

HUMAN RIGHTS MONITOR

QUARTERLY



ISHR | INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

ISSUE 3/3 | OCTOBER 2010

- P1. SECURITY COUNCIL
Developments in Sudan, Nepal and DRC
- P15. HUMAN RIGHTS COMMITTEE
Focus on Cameroon, Colombia, Estonia, and Israel
- P27. THE TREATY BODY COMPLAINT SYSTEM
Recent decisions on individual complaints
- P36. UPCOMING OPPORTUNITIES
Meetings to look out for and how to prepare



With reprisals and attacks against human rights defenders featuring as a main theme of the High Commissioner for Human Rights' update to the 15th session of the Human Rights Council (the Council), this important issue is rightfully starting to receive more attention. The High Commissioner's speech highlighted the targeting of defenders who collaborate with the UN's human rights mechanisms, and the difficult national contexts in which they work (p. 4). This issue was also raised by NGOs during an earlier general meeting with the Committee on the Elimination of Racial Discrimination (p. 12), and featured during the examination of State reports by the Human Rights Committee (p. 15).

It is fitting then that this year's Human Rights Day, 10 December 2010, will mark the beginning of a year-long focus on human rights defenders by the Office of the High Commissioner for Human Rights. This year's event, with the slogan: 'Speak Up... Stop Discrimination', will particularly highlight the role of defenders who act to end discrimination. This fits well with ISHR's increasing focus on the issue of reprisals against defenders, and the need for more effective UN responses.



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.

Now celebrating our 25th anniversary, 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* is a new publication launched by the International Service for Human Rights in April 2010. It replaces the former *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 NGO/NHRI engagement 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.

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ACKNOWLEDGEMENTS

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



Irish Aid
Department of Foreign Affairs
An Roinn Gnóthaí Eachtracha

LAYOUT AND DESIGN

Sarah Song, Geneva.

COVER PHOTO

iStock Photo : Pilgrims with candles in Lourdes, France. A new Special Rapporteur on the right to freedom of peaceful assembly and of association was established at the Human Rights Council's 15th session (p. 4).

PRINTER

Print Carrier.

CLOSING OF THIS EDITION

1 November 2010.

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CONTENTS

INTERNATIONAL DEVELOPMENTS

| | |
|--|----|
| SECURITY COUNCIL | 1 |
| HUMAN RIGHTS COUNCIL | 4 |
| HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE | 9 |
| COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION | 12 |
| HUMAN RIGHTS COMMITTEE | 15 |
| COMMITTEE ON THE RIGHTS OF THE CHILD | 19 |
| COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN | 22 |

THEMATIC FOCUS

| | |
|----------------------------------|----|
| THE TREATY BODY COMPLAINT SYSTEM | 27 |
|----------------------------------|----|

REGIONAL DEVELOPMENTS

| | |
|--|----|
| A REGIONAL HUMAN RIGHTS MECHANISM FOR THE PACIFIC? | 32 |
|--|----|

UPCOMING EVENTS

| | |
|--|----|
| OPPORTUNITIES FOR NGO ENGAGEMENT | 36 |
| UPCOMING EVENTS DECEMBER 2010 - MARCH 2011 | 40 |

INTERNATIONAL DEVELOPMENTS

| | |
|--|----|
| SECURITY COUNCIL | 1 |
| HUMAN RIGHTS COUNCIL | 4 |
| HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE | 9 |
| COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION | 12 |
| HUMAN RIGHTS COMMITTEE | 15 |
| COMMITTEE ON THE RIGHTS OF THE CHILD | 19 |
| COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN | 22 |

SECURITY COUNCIL

Focus on referenda in the Sudan, UNMIN withdrawal from Nepal, and sexual violence in the DRC



Photo: UN/Tilak Pokharel

Nepal succeeded in its bid to oust the UN peacekeeping mission in Nepal (UNMIN).

