

HUMAN RIGHTS MONITOR

QUARTERLY

ISHR | INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

ISSUE 4 | 2011

- p. 1 HUMAN RIGHTS COUNCIL 18TH SESSION
Thematic advances offset stalled momentum
- p. 7 HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE
Traditional values and human rights
- p. 21 THE INTEGRITY OF THE UN TREATY BODY SYSTEM
The case of Pakistan's recent treaty action
- p. 27 UPCOMING OPPORTUNITIES
Meetings to look out for and how to prepare



As civil society representatives filed out of the last meeting of the 18th session of the Human Rights Council (the Council) many did so with mixed feelings as to the session's accomplishments (p. 1). There were some notable achievements, such as the establishment of a Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence, the adoption of a resolution on preventable maternal mortality, and an initiative to set up a panel discussion on the issue of reprisals against those cooperating with the United Nations system. However, the forward momentum gained at previous sessions of the Council stalled, as States failed to respond adequately to critical country situations. Also of concern was a further push by Cuba and others for the extension of Council jurisdiction over the workings of the Office of the High Commissioner for Human Rights.

A focus of the 7th meeting of the Human Rights Council Advisory Committee was discussion of the Committee's mandate on traditional values, resulting from a resolution driven by the Russian Federation and adopted at the Council's 16th session (p. 7). The discussion highlights the risks of allowing universal human rights standards to become relativised through giving too much weight to tradition and culture, and the critical importance of vigorously defending the fundamental concept of the universality of human rights.

**ISHR****INTERNATIONAL SERVICE
FOR HUMAN RIGHTS**

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

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

OUR VISION

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

OUR MISSION

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

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

Downloadable online editions of the *Quarterly* are available at www.ishr.ch/quarterly.

EDITORS

Michael Ineichen, Olivia Starrenburg.

COVER PHOTO

iStockphoto.

guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication.

CONTRIBUTORS AND EDITORIAL SUPPORT

Jeremy Arthur, Heather Collister, Michelle Evans, Eleanor Openshaw, Joseph Shawyer, Madeleine Sinclair, Monika Milinauskyste, Kareem El-Assal, Clement Nyaletsossi Voule.

LAYOUT AND DESIGN

Sarah Song, Geneva.

PRINTER

Print Carrier.

We are happy to correct any errors you may come across, so please notify us:

information@ishr.ch

Special thanks to our guest contributors Victoria Lee (International Disability Alliance), and Alex Conte and Marina Mattiolo (International Commission of Jurists).

CLOSING OF THIS EDITION

31 October 2011.

COPYRIGHT AND DISTRIBUTION

Copyright © 2011




International Service for Human Rights.

For more information about our work, or any of the issues covered in this edition, please visit our website: www.ishr.ch or contact us: information@ishr.ch

ACKNOWLEDGEMENTS

The International Service for Human Rights (ISHR) would like to thank the co-funders, the European Union and the Ministry of Foreign Affairs of the Netherlands, for their support to this project. The contents are the sole responsibility of the authors and cannot be regarded as reflecting the views of the project sponsors.

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

 www.facebook.com/ishr.geneva
 http://twitter.com/ishr_geneva
 www.youtube.com/ISHRHumanRights



Ministry of Foreign Affairs of the
Netherlands

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not

GENEVA OFFICE

Rue de Varembe 1, 5th floor
P.O. Box 16
CH-1211 Geneva 20 CIC
Switzerland

NEW YORK OFFICE

777 UN Plaza, 8th floor
New York
NY 10017
USA

CONTENTS

INTERNATIONAL DEVELOPMENTS

HUMAN RIGHTS COUNCIL	P. 1
HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE	P. 7
HUMAN RIGHTS COMMITTEE	P. 10
COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES	P. 14
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	P. 17

THEMATIC FOCUS

THE UN TREATY BODY SYSTEM	P. 21
---------------------------	-------

REGIONAL DEVELOPMENTS

THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS	P. 25
--	-------

UPCOMING EVENTS

QUICK REFERENCE	P. 28
OPPORTUNITIES FOR NGO ENGAGEMENT	P. 31
USEFUL LINKS	P. 37
UPCOMING EVENTS NOVEMBER 2011 – MARCH 2012	P. 40

INTERNATIONAL DEVELOPMENTS

HUMAN RIGHTS COUNCIL	P. 1
HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE	P. 7
HUMAN RIGHTS COMMITTEE	P. 10
COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES	P. 14
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	P. 17

HUMAN RIGHTS COUNCIL

Stalled momentum on country responses partly offset by thematic advances



Photo: Vikalpasi

Protesters in Katunayake, Sri Lanka.

The 18th session of the Human Rights Council (the Council), held from 12 to 30 September 2011, showed signs of stalling the positive momentum generally sustained throughout the 16th and 17th sessions. Not only did the Council fail to build on the positive efforts to follow up on the situations in several countries or find similarly robust responses to other situations, but there were also worrying institutional developments that reflected a re-emergence of the Council's old dynamics. Most telling in this regard was the renewal of Cuba's efforts, together with Pakistan and Sri Lanka, to limit the independence of the Office of the High Commissioner for Human Rights (OHCHR), with an attempt to push through a resolution on the staffing and budget of OHCHR. Taken together with the failure of the Council to once again take action on Sri Lanka, this session marked a reassertion from several States of their traditional positions and a return to the frustrations of earlier sessions.

There were, however, some notable achievements, not least the adoption of a resolution on reprisals, which sets up a panel on the subject to take place at the 19th session of the Council. In addition, the creation of a new Special Rapporteur on truth, justice, reparation, and guarantees of non-recurrence represents a definite step forward in the ability of the Council to address situations of serious human rights violations. Important developments on maternal mortality and morbidity and on the right to water and sanitation completed the generally positive record of the session in thematic terms.

During her first Council session, the new President, Ms Laura Dupuy Lasserre showed herself a capable Chair. As her term is slightly longer than previous Presidents, she may have more time to shape the role. However, it is too soon to make any definitive judgements on how strong she will prove to be in that position.

INSTITUTIONAL DEVELOPMENTS

Cuba's attempt to introduce a resolution on transparency in funding and staffing of OHCHR, cosponsored by Pakistan, Sri Lanka, Malaysia, Algeria, and Palestine, is the latest in a long line of efforts to position the Council in an oversight role over OHCHR. For instance, at the 7th session of the Council in 2008, Cuba introduced a resolution intended to 'rectify the geographical imbalance' of OHCHR. The resolution followed similar ones at the Commission on Human Rights and the General Assembly, and marked the continuation of the initiative into the Council. Despite opposition from several States that the General Assembly, and not the Council, is the appropriate body to deal with the issue of geographical balance in the UN secretariat, the resolution was adopted by a vote. Follow-up resolutions were introduced again at the 13th and 16th sessions of the Council, and in each case adopted by a vote.¹

Political efforts to provide the Council with an oversight function over OHCHR became more apparent during the 15th session of the Council. In a surprise move, Cuba presented an initiative to have the High Commissioner for Human Rights present her programme of work for the next two years (Programme 19) to the Council for its comments before it is passed onto

¹ Resolution 7/2: adopted by 34 to 10, with three abstentions; Resolution 13/1 adopted by 31 to 12, with three abstentions; Resolution 16/10 adopted by 31 to 13, with two abstentions. The regional and political divides on these votes are stark. Those voting against the resolution are consistently Western European and Others-Group (WEOG) members (with the exception of Japan, which abstained on Resolution 7/2 and voted against Resolution 16/10). The Republic of Korea and Chile have consistently abstained. Switzerland abstained on Resolution 7/2 but joined fellow WEOG States in voting against Resolution 16/10.

the Committee for Programme and Coordination (CPC).² Although Cuba withdrew its resolution in 2010, it was turned into a Presidential Statement, inviting the High Commissioner to present Programme 19 to the Council. The issue was again discussed in March³ but was postponed for technical reasons.

The resolution presented to the 18th session – deceptively named ‘transparency in funding and staffing of the OHCHR’ – requested the High Commissioner to include information about budget and staffing in her update to the Council.⁴ After several rounds of formal and informal negotiations, the resolution was ‘deferred’ but according to the Pakistani Ambassador ‘if by the time [of the next OHCHR report] we are unable to find a mutually agreed forum [to consider the issues of funding] we reserve the right to revisit this issue in the June [2012] session’. In return, a Presidential Statement was adopted, requesting that OHCHR include information on resources and expenses in the public OHCHR annual report, as is currently largely the case.

While the Council can and does request that the High Commissioner perform specific tasks relating to the promotion and protection of human rights, such as the request for her to report to the Council on her visit to Yemen, the High Commissioner must also be able to act independently in accordance with her strategic plan approved by the General Assembly and under the supervision of the Secretary-General. Requesting the High Commissioner to report on financial and management information in a political forum would divert attention from human rights issues. At a time when the High Commissioner has become more forthright in bringing serious geographic and thematic concerns to the Council’s attention, particularly in the context of the Arab Spring, these attacks on OHCHR’s independence are a reminder that several States within the Council continue to be uncomfortable with an independent OHCHR.

Three sets of mandate holders were appointed at this session: the Western European and Others Group (WEOG) member of the Working Group on mercenaries,⁵ the Independent Expert on Cote d’Ivoire,⁶ and the members of the Working Group on human rights and transnational corporations.⁷ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai of Kenya, resigned his position during the session, owing to a new conflict of interest with his recent appointment

as Attorney-General of Kenya. A new mandate holder, Mr Mutama Ruteere from Kenya, was appointed at the resumed 18th session on 21 October.

Exchange of views with NGOs, NHRIs and mandate holders

The Annual Meeting of Special Procedures took place from 27 June to 1 July 2011. On 30 June an exchange of views was held between the mandate holders, civil society and national human rights institutions (NHRIs). The forum provided an opportunity for NGOs to raise their concerns and engage in dialogue with the UN special procedures. However, it is yet to be seen whether any concrete action will be taken.

Both mandate holders and civil society said they appreciated the regular cooperation between special procedures and NGOs. However, they raised issues related to the need to strengthen cooperation between States and special procedures, and in particular, to find ways in which to assess the level of such collaboration. Some NGOs regarded as problematic the lack of information special procedures have concerning what happens after a country visit takes place, and recommended that special procedures should follow-up more effectively with the respective governments.

The importance of addressing the issue of reprisals was also stressed during the debate. Mandate holders raised several issues, one of the most important being the need to improve communication between NGOs and special procedures, especially regarding the format in which NGOs submit information to OHCHR. Other recommendations were to strengthen regional cooperation with local NGOs that focus on specific issues and enhance the participation of mandate holders in regional organisations.

NGOs were invited to submit specific suggestions to mandate holders in writing. A compilation of concerns raised by NGOs at the meeting is available here <http://bit.ly/vIRMqH>. Although a variety of issues are discussed each year during the annual meeting of mandate holders, concrete follow-up is rare. The availability of a compilation of issues raised may serve as the starting point for further discussion and for assessing progress at annual meetings in future.

² See ISHR *Human Rights Monitor Quarterly*, Issue 3/2010 at <http://bit.ly/rr9KYk>. Cuba’s argument was that all other such parts of the UN strategic framework are reviewed by the relevant sectoral or inter-governmental body before being reviewed by the CPC.

³ <http://bit.ly/lleVI9>.

⁴ Much of the requested information is already available in the High Commissioner’s annual report at <http://bit.ly/njOvIk>.

⁵ Mr Gabor Rona (US/Hungary).

⁶ Mr Doudou Diene (Senegal).

⁷ Mr Michael Addo (African Group), Mr Puvan Selvanathan (Asian Group), Mr Pavel Sulyandziga (Eastern European Group), Ms Alexandra Guaqueta (Group of Latin American and Caribbean States), Ms Margaret Jungk (Western European and other Group).

THEMATIC DEVELOPMENTS

The initiative to set up a panel discussion on the issue of **reprisals against those who cooperate with the UN system** was one of the key positive developments at the session. Although the final resolution represented a compromise, the panel is nevertheless an important step forward and a much-needed attempt to increase the attention given by the Council to this critical issue. Original proposals to set up a permanent debate on the subject failed to find consensus support, but the panel debate could be the starting point for the Council to seriously begin to consider ways in which it can concretely improve protection for persons who cooperate with the UN.

A panel discussion held during the 18th session on the **promotion and protection of human rights in the context of peaceful protests** was keenly anticipated, given the circumstances in which it was created.⁸ The panel followed a failure by the Council to convene a special session on the common difficulties facing protestors across the Middle East and North Africa region, and was a final attempt to direct at least some of the Council's attention to these issues. The discussion was constructive, with a series of concrete recommendations made to the Council. However, a joint statement was made by China, on behalf of 32 States,⁹ which asserted the principle of non-intervention in international relations in matters that are within the domestic jurisdiction of any State. It has been rare for China to play such a visible coordinating role in the Council, but this joint statement falls within a recent more active approach observed from the Chinese delegation in Geneva in both formal and informal Council debates.

The joint statement presented by China also made reference to **internet freedom and human rights**, an issue that gained increasing prominence at this session of the Council. The issue is topical due to the extent to which online social media was used to organise activity during the events of the Arab Spring, and the disturbances that took place in the United Kingdom in August 2011. The joint statement, however, particularly noted the negative impact of social media, asking how such issues could be addressed, while also recognising its important role in promoting freedom of expression.

A resolution by Sweden set up a panel on freedom of expression on the internet, with a particular emphasis on finding ways to protect freedom of expression on the Internet in accordance with human rights law. The resolution was adopted by consensus, but in an indication of China's unease with the issue's increasing prominence at the international level, the State delegation forced a delay in the resolution's adoption. While the delegation claimed it had not been able to get

instructions from capital, China's dissociation from consensus, announced before the adoption, clearly shows how uncomfortable the State feels with the issue. Chinese efforts to counter advances at the Council on freedom of expression and the Internet should also be seen in the context of its push for an international code of conduct for information security at the General Assembly, which among other things reaffirms the sovereign right of States to regulate the Internet.¹⁰

The establishment of a **Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence** was one of the most positive developments of the session. The mandate will give the Council an additional tool to investigate serious human rights violations, in particular 'gross violations of human rights and serious violations of international humanitarian law'. It also tasks the Special Rapporteur with integrating a victim's perspective throughout his or her work. The mandate includes some information gathering on national situations, practices, and experiences of promoting truth, justice, reparations and guarantees of non-recurrence. It also includes making recommendations to address such violations. The appointment of the first mandate holder will take place at the next Council session, in March 2012, with applications solicited by midnight on 30 November 2011.¹¹

A resolution on 'regional arrangements' was adopted by consensus. It followed on from the last such resolution at the 12th session,¹² which had welcomed the regional efforts made by the member States of the Association for Southeast Asian Nations, through the establishment of the Intergovernmental Commission on Human Rights. This session's resolution expressed appreciation for the efforts made by the member States of the Organization of Islamic Cooperation (OIC) in establishing the Independent Permanent Human Rights Commission.¹³

A resolution presented by Egypt, to create a panel on the **promotion of human rights in a multicultural context** was adopted, against the opposition of some western States. As initially framed, this resolution had worrying echoes of the resolution on traditional values adopted at the 16th session of the Council, in that it simply asserted the value of multiculturalism in vague terms, and did not clearly articulate that culture could never be used as an excuse to infringe upon an individual's human rights. Although these concerns were addressed to some extent, some WEOG States chose to vote

⁸ <http://bit.ly/vLbUdk>.

