporters, transcribers, recorders and revisers, are unfilled.

Despite all these challenges and inadequacies in implementation, the African Charter on Human and Peoples' Rights is an evolving tool and a unique treaty, which reconciles international human rights standards with African specificities. ■

11 Under article 5(3) of the Protocol. See <http://bit.ly/zE1HT8>.

12 Ghana, Tanzania, Mali, Malawi and Burkina Faso.

13 <http://bit.ly/wr05Mw>.

14 <http://bit.ly/zFB6P1>.

15 <http://bit.ly/ydXaJM>.

16 <http://bit.ly/fqr4Xx>.

UPCOMING EVENTS

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QUICK REFERENCE

NGO engagement opportunities by country February – July 2012

The table below is a quick reference guide to countries that feature within the 'Opportunities for NGO Engagement' section of this publication (pages 38-42). Only those countries featured in one or more of the upcoming meetings are listed in the table.

ACRONYMS

CRC:	Committee on the Rights of the Child (p. 38)
CEDAW:	Committee on the Elimination of Discrimination against Women (p. 39)
CERD:	Committee on the Elimination of Racial Discrimination (p. 39)
HRC:	Human Rights Committee (p. 39)
CMW:	Committee on Migrant Workers (p. 39)
CESCR:	Committee on Economic, Social and Cultural Rights (p. 40)
CAT:	Committee against Torture (p. 40)
UPR:	Universal Periodic Review (p. 40)
SP Visits:	Special procedures' visits (p. 42). Please note that at the time of writing only limited information was available regarding special procedures' visits.

	CRC	CEDAW	CERD	HRC	CMW	CESCR	CAT	UPR	SP Visits
Albania	x						x		
Algeria	x	x						x	
Armenia							x		
Australia	x								
Azerbaijan						x	x		
Bahrain								x	x
Bosnia and Herzegovina				x					
Brazil		x						x	
Canada			x				x		
Cape Verde				x					
Central African Republic		x							
Chile		x					x		
Colombia							x		
Comoros		x							
Congo		x							
Cuba							x		
Cyprus	x								
Czech Republic							x		
Dominican Republic				x					
Ecuador								x	
El Salvador							x		
Equatorial Guinea		x							
Ethiopia						x			
Finland								x	
Gabon							x		
Georgia									x
Greece	x						x		
Grenada		x							

	CRC	CEDAW	CERD	HRC	CMW	CESCR	CAT	UPR	SP Visits
Guatemala				×					
Honduras							×		
Iceland						×			
India								×	
Indonesia								×	
Iran						×			
Israel			×				×		
Italy			×						
Jamaica						×			
Japan						×			
Jordan		×	×						
Kuwait			×						
Laos			×						
Mexico			×				×		
Moldova							×		
Morocco								×	
Mozambique				×					
Nepal	×								
Netherlands								×	
New Zealand						×	×		
Norway		×					×		
Paraguay				×	×				
Peru						×	×		
Philippines				×			×	×	
Poland								×	
Portugal			×	×					
Qatar			×				×		
Russian Federation							×		×
Rwanda							×		
Senegal			×				×		
Serbia		×							
Slovakia						×	×		
South Africa								×	
Spain						×	×		
Syria							×		
Tajikistan							×		
Togo		×					×		
Tunisia								×	
Turkey	×			×					
Turkmenistan		×	×	×	×				
United Kingdom								×	
Uruguay									×
Venezuela									×
Vietnam	×		×						
Yemen				×					
Zambia									×
Zimbabwe		×							

OPPORTUNITIES FOR NGO ENGAGEMENT

February – July 2012

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 website at <http://bit.ly/ea8LRG>. An annual calendar of treaty body examinations is available at <http://bit.ly/zAIQfR>.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

The Committee on the Rights of the Child will hold its 60th session from 29 May to 15 June in Geneva, when it will examine the reports of Albania, Algeria, Australia, Cyprus, Greece, Turkey and Vietnam. It will also review Albania, Australia and Nepal under the Optional Protocol on the sale of children, and Albania, Australia and Greece under the Optional Protocol on children in armed conflict.

What can you do?

If you would like to submit information for upcoming examinations, you can contact the NGO group on the *Convention for the Rights of the Child* 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 will hold its 51st session from 13 February to 2 March in Geneva. It will examine the reports of Algeria, Brazil, Congo, Grenada, Jordan, Norway and Zimbabwe. For more information see <http://bit.ly/rZsNZE>. The Committee will also hold a pre-session working group from 5 to 9 March 2012 to prepare for its 53rd session in October. It will prepare its list of issues for Central African Republic, Chile, Comoros, Equatorial Guinea, Serbia, Togo and Turkmenistan.