THE SUDAN: SECURITY COUNCIL CONFIDENT REFERENDA WILL OCCUR ON TIME DESPITE LACK OF PROGRESS THREE MONTHS OUT

Like the Independent Expert on the Sudan, the Security Council (the Council) has called on parties to the Comprehensive Peace Agreement (CPA) to 'take urgent action' to ensure 'peaceful and on-time referenda' in Southern Sudan and Abyei on 9 January 2011.¹ In addition to lengthy delays to basic arrangements for the referenda, including voter registration, the Security Council is also concerned about the deteriorating humanitarian situation and escalation of violence in Darfur.² Without a political strategy to resolve the conflict in Darfur, there is concern a sustainable peace may elude the rest of the country.

Over the course of September, the Council intensified its focus on the Sudanese referenda. It received briefings, issued a press statement outlining the criteria for credible referenda,³ and prepared a mission to north and south Sudan in early October.⁴ Whilst on mission, Security Council members said that although the timeline was 'extremely tight', they were confident the referenda would be held on time, and that a range of post-referenda concerns, including citizenship and border demarcation, would be addressed.⁵

A number of initiatives taken by the UN Secretary-General in September may have contributed to this confidence. As requested by the parties to the CPA, Mr Ban Ki-moon appointed a three-member panel to monitor the referenda.⁶ Panel members undertook the first of many visits to the country in early October. The Secretary-General also organised a high-level meeting on the Sudan in New York on 24 September.⁷ It helped to focus international attention and mobilise resources to address the considerable political, financial and technical challenges to the referenda.

Nonetheless, even if the referenda are held on time and without incident, it remains to be seen whether they will 'reflect the will of the Sudanese people' and be broadly accepted.⁸ Should this not be the case, there is a risk that violence could return to the Sudan and derail the peace process. It is difficult to predict how the Council might respond in this situation, as its membership will change on 1 January 2011.

1 The referendum will decide whether Southern Sudan secedes from the rest of the country. On the same day, the residents of Abyei (an oil-rich area in the centre of the country) will vote separately to determine whether to retain Abyei's special administrative status in the north, or become part of the south.

2 The Council unanimously adopted *Resolution 1935* on 30 July 2010, thereby agreeing to extend the mandate of the UN-African Union peacekeeping mission in Darfur (UNAMID) until 31 July 2011. The resolution also condemned the attacks on civilians, peacekeepers and humanitarian personnel, and expressed 'deep concern' at the continuing restrictions placed on UNAMID's movement and operations by Sudanese authorities.

3 Press statement by Security Council President, 15 September 2010, available at <http://bit.ly/aftg9C>.

4 The mission to the Sudan was jointly led by the United States (USA) and United Kingdom (UK). It visited Khartoum, Juba (the capital of Southern Sudan), Abyei and Darfur between 4 and 10 October 2010. The mission also included a visit to Uganda, which was headed by the Ugandan Ambassador to the UN in New York.

5 Comment by Ambassador of the UK Mark Lyall Grant, UN news centre article, 11 October 2010, available at <http://bit.ly/byOI1V>.

6 The panel members are Mr Benjamin Mkapa (former Tanzanian President); Mr Antonio Monteiro (former Minister for Foreign Affairs for Portugal); and Mr Bhörjraj Pokharel (former Chairman of the Nepalese Electoral Commission).

7 The communiqué issued at the conclusion of the meeting is available at <http://bit.ly/c5oNR0>.

8 Press statement by Security Council President, 15 September 2010, available at <http://bit.ly/aftg9C>.

UN PEACEKEEPERS TO LEAVE NEPAL IN 2011, DESPITE STALLED PEACE PROCESS AND DEEP POLITICAL DISUNITY

On 15 September, Nepal succeeded in its bid to oust the UN peacekeeping mission in Nepal (UNMIN). This premature withdrawal of peacekeepers by the UN, at the request of the host Government, is the latest in a series this year.⁹ With Nepal now joining Chad and the Democratic Republic of the Congo, it is clear this concerning trend is not unique to the African continent.

Over the course of this year, a number of developments heralded the likelihood that UNMIN's days in Nepal were numbered. In May, when UNMIN's mandate was last renewed, Nepal had advised the Security Council to immediately begin to take steps to wind up its mission. Afterwards UNMIN had come under a 'flood of criticism', including accusations by the Nepalese Army that the UN was siding with the Maoists against the Government.¹⁰ Finally on 13 September, the Government and opposition parties reached the so-called 'Four-Point Agreement', under which they would complete the remaining tasks of the peace process by 14 January 2011, including the integration and rehabilitation of over 19,000 Maoist combatants. These developments left the Security Council little alternative but to agree to Nepal's request to extend the mission by only four months until 15 January 2011.