⁹ China, Algeria, Bangladesh, Bahrain, Belarus, Bolivia, Congo, Cuba, Democratic People's Republic of Korea, Djibouti, Ecuador, Iran, Kuwait, Lao People's Democratic Republic, Malaysia, Mauritania, Myanmar, Namibia, Nicaragua, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Tajikistan, Uganda, Venezuela, Vietnam, Yemen, and Zimbabwe.

¹⁰ See a letter to the Secretary-General from China, the Russian Federation, Uzbekistan, and Tajikistan, A/66/359 at <http://bit.ly/t3K0MI>. The preamble of the proposed code of conduct reaffirms 'that policy authority for Internet-related public issues is the sovereign right of States, which have rights and responsibilities for international Internet-related public policy issues'.

¹¹ See <http://bit.ly/rm0X0F> for the application procedure of Special Procedures mandate holders. Deadline for applications is 30 November 2011.

¹² <http://bit.ly/tGaAvG>.

¹³ OIC/IPHRC/2010/DR.STATUTE at <http://bit.ly/tM8aem>.

against the resolution on the basis that the concept of multiculturalism remained undefined.

A resolution on preventable **maternal mortality and morbidity** was adopted by consensus. It reaffirms the human rights-based approach to reduce preventable maternal mortality and morbidity, and requests OHCHR to convene a workshop to prepare concise technical guidance on how to apply a human rights-based approach to implement policies and programmes in this area.

COUNTRY SITUATIONS

In general, the 18th session's response to country situations represented a stalling of the more positive dynamic that started to emerge during recent sessions. States leading on country resolutions attempted to address situations by trying to engage concerned States cooperatively, working to get them on board with planned resolutions. This was exemplified by efforts to accommodate the Government of Sudan's reservations on the renewal of the mandate of the Independent Expert on Sudan. Accordingly, this and other country resolutions were tabled under Item 10, which focuses on provision to the State of technical cooperation and capacity building, on the premise that the State is ready to address the problems it faces; rather than Item 4, under which the Council can discuss situations of concern from a wider perspective than just provision of technical assistance. This shift coincided with Thailand introducing a resolution, adopted without a vote, on '**Enhancement of technical cooperation and capacity-building in the field of human rights**'. The resolution emphasises 'the need to promote a constructive and cooperative approach for the promotion and protection of human rights', and to 'enhance the role of the Council in promoting advisory services, technical assistance and capacity-building, particularly through discussions held under agenda item 10'. The resolution sets up an annual thematic discussion under Item 10, the first of which, to be held at the 19th session, will focus on technical cooperation in the context of the second cycle of the Universal Periodic Review.

While this approach resulted in all country resolutions being adopted by consensus, it also brought about a string of weak or non-existent responses to urgent country situations. The difficulty for many States – both members and observers – is to recognise that while a cooperative approach is commendable, its success depends on both parties being equally committed to improving the human rights situation. In particular, a cooperative approach will only work where concerned governments have proven themselves as willing partners not only in words, but also through taking concrete steps on the ground to improve the situation.

The previous Council session had seen positive steps in relation to **Yemen**, including requesting the High Commissioner to report to the Council on her visit to the country. However, at this session the Council failed to follow up on the recommendations made by the High Commissioner in her report to

establish an independent, international investigation. During the debate on the report, the Yemeni delegation rejected this recommendation, arguing it was inconsistent with the recommendation that Yemeni political parties seek to resolve their political differences through open and transparent dialogue. Instead, the delegation proposed establishing an independent and neutral national commission consisting of all political parties to undertake an evidence-based investigation into violations of human rights.

The perhaps overly cooperative approach to this situation is evident in the final resolution, cosponsored by Yemen. It acknowledges the Government's response to the High Commissioner's recommendations and takes note of the proposal to launch domestic investigations. The resolution's call for the High Commissioner to report on progress to the 19th session of the Council, while leaving the door open for a stronger response should the situation not be found to have significantly improved, may be too little too late for many on the ground.

Discussions on the renewal of the mandate of the **Independent Expert on Sudan** coincided with increasing international awareness of serious human rights violations in Blue Nile and South Kordofan. Reflecting these developments, there were calls for a strong mandate renewal. However, the final resolution is very weak. It notes the situation in these regions 'with concern', calling on parties to 'make every effort to immediately end violence and halt clashes', but does not call for any independent investigation. It also moves the mandate of the Independent Expert from Item 4 to Item 10, and gives him the mandate to 'engage with the Government of the Sudan with a view to identifying areas of assistance that will aid the Sudan to fulfil its human rights obligations'. This resolution removes the Independent Expert's role of monitoring and reporting on violations. Similarly, a resolution was also adopted on South Sudan, requesting OHCHR to assess the technical assistance needs of the new State and report back to the 20th session of the Council.

The response to the situation in **Sri Lanka** represented a major disappointment. Early in the session, the Secretary-General transmitted the report of his Panel of Experts on Accountability in Sri Lanka to the President of the Council.¹⁴ This marked a valuable opportunity for the Council to follow-up on its 11th special session on Sri Lanka, as it provided an avenue to address the recommendation to establish an international, independent mechanism to conduct investigations and complement the domestic Lessons Learnt and Reconciliation Commission (LLRC). The Council was strongly divided on the issue. Several States (including China, Cuba, Algeria, and the Maldives) expressed support for Sri Lanka's desire that the international community 'wait for [the LLRC] to finish its deliberations and come up with its conclusions in its own time'. However, States that might have been expected to

14 Available at <http://bit.ly/eq3uZb>.

speak out in favour of the findings of the Secretary-General's Panel of Experts were notably silent.

Canada's attempt mid-session to place the issue on the Council's agenda for the March 2012 session failed rapidly.¹⁵ After presenting a resolution that called for an interactive dialogue with the High Commissioner, to be held at the 19th session of the Council, Canada chose to withdraw its resolution after only one open informal discussion. This effectively blocked the way for other States to progress the matter, wasting the valuable opportunity created by the submission of the Secretary-General's report.

With human rights defenders around the world calling for the Council to address the situation in Sri Lanka, the gap between the strength of those calls and the operation of the Council was very apparent. Since no State was willing or able to take the matter forward, calls for action remained impotent.

The dialogue on the human rights situation in **Belarus** was similarly unconstructive and a demonstration of the old Council politics at work. Belarus and others (including the Russian Federation, Cuba, China, the Democratic People's Republic of Korea (DPRK), Venezuela, and Zimbabwe) dismissed the Council's focus on the country as politicised. Their criticism of country resolutions in general as 'ineffective tools' that are inevitably open to accusations of double-standards and bias, tainted the debate and turned their statements into self-fulfilling prophecies. The debate was divisive and ineffectual, and as expected, there was no reflection on how the space in the Council could be used to seriously address the human rights violations in Belarus. The State has still not allowed OHCHR access into the country, which was requested under Resolution 17/24 of June 2011 in order to provide a report on the situation to the Council in June 2012. Belarus stated bluntly that it would not cooperate with a politicised mandate.

In relation to **Burundi**, the mandate of the Independent Expert was brought to a formal end, following the establishment of a national human rights institution (NHRI). While the Independent National Human Rights Commission has been established, it is still encountering serious funding and political challenges. It is therefore impossible to discern at this stage whether it is functioning 'effectively' as required in the resolution. However, no State challenged the resolution. It will be interesting to see if the Commission will choose to provide updates to the Council – since it can participate like any NHRI in the Council's general debates on any issue – despite the absence of a dedicated report on Burundi.

Finally, the mandate of the **Special Rapporteur on Cambodia** was renewed for a further two years (exceptionally, given the usual one-year renewal of country mandates). A resolution calling for the General Assembly to readmit Libya as a member of the Council was adopted without a vote.

Adoption of UPR outcomes

During its 18th session, the Council adopted the UPR outcomes of 16 states. The adoption of the report of the review of Papua New Guinea was postponed until the end of the Council's session due to the Government's request for more time to reach a decision on pending recommendations. At the last minute, however, the Council was able to adopt the outcome on Papua New Guinea, thereby safeguarding the 100 percent adoption rate of the first cycle to date.

The majority of States under review adopted the good practice of submitting a written addendum to the report, containing their views on recommendations, conclusions, voluntary commitments, and replies presented. Denmark, Palau, Somalia, Seychelles, and the Solomon Islands had left all their recommendations pending until the Council's adoption of the outcome process during the 18th session. While no State under review had immediately accepted all the recommendations, Greece distinguished itself by accepting 112 of the 124 recommendations.

Participation in the adoption process differed from country to country. Interest in the majority of State reviews was low, usually with intervention from four States and approximately six NGOs. Only for Somalia, Singapore and South Sudan was there a considerable level of interest, with more than 10 States and NGOs providing their comments for each of the reviews.

Recommendations in relation to the decriminalisation of same-sex conduct continue to be largely rejected. For instance, the Solomon Islands claimed that in order to amend legislation and decriminalise same-sex conduct, it would require further national consultations. On the other hand, Suriname indicated that its Constitution guarantees protection against discrimination and claimed that recommendations relating to sexual orientation and gender identity are already implemented.

In general, recommendations related to the ratification of international treaties, conventions, the fight against domestic violence, and promotion of gender equality and judicial reforms were accepted by most States under review. Additionally, the Seychelles emphasised its agreement to extend the requested invitations for visits of special procedures. Sierra Leone and the Seychelles also indicated that mainstreaming gender concerns and implementing national gender plans is an ongoing process and a priority.

¹⁵ In the words of a seasoned Council diplomat the initiative 'disappeared before it appeared'.

PREVIEW OF THE NEXT COUNCIL SESSION

Most notably, at the next session of the Council, a panel discussion on sexual orientation and gender identity will be held. The panel discussion was called for at the 17th session of the Council.¹⁶ There will be room for civil society representation on the panel. Reflecting the inclusion of gender identity alongside sexual orientation in the resolution, it would be ideal to ensure that the speakers invited are able to represent the different concerns and challenges faced in both of these areas. South Africa, as the lead State on the resolution, will work with OHCHR to devise the panel. The study commissioned by that resolution, on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, is in the course of being drafted.

Other highlights of the 19th session will include the first report of the Special Rapporteur on the situation of human rights in Iran, the reports of the special rapporteurs on Myanmar and the Democratic People's Republic of Korea, the report of the Independent Expert on the situation of human rights in Côte d'Ivoire, and follow-up reports to Council resolutions on Libya, Syria and Yemen. The Special Rapporteur on human rights defenders will also present her annual report to the 19th session. Finally, the Council will appoint the mandate holder to the post of Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence.¹⁷

Syria: China and Russia veto efforts to end human rights abuses by Syrian authorities

On 4 October, the Security Council voted on a draft resolution presented by France, the UK, Germany, and Portugal. The draft resolution¹⁸ had condemned the violent crackdown against pro-democracy protesters by the Syrian authorities, and indicated the Security Council's readiness to consider imposing sanctions if the Syrian authorities ignored its calls. It had also emphasised an 'inclusive Syria-led political process' to resolve the crisis, which should aim at 'effectively addressing the legitimate aspirations and concerns of Syria's population.'

Nine of the Council's 15 members voted in favour of the draft text (Bosnia and Herzegovina, Colombia, France, Gabon, Germany, Nigeria, Portugal, the UK, and the US) and four States abstained (Brazil, India, Lebanon, and South Africa). Despite numerous concessions to the text by European States, it was ultimately vetoed by China and Russia.¹⁹ An overarching concern in negotiations was

the possibility of whether the resolution would lead the Security Council into military action, given the recent Libyan situation.²⁰ Russia and China also opposed any mention of future sanctions against Syria.

Earlier in the summer, the Security Council issued a presidential statement condemning the Syrian authorities for 'widespread violations of human rights, and use of force against civilians'. It called on the authorities to respect their human rights obligations, and to hold accountable those responsible for the violence (S/PRST/2011/16, 3 August). In August and September, the Security Council was briefed on the situation in Syria by the Secretariat, including by the High Commissioner for Human Rights on 18 August. This followed the release of the report of the fact-finding mission mandated by the Human Rights Council to investigate the violent repression in Syria (mandated by the Human Rights Council at its 16th special session on 29 April 2011). The High Commissioner encouraged the Security Council to consider referring the situation in Syria to the International Criminal Court, a call that remains unheeded. ■

¹⁶ A/HRC/RES/17/19 at <http://bit.ly/rqSK9k>.

¹⁷ See <http://bit.ly/t2h4S5>.

¹⁸ The draft resolution, S/2011/612, is available at <http://bit.ly/e69egO>.

¹⁹ It was the first double veto by Russia and China since July 2008 when they vetoed proposed sanctions against Zimbabwe. In January 2007, they also vetoed a resolution on Myanmar.

²⁰ In Russia and China's view, the North Atlantic Treaty Organization's (NATO) military operation in Libya exceeded the mandate it had been given through the Security Council resolution in March 2011. Russia and China abstained in the vote on that resolution on Libya, which empowered a no-fly zone and 'all necessary measures' to protect civilians at risk from Libyan authorities.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

A focus on traditional values and the universality of human rights



Photo: Caleb Starrenburg

Dormition Cathedral, Moscow. A resolution put forward by the Russian Federation requests the Advisory Committee to prepare a study on how traditional values can contribute to human rights.

The Advisory Committee of the Human Rights Council (the Committee) held its 7th meeting in Geneva from 8 to 12 August, 2011. In the role of Chair was Mr Latif Hüseyinov, who took over from Ms Purificacion V. Quisumbing. The Committee discussed several mandates given by the Human Rights Council (the Council) including the right of peoples to peace, the right to food, the enhancement of international cooperation in the field of human rights, and international solidarity.

Of particular interest was the Committee's discussion of its mandate under Resolution 16/3: 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.'¹ The resolution requests the Committee 'to prepare a study on how a better understanding and appreciation of traditional values of dignity, freedom and responsibility could contribute to the promotion and protection of human rights'.

Resolution 16/3 was presented to the Council in March 2011 by the Russian Federation. Despite concerns by human rights defenders and NGOs, and opposition from a sizeable number of States, it was adopted with 24 votes in favour, 14 against, and seven abstentions. The resolution marked another step in the Russian Federation's attempt to legitimise the concept of traditional values within the international human rights discourse.