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 or PDF format by email to cedaw@ohchr.org, indicating whether the materials may be published on the Committee's website. Hard copies can be sent to CEDAW Secretariat, OHCHR – Palais Wilson, 52 Rue des Paquis, CH-1201 Geneva, Switzerland. The deadline for submissions to the 51st session has now passed. Submissions for the pre-session working group should arrive at least two weeks prior to the meeting i.e. by Friday 17 February.

The Committee has scheduled two meetings for NGOs to provide oral information to Committee members during its 51st session. The first will take place on 13 February from 15h00 to 16h00 for countries that will be considered in the first week, and at the same time on 20 February, for countries to be considered in the second week. These meetings will be public, and NGOs are requested to send a copy of their presentation (no more than 10 minutes long) to cedaw@ohchr.org prior to the meeting. There is also an NGO meeting scheduled for during the pre-session working group for the 53rd session, which will take place on 5 March 2012 from 11h30 to 12h30.

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.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

What's coming up?

From 13 February to 9 March, the Committee on the Elimination of Racial Discrimination will hold its 80th session in Geneva to examine the reports of Canada, Italy, Israel, Kuwait, Jordan, Laos, Mexico, Portugal, Qatar, Senegal, Turkmenistan, and Vietnam.

The Committee will hold an open meeting with NGOs to discuss their participation in the Committee's work. See <http://bit.ly/wEkqBy> for the schedule of informal meetings. Additional NGO information can be found here: <http://bit.ly/zllt2>. The International Movement against all Forms of Discrimination and Racism (IMADR) provides a *Guide to Civil Society Actors*, available at <http://bit.ly/xl4SIs>.

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 30 January.

THE COMMISSION ON THE STATUS OF WOMEN

What's coming up?

The Commission on the Status of Women will hold its 56th session from 27 February to 9 March in New York. The three key themes of the session will be the empowerment of rural women and their role in poverty and hunger eradication; financing for gender equality and the empowerment of women; engaging young women and men, girls and boys, to advance gender equality.

What can you do?

For details on the organisation of the session see: <http://bit.ly/fEILdN>. A live webcast of the meetings will be available via the United Nations Webcast at <http://www.un.org/webcast>.

HUMAN RIGHTS COMMITTEE

What's coming up?

The Human Rights Committee will hold its 104th session from 12 to 30 March in New York. It will examine the reports of Guatemala, Dominican Republic, Turkmenistan, and Yemen, as well as Cape Verde and Mozambique in the absence of a report. Lists of issues will be prepared on Bosnia and Herzegovina, Philippines, Paraguay, Portugal and Turkey.

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 ccpr@ohchr.org. 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 <http://bit.ly/o5M1xy>. 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 MIGRANT WORKERS

What's coming up?

The Committee on Migrant Workers will meet for its 16th session from 16 to 27 April in Geneva to examine the reports of Paraguay and Tajikistan.

What can you do?

More information on how to submit reports to the Committee can be obtained by contacting its office at OHCHR in Geneva, or emailing cmw@ohchr.org.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

What's coming up?

The Committee on Economic, Social and Cultural Rights will hold its 48th session from 30 April to 18 May in Geneva. It will examine the reports of New Zealand, Peru, Slovakia, Spain, and Ethiopia. At its pre-sessional working group, from 21 to 25 May, the Committee will prepare the lists of questions for Azerbaijan, Iceland, Iran, Jamaica and Japan, which will be reviewed at a later session.

What can you do?

NGOs may participate in parts of both the 48th session and the pre-sessional working group following it. To find out more, visit <http://bit.ly/wRSR63>.

COMMITTEE AGAINST TORTURE

What's coming up?

The Committee against Torture will hold its 48th session from 7 May to 1 June in Geneva. It will consider the reports of Albania, Armenia, Canada, Cuba, the Czech Republic, Greece, Mexico, Rwanda, and Syria. During the same session, the Committee will adopt lists of issues prior to reporting (LOIPR) for reports due in 2013 on Azerbaijan, Chile, Colombia, El Salvador, Honduras, Israel, Moldova, New Zealand, Slovakia, Spain, and the Philippines.

The Committee will hold its 49th session from 29 October to 23 November in Geneva, and will review Tajikistan, Togo, Senegal, Qatar, Rwanda, the Russian Federation, Norway, Peru, and Gabon.

What can you do?

If you are working on the issue of torture in one of these States, you can submit information to the Committee at any time, but preferably six weeks before the session. The deadline for submission of information to the 48th session is 20 April. 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. For more information visit <http://bit.ly/bJOQCE>.

UNIVERSAL PERIODIC REVIEW

What's coming up?