This unanimous decision by the Security Council (*Resolution 1939*) followed a frank and discouraging briefing on the state of Nepal's peace process by the Secretary-General's Special Representative and head of UNMIN, Ms Karin Landgren, on 7 September.¹¹ She reported the peace process was in serious jeopardy as a result of the 'gulf of mistrust between the parties', as well as internal divisions within the parties. The inability of the parliament to elect a new Prime Minister¹² was a further indication of the unlikelihood parties could overcome their differences and form a consensus government in the foreseeable future. The stalled political process was also blocking progress on drafting a new constitution.¹³ Each of these concerns was addressed by the Security Council in *Resolution 1939*, along with a very strong appeal that all political parties expedite the peace process and work together to find durable, peaceful and democratic solutions.

9 The UN will end its mission in Chad and the Central African Republic by the end of 2010, as requested by the Government of Chad. Its mandate in the DRC expires in June 2011, and the DRC Government has been very public in its desire to assume full responsibility for security thereafter. Further information is available in ISHR's second (July 2010) edition of the Human Rights Monitor Quarterly, see text boxes in the chapter on the Human Rights Council, available at <http://www.ishr.ch/quarterly>.

10 Report of Security Council meeting on 7 September 2010, available at <http://bit.ly/bgdINw>.

11 The report of the proceedings (S/PV.6377) is available at <http://bit.ly/bgdINw>.

12 The Prime Minister stepped down in July, and after three months and 12 rounds of voting, the Parliament has not been able to elect a successor. A caretaker government is in place.

13 The deadline for completing the constitution was extended by one year until 28 May 2011.

The UN's withdrawal from Nepal will bring an end to any monitoring of the arms and armies of both the Government and Maoist sides. It will also remove the stabilising effect that UN peacekeepers have had in the country. Longer-term UN assistance to Nepal will continue to be delivered by UN agencies. This includes the Office of the High Commissioner for Human Rights, which has operated in the country since 2005 and is responsible for monitoring the human rights situation during the peace process.

MASS RAPES IN THE DRC: SECURITY COUNCIL ACTS TO ADDRESS ITS FAILINGS

International media reports, which helped to bring to light mass rapes in the eastern DRC that occurred between 30 July and 2 August¹⁴, were a powerful demonstration to the Security Council of a series of failures of the UN system. Not only were there serious communication problems between peacekeepers and the civilians they were mandated to protect, but it appeared that early-warning mechanisms, such as the Special Representative of the Secretary-General (SRSG) on sexual violence in conflict, had only learnt of the rapes after a UN human rights team had conducted a fact-finding mission and made their findings public.¹⁵

The Security Council was united in its 'outrage' at the attacks, and within days made a statement to the press demanding all parties to the armed conflict immediately cease all forms of sexual violence and other human rights abuses. The statement also urged the DRC Government to 'swiftly investigate the attacks and bring the perpetrators to justice'.¹⁶ The Council welcomed the Secretary-General's prompt dispatch of senior UN officials to the DRC to investigate the UN's response, and his appointment of the SRSG on sexual violence in conflict, Ms Margot Wallström, as the coordinator of the UN response and follow-up.

In the weeks that followed, the Security Council received numerous briefings from senior UN officials who had undertaken fact-finding missions in the DRC.¹⁷ Their message was

14 'UN knew of rebels in area of Congo rapes', The New York Times, 25 August 2010, available at <http://nyti.ms/aPKSJI>. The article reported that 'at least 179 women' were raped by rebel forces during this period. It also reported that a humanitarian organisation, International Medical Corps, told the UN about the rapes on 6 August. However the UN claims it was only told on 12 August.

15 On 23 August 2010, the Spokesperson for the UN Secretary-General announced that a UN human rights team had conducted a fact-finding mission, confirmed mass rapes had occurred in the North Kivu province in late July, and victims were receiving psycho-social care. The SRSG on sexual violence in conflict first addressed the UN press corp on the matter on 31 August 2010 and said she had only recently learned of the situation.