INTERNATIONAL DEVELOPMENT OF TRADITIONAL VALUES

The relationship of 'tradition' and human rights became part of debates at the international level in connection with harmful traditional practices, such as female genital mutilation (FGM). From the late 1950s onwards, this and other practices harmful to women and girls gradually received increased attention, until the Commission on Human Rights (the Commission) established a Working Group on traditional practices affecting the health of women and children. The Working Group met three times in Geneva between 1985-1986. Based on its report, the Commission requested the Sub-Commission on the Promotion and Protection of Human Rights to consider measures to be taken nationally and internationally to eliminate such practices. Mrs Halima Warzazi – then member of the Sub-Commission and two decades later a member of the Advisory Committee – was appointed by the Sub-Commission as its special rapporteur on this issue.² She submitted a report in 1991, which focused on traditional practices that adversely impacted on the health of women and girls, such as FGM, early or forced marriage, and son preference.³

During the meeting of the Committee, the Russian delegation said it wished to remove the negative connotations of tradition through its initiative, and to highlight common values found in all cultures and traditions. The Russian Federation's efforts in this regard go back to October 2009, when it had sponsored Resolution 12/21 setting up a seminar on traditional values and human rights. The stated purpose of the seminar had been to explore how traditional values can contribute to the promotion

¹ <http://bit.ly/naAhON>.

² See Mrs Warzazi's long history with the Sub-Commission at <http://bit.ly/nrk3fk>.

³ 'Son preference' refers to a range of values and attitudes manifested in many different practices, the common feature of which is a preference for the male child. Neglect of the girl child is the rule, but in some cases it can lead to selective abortion or female infanticide.

of human rights. However, the discussion during the seminar in October 2010 was divided between two main groups; those who argued that values rooted within traditions and cultures are not given sufficient recognition in the human rights framework, and those who warned about any legitimacy being given to alternative value systems that are not consonant with international human rights norms. Several NGO participants at the time expressed concern about the invocation of tradition and culture to justify human rights violations.

The Independent Expert on cultural rights, Ms Farida Shaheed, had also addressed the seminar. Her mandate was established in 2009, at least in part to address the often negative framing of tradition and culture at the international level, and to find ways of protecting cultural rights. The resolution establishing the mandate also notes 'that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope'.⁴ Addressing the seminar, Ms Shaheed reiterated that traditional values should never be allowed to undermine human rights. It was in follow-up to this seminar that the Russian Federation presented Resolution 16/3 to the Council in March 2011, tasking the Advisory Committee to study the issue.

DISCUSSION AT THE 7TH SESSION

The Advisory Committee held two meetings to discuss its mandate from the Council; one as part of the official agenda, and one with NGOs.

In setting out the intentions behind its initiative, the Russian delegation explained to the Committee that the aim was not to undermine the universality of human rights or to introduce cultural relativism. It argued that it wanted to contribute to the promotion of human rights and to provide them with 'additional legitimacy'. The delegation stated it wanted to 'bridge the gap between the existence of human rights standards and their implementation', a task made difficult because human rights were often 'understood as a western concept', and not seen as 'relevant to the context of non-western communities'. The Russian delegation argued that using traditional values as a vehicle to promote human rights would be a way to bridge this gap. The particular traditional values the Committee is asked to focus on in this regard are those of dignity, freedom, and responsibility.

This understanding of the mandate was picked up on by several Committee members, including Ms Mona Zulficar, Mr Ahmer Bilal Soofi, Mr Obiora Chinedu Okafor, and Ms Anantonia Reyes Prado, who saw the purpose of the mandate as being to focus on how traditional values could promote human rights, and support the implementation of universal human rights standards. As long as those universal standards are placed at the forefront, they argued, there can be no danger of undermining them.

This argument assumes, however, that there is no disagreement about what universal human rights standards consist of. Particularly within debates at the Human Rights Council, those standards have often been questioned, if not undermined by some States. For instance, during explanations of vote on the resolution entitled 'Human rights, sexual orientation, and gender identity'⁵ at the 17th session of the Council, it was evident that several States have a limited interpretation of the universality of human rights. For these States, it is not clear that the universality of human rights means that human rights apply to all people, regardless of their sexual orientation or gender identity. For example, according to Pakistan (speaking on behalf of the Organization of the Islamic Conference), the resolution attempts to establish new rights by misinterpreting the *Universal Declaration of Human Rights*. Echoing the point, Nigeria said the resolution fell outside of international human rights principles. According to the limited understanding of universality voiced by these States, promotion of human rights would not include a requirement to ensure non-discrimination on the grounds of sexual orientation or gender identity.

In this light, it is crucial that the Committee sets out clearly what it means by 'universality of human rights'. Failing that, there is a risk the report produced could legitimise the concept of traditional values, without ensuring that traditional values cannot be used to undermine universal human rights standards.

The focus of Resolution 16/3 on the so-called traditional values of dignity, freedom, and responsibility also points to the possibility of such an outcome. Several members of the Committee⁶ noted that there is no agreed understanding of these values. Mr Wolfgang Stefan Heinz and Mr Shigeki Sakamoto referenced two written NGO statements, setting out different interpretations of these values between different cultures. Dignity, for example, is often traditionally linked to perceptions of gender roles in a society; in some contexts placing the dignity of a woman in her role as wife and mother. The lack of a common understanding of those values means Committee members need to be exceptionally clear in how they define these values.

The particular emphasis that has been placed on the notion of 'family' as a vehicle for promoting traditional values is also worrying. The resolution setting up the Advisory Committee mandate 'notes the important role of family, community, society and educational institutions in upholding and transmitting these values (...) and calls upon all States to strengthen this role through appropriate positive measures'. In the meeting of the Advisory Committee, Mr Vladimir Kartashkin described this paragraph as one of the most important points of the resolution. Mr Dheerujall Seetulsingh raised the question as to whether the report should contain a section on this issue, saying family is important 'even in the west' and it is a misconception to think otherwise. Attempts to note the

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

5 A/HRC/17/L.9/Rev.1 available at <http://bit.ly/rqSK9k>.

6 Mr Seetulsingh, Mr Heinz and Mr Sakamoto.

plurality of forms that family can take on were unsuccessful during negotiations on the resolution. However, Ms Laurence Boisson de Chazournes sounded the only note of caution on this issue during the Advisory Committee meeting. She noted the definition of family is plural and varies across cultures, which should be respected.

It was also worrying that several members of the Committee took the mandate to require a focus on only positive traditional values.⁷ For example, Ms Zulficar pointed out that Resolution 16/3 focuses on those traditional values that promote human rights, and indeed it explicitly rules out using traditional values to justify harmful practices that undermine universal human rights norms and standards. While she noted that there were negative values that undermined the rights of women, she also added that since these values do not promote human rights, they would not fall within the mandate of the study.

However, other members showed some awareness of the dangers of the mandate and the need to spell out the negative impact of some traditional values and practices. Mr Obiora Chinedu Okafor said the report should not give comfort to those who would use the concept of traditional values to impair human rights coverage of disadvantaged groups. Mr Heinz argued for an approach that includes consideration of the rights of different minorities and vulnerable groups, and how they are impacted by traditional values.

CONCLUSION AND NEXT STEPS

The Committee has set up a ten-member drafting group to work on the report.⁸ The drafting group is chaired by Mr Soofi, with Mr Kartashkin as rapporteur.⁹ Mr Kartashkin said the group intends to have an interim draft of the report completed by mid-February and a final draft prepared by August, in time for presentation at the 21st session of the Council in September 2012. The drafting group also welcomes input by NGOs.¹⁰

With as fundamental a concept as the universality of human rights at stake, it is crucial that the Working Group produces a report that avoids any possibility that traditional values could be used to undermine the universality of human rights. A report that does not do this could have long-term implications for the rights of those groups whose equal position in society is less widely accepted, most especially those of minority sexual orientations or non-standard gender identities. The run up to the Committee's next meeting in mid-February, when it will

present the first draft of the report, marks the best point to engage with the Committee to reiterate these dangers. After the first draft is prepared it will become progressively harder to make any significant changes to the report.

Other developments

The Committee adopted four other recommendations as follows.

First, the Committee has been tasked under Resolution 15/13 to prepare input to the work being carried out by the Independent Expert on human rights and international solidarity, on drafting a declaration on the right of peoples and individuals to international solidarity. Mr Chen Shiqiu presented an outline of the work carried out to date by the drafting group set up under this mandate. The Committee requested the group to work closely with the Independent Expert and to submit the final outcome to the 8th session of the Committee, in mid-February 2012.

Under Resolution 17/6, the Committee is also mandated to develop a draft declaration on the right of peoples to peace. It has been requested to report on its progress at the Council's 20th session. At this session, the Committee received a progress report from the drafting group working on the declaration, including information about responses to a questionnaire devised by the group. The Committee expects to receive a draft of the declaration at its 8th session.

The third additional mandate from the Council is on the right to food. This is a long-standing mandate, and the Committee has already drafted preliminary studies covering various aspects of this right, including on the advancement of the rights of peasants and other people working in rural areas, and on severe malnutrition and childhood diseases. Both of the studies are to be completed by the Committee for submission to the Council at its 19th session. Under Resolution 16/27, the drafting group is preparing to draft a study on the human rights of the urban poor, and on rural women and their enjoyment of the right to food. A draft of the former is to be presented to the 8th session of the Committee, and the latter to the 9th session.

Finally, the Committee is working on a mandate on the enhancement of international cooperation in the field of human rights. It is requested to submit proposals to the 19th session of the Council on ways and means to enhance such cooperation. The Chairperson of the drafting group has devised a questionnaire to seek views from States and other stakeholders to assist in preparing the proposals. The group is requested to submit these proposals for consideration at the 8th session of the Committee. ■

7 Mr Okafor, Mr Soofi, Ms Reyes Prado, and Ms Zulficar.

8 <http://bit.ly/qUyEB8>.

9 Although Mr Kartashkin expressed a willingness to serve as both Chair and rapporteur, he agreed to uphold the previous practice of the Committee, whereby these roles are shared.

10 There is no formal process in place for such engagement, so NGOs and other members of civil society should send materials to the Committee Secretariat at hrcadvisorycommittee@ohchr.org. It is also possible to email ARC International at tradval@arc-international.net regarding the process.

HUMAN RIGHTS COMMITTEE

Ethiopia, Bulgaria, and Kazakhstan under review



Photo: Alik Shahaf

Lalibela, Ethiopia.

The Human Rights Committee (the Committee) held its 102nd session in Geneva from 11 to 29 July 2011, during which it reviewed reports from Ethiopia, Bulgaria, and Kazakhstan.¹ Key themes of these reviews included women's rights, corruption, prisoner rights, and anti-terrorism legislation. The Committee chose not to review the human rights situation in Dominica in the absence of a report as originally planned, after the State announced its intention to submit its initial report (which should have been submitted in 1994) on implementation of the *International Covenant on Civil and Political Rights* (the Covenant).²

ENGAGEMENT BY STATES UNDER REVIEW

Delegations ranged from medium-sized (Ethiopia and Bulgaria, with nine and ten delegates respectively) to large (Kazakhstan, with 20 delegates). All delegations included high-level ministers and high-ranking government officials.

Ethiopia, represented by a delegation made up of various experts³ who were each able to address specific questions raised by the Committee members, provided generally informative responses. At times however, the Committee expressed dissatisfaction with inadequate answers, such as to questions concerning the absence of legal procedures to govern detention. The delegation refused to go into detail on specific cases of detainees, firmly stating that it would prefer to focus on defending the report, and denying that problems existed with this particular issue. Nevertheless, the Committee was persistent and referred back to these cases in an attempt to emphasise the gap in Ethiopia's legislative measures.

The Bulgarian delegation was cooperative and provided frank answers to the Committee's questions. Bulgaria focused on amendments to the criminal code and emphasised its new judicial approach to juvenile crimes, including the establishment of children's courts, as had been previously recommended by the Committee.⁴ The delegation⁵ consisted of various experts coming from legislative and civil service backgrounds and was therefore equipped to provide direct answers to the Committee's questions. However, the delegation was criticised for not providing clear responses about corruption cases in the country, and the protection of Roma people from discrimination.

The Kazakh delegation engaged positively, however the Committee expressed dissatisfaction with the delegation's failure to adequately respond to some questions. The Committee frequently followed up on unanswered questions and pressed the delegation for clearer information – which ultimately lead to the Kazakh delegation providing well-prepared and informative answers. Despite the delegation's overall cooperativeness, the Committee expressed dissatisfaction on a number of issues: particularly on the domestication of the Covenant within the national framework, the lack of clarity as to the number of documented cases of torture in Kazakhstan, and the issue of judicial independence.

1 All documents can be found at <http://bit.ly/nH7xC5>.

2 'Dominica undertakes to submit its Initial Report to the UN Human Rights Committee'. CCPR Centre. <http://bit.ly/qNoPyP>.

3 Ethiopia's delegation composition is available at <http://bit.ly/qRff0l>.

4 Concluding Observations of the Human Rights Committee: <http://bit.ly/q7OFyj>.

5 Bulgaria's delegation composition is available at <http://bit.ly/qkv2sx>.

NGO PARTICIPATION

A productive pre-session NGO meeting was held, at which a number of Committee members warmly received suggestions made by NGOs on improving cooperation with the Committee. The Centre for Civil and Political Rights (CCPR Centre) along with Amnesty International, presented a working document signed by 23 other NGOs.⁶ It recommended, amongst other things, that the Committee notify NGOs well ahead of time as to which countries would be reviewed at a given session in order to give NGOs sufficient time to prepare their interventions. It was also suggested that reviews of States in the absence of reports be made public. Committee members applauded this joint NGO proposal. Mr Krister Thelin and Mr Michael O'Flaherty said such initiatives illustrate why civil society participation is so important.

Committee members cited information received by NGOs several times when reviewing Ethiopia, Bulgaria, and Kazakhstan. The Committee echoed concerns from a joint NGO report about Ethiopia's Charities and Societies Proclamation, which limits freedom of association and expression, and forbids independent NGOs from working on human rights in the country.⁷ The Committee also requested further information about allegations that the Ethiopian Government has refused to register the Ethiopia Women Lawyers Association and has also allegedly frozen the bank accounts of the NGO Ethiopian Human Rights Council.

The Committee relied heavily on NGO information when reviewing Bulgaria on issues such as impunity, excessive use of force by security personnel, hate speech, discrimination towards minorities, and several other issues. The Bulgarian delegation acknowledged some of the troubling issues pointed out by NGOs, and indicated the Government was attempting to remedy several of the cited concerns, such as addressing police violence by investigating allegations and punishing officers found to be responsible for violations.

Kazakh NGOs were well coordinated and offered a comprehensive report to the Committee on the human rights situation in the country. NGOs also held an informal lunchtime briefing with Committee members to discuss issues of concern. During the review, the Committee notably used NGO information to question the accuracy of the Kazakh delegation's claim that there have only been three cases of torture within the country over the last four years.

CCPR Centre provided a live webcast of the meeting, marking the first time that Committee meetings have been broadcast online. This development was significant because it made the Committee accessible to human rights defenders at the national level and the wider public, including viewers who may not have otherwise had access to such information due to either lack of coverage or government censorship.

⁶ The statement can be found at <http://bit.ly/nSrW11>.

⁷ <http://bit.ly/qJAHmA>.