The Universal Periodic Review (UPR) will hold its 13th session from 21 May to 4 June in Geneva. The countries under review are Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, and South Africa. The 13th session will be the first session of the second cycle of the UPR, with a particular focus on implementation of recommendations and commitments from the first review.

What can you do?

To submit information on any of the countries to be examined at the 13th session please follow the guidelines found at <http://bit.ly/d07u3s>. A timeline for NGO participation can be found here: <http://bit.ly/zJbFdX>. 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/dJJJoOb>. For a tentative calendar of the second cycle see: <http://bit.ly/rmjTHC>.

MEETINGS

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The Human Rights Council Advisory Committee will hold its 8th session from 20 to 24 February in Geneva. Among other things, it will discuss the draft study on traditional values and human rights.¹ NGOs can participate in all public sessions. More information on this meeting will be made available here: <http://bit.ly/byzWQz>.

HUMAN RIGHTS COUNCIL

What's coming up?

The Human Rights Council will hold its 19th session from 27 February to 23 March in Geneva. The programme of work is available at <http://bit.ly/Aw3LVj>, and the annotated agenda will be at <http://bit.ly/zYxdHL>. The Council will convene for its 20th session later than usual, from 18 June to 6 July.

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. You may register to deliver oral statements under all agenda items. More information about the Council and NGO participation is available at <http://bit.ly/dSkbHC> and at www.ishr.ch/council.

PERMANENT FORUM ON INDIGENOUS ISSUES

What's coming up?

The UN Permanent Forum on Indigenous Issues will hold its 11th session from 7 to 18 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, which will be held in May, are an opportunity to raise issues relevant to the Special Rapporteur's mandate. Requests for a meeting should be sent by 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 11th session. For more information on pre-registering and the session in general, consult the website here: <http://bit.ly/gQlvKj>.

THE COMMITTEE ON NON-GOVERNMENTAL ORGANIZATIONS

What's coming up?

The Economic and Social Council (ECOSOC) Committee on Non-Governmental Organizations will meet on 17 February in New York to adopt the report of its regular session held from 30 January to 8 February. The session's recommendations will be sent to the Economic and Social Council for its approval in July.

The resumed session of the Committee will take place from 21 to 30 May, during which NGO applications for ECOSOC accreditation that have been deferred from earlier sessions will be considered by the Committee. In addition to these new applications for status, the quadrennial reports of NGOs will also be examined by the Committee, before the report of the session is adopted on 8 June.

¹ See <http://bit.ly/y9aHvf>.

What can you do?

To download information pertaining to the January to February 2012 session see <http://bit.ly/zE1nDc>. If your NGO has submitted an application or a quadrennial report before the Committee then you can register to attend using the following link: <http://bit.ly/u8sPcU>. Reports of previous sessions of the Committee, as well as press coverage of the Committee issued on the days when it is in session, are available at: <http://csonet.org>.

ECOSOC accreditation

Some forms of formal participation in the work of the UN require NGOs to hold consultative status with ECOSOC. NGOs may apply for ECOSOC consultative status under Article 71 of the Charter of the United Nations and ECOSOC Resolution 1996/31. These accredited organisations may participate in meetings of ECOSOC and its subsidiary bodies, including the functional commissions, in accordance with the rules of procedure of those bodies. For more information visit <http://csonet.org>.

SPECIAL PROCEDURES' VISITS

You can stay up to date about upcoming visits by the special procedures to countries around the world at www.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 **assembly and association**, Mr Maina Kiai, will visit **Georgia** from 6 to 14 February. See <http://bit.ly/qqdi1g>
- The Special Rapporteur on **water and sanitation**, Ms Catarina de Albuquerque, will visit **Uruguay** from 13 to 17 February. See <http://bit.ly/o9RTLm>
- The Special Rapporteur on **torture**, Mr Juan Mendez, will visit **Bahrain** in February/March. See <http://bit.ly/sPVYMO>
- The Special Rapporteur on the **right to food**, Mr Olivier De Schutter, will visit **Zambia** in Spring 2012. See <http://www.srfood.org/>
- The Independent Expert in the field of **cultural rights**, Ms Farida Shaheed, will visit the **Russian Federation** from 16 to 27 April. See <http://bit.ly/zFWNSp>
- The Special Rapporteur on the **right to food**, Mr Olivier De Schutter, will visit **Canada** from 7 to 15 May. See <http://www.srfood.org/>
- The Special Rapporteur on the **right to health**, Mr Anand Grover, will visit **Japan** in November. See <http://bit.ly/vzxK0o>
- The Special Rapporteur on the **right to food**, Mr Olivier De Schutter, will visit **Venezuela** from 15 to 22 January 2013. See <http://www.srfood.org/> ■