16 On 26 August, the Security Council was briefed by the Assistant Secretary-General of the UN Department of Peacekeeping Operations (DPKO) and the SRSG on sexual violence in conflict, and issued a press statement that day. Further press statements followed on 8 and 9 September.

17 ASG of DPKO (Khare), SRSG on sexual violence in conflict (Wallstrom)

clear and consistent: the UN mission in the DRC (MONUSCO) had 'failed' and 'must do better'.¹⁸ Not only were more resources needed to improve MONUSCO's ability to communicate with remote villages, but peacekeepers needed training to respond to the needs of rape victims. Furthermore, the establishment of a mining regulatory mechanism in the DRC could address the nexus between the use of sexual violence and illicit exploitation of natural resources by armed forces. Finally, and perhaps most importantly, Ms Wallström emphasised that the DRC Government's policy of 'zero tolerance' towards sexual violence could no longer be backed up by 'zero consequences'.¹⁹

On 17 September the Security Council issued a Presidential Statement reiterating its earlier messages that primary responsibility for security in the DRC rested with the Government.²⁰ In addition to 'swift and fair' prosecutions, the Government was recognised to have a responsibility to assist victims, protect against future violence, and cooperate with the UN and others to end impunity. The Council was 'determined to support the Congolese authorities in addressing the root causes' of the mass rapes, and encouraged the Government to strengthen its military capacity, reinforce the training and equipment of the police, and build capacity in the domestic justice and corrections systems. MONUSCO was also encouraged to work more closely with civilians, better assist victims, and further develop its strategy for the protection of civilians. A number of other recommendations from the Secretariat were taken up by the Security Council, including the possible use of targeted sanctions against the perpetrators of the mass rapes.

One of the positive consequences of the horrific violations in the DRC has been the solidification of a close working relationship between the Security Council and the SRSO on sexual violence in conflict.²¹ The Security Council has encouraged her to 'regularly interact with MONUSCO's sexual violence unit' in order to coordinate the UN response to the mass rapes and monitor the UN's strategy to combat sexual violence in the DRC. As a result, the Council continues to invite her to provide periodic briefings.

The nature and scale of the human rights violations that occurred in the DRC has also prompted the DRC Government to acknowledge its need to focus more attention on security sector reform. Although much is dependent on the availability of donor funding to provide equipment and training for the military, police and justice system, it is welcome news that the DRC Government has requested an expansion of

these forms of assistance from MONUSCO. It is also encouraging that MONUSCO has expanded the number of bases in eastern DRC, and helped the Congolese authorities in arresting a rebel leader implicated in the mass rapes. It remains to be seen whether these forms of cooperation between the two parties will prompt the DRC Government to reconsider its demand that the UN withdraw its mission when the mandate expires in mid-2011. The Secretary-General has already proposed to the DRC President that any future draw-down of MONUSCO be based on a joint assessment of the situation.²²

Though the Security Council acted to address the UN system's failings in regard to mass rapes, it is not likely to directly take up the issue of impunity for human rights violations in DRC from 1993 to 2003, which are documented in the mapping report of the DRC by the Office of the High Commissioner for Human Rights.²³ This is despite the fact that the mapping exercise was first announced in a report to the Security Council in June 2006, and that the Security Council endorsed the exercise in *Resolution 1794* in December 2007. There is a difficult political environment around the report's release, including Rwanda's threat to withdraw from all UN peacekeeping missions, after the report raised questions of whether some crimes committed by their troops might be classified as 'crimes of genocide'. This situation is no doubt influencing how and when the UN will ultimately move forward to implement the report's call for accountability for the atrocities committed. ■

and SRSO on the DRC (Meece).

18 Security Council briefing by ASG of DPKO, Mr Atul Khare, 7 September 2010.

19 Press conference by SRSO on sexual violence in conflict, 31 August 2010.

20 PRST/2010/17 of 17 September 2010.

21 This special procedure was created by the Council via *Resolution 1888* (2009) and Ms Margot Wallström was the first mandate-holder, a position she accepted in February 2010.