THEMES

Women's rights

Many of the meetings focused on gender equality legislation and the implementation of such legislation in the countries reviewed. Despite Ethiopia's implementation of the Federal Criminal Code's regulations criminalising bodily and psychological harm, through practices such as female genital mutilation (FGM) and child marriage, the Committee expressed dissatisfaction with the lack of enforcement of legislation regarding gender-based violence. In response, the Ethiopian delegation limited itself to stressing the effectiveness of its criminal code, especially criminalisation of bodily and psychological harm, which had resulted in a decline in cases of FGM from 78 percent of girls to 37 percent.

Another focus area was gender equality in society. Mr O'Flaherty requested more examples to illustrate the Ethiopian Government's commitment to promoting women's participation in the electoral process. The delegation responded to the Committee's concerns by referring to the national action plan drafted by the Ministry of Education, which reserved a 30 percent quota for women in education and employment. The delegation also referred to the strategic action plan by its Ministry of Justice, aimed at combatting violence against women and children.

Like Ethiopia, the Kazakh Government has a national action plan in place, entitled the Gender Equality Strategy, which aims to increase employment of women. However, the Kazakh plan is more ambitious than the Ethiopian one as it aims to have at least 30 percent of women in decision-making positions by 2016, which is 20 percent higher than the current level of 10 percent. Kazakhstan also stated that more than half of Kazakh businesses are run by women and that half the labour force is composed of women. Despite these claims, Committee members expressed concerns over women's roles in the workplace, noting that more women acquire higher education in the country than men, yet women remain grossly under-represented in high-level positions in both the public and private sectors.

Enforcement of legislation to combat gender violence in Kazakhstan was also a concern for the Committee. Ms Iulia Antoanella Motoc pointed out that the very few cases of reported domestic violence in the country suggests domestic law is ineffective and that female victims are unwilling to report violence. The Committee called on Kazakhstan to encourage victims of gender violence to report abuses, and also called on the State to thoroughly investigate cases of gender violence, prosecute perpetrators, punish those convicted and, where possible, offer reparation to victims.

Discussions about the specific reference to sexual or gender discrimination in national legislation dominated the Bulgarian review. At present, the country has a general anti-discrimination law but it does not specify an obligation of

equal treatment of men and women. This gap was identified by the Committee as a crucial area for revision. Committee members also expressed a particular concern about vagueness of the definition of domestic violence, and the need to include a gender-neutral definition in order to prevent gender stereotyping.

Corruption

Although little time was spent on the issue of corruption in Kazakhstan, Mr Thelin did raise the issue of judicial corruption. He cited an NGO claim that while the judicial selection process in Kazakhstan is promoted as being fair and transparent, in practice, one needs 'connections' to win appointment as a judge. The delegation firmly denied this claim, saying its judicial selection process is very competitive, with an estimated 100 applicants writing exams to compete for each opening, and the results are made public. Mr Thelin replied by raising the allegation that the executive not only interferes with the appointment of judges but also limits judicial independence. Mr Thelin noted that in 2010, 125 out of 2000 Kazakh judges were disciplined by the executive. Once again, the delegation denied allegations of judicial corruption, stating that appointments are made strictly on merit and that the selection process is monitored by the media and the public.

Similar concerns were raised by the Committee during the review of Ethiopia. In particular, the Committee criticised the handling of corruption cases by the courts and the arbitrary legal system. Although the delegation emphasised that its judiciary system is effective, and all those detained have access to lawyers, the Committee was still dissatisfied by the answers given; pressuring the delegation to review the system by which cases are selected for consideration by the courts.

Corruption was a greater focus in the review of Bulgaria, than in those of Ethiopia and Kazakhstan, with Committee members spending a significant amount of time questioning the State about the issue. While the Committee commended Bulgaria for adopting an action plan in 2010 to combat corruption, there was still concern about corruption in the justice system, and in particular, the lack of convincing results in fighting high-level corruption. Mr Thelin felt that a disproportionate amount of the State's attention was being spent on tackling judicial corruption, and not enough effort and time was being invested in combating corrupt police and security forces. The delegation defended the State's anti-corruption efforts noting, as an example, that police are not immune from the law and that 97 police officers have been recently investigated on allegations of police brutality. The delegation also claimed that efforts were being made to combat high-level corruption, saying there were twelve corruption cases pending in Bulgaria involving former government ministers. Similarly, the delegation pointed out that a further 22 corruption cases were pending against high-level State officials, such as mayors, governors, and high-level policemen.

Prisoner rights

The Committee pressed Ethiopia to provide detailed statistics of people being prosecuted and kept in detention, and requested the delegation to explain why the International Committee of the Red Cross (ICRC) had been denied access to prisons in the country. During the review, Ethiopia side-stepped the Committee's concerns and gave no clear answers about the number of detainees, nor did it explain why the ICRC was denied access to the prisons. Instead, the delegation emphasised the improved conditions of prisons and detention centres.⁸ The Committee also expressed strong criticism about prison overcrowding and the lack of available information about sentenced persons. Although the Committee pressured the delegation to provide precise statistics of death sentences carried out in the last three years, the dialogue about this matter remained weak and the requested information was not supplied.

Overcrowding in prisons was a concern in the reviews of Bulgaria and Kazakhstan, however, unlike Ethiopia, both States engaged with the Committee on the matter and demonstrated efforts to improve their prison situations. Poor prison conditions, including lack of access to drinking water, irregular supplies of water and electricity, and lack of medical services, were noted as needing improvement in Bulgaria. The Committee called on Bulgaria to respect prisoner rights and implement the commitment to build new prisons. The delegation reminded the Committee that Bulgaria is already taking action to reduce overcrowding, such as using electronic tagging, and since 2005, 52 percent of convicted offenders have been sanctioned with probation as a way of reducing the strain on the prison system.

The Committee's major concern in Kazakhstan was with the negligent treatment of prisoners. The Committee expressed great concern with Kazakhstan's prison system, noting reported cases of prison violence, self-mutilation, and death of prisoners. The delegation responded by saying the State is making an effort to improve prisoner treatment, and is continuing to allow civil society monitoring of its prisons. Overcrowding was another issue, however, like Bulgaria, the delegation of Kazakhstan said the State is taking concrete measures to improve its prison system, including by constructing large, modern prisons that are in line with international standards. The State also said it has been actively revoking some criminal laws, including, in January 2011, the decriminalisation of 24 formerly offensive conducts as a means of reducing its prison population.

Anti-terrorism legislation

The Committee asked Ethiopia for more information about anti-terrorism laws and laws of detention, and how the

⁸ The Government of Ethiopia said prisoners are provided with medication, food and other services, and access to their families, lawyers, and religious counselors.

legislation is applied in practice. In particular, the Committee members highlighted the existence of a vague definition, in Ethiopia's anti-terrorism legislation, of what constitutes a terrorist attack. It said such imprecision could allow for broad criminalisation of behaviours. The delegation strongly opposed the Committee's view and said the definitions used in its laws are not vague but, rather, are consistent with international anti-terrorism conventions and the Security Council's Resolution 1566. However, the Committee maintained its scepticism about the absence of clear legal procedures for the treatment of detainees and the vague framing of what constitutes a terrorist attack.

During the review of Bulgaria the Committee also raised concerns about the issue of terrorism, but was more concerned about the lack of clear and agreed documentation, and thus definition, of terrorist acts. Ms Motoc cited NGO information when questioning Bulgaria on the way it documents terrorist acts. She asked why Bulgaria claims only one incident of terrorism in the country during the reporting period, whereas NGO research has recorded nine. The Committee also expressed concern about other inconsistencies between information recorded by NGOs and the information provided by the Government.

Terrorism legislation was a prominent topic during the Committee's review of Kazakhstan. The issue of social or racial profiling was listed as a concern, with the Committee citing NGO reports of law enforcement officials targeting certain groups, such as asylum seekers and members of Islamic groups, in their efforts to combat terror. Ms Helen Keller expressed deep concern about the broad nature of anti-terrorism legislation and its possible infringement upon the rights of Kazakh citizens. The delegation tried to respond to these concerns by saying that Kazakh law has a comprehensive list of provisions that restrict the implementation of anti-terrorism laws, and that anti-terror laws are only used after the topic is thoroughly discussed between relevant stakeholders.

OTHER DEVELOPMENTS

At the 102nd session, the Committee adopted its General Comment 34 on Article 19 of the Convention, which deals with freedom of expression. A news article on the completion of the second reading of the draft is available on ISHR's website.⁹

Annual Inter-Committee Meeting

From 27 to 30 June, the 12th annual Inter-Committee Meeting (ICM) took place in Geneva, chaired by Mr Ronald Clive McCallum of the Committee on the Rights of Persons with Disabilities. Seventeen committee members from nine treaty bodies were present, including the Subcommittee on the Prevention of Torture.

Members agreed that the effective operation of the treaty body system depends on NGOs being able to engage at all stages of the review process. Mr Michael O'Flaherty, of the Human Rights Committee, voiced concern about creating formal guidelines for participation in review sessions, arguing that such modalities could be used to limit NGO engagement. The outcome of the discussion ('points of agreement'¹⁰) calls for training to be provided to NGOs on how to brief treaty bodies, to optimise the time available. It does not, however, specify who is to carry out the training.

Discussions on participation by national human rights institutions (NHRIs) focused on encouraging their greater engagement with treaty bodies. Mr O'Flaherty said limiting opportunities for engagement to A-status¹¹ NHRIs would prevent useful participation by those that do not meet this standard. The final points of agreement therefore encourage engagement by NHRIs in general.

An issue that enjoyed greater consensus was the protection of human rights defenders. Mr O'Flaherty stressed troubling reports from NGOs that human rights defenders continue to be targeted for their work with treaty bodies. The ICM adopted a point of agreement emphasising the legal obligation of States to ensure the safety of human rights defenders 'or any other person or organisation who engages with treaty bodies throughout the reporting process, (or) in the context of individual communications, inquiries and visits'.

Finally, Mr McCallum voiced concern that treaty bodies over-burden States with recommendations, and suggested either reducing the number of recommendations or making them more succinct. A point of agreement was adopted to this effect.

Regarding meetings of treaty bodies taking place outside Geneva and New York (called regional meetings), Mr Jean Zermatten, of the Committee on the Rights of the Child, warned that regional meetings would be costly and, since States reviewed during a given session are not selected by region, it could be challenging to find a mutually acceptable location for each session. The Committee adopted a point of agreement to explore working with OHCHR on potential regional meetings. ■

9 'Human Rights Committee adopts General Comment 34 on freedom of expression': <http://bit.ly/pA0QAI>.

10 <http://bit.ly/rX4hlu>.

11 That is fully compliant with the *UN Principles relating to the Status of National Institutions* (The Paris Principles).

COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

Spain attracts criticism for restricting individuals' legal capacity



Photo: Caitlin Margaret Kelly

The Committee questioned Spain's electoral law, which permits a judge to deprive an individual of his or her right to vote.

The Committee on the Rights of Persons with Disabilities (the Committee) met for its 6th session from 19 to 23 September 2011, to review Spain and to adopt the list of issues on Peru. It had been envisaged to also adopt the list of issues on China, however this was postponed as the translation of the State report had not been finalised. Key themes of Spain's review included the role of the *Convention on the Rights of Persons with Disabilities* (the Convention) in the national legal framework, the restricted legal capacity of persons with disabilities, and the issue of reasonable accommodation.

The Committee opened the session with a call to States, disabled persons' organisations (DPOs), and NGOs to lobby in support of the Committee's request to the General Assembly to expand its sessions from one week to three weeks biannually. The Committee faces an increasing backlog of work; there are currently 16 reports¹ pending examination and another 48 initial reports are overdue. The one-week biannually allocated to the Committee is insufficient to examine initial reports, and also to deal with subsequent periodic reports from States. In order for the mechanism to work sustainably and credibly, it is clear that more time and resources are urgently needed for the proper fulfilment of the Committee's mandate. Currently, the Committee is the treaty body with the least time for sessions,² and yet it has an ever-expanding number of States Parties to the Convention (106 States as of 25 October 2011). By comparison, the Committee on Migrant Workers meets three weeks per year, with 45 States Parties to the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. Other treaty bodies meet from eight to 15 weeks to examine up to 24 State reports per year plus individual communications.³ The General Assembly will be considering the Committee's request and should make a decision before the end of the year.

SECOND DIALOGUE

The overarching challenge of time and resources did not affect the Committee's focus and impetus in engaging in its second dialogue with a State. The discussion between the Committee and the Spanish delegation was rich. Country rapporteur, Mr Torres Correa (Ecuador) opened the questions with a brief overview of gaps where further information was required.

These included information on:

- disaggregated data on persons with disabilities, including children and their families, living in poverty
- assistance available to live independently, and assistance for persons with disabilities in prison
- specific programmes targeting women with disabilities
- inclusion of children with disabilities in the national action plan on children

1 By the end of the 6th session, the following State reports had been submitted to the Committee: Argentina, Australia, Austria, Azerbaijan, Belgium, China, Costa Rica, Ecuador, El Salvador, Germany, Hungary, Mexico, Paraguay, Peru, Republic of Korea, and Sweden.

2 The Sub-Committee on the Prevention of Torture also meets for one week biannually, however it does not have the same traditional functions as treaty bodies, such as examining State reports.

3 The Committee on the Elimination of Discrimination against Women meets for 15 weeks per year (including working groups on the pre-session and Optional Protocol); the Committee on the Rights of the Child meets 12 weeks per year (including for pre-session working groups); the Human Rights Committee meets for nine weeks per year; the Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, and Committee against Torture each meet for eight weeks per year (the Committee against Torture was granted an extra week per session by the General Assembly for years 2011 and 2012).

- the criteria for identifying and assessing a person with disabilities for the purposes of access to social services
- accessibility measures for persons with disabilities in their homes, and access to recreation in their communities
- establishment of quality health services
- training for public sector workers on disability issues.

A common theme of the dialogue was the status of the Convention within the national legal framework. While it was frequently repeated by the delegation that fundamental rights and freedoms must be interpreted in light of internationally ratified treaties (by virtue of Article 10(2) of the Spanish Constitution), contradictory practices were identified by the Committee. For example, the delegation claimed that European Union (EU) directives prevent Spain from excluding private companies from public procurement tenders, even if quotas established in Spanish law for the employment of persons with disabilities are not respected by those companies.⁴ Mr Torres Correa and Mr Langvad said EU directives could not serve to absolve the State of its obligations under the Convention, and that Spain should go beyond the minimum requirements of EU directives to ensure it promotes and protects the rights of persons with disabilities.

Mr Gombos and Ms Maina posed several questions regarding the legal capacity of persons with disabilities, asking the delegation to explain how the current Spanish system of guardianship and trusteeship complies with the Convention's provision on equal recognition before the law.⁵ The delegation explained that the Spanish Supreme Court had issued an opinion on the matter in 2009, which deemed the Spanish mechanism to be one of protection of persons with disabilities, and regardless of its name – guardianship or assistance – it was in compliance with the Convention. The Supreme Court had concluded that the Spanish model was in compliance with the Convention, because a court must undertake an assessment of an individual's legal capacity in order to ensure proportionate assistance. Members of the Committee challenged this view, which contradicts the Convention's provision that all persons with disabilities enjoy legal capacity on an equal basis with others.