USEFUL LINKS

UN BODIES

Office of the High Commissioner for Human Rights: www.ohchr.org

Human Rights Council: www2.ohchr.org/english/bodies/hrcouncil

General Assembly: www.un.org/ga

Human Rights Committee: www2.ohchr.org/english/bodies/hrc

Committee on Economic, Social and Cultural Rights: www2.ohchr.org/english/bodies/cescr

Committee on the Elimination of Racial Discrimination: www2.ohchr.org/english/bodies/cerd

Committee on the Elimination of Discrimination against Women: www2.ohchr.org/english/bodies/cedaw

Committee against Torture: www2.ohchr.org/english/bodies/cat

Committee on the Rights of the Child: www2.ohchr.org/english/bodies/crc

Committee on Migrant Workers: www2.ohchr.org/english/bodies/cmw

Committee on the Rights of Persons with Disabilities: www.ohchr.org/EN/HRBodies/crpd

Committee on Enforced Disappearances: www.ohchr.org/EN/HRBodies/ced

Special Rapporteur on the situation of human rights defenders: www.ohchr.org/EN/Issues/SRHRDefenders

Universal Periodic Review: www.ohchr.org/en/hrbodies/upr

Secretariat of the ECOSOC NGO Committee: www.csonet.org

REGIONAL ORGANISATIONS

African Commission on Human and Peoples' Rights: www.achpr.org

Asia Pacific Forum of National Human Rights Institutions: www.asiapacificforum.net

ASEAN Intergovernmental Commission on Human Rights: www.asean.org/22769.htm

Council of Europe: <http://conventions.coe.int>

European Union Guidelines on Human Rights Defenders: <http://bit.ly/dxG2MP>

Inter-American Commission on Human Rights: www.cidh.org

CONTRIBUTORS TO THIS ISSUE

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REGIONAL MEETINGS:

NGO FORUM @ AFRICAN COMMISSION
ON HUMAN AND PEOPLES' RIGHTS

15 – 17 April

AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS

18 April - 2 May

UN MEETINGS:

HUMAN RIGHTS COUNCIL
ADVISORY COMMITTEE

20 – 24 February
(Geneva)

HUMAN RIGHTS COUNCIL

27 February – 23 March
(Geneva)

CCPR (individual communications, private)

5 – 9 March
(Geneva)

CEDAW, PRE-SESSION WG

5 – 9 March
(Geneva)

CRC WG

6 – 10 February
(Geneva)

CEDAW
(individual
communications
private)

7 – 10 February
(Geneva)

CEDAW

13 February – 2 March
(Geneva)
Algeria, Brazil, Grenada,
Jordan, Norway, Republic
of Congo, Zimbabwe

CERD

13 February – 9 March
(Geneva)
Canada, Italy, Israel, Jordan,
Kuwait, Laos, Mexico, Portugal,
Qatar, Senegal, Turkmenistan
and Vietnam

HUMAN RIGHTS COUNCIL
ORGANIZATIONAL MEETING

13 February
(Geneva)

HUMAN RIGHTS COMMITTEE

12 – 30 March
(New York)
Mozambique, Dominican Cape
Verde, Republic, Guatemala,
Turkmenistan, Yemen
LISTS OF ISSUES: Philippines,
Bosnia & Herzegovina, Paraguay,
Portugal, Turkey

CED

26 – 30 March
(Geneva)

AD HOC COMMITTEE
COMPLEMENTARY STANDARDS

10 – 20 April
(Geneva)

CESCR

30 April – 18 May
(Geneva)
New Zealand, Peru, Slovakia,
Spain, Ethiopia

PERMANENT FORUM
INDIGENOUS ISSUES

7 – 19 May
(New York)

CAT

7 May – 1 June
(Geneva)
Albania, Armenia, Canada, Cuba, Czech
Republic, Mexico, Russian Federation, Rwanda

CESCR, PRE-SESSION WG

21 – 25 May
(Geneva)
Azerbaijan, Iceland, Iran, Jamaica, Japan

UPR

21 May – 4 June
(Geneva)
Bahrain, Ecuador, Tunisia, Morocco, Indonesia,
Finland, United Kingdom, India, Brazil, Philippines,
Algeria, Poland, Netherlands, South Africa

HUMAN RIGHTS COUNCIL
ORGANIZATIONAL MEETING

4 June
(Geneva)

ANNUAL MEETING OF
SPECIAL PROCEDURES

11 – 15 June
(Geneva)

HUMAN RIGHTS COUNCIL

18 June – 6 July
(Geneva)

TREATY BODY CHAIRPERSONS' MEETING

25 – 29 June
(Geneva)

ECOSOC REGULAR SESSION

2 – 27 July
(New York)

FEBRUARY

MARCH

APRIL

MAY

JUNE

JULY

UPCOMING EVENTS FEBRUARY – JULY 2012