22 Secretary-General press conference, UN Headquarters, 6 October 2010, available at <http://bit.ly/bDtL7Z>. The Secretary-General commented that an underlying reason for MONUSCO's failures in responding to the rapes was because "the number of peacekeepers was too small and our resources too limited." This lack of capacity was accentuated in May when the Security Council had come under pressure from the DRC to withdraw the UN peacekeeping mission altogether, and acquiesced to a significant draw-down of armed personnel in *Resolution 1925*. The Secretary-General reported that 1,700 peacekeepers had recently left the mission and critical assets such as helicopters had been withdrawn. "We are now trying to make up for all these losses of critical assets, but it is going to be quite a difficult operation," he said.

23 The report is available at <http://bit.ly/9zl0FT>.

HUMAN RIGHTS COUNCIL 15TH SESSION

New special procedures on freedom of association and women's equality



Pilgrims with candles in Lourdes, France.

The Human Rights Council's 15th session, 13 September - 1 October 2010, was expected to be tense, particularly around the renewal of important country mandates (Cambodia, Haiti, Somalia, and the Sudan), and the negotiation of two new thematic special procedures on discrimination against women and freedom of association and assembly. Other controversies arose during the session, as Cuba, without warning, introduced a draft resolution on 'cooperation and dialogue' between the Council and the Office of the High Commissioner for Human Rights (OHCHR). The session was also marked by the impending review of the Council as some States staked out their positions.

Nevertheless, the outcomes of the session were generally commendable and seem to indicate the Council may be starting to more effectively respond to the expectations of human rights defenders.

UPDATE FROM THE HIGH COMMISSIONER

The High Commissioner for Human Rights, Ms Navanethem Pillay, made reprisals and attacks against human rights defenders a main theme of her update to the Council. She drew attention to the targeting of defenders in Iran, Iraq and Somalia, and impunity for attacks on defenders in Azerbaijan, Guatemala, Mexico, the Russian Federation, and Serbia. She highlighted the very challenging contexts for defenders' work in Angola, the Democratic Republic of Congo, the Occupied Palestinian Territories, and Zimbabwe, and expressed concern at restrictive legal frameworks for civil society in Bahrain, Belarus, China, Egypt, Libya, Syria, and Tunisia.

Syria (on behalf of the Arab Group) expressed surprise and disagreement with the High Commissioner for having named Arab countries among those which restrict the functioning of civil society. It stressed the group's commitment to ensuring the promotion of human rights, including civil rights, in conformity with international human rights obligations. However, at the same time it made it clear that the cultural or religious norms of each country should be respected.

The seriousness of the issue of reprisals and attacks against human rights defenders was broadly acknowledged, as was the crucial role played by human rights defenders, journalists, civil society activists, and national human rights institutions.

Several States shared the view expressed by Ms Pillay that there is a need to ensure the safety and protection of defenders and witnesses that cooperate with UN mandated fact-finding missions (Poland, Egypt on behalf of NAM, Pakistan on behalf of the OIC, Belgium on behalf of the EU, Mexico, Republic of Korea, UK, Jordan, Norway, Switzerland, Japan, Moldova, Hungary, Chile, Germany, Lithuania, New Zealand, Austria, Slovenia, Morocco, and the Czech Republic).

The High Commissioner also drew the Council's attention to situations of particular concern, including the expulsion of Roma from France,¹ killing of migrants in Mexico, and an alleged programme of targeted killings of terrorist suspects by the US. She also updated the Council on her Office's recent activities, including the dispatching of a mission to Kyrgyzstan in response to the June 2010 ethnic violence;² the release of the controversial mapping exercise report which records serious violations of human rights and international

1 See the article in this edition on the Committee on the Elimination of Racial Discrimination for its debate on the same issue.

2 See the article in this edition on the Committee on the Elimination of Racial Discrimination for its urgent action on Kyrgyzstan.

humanitarian law committed in the Democratic Republic of Congo from 1993 to 2003;³ and her recent visits to Kenya and Uganda.