The Committee was assertive in its questioning of practices that apply to persons with disabilities who have had their legal capacity restricted, namely involuntary sterilisation and the denial of the right to vote. Ms Theresia Degener and Ms Fatiha Hadj Salah argued that the clause in the Spanish Criminal Code permitting forced sterilisation violates articles 12 and 17 on the right to physical and mental integrity. In response, the delegation claimed that involuntary sterilisation

was prohibited by the law, except for persons with severe psychosocial disorders who are legally incapacitated, in accordance with judicial safeguards, and that this had been confirmed by a Constitutional Court decision in 1994.⁶

Similarly, Committee members⁷ were vocal in questioning of Spain's electoral law, which permits a judge to deprive an individual of his or her right to vote. Mr Langvad enquired about the aim of this denial – whether it was to protect persons with disabilities or to protect society. He also reminded the delegation that the essence of the right to vote is that one's vote cannot be questioned. In response to the delegation's claim that the deprivation of the right to vote occurs only exceptionally, Mr Gombos referred to a recent case in Spain in which the right to vote of a woman with disabilities was reinstated by a court. He observed that the high profile nature of the case confirmed that such restorative action by the courts is exceptional, while deprivation of the right to vote remains standard practice. He also questioned the grounds on which a court could deny someone of his or her right to vote, in particular what type of evidence could be presented to support such a judgment.

CONCLUDING OBSERVATIONS⁸

Reasonable accommodation⁹ was a major theme in the Committee's recommendations. Despite its explicit incorporation into Spanish law, the Committee found the denial of reasonable accommodation was not systematically recognised as discrimination in practice. The Committee observed that the decision to provide reasonable accommodation was made conditional upon the severity of a person's disability. It also observed that there was a general lack of understanding of the concept of reasonable accommodation by public and private actors, including what constitutes 'accommodation' and what can be considered 'reasonable'. Consequently, the Committee said, Spain fails to respect several provisions under the Convention including the prohibition of discrimination,¹⁰ the right to education,¹¹ and the right to live in the community.¹² The Committee recommended that reasonable accommodation be provided regardless of the level

4 It must be noted that the EU directives in question (Directive 2004/18/EC on the coordination of procedures for the award of public contracts, and Directive 2004/17/EC relating to energy, water and transport) prescribe that companies can be excluded from public tenders on the basis of non-compliance with social legislation, including quotas for the employment of persons with disabilities (Recital 33 and articles 26 and 27, Recital 44 and articles 38 and 39 respectively).

5 Article 12 of the Convention.

6 Ruling 215/1994.

7 Ms Theresia Degener, Mr Stig Langvad, Mr Gábor Gombos, and Ms Maria Soledad Cisternas.

8 To read the Concluding Observations on Spain, visit <http://bit.ly/fyK4zi>.

9 Article 2 of the Convention provides that 'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.' Often confused with accessibility measures, reasonable accommodation is distinct because it applies in isolation to a particular case or a particular individual, whereas accessibility measures consist of adjustments and modifications that can be of benefit beyond an individualised instance. Additionally, whereas accessibility is subject to progressive realisation, reasonable accommodation is immediately applicable.

10 CRPD/C/ESP/CO/1. Para 20.

11 Ibid. Para 44.

12 Ibid. Para 40.

of disability, and that guidance, awareness raising, and training be provided to public sector personnel to ensure understanding of the concept of reasonable accommodation.

Other significant recommendations included:

- That the State abolish the disability-based distinction in law that permits abortion to be conducted beyond 14 weeks where there is a risk of serious anomalies in the foetus and when an extremely serious and incurable illness is detected in the foetus.¹³
- That the State abolish the administration of medical treatment without the full and informed consent of the individual concerned, including the sterilisation of persons whose legal capacity is not recognised.¹⁴
- That the State allocate the necessary funding to enable persons with disabilities to better integrate in their communities, enjoy the freedom to choose their residence on an equal basis with others, and access a full range of in-home, residential and other community services for daily living, including personal assistance. The provision of the latter should be based on individual need and not reserved for a certain class of disability, nor restricted for certain purposes (such as only education and work).¹⁵ This was the first time the Committee has included a recommendation concerning the right to live in the community.
- That all legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status, or place of residence have a right to vote. In particular, it should not be possible for a judge to strip an individual of his or her right to vote even on a case-by-case basis.¹⁶

A manifest weakness of the Concluding Observations relates to the recommendation on the right to education, and in particular, the references to 'special school' and 'special classes', which do not figure anywhere in the text of the Convention. In Spain, whilst there is a positive trend of inclusion in education, decisions on placement of children with disabilities into special schools or special classes are often taken by the school authorities. These decisions are often unilateral, without genuine consultation with the child or his or her parents, and currently parents have no mechanism to challenge the decisions. The Committee's recommendations to ensure consultation with parents and the possibility of an appeal against such decisions fall short of guaranteeing the implementation of the right to inclusive education for all children as enshrined in Article 24. On the contrary, these recommendations risk clouding the central focus of this provision, i.e. inclusion.¹⁷

CIVIL SOCIETY PARTICIPATION

There was strong civil society input to the Committee's work on Spain and Peru, with the participation of two representatives

from each of the respective national DPO coalitions – Comité Español de Representantes de Personas con Discapacidad (CERMI)¹⁸ for Spain and Confederación Nacional de Personas con Discapacidad del Perú (CONFENADIP)¹⁹ for Peru. The Committee had a private briefing from CERMI on Spain the day before the dialogue. It became clear during the dialogue with Spain that the Committee had greatly benefited from this exchange and the several written submissions. These included the CERMI parallel report, its specific submission on the list of issues, and its responses to the list of issues submitted for comparison with the Government's replies. With respect to Peru, the International Disability Alliance (IDA) hosted a side event at which CONFENADIP and Human Rights Watch presented their main concerns with respect to the implementation of the Convention to date. The theme of the right to vote emerged prominently, given the sweeping removal from the electoral registry of 20,000 Peruvian citizens with intellectual disabilities.²⁰

To read the Concluding Observations on Spain, the list of issues on Peru,²¹ and the submissions made by CERMI, CONFENADIP and others, visit <http://bit.ly/fyK4zi>.

NEXT SESSION

The 7th session of the Committee will be held in April 2011. The duration is yet to be determined pending the decision of the General Assembly. The Committee envisages holding a dialogue with Peru, and adopting lists of issues on China, Hungary, Argentina, and possibly Paraguay. Ms Degener and Mr Hyung Shik Kim are co-rapporteurs for China and Mr Rios Espinosa for Peru. Mr Tatic, Ms Pelaez, and Ms Quan Chang were named rapporteurs for Hungary, Argentina, and Paraguay respectively.

Information on the IDA

The International Disability Alliance (IDA) is the network of global and regional organisations of persons with disabilities (DPOs), currently comprising eight global and four regional DPOs. With member organisations around the world, IDA represents the more than one billion people worldwide living with a disability. For more information on IDA and its activities visit www.internationaldisabilityalliance.org. ■

Article by Victoria Lee of the IDA Secretariat. For more information on how to engage with the Committee on the Rights of Persons with Disabilities, email vlee@ida-secretariat.org

13 CRPD/C/ESP/CO/1. Paras 17-18.

14 Ibid. Para 38.

15 Ibid. Paras 39-42.

16 Ibid. Para 48.

17 Ibid. Para 44(b), (d).

18 CERMI is the umbrella group of Spanish organisations of persons with disabilities.

19 CONFENADIP, benefited from support from the Disability Rights Fund for its engagement with the Committee.

20 Since the 6th session, the Peruvian Government has reinstated the electors to the registry, thanks to the active advocacy of DPOs and NGOs.

21 The list of issues adopted with respect to Peru had not been made public at the time of writing.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Reviews of Costa Rica, Djibouti, Ethiopia, Italy, Nepal, Republic of Korea, Singapore, and Zambia



Photo: The Advocacy Project

School girls in Nepal. The representation of women, particularly in the public service, was an issue discussed in many of the State reviews.

The Committee on the Elimination of Discrimination against Women (the Committee) held its 49th session in New York from 11 to 29 July 2011. It considered the reports of eight State parties to the *Convention on the Elimination of All Forms of Discrimination Against Women* (the Convention): Costa Rica, Djibouti, Ethiopia, Italy, Nepal, the Republic of Korea (Korea), Singapore, and Zambia. Some of the key issues raised during the reviews were the integration of the Convention in domestic legal systems, the political participation of women, sexual orientation and gender identity (SOGI), and human trafficking.

ENGAGEMENT BY STATES AND COMMITTEE MEMBERS

State delegations varied in size, from Korea with 23 representatives to Costa Rica with seven. Women were well represented in the delegations with the notable exception of Nepal. The delegations varied in their approach to engagement with the Committee. Singapore offered the greatest level of detail in its responses and vigorously defended laws and policies that the Committee called into question. Other delegations were quicker to point out challenges, such as a lack of financial and human resources, entrenched gender stereotypes and traditional practices. The Committee was disappointed that Korea's answers were similar to those already submitted in its report and replies to the list of issues. Italy was criticised for ignoring reporting rules and submitting an excessively long and imprecise report. The Italian delegation also struggled to provide concise responses and left many questions unanswered. Costa Rica was also criticised for submitting an overly lengthy report, the majority of which cited information from 2006 or earlier. Meanwhile, the delegation of Ethiopia tended to ignore or deny controversial issues. For example, the delegation devoted considerable effort in an attempt to convince Committee members that sexual abuse by the Ethiopian army is not a problem, despite convincing evidence to the contrary. The Zambian delegation's responses generally lacked precision.

Committee members raised a diverse array of issues and were generally active in posing follow-up questions. Among the most active Committee members were Ms Patricia Schulz, Ms Dubravka Šimonović, Ms Pramila Patten, Ms Ruth Halperin-Kaddari, and Ms Nicole Ameline. The least active Committee members were Ms Meriem Belmihoub-Zerdani and Ms Barbara Evelyn Bailey. This was the first session for Ms Maria Helena Lopes de Jesus Pires, who generally kept a low profile. Ms Indira Jaising did not participate in the session.

NGO AND NHRI PARTICIPATION

Non-governmental organisations (NGOs) submitted reports for each State examined and several NGO representatives briefed the Committee on 11 and 18 July. However, NGO input varied considerably depending on the State being examined. The number of reports submitted ranged from three for Djibouti to 15 for Nepal.¹ No domestic NGOs submitted reports for Zambia or Ethiopia, and the Committee regretted that no NGO was present to brief the Committee regarding Djibouti. The Committee seemed receptive to the issues raised in the NGO reports and briefings, highlighting and seeking more information about several matters raised in them.

¹ Costa Rica 4; Zambia 4; Ethiopia 5; Italy 6; Singapore 6; Korea 7.

Notably, during the NGO briefing and the review of Ethiopia, several Committee members expressed concern about the new Charities and Societies Proclamation (the Proclamation), a law that prohibits Ethiopian charities from receiving more than 10 percent of their funding from foreign sources. The Proclamation has resulted in the freezing of the assets of the Ethiopian Women Lawyers Association, among others. The delegation of Ethiopia obstinately argued that, while the Proclamation's aims may not be satisfactory to others, it 'had not come to the session to convince Committee members of anything', but to tell the Committee 'frankly what the law is and what the stance of the Government is'. Committee members expressed concern that the Proclamation affects the right to freedom of association and assembly and has had devastating implications for many NGOs. In response, the delegation insisted the Proclamation does not affect the rights of citizens but rather prohibits foreign intervention in political activities.

The National Human Rights Commission of the Republic of Korea (NHRCK) and the National Women's Commission of Nepal were the only national human rights institutions (NHRIs) to submit reports, and the NHRCK was the only one present to brief the Committee. Regrettably, the exchange with the NHRCK lacked in substance and Committee members were told by the NHRCK that it would be inappropriate for the institution to evaluate the policies of the current Government.

MAIN THEMES

Integration of the Convention in the domestic legal system

Ethiopia faced criticism for insufficient knowledge of the Convention at the local level, including by local judges. In particular, the Committee expressed concern that relevant training programmes had ceased in 2008. The delegation did not answer the Committee's query on whether Ethiopia would ratify the Optional Protocol to the Convention.

In response to urging by the Committee, the delegation of Korea promised to look at the wording of the antidiscrimination law currently under review to ensure its compliance with Article 1 of the Convention. The Committee also pressed Korea for a timeframe for withdrawal of its reservations to the same rights and responsibilities of parents regardless of marital status (Article 16.1(d)) and on surnames (Article 16.1(g)). The delegation simply reported that progress on 16.1(d) had been interrupted by the end of the legislative period.

Italy was reproached for insufficiently addressing recommendations made by the Committee in 2005 and 1997 and not disseminating Italian versions of recommendations widely. The Committee also took up the concern raised during the NGO briefing that none of the Committee's General Recommendations have been translated into Italian.

Singapore faced repeated questions and sharp criticism regarding what the Committee perceived as an unwillingness

to fully domesticate the Convention. Several members questioned why Singapore would be a party to the Convention and not fully incorporate it into the domestic legal system. The delegation defended the State's approach, saying its laws were aligned with the Convention and that its dualist system, by which domestic laws take precedence, was used and respected by many other countries.

The Committee noted that gaps remained between the Convention and domestic law in Djibouti, due in part to the religious aspects of laws in the country. Examples cited include the exception to the minimum age of marriage of 18 years, and the lack of prosecutions for female genital mutilation. The delegation acknowledged that Djibouti lagged behind other countries.

Political participation of women

The Committee acknowledged the progress made regarding the political participation of women in Djibouti, welcoming the introduction of a 10 percent quota on candidate lists of political parties and 20 percent quota in senior civil service posts. However, the Committee was clear that the quotas were too low and expressed concern at the overall weak representation of women, in particular in decision making positions.

In its review of Nepal, the Committee welcomed the resolution of the House of Representatives calling for 33 percent representation of women in all parts of the State structure. However, reports that women compose only 13 percent of the civil service and have low participation in other fields have led several Committee members to question whether the quota was effective. The Committee also expressed concern at the temporary nature of the measure and the particularly low levels of participation of Dalit and indigenous women. The delegation of Nepal defended progress made from only 2 to 3 percent rate of female representation in the civil service.

The Committee praised Zambia's attainment of the 50 percent threshold for women's participation in decision-making positions in the High Court and Supreme Court. However, the Committee also expressed concern at the lack of temporary special measures in place to promote women's participation in political life more broadly.

Sexual orientation and gender identity

Singapore faced repeated questions from a number of Committee members on numerous inequalities faced by sexual minority women. The delegation continuously avoided the questions or tried to minimise the extent of discrimination. NGOs present during the dialogue were pleased at the extent to which the Committee held Singapore accountable on this issue, and the responsiveness of Committee members to the intersectional aspects of discrimination on the basis of SOGI.

The Committee followed up on discrimination against sexual minority women in Korea, which had been raised in NGO

submissions² and during the NGO briefing. However, the Korean delegation ignored the repeated questions posed by Committee members on whether the country's new anti-discrimination legislation would prohibit discrimination based on SOGI.

The Committee also addressed the issue in the dialogue with Costa Rica, citing NGO reports that lesbian women face extreme harassment, violence and arbitrary detention. The Committee questioned the delegation about the role of Catholicism in perpetuating discrimination. The delegation argued that a recent referendum, which had rejected same-sex unions, implied a change of mindset was required to enable progress. The Committee criticised Costa Rica's approach of waiting for the general population to become more progressive rather than enacting legislation to protect rights. It urged Costa Rica to launch a public sensitisation campaign, and to provide training to law enforcement officials and health service providers.

Trafficking

Trafficking was raised as a major concern with every State party under review. The Committee commended Ethiopia for its efforts to combat trafficking but also criticised the State for not working together with neighbouring countries, failing to address the root causes, and, citing outside sources, for having a 'dismal' track record with regard to prosecutions and punishment.

Italy was praised for elaborating its first national action plan against human trafficking. However, the Committee cited NGO reports that the trafficking law was being interpreted restrictively and some victims were being excluded. Furthermore, the Committee urged Italy to review a 2009 law that made illegal immigration a criminal offence so as to ensure trafficking victims do not fall into the category of irregular or illegal migrants.

The Committee remarked that the legal framework governing trafficking in Zambia was neither strong enough nor defined clearly enough. Additionally, the Committee said challenges remain regarding the implementation and monitoring of counter trafficking mechanisms. Finally, the Committee highlighted the issue of trafficking through marriage and child brokers.

The Committee devoted considerable attention to the issue of trafficking in Nepal, which the delegation acknowledged was still a major problem, despite numerous initiatives to try and combat the problem. However, the delegation denied allegations made by various outside sources that some Nepalese officials were involved in facilitating trafficking.

DRAFT GENERAL RECOMMENDATIONS

The Committee held a general discussion on women in armed conflict and post-conflict situations in an open meeting on

18 July 2011 to gather input from NGOs, specialised agencies and other UN bodies, as the Committee elaborates a general recommendation on the topic. The Working Group on the human rights of women in conflict and post-conflict situations is reportedly in the initial stages of the drafting process.³

A concept note circulated in advance of the general discussion outlined four critical thematic areas: access to justice, women's participation in peace building processes, violence against women, and women's economic opportunities in the post-conflict setting.

Statements were delivered by the following keynote speakers: Ms Margot Wallström, Special Representative of the Secretary-General on Sexual Violence in Conflict; Ms Radhika Coomaraswamy, Special Representative of the Secretary-General for Children and Armed Conflict; Ms Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences; Mr Juan Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Ms Jessica Neuwirth, Coordinator of the high-level panel on remedies and reparations for victims of sexual violence in the DRC.

The general discussion was well attended by NGOs and UN agencies, and more than 30 written submissions were received beforehand. Some of the principle issues addressed in the interventions included impunity, stigma, reparations, female combatants, participation in post-conflict reconstruction, root causes of sexual violence, intersectionality, and a gender-sensitive approach to disarmament, demobilisation and reintegration programmes. The Office of the United Nations High Commissioner for Refugees urged the Committee to ensure its work on the general recommendation does not delay work on the general recommendation on displaced and stateless women.⁴

OTHER DEVELOPMENTS

The Committee reported it is continuing its work on a general recommendation on access to justice, and a joint general recommendation with the Committee on the Rights of the Child on practices considered to be harmful to women and girls.

The Committee decided to establish a Working Group on working methods, to reduce Lists of Issues to no more than 20 questions and to impose a 25-page limit for replies. The Working Group will also consider ways of strengthening the role of the country rapporteurs and to ensure a more effective constructive dialogue. ■

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

3 The Working Group's name was changed to drop 'armed' from the title, to better reflect the range of relevant issues and prevent States from shielding themselves from criticism through international laws governing the treatment of civilians in armed conflict.

4 More complete coverage of the general discussion, by Women's International League for Peace and Freedom, can be found at <http://bit.ly/ptrcHo>.

THEMATIC FOCUS

THE UN TREATY BODY SYSTEM

P. 21

THE UN TREATY BODY SYSTEM

Protecting the integrity of the treaty body system: Pakistan's recent treaty action



Photo: DVIDSHUB

Residents of Khyber-Pakhtunkhwa province, Pakistan.

On 23 June 2010, Pakistan ratified the *International Covenant on Civil and Political Rights* (the Covenant) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). In doing so, the Government appeared to be upholding the pledges it had made when running for election to the United Nations (UN) Human Rights Council, and giving effect to recommendations made by several States under the Universal Periodic Review, that Pakistan should become party to the Covenant and to the Convention. The ratifications, however, came with reservations to eight of the Covenant's 27 substantive articles, and to seven of the Convention's 16 substantive articles. Many of these reservations proved to be incompatible with the object and purpose of each treaty.¹

This article considers the compatibility of one of these reservations with the integrity of the UN treaty body system, tracing NGO advocacy, and giving consideration to the consequences of the outcomes of Pakistan's treaty action.

COMPATIBILITY OF PAKISTAN'S RESERVATIONS WITH INTERNATIONAL LAW

A reservation is a unilateral statement purporting to exclude or modify the legal effect of certain provisions of an international treaty, including as it applies at the domestic level. Under the Vienna Convention on the Law of Treaties (the Vienna Convention), States Parties are able to enter reservations at the time of ratification, provided they are not incompatible with the 'object and purpose' of the treaty (Article 19(c)).

Many of the reservations lodged by Pakistan were incompatible with the object and purpose of the Covenant and the Convention because of their scope and generality, including by restrictively altering the content of certain rights. The rights affected by the reservations included non-derogable rights such as the right to life; freedom from torture and other cruel, inhuman or degrading treatment or punishment; and freedom from discrimination on the basis of gender.

A reservation to Article 40 of the Covenant raised significant concerns. Article 40 requires States Parties to submit periodic reports to the Human Rights Committee (the Committee), recording their domestic implementation of the Covenant. It also establishes the competence of the Committee to examine and comment on these reports. The Concluding Observations that result from this exercise stand as an authoritative interpretation of the reporting State's obligations, and are key to ensuring compliance by States with their obligations. The competence of the Committee to review the compliance of States with human rights obligations under the Covenant, through the establishment of a supervisory machinery, is an essential 'object and purpose' of the Covenant. The reporting process is also one of the principal avenues for human rights defenders to engage with the UN treaty system to influence the implementation by their governments of international human rights obligations.

¹ Pakistan entered reservations to articles 3, 6, 7, 12, 13, 18, 19, 25, and 40 of the Covenant; and to articles 3, 4, 6, 8, 12, 13, 16, and 28 of the Convention.

The Committee has already addressed the question of permissible reservations to the Covenant in its General Comment 24.² It there observed:³

‘The object and purpose of the Covenant is to create legally binding standards for human rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify; and to provide an efficacious supervisory machinery for the obligations undertaken.’

The Committee therefore affirmed that a State may not opt out of the obligation to periodically report to, and have that report considered by, the Committee.⁴ Pakistan’s reservation to Article 40 of the Covenant was therefore clearly incompatible with the object and purpose of the Covenant, and consequently impermissible under international law.

When reservations are made to an international treaty, all other States Parties have the ability to object to the reservation within a one-year period. If no objections to a reservation are lodged by the end of this twelve-month period, the reservation is considered to have been accepted.⁵ Pakistan’s reservation was submitted on 27 June 2010, giving other States Parties to the Covenant until 27 June 2011 to object.

THE ADVOCACY CAMPAIGN

A number of NGOs were concerned that Pakistan’s behaviour could set a dangerous precedent for other States wanting to follow suit, not only in relation to the *International Covenant on Civil and Political Rights* but also to other human rights instruments. Accordingly, they lobbied governments to impress upon them the need to intervene with Pakistan by objecting to the reservations. Advocacy efforts in Geneva, New York, and in capitals focused on two objectives: to achieve withdrawal of the reservations by Pakistan, and failing that, to persuade States to object to the reservations.

Pakistan’s response to challenges concerning the permissibility of its reservation to Article 40 was inconsistent. Almost immediately after lodging the reservation, Pakistan explained that this was a technical error and that it had in fact intended to lodge a reservation to Article 41 (concerning inter-State complaints). However, given that the inter-State complaint mechanism under Article 41 can only be activated by an explicit declaration in favour of such jurisdiction, this explanation was dubious. Nevertheless, agreeing that a technical error should not transform itself into a political issue, Pakistan indicated to States and NGOs that it would withdraw the reservation prior to 27 June 2011. Shortly before that date,

a Government press release announced that the President of Pakistan had directed that ‘almost all’ reservations to the Covenant and the Convention were to be withdrawn.

OUTCOME AND CONSEQUENCES

Despite this assurance, by the end of June 2011, Pakistan had failed to withdraw its reservations. In response, 16 States lodged objections to the reservations, with more States expected to follow.⁶ This is a significant outcome, demonstrating the important role of civil society in bringing issues that relate to the safeguarding of the international human rights system to the attention of States, and the ability of civil society to persuade States to take action. The fact that many States lodged objections to Pakistan’s reservation sets an important precedent that is likely to deter other States from lodging reservations to the same article, or equivalent provisions in other human rights treaties, in the future. It should also be noted that the issue was considered to be of such importance that it prompted the United States, Switzerland and Uruguay to lodge objections, despite never before having done so in respect of the Covenant.

The pressure exercised by the international community resulted in Pakistan ultimately withdrawing most of its reservations to the Covenant and the Convention.⁷ Unfortunately, Pakistan’s reservations to articles 3 and 25 of the Covenant remain in place. Despite having been modified, they undermine the ability of women in Pakistan to enjoy equal rights to men, and continue to impose a general limitation on the Pakistani population’s rights to participate in public affairs, to vote, and to have equal access to public services. As far as the Convention is concerned, Pakistan has not withdrawn reservations to articles 8, 28, and 30, reflecting its decision not to recognise the competence of the Human Rights Committee or the International Court of Justice in respect of inter-State disputes.

Several legal and practical consequences flow from Pakistan’s withdrawal of its reservation to Article 40 of the Covenant. If Pakistan had continued to reject the competence of the Committee under Article 40, it would most likely have argued not to be bound to submit reports on the implementation of the Covenant. Should that position have prevailed, it would have meant that civil society in Pakistan and around the world would have been less aware of the measures taken by the Government to implement the provisions of the Covenant, and less able to assess the status of such implementation.

2 Human Rights Committee, *General Comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocol thereto, or in relation to declarations under Article 41*, UN Doc CCPR/C/21/Rev.1/Add.6 (1994).

3 Ibid, para 7.

4 Ibid, para 11.

5 Vienna Convention, Article 20(5).

6 States that are officially recorded to have lodged an objection are Spain, Poland, Greece, the Netherlands, Ireland, Uruguay, Austria, Canada, France, Australia, Sweden, Finland, US, Denmark, Switzerland, and Estonia. Four more States (Portugal, UK, Germany, and the Czech Republic) are said to have objected to the reservation to Article 40 but this has not been recorded yet.

7 On 21 September 2011, reservations to articles 6, 7, 12, 13, 18, 19 and 40 of the Covenant, and to articles 3, 4, 6, 12, 13 and 16 of the Convention, were withdrawn.

Human rights defenders would have been deprived of a key opportunity to work with their Government to improve its human rights record.

In response to the Article 40 reservation, the Committee stated that, even if Pakistan had continued to refuse to recognise the Committee's competence, the State would nonetheless be treated as a 'non-reporting State'.⁸ This means the Committee would have examined Pakistan's implementation of the Covenant in the absence of a report by Pakistan. For the review of non-reporting States, the Committee drafts a list of issues and sets a date for the review, inviting the State to send a delegation. The Committee then considers the State in a closed session, either in dialogue with a delegation or on the basis of any information that has been made available concerning the implementation of the Covenant, often only based on information from civil society. At the end of the examination, the Committee adopts Provisional Concluding Observations that are sent to the State without being published. These usually include a request that the State responds to the concerns in the Concluding Observations by a certain date. If the State fails to do so, the Concluding Observations are adopted and made public.

While the intended approach of the Committee is laudable, and probably represents the best alternative available, it would nevertheless have presented difficulties. Politically, the issuing of Concluding Observations by the Committee, despite a rejection by Pakistan of the Committee's competence to review periodic reports, would have given Pakistan arguments to dismiss the Concluding Observations as invalid or irrelevant. Notwithstanding the clear impermissibility of Pakistan's reservation under international law, and the inferred capacity of the Committee to treat Pakistan as a non-reporting State, there seems little doubt that such reasoning would have been used in an attempt to undermine the authoritative status of the Concluding Observations.

A further problem with this approach is that civil society would have been given little opportunity to actively participate in the periodic reporting process. Other than providing written submissions, human rights defenders from Pakistan would not have had the opportunity to formally engage with the Committee during the examination phase because the review would have taken place in a closed meeting. By not being able to attend the examination, important opportunities to submit supplementary information based on the discussion of issues would have been lost, thereby reducing the overall effectiveness of the examination process.⁹

Furthermore, at the end of the examination of a non-reporting State, the provisional Concluding Observations remain confidential for a period of 12 months. The implementation of Concluding Observations is one of the most important aspects of the periodic reporting process. Such a delay in making the Concluding Observations public has the potential to undermine, or at least impede, the role of local human rights defenders concerned with the implementation of international human rights obligations. It frustrates the ability of local NGOs to start a national dialogue concerning the recommendations made by the Committee and to lobby authorities to ensure concrete steps are taken towards implementation.

The wider implications of the outcome of Pakistan's treaty action concerning Article 40 are also important. The number of objections to the reservation constitutes a clear affirmation that the article represents an essential object and purpose of the international covenant, thus reinforcing the integrity of the UN treaty body system. Combined with the pressure brought to bear that ultimately saw the withdrawal of the reservation by Pakistan, a strong message was sent to States who may in the future become party to the Covenant: do not entertain the idea of objecting to the competence of the periodic reporting mechanism. ■

Article by Marina Mattiolo, Associate Legal Advisor, and Alex Conte, UN Representative, of the International Commission of Jurists.

⁸ See Human Rights Committee, *Statement on the reservation of Pakistan to Article 40*, 30 March 2011. The Committee initiated such a procedure in 2001, in accordance with rule 70 of its rules of procedure in UN Doc CCPR/C/3/Rev.9 (2011), in order to ensure the periodic review of the implementation of the Convention even in the case of States Parties failing to submit their report on time.

⁹ See rules 70(1) and 70(3) of the Human Rights Committee's rules of procedure, in UN Doc CCPR/C/3/Rev.9 (2011). It should be noted that the Committee is considering revision of this procedure such that the

examination would be held in open session: compare with rule 67(3) of the Committee against Torture's rules of procedure, in UN Doc CAT/C/3/Rev.5 (2011).

REGIONAL DEVELOPMENTS

THE ASIA PACIFIC FORUM P. 25

THE ASIA PACIFIC FORUM

16th Annual Meeting of National Human Rights Institutions



Photo: UN Photo/John Isaac

Winnowing rice, India. The Asia Pacific Forum of National Human Rights Institutions discussed challenges in realising the right to development.

The 16th Annual Meeting and Biennial Conference of the Asia Pacific Forum of National Human Rights Institutions (APF) was held from 6 - 8 September 2011. The conference was attended by the 15 full members of the Asia Pacific Forum – national human rights institutions (NHRIs) compliant with the Paris Principles¹ – associate members, and observers' institutions from Bangladesh, Kazakhstan, Kyrgyzstan, and Oman.² Two of the key themes covered during the session were the right to development, and the implementation of recommendations related to human rights, sexual orientation and gender identity (SOGI).

As in previous years, the meeting was preceded by an NGO conference organised by the Asian NGO Network on National Human Rights Institutions (ANNI). The majority of human rights defenders attending the ANNI conference are involved in monitoring the independence and effectiveness of their national human rights institutions (NHRIs), lobbying for improvements, and working for the establishment of such bodies where they do not exist. The aim of the NGO conference is to contribute to the discussions of the APF, and its agenda therefore mirrored the key issues to be considered at the APF meeting.

THE RIGHT TO DEVELOPMENT: EMPOWERMENT NOT CHARITY

Marking the 25th anniversary of the *Declaration on the Right to Development*,³ the APF considered progress made and challenges faced in realising this right, restating that 'the right to development is not about charity, but enablement and cooperation'.⁴ The complementarity and indivisible nature of economic and social rights, and civil and political rights is what underpins the realisation of the right to development.

In discussions held at the ANNI conference, participants noted that realising the right to development was a process, and that State obligations, to create and sustain an environment that enables individuals and communities to claim their rights, are key. Discussions also helped highlight the practical aspects of the realisation of the right to development. Beyond the conceptual framework, the role of human rights defenders and NHRIs was highlighted, in ensuring the transparency and accountability of duty bearers (States and businesses). In relation to this, the references developed by the APF Advisory Council of Jurists (ACJ) on 'corporate accountability and governmental responsibility'; and the 'right to environment', issued at the 13th and 11th annual meetings respectively,⁵ propose a number of practical measures for NHRIs to carry out, and issues on which to engage States in regard to the right to development.

'NO VIOLENCE PLEASE': A FOCUS ON SEXUAL ORIENTATION AND GENDER IDENTITY

Discussions on the question of human rights, sexual orientation and gender identity were guided by the ACJ's recommendations to NHRIs in the region, on how to work to eradicate discrimination based on a person's sexual orientation or gender

1 The *UN Principles Relating to the Status of National Institutions* (the 'Paris Principles') enumerate elements related to competence and responsibilities, methods of work and guarantees of independence and pluralism, indispensable to effective and credible NHRIs.

2 For more details on the national human rights institutions of the region see the Asia Pacific Forum website: www.asiapacificforum.net.

3 <http://bit.ly/p61ZE8>.

4 See APF 16 Concluding Statement: <http://bit.ly/nyuPRC>.

5 <http://bit.ly/r4Q2ob>.

identity. The recommendations focus on the need to develop concrete safeguards to prevent this kind of discrimination, both through legislative and policy measures.

The recommendations of the ACJ contribute to a developing global awareness of the need to address the problem of violence and discrimination on the grounds of sexual orientation and gender identity. In June 2011, the United Nations (UN) Human Rights Council adopted a landmark resolution expressing grave concern at these forms of violence and discrimination.⁶ The resolution called for the UN Office of the High Commissioner for Human Rights to prepare a global study by December 2011, on human rights violations that are committed on the basis of gender identity and sexual orientation.

The ACJ reference provides guidance on how international human rights law can be used to ensure non-discrimination and to end violations committed against lesbian, gay, bisexual, or transgender persons. The recommendations contained in the reference are structured in such a way as to enable a staged implementation acknowledging the challenges faced by NHRIs in some contexts. ANNI ended its statement to the APF by appealing to NHRIs to implement the recommendations,⁷ beseeching 'no violence please, no discrimination please and no criminalisation please'.

Also discussed at the APF meeting was the importance of protecting human rights defenders who advocate for SOGI rights. ISHR highlighted, for example, how criminalisation of consensual same-sex conduct is a violation of international human rights law in and of itself, and has a chilling effect on the potential for advocating for SOGI rights. Protecting SOGI human rights defenders, contesting hate crimes, and supporting the formal recognition of SOGI organisations were therefore recommended as key NHRI tasks.

CLOSING THE GAP BETWEEN BETWEEN NHRIS AND CIVIL SOCIETY

Another key issue discussed was the collaboration between NHRIs and NGOs. The number of NHRIs in the region has increased during the decade since the adoption of the 1999 Kandy Programme of Action, which outlines measures to deepen cooperation between NHRIs and non-governmental organisations in the Asia Pacific region. Time was dedicated at the ANNI conference to assessing the implementation of the Kandy Programme of Action. NGOs noted that efforts had been made, by NHRIs, the APF, and the International Coordinating Committee of NHRIs, to engage with civil society in areas such as training and the accreditation process.⁸ However, they also said that much still has to be done in regard to the original Programme of Action, including

establishing temporary attachments of personnel between NHRIs and NGOs, and coordinated work between NHRIs and NGOs in pressing for the ratification of human rights instruments.

In its conference concluding statement, the APF reaffirmed the role of NHRIs as 'defenders of the defenders', and noted civil society calls for NHRIs to advocate for 'the formal recognition of human rights defenders by governments through legislation or any other mechanism to ensure their protection'. Although the statement provided an overview of some key issues considered during the APF meeting, it did not contain sufficient commitments by members – an issue that has been repeatedly highlighted by civil society.

In its statement to the APF, ANNI indicated the need for a 'Kandy Plus Programme' to advance cooperation between civil society and NHRIs. Such a programme would need to reflect the growing opportunities for partnerships between NHRIs and NGOs, and their involvement in international mechanisms to enhance State accountability for human rights. At the UN level, for example, the Universal Periodic Review mechanism explicitly regulates the contribution of NHRIs and NGOs to the process, and is an important tool around which NHRIs and NGOs should collaborate.

NGOs need to engage effectively and strategically with NHRIs to ensure commitments made by States at the domestic, regional and international levels are implemented. NHRIs also have a responsibility to ensure human rights defenders are protected and able to carry out their work in favorable and non-threatening environments. The responsibilities of NHRIs need to be translated into concrete policies and actions to protect human rights defenders in specific contexts.

Lastly, NGOs need to continue to monitor the performance of NHRIs. At the ANNI conference NGOs rightly focused their attention on the accreditation of NHRIs by the APF, and the degree to which civil society is involved and their informed opinion considered when accreditation decisions are made. NGOs recalled the 2011 UN Secretary-General's report, which encouraged the Subcommittee on Accreditation 'to develop a more systematic cooperation with civil society organisations'.⁹ NGOs and NHRIs should play a mutually reinforcing role to ensure governments are held accountable for their human rights obligations. Collaboration between these groups must extend beyond the domestic level, and seize the growing opportunities that regional and international structures such as the APF and the UN offer to strengthen accountability and implementation of human rights on the ground. ■

6 See the Human Rights Council article in Issue 3, 2011 of the *Human Rights Monitor Quarterly* for more details: <http://bit.ly/oWNX00>.

7 <http://bit.ly/q2qLEP>. IGLHRC also made a statement at the Forum.

8 <http://bit.ly/oL1JPY>.

9 A/HRC /16 /77, February 2011, paragraph 25.

UPCOMING EVENTS

QUICK REFERENCE	P. 28
OPPORTUNITIES FOR NGO ENGAGEMENT	P. 31
Country examinations and reviews	P. 31
Meetings	P. 33
Elections and appointments	P. 35
Special procedures' visits	P. 36
USEFUL LINKS	P. 37
UPCOMING EVENTS NOVEMBER 2011 - MARCH 2012	P. 40

QUICK REFERENCE

NGO engagement opportunities by country
November 2011 – March 2012

The table below is a quick reference guide to countries that feature within the 'Opportunities for NGO Engagement' section of this publication (pages 31 - 36). Only those countries featured in one or more of the upcoming meetings are listed in the table.

ACRONYMS

UPR: Universal Periodic Review (p. 33)
CESCR: Committee on Economic, Social and Cultural Rights (p. 31)
CAT: Committee against Torture (p. 31)
CRC: Committee on the Rights of the Child (p. 32)
CEDAW: Committee on the Elimination of Discrimination against Women (p. 32)
HRC: Human Rights Committee (p. 32)
CERD: Committee on the Elimination of Racial Discrimination (p. 32)
SP Visits: Special procedures' visits (p. 36). Please note that at the time of writing only limited information was available regarding special procedures' visits.

	UPR	CESCR	CAT	CRC	CEDAW	HRC	CERD	SP Visits
Albania			×					×
Algeria	×				×			
Argentina		×						×
Armenia			×					
Australia								×
Azerbaijan				×				
Bahrain	×							
Belarus			×					
Bosnia & Herzegovina						×		
Brazil	×				×			
Bulgaria		×	×					
Burkina Faso								×
Cameroon		×						
Canada			×				×	×
Cook Islands				×				
Cuba			×					
Czech Republic			×					

	UPR	CESCR	CAT	CRC	CEDAW	HRC	CERD	SP Visits
Djibouti			×					
Dominican Republic						×		
Democratic Republic of Congo				×				
Ecuador	×	×						
Estonia		×						
Ethiopia		×						
Finland	×							
France								×
Germany			×					
Greece			×					
Grenada					×			
Guatemala						×		
India	×							
Indonesia	×							
Israel		×					×	×
Italy							×	
Jordan					×		×	×
Kuwait							×	
Laos							×	
Madagascar			×	×				
Mauritania		×						
Mexico			×				×	×
Morocco	×		×					
Myanmar				×				
Netherlands	×							
Niue Islands				×				

	UPR	CESCR	CAT	CRC	CEDAW	HRC	CERD	SP Visits
Norway					×			
Paraguay			×			×		
Philippines	×					×		
Poland	×							
Portugal						×	×	
Qatar							×	
Republic of Congo					×			
Russian Federation			×					
Rwanda			×					
Senegal							×	
South Africa	×							
Sri Lanka			×					
Thailand				×				
Togo				×				
Tunisia	×							
Turkmenistan		×				×	×	
United Kingdom	×							
United Republic of Tanzania		×						
Uruguay								×
Venezuela								×
Vietnam				×			×	×
Yemen						×		
Zimbabwe					×			

OPPORTUNITIES FOR NGO ENGAGEMENT

November 2011 – March 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>. For an overview of the UN treaty body system and its functions, you can download a free copy of ISHR's *Simple Guide to the UN Treaty Bodies* at <http://bit.ly/dB7B73>.

COMMITTEE AGAINST TORTURE

What's coming up?

The Committee against Torture will hold its 47th session from 31 October to 25 November in Geneva. It will consider the reports of Belarus, Bulgaria, Djibouti, Germany, Greece, Madagascar, Morocco, Paraguay, and Sri Lanka.

The Committee will hold its 48th session from 7 May to 1 June 2012, when it will review Albania, Armenia, Canada, Cuba, Czech Republic, Mexico, the Russian Federation, and Rwanda. For more information see <http://bit.ly/eknkCG>.

What can you do?

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

Information on the States to be reviewed at the 48th session is due by 20 April 2012. Information should be sent in electronic Microsoft Word format to registry@ohchr.org, jnataf@ohchr.org, and bcorvalan@ohchr.org, and will be posted on the Internet.

COMMITTEE ON ENFORCED DISAPPEARANCES

What's coming up?

The Committee on Enforced Disappearances will hold its first meeting from 8 to 11 November 2011 in Geneva. At this first session the Committee will focus on adopting its methods of work, rules of procedure, and reporting guidelines for States, and many of the sessions will be closed to the public. A meeting of the Committee with NGOs is provisionally scheduled for 15h00 on 11 November. A provisional agenda can be found at <http://bit.ly/rtGxPj> and the finalised programme of work will be made available at <http://bit.ly/oJf6dn>. NGOs that want to attend the meeting must confirm their participation by 1 November, by emailing the Committee Secretariat at ced@ohchr.org. There will also be a side event, with the International Coalition against Enforced Disappearances, 13h00 - 15h00 on 9 November.

What can you do?

NGOs who wish to attend the first session of the Committee should contact the Committee's Secretariat, at ced@ohchr.org for accreditation and for more information as to the space available for NGO engagement with the Committee in the programme of work. The final programme of work will be published on the Committee's webpage: <http://bit.ly/oJf6dn>.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

What's coming up?

The Committee on Economic, Social and Cultural Rights will hold its 47th session from 14 November to 2 December in Geneva. It will examine the reports of Argentina, Cameroon, Estonia, Israel, and Turkmenistan.

At its pre-sessional working group, from 5 to 9 December, the Committee will prepare the lists of questions for Bulgaria, Ecuador, Ethiopia, Mauritania, and the United Republic of Tanzania, which will be reviewed at a later session.

What can you do?

NGOs may participate in parts of both the 47th session and the pre-sessional working group following it. See <http://bit.ly/njgtxS> for more information.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

The Committee on the Rights of the Child will hold its 59th official session from 16 January to 3 February 2012 in Geneva. It will examine the reports of Azerbaijan, Cook Islands, Madagascar, Myanmar, Niue Islands, Thailand, Togo, and Vietnam. It will also review Azerbaijan, Thailand, and Togo under the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, and Azerbaijan, the Democratic Republic of Congo, and Thailand under the *Optional Protocol on the Involvement of Children in Armed Conflict*.

What can you do?

If you would like to submit information for upcoming examinations, you can contact the NGO Group for the Convention on 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>. Additional information on the 59th official session and how to submit information to the Committee is available at <http://bit.ly/pYKtg4>.

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 2012 in Geneva. It will examine the reports of Algeria, Brazil, Grenada, Jordan, Norway, the Republic of Congo, and Zimbabwe. For more information see <http://bit.ly/nAM47v>.

What can you do?

If you are working on discrimination against women in any of the countries under review, you can submit information to the Committee in Microsoft Word format to bsmith@ohchr.org, indicating whether the materials may be published on the Committee's website; and also in hard copy to CEDAW Secretariat, Office of the High Commissioner for Human Rights (OHCHR), Palais Wilson, 52 rue des Paquis, CH-1201 Geneva, Switzerland; e-mail: cedaw@ohchr.org.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

What's coming up?

From 13 February to 9 March 2012, the Committee on the Elimination of Racial Discrimination will hold its 80th session. It will examine the reports of Canada, Italy, Israel, Jordan, Kuwait, Laos, Mexico, Portugal, Qatar, Senegal, Turkmenistan, and Vietnam. An information note for NGOs will be published on <http://bit.ly/pVnmGX>.

What can you do?

The deadline for submissions has not yet been published; it will be included in the information note mentioned above. Information on NGO participation with the Committee can be found in *A Guide for Civil Society Actors*, which is available at <http://bit.ly/u01iBY>.

HUMAN RIGHTS COMMITTEE

What's coming up?

The Human Rights Committee will hold its 104th session from 12 to 30 March 2012 in New York. It will examine the reports of the Dominican Republic, Guatemala, Turkmenistan, Yemen, and Mozambique (in the absence of a report). Lists of issues will be prepared on the Philippines, Bosnia and Herzegovina, Paraguay, and Portugal.

What can you do?

NGO reports should be submitted by 31 December 2011. Information and dates on when and how to submit NGO reports for the future sessions are available on www.ccprcentre.org/next-sessions.

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

UNIVERSAL PERIODIC REVIEW

What's coming up?

The Universal Periodic Review (UPR) will hold its 13th session from 21 May to 1 June 2012 in Geneva. The countries under review are Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, the United Kingdom, India, Brazil, Philippines, Algeria, Poland, the Netherlands, and South Africa. The 13th session will be the first session of the second cycle of the UPR.

What can you do?

The deadlines for submissions of information to the 13th session are:

- 21 November: Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, and the United Kingdom.
- 28 November: India, Brazil, the Philippines, Algeria, Poland, the Netherlands, and South Africa.

If you would like to submit information on any of the countries to be examined in June 2012, when the 2nd cycle starts, please follow the guidelines found at <http://bit.ly/d07u3s>. Your submission should be sent to uprsubmissions@ohchr.org following the above-mentioned guidelines. For a tentative calendar of the second cycle see: <http://bit.ly/rmjTHC>.

MEETINGS

GENERAL ASSEMBLY'S THIRD COMMITTEE

What's coming up?

The General Assembly's Third Committee is holding its 66th session from 3 October to 22 November in New York.

What can you do?

If you work with an ECOSOC accredited NGO you may attend the Third Committee. You may also organise parallel events at premises outside the UN, such as in the Church Center to the UN, or at UN headquarters (in conjunction with a State or UN Secretariat). NGOs cannot deliver oral statements to the General Assembly's Third Committee. Information on the Third Committee is available at <http://bit.ly/pdbqgg>. ISHR's email news alert on the General Assembly (available at www.ishr.ch/subscribe) also provides information on the key issues and themes expected during the session.

WORKING GROUP ON ENFORCED DISAPPEARANCES

What's coming up?

The Working Group on Enforced or Involuntary Disappearances will hold its 95th session in Geneva from 1 to 11 November. The Working Group meets with NGOs and family members of the disappeared during the first three days of each session, and with representatives of governments to exchange views and information on the issue of enforced disappearances.

What can you do?

The deadline for making an appointment to meet with the Committee during its 95th session has already passed, but it may still be possible to make an appointment by emailing the Secretariat at wgeid@ohchr.org. For more information on how NGOs can engage with the working group see <http://bit.ly/poqfoc>.

INTERGOVERNMENTAL OPEN-ENDED WORKING GROUP ON THE RIGHT TO DEVELOPMENT

What's coming up?

The UN Intergovernmental open-ended Working Group on the Right to Development will hold its 12th session in from 14 to 18 November, in room XVI, Palais des Nations, Geneva. The Working Group will consider views of member States and other stakeholders on the work of the high-level task force on the implementation of the right to development and the way forward in implementation of this right.

What can you do?

The date for contributions has passed, but information and reports can be read on <http://bit.ly/oAliqx>.

FORUM ON MINORITY ISSUES

What's coming up?

The UN Forum on Minority Issues will hold its 4th session on 29 and 30 November, in Room XX, Palais des Nations, Geneva. The theme for this session of the Forum will be 'Guaranteeing the rights of minority women'. Key documentation for the Forum, including the provisional agenda and the concept note on the theme that will be discussed in this session, is available on <http://bit.ly/readHL>.

What can you do?

The Forum will seek to formulate concrete thematic recommendations from a broad array of experts. The 'Draft Recommendations aimed at guaranteeing the rights of minority women' will be made available to all participants, and will constitute the basis for discussion. The discussion will be aimed to provide guidance for those governments seeking to guarantee full respect of human rights for women belonging to any national, ethnic, religious, and linguistic minority. The recommendations will be reported to the Human Rights Council in the annual report of the Independent Expert on minority issues.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

What's coming up?

The Human Rights Council Advisory Committee will hold its 8th session from 20 to 25 February 2012, immediately prior to the 19th session of the Human Rights Council in Geneva. Exact dates have not yet been made public. At this session the working group established to produce a report on traditional values and human rights will present a draft to the Committee. Other studies currently being prepared by the Committee can be found here: <http://bit.ly/aRwX2l>.

What can you do?

NGOs can submit information to the Committee on any of the studies being prepared by the Committee. Information can be submitted to the Committee Secretariat, by emailing hrcadvisorycommittee@ohchr.org, who will ensure it reaches the relevant Committee members. NGOs may also attend the session itself and make oral statements. Written statements can be submitted two weeks in advance of the opening of the session to hrcngo@ohchr.org. More information about NGO engagement with the Committee can be found here: <http://bit.ly/9UJoyG>.

HUMAN RIGHTS COUNCIL

What's coming up?

The 19th session of the Human Rights Council will take place from 27 February to 23 March 2012 in Geneva. For an overview of key thematic and country issues see the Council's annual programme of work here: <http://bit.ly/uAGDsV>.

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 also register to deliver oral statements under all agenda items. Registration will usually take place online from 14h00 Geneva time on 24 February 2012. More information about the

Council and NGO participation (deadlines for written statements and room requests) is available at <http://bit.ly/dSkbHC> and www.ishr.ch/council.

COMMISSION ON THE STATUS OF WOMEN

What's coming up?

The 56th session of the Commission on the Status of Women will take place at UN headquarters in New York from 27 February to 9 March 2012. The priority theme is the empowerment of rural women and their role in poverty and hunger eradication, development and current challenges. The review theme is financing for gender equality and the empowerment of women (agreed conclusions from the 52nd session).

What can you do?

If you work with an ECOSOC accredited NGO you may attend the Commission session, but you must register to do so by 31 December. You can attend open (public) official meetings, submit written statements prior to sessions, organise and attend parallel events that take place during the session, and make oral statements on behalf of caucuses or coalitions during general discussions and interactive events (limited numbers because of time constraints).

NGOs without ECOSOC accreditation can organise and attend parallel events held outside UN premises, for example in the Church Center to the UN. To do so, they should contact the NGO Committee on the Status of Women (www.ngocsw.org), which is a group of New York-based women's NGOs in consultative status with ECOSOC.

NOTE: Because of space limitations in the North Lawn Building where the next session will take place, the Secretariat has reduced the numbers of attendees from civil society. The limit is 20 representatives per organisation.

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 2012 at UN headquarters 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. The special theme of the meeting will be the 'The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)'. A provisional agenda can be found at <http://bit.ly/qH53iG>.

What can you do?

The Special Rapporteur on the rights of indigenous peoples, Mr James Anaya, will hold individual meetings with representatives of indigenous peoples and organisations. The meetings are an opportunity to raise issues relevant to the Special Rapporteur's mandate. The meetings will be held in May 2012. Requests for a meeting should be sent by April 2012 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, consult the website here: <http://bit.ly/gQlvKj>.

ELECTIONS AND APPOINTMENTS

APPOINTMENT OF SPECIAL PROCEDURES MANDATE HOLDERS

What's coming up?

At the September 2011 session, the Human Rights Council established for a period of three years a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur's objectives will include gathering relevant information and making subsequent recommendations on national situations and violations of international

humanitarian law on the matter of truth and justice. The Special Rapporteur will report annually to the Human Rights Council and the General Assembly. The mandate holder will be appointed at the 19th session of the Council, and the deadline for applications to the role is 30 November. To find out more visit <http://bit.ly/6rmxeS>.

Furthermore, the Council established, for three years, a new special procedures mandate: Independent Expert on the promotion of a democratic and equitable international order. The mandate includes the objective of identifying possible obstacles to the promotion and protection of a democratic and equitable international order, identifying best practices and working in cooperation with States to foster the adoption of measures at the local, national, regional, and international levels. The mandate holder's first report will be presented to the Council at its 21st session. The mandate holder will be appointed at the 19th session of the Council.

What can you do?

NGOs can nominate candidates. Please check the following link for information on the nomination procedures: <http://bit.ly/6rmxeS>.

SPECIAL PROCEDURES' VISITS

You can stay up-to-date about upcoming visits by the special procedures mandate holders to countries around the world at <http://twitter.com/unrightswire> or join the OHCHR civil society mailing list at <http://conta.cc/c4paEC>. Unfortunately, there is no centralised location online at which to access information regarding special procedures' visits. At the time of writing, information about the following 2011-2012 visits was available:

- The Special Rapporteur on **human rights and countering terrorism**, Mr Ben Emmerson, will visit **Burkina Faso** from 7 to 11 November. See <http://bit.ly/vZKxTn>.
- The Special Rapporteur on **violence against women**, Ms Rashida Manjoo, will visit **Jordan** from 11 to 27 November. See <http://bit.ly/qKi1Ad>.
- The Special Rapporteur on **trafficking in persons, especially in women and children**, Ms Joy Ngozi Ezeilo, will visit **Australia** from 16 to 29 November. See <http://bit.ly/rznyBu>.
- The Special Rapporteur on **extrajudicial, summary or arbitrary executions**, Mr Christof Heyns, will visit **Mexico** from 21 November to 2 December. See <http://goo.gl/2HpB4>.
- The Special Rapporteur on **the sale of children, child prostitution and child pornography**, Ms Najat Maalla M'jid will visit **France** from 21 November to 2 December. See <http://bit.ly/s91hx1>.
- The Special Rapporteur on **the right to health**, Mr Arnand Grover will visit **Vietnam** from 25 November to 6 December. See <http://bit.ly/vzxK0o>.
- The Special Rapporteur on **the rights of indigenous peoples**, Mr James Anaya, will visit **Argentina** from 27 November to 7 December. See <http://goo.gl/CFtxb>.
- The Special Rapporteur on **freedom of opinion and expression**, Mr Frank La Rue, will visit **Israel** from 4 to 18 December. See <http://bit.ly/pYS1Gz>.
- The Special Rapporteur on **the human rights of migrants**, Mr François Crépeau will visit **Albania** from 5 to 13 December. See <http://bit.ly/txRles>.
- The Special Rapporteur on **the right to food**, Mr Olivier De Schutter will visit **Venezuela** from 15 to 22 January, and Canada from 7 to 15 May, 2012. See www.srfood.org.
- The Special Rapporteur on water and sanitation, Ms Catarina de Albuquerque, will visit **Uruguay** from 13 to 17 February, 2012. See <http://bit.ly/o9RTLm>.

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> ■

USEFUL LINKS

UN HUMAN RIGHTS BODIES

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

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

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/cmwr

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>

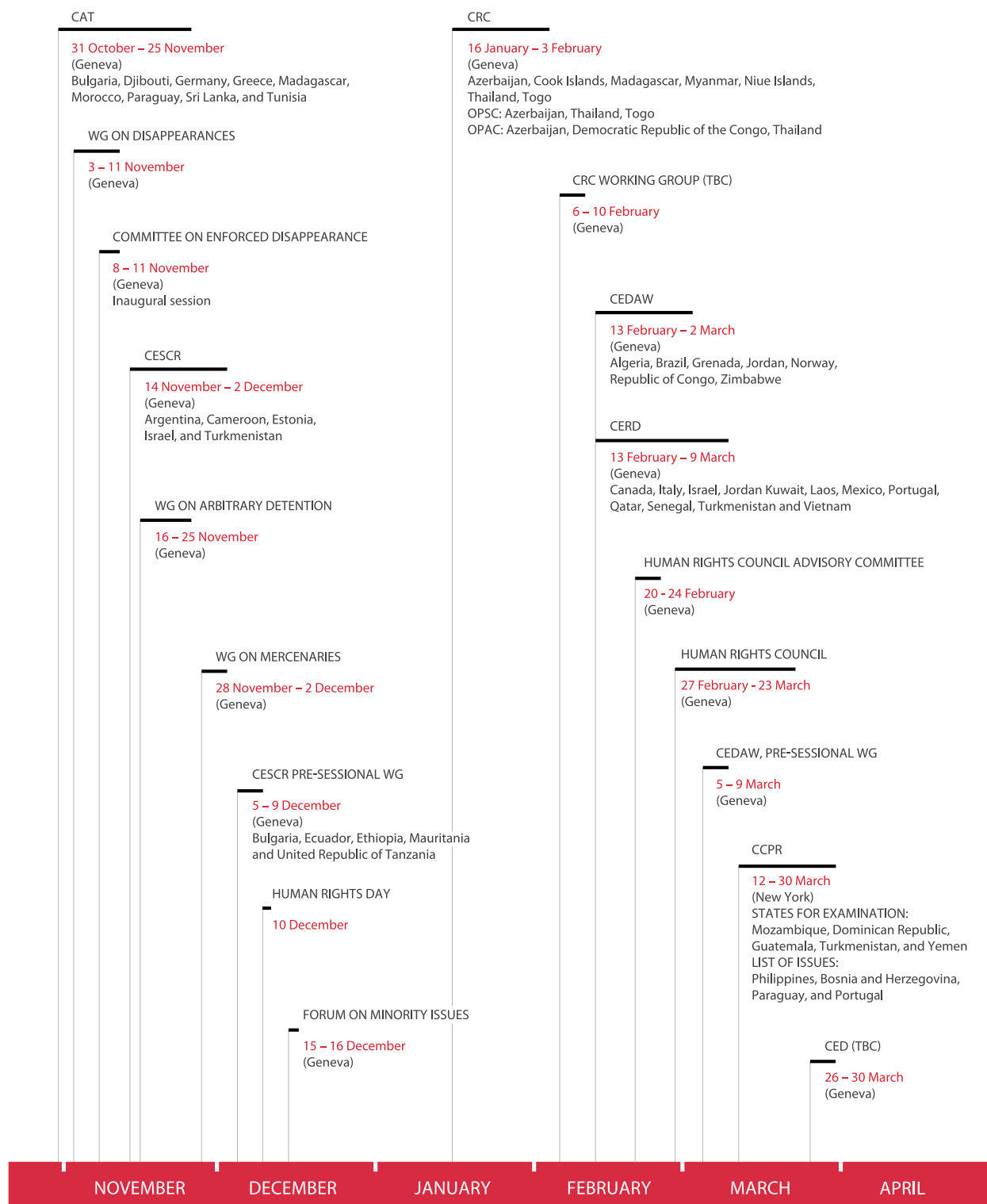
Inter-American Commission on Human Rights: www.cidh.org

NGO CONTRIBUTORS TO THIS ISSUE

International Commission of Jurists: www.icj.org

International Disability Alliance: www.internationaldisabilityalliance.org

UN MEETINGS:



UPCOMING EVENTS NOVEMBER 2011 – MARCH 2012