UNDERMINING OHCHR'S INDEPENDENCE

Cuba introduced its draft resolution on cooperation between OHCHR and the Council without prior warning, and without regard to the practice among most delegations to alert other stakeholders to planned resolutions before Council sessions. It was perhaps no surprise this came just before the Council was to begin its formal review process and at the same time as the beginning of the General Assembly's 64th session.

The controversial text, which would limit the independence of the High Commissioner in respect to the Council, was abandoned after the President agreed to issue a Presidential Statement reflecting a compromise on the matter. The statement's text was developed by OHCHR and its introduction into the negotiations undercut efforts by those opposed to any Council action on this issue. It invites the High Commissioner to present OHCHR's human rights programme, part of the UN's strategic framework, to the Council, and to pass the views of States and relevant stakeholders to the Committee for Programme and Coordination for its consideration. In doing so it inserts the Council into already established procedures for oversight of the human rights programme through the General Assembly, and gives it a role that may be misused by States that seek to undermine the High Commissioner's independent role.

RENEWAL AND APPOINTMENT OF SPECIAL PROCEDURES MANDATES

The Council adopted without a vote the resolutions to renew for three years the following special procedures mandates:

- Special Rapporteur on the rights of indigenous peoples (*Resolution 15/14*)
- Special Rapporteur on contemporary forms of slavery (*Resolution 15/2*)
- Special Rapporteur on adequate housing (*Resolution 15/8*)
- Special Rapporteur on the promotion and protection of human rights while countering terrorism (*Resolution 15/15*)
- Working Group on arbitrary detention (*Resolution 15/18*)
- Special Rapporteur on the right to health (*Resolution 15/22*)

These resolutions were mostly procedural rather than substantive, with the exception of the resolution on health, which may have facilitated their relatively smooth negotiation. The mandate of the Special Rapporteur on the rights of indigenous peoples, in the plural,⁴ was strengthened. This development is despite efforts

by some States, including the UK, US and Canada, to retain the previous language because they do not recognise collective rights. This position is becoming increasingly embarrassing for countries that claim to be strongly committed to human rights protection.

A common theme during the negotiations was how to acknowledge the special procedures' work and reports. Increasingly, some States refuse to welcome the reports and will at best 'take note of them with appreciation'. While this may seem a minor issue, it reflects a general approach to the special procedures by many States that are uncomfortable with critical and often progressive expert analysis of human rights issues and situations. In this regard, it was unsurprising Pakistan said it in no way endorsed the most recent report of the Special Rapporteur on the right to health, which examined the impact of criminalisation of sexual conduct on enjoyment of the right to health.

The Council endorsed the President's nominee for the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Ernesto Mendez, and the Special Rapporteur on the human rights of internally displaced persons, Mr Chaloka Beyani. This restored the integrity of the appointment process which had been subject to political interference by States in the process at the Council's previous session.⁵

NEW SPECIAL PROCEDURES ON DISCRIMINATION AGAINST WOMEN AND ON FREEDOM OF ASSOCIATION

Among the most significant and positive outcomes at the session were the establishment of two new thematic special procedures.

The new Special Rapporteur on the rights to freedom of peaceful assembly and of association was established at the initiative of a cross-regional group of States led by the US, and including the Czech Republic, the Maldives, Nigeria, Lithuania, Mexico, Indonesia, and Latvia.⁶ This group of core sponsors, which included important members of the African Group and the OIC, played an important role in ensuring the mandate was set up without a vote. China, Cuba, Libya, and Pakistan disassociated themselves from the consensus. During the negotiations China, Egypt, Ethiopia, Pakistan, and the Russian Federation expressed their principled opposition to the creation of the new mandate. Although the text was slightly weakened in last minute negotiations, including by removing the request to the Special Rapporteur to also report to the General Assembly, it remains a strong and comprehensive mandate. The Special Rapporteur is tasked to report on violations of the rights to freedom of association and assembly, and on threats, harassment and reprisals against those exercising these rights.

In a landmark resolution, the Council established a Working Group on discrimination against women.⁷ This follows several years of civil society advocacy to strengthen efforts to eliminate

³ The full report is available at <http://bit.ly/9zI0FT>. See the OHCHR press release at <http://bit.ly/a2rOxv>.

⁴ The mandate was previously named the 'Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people'.

⁵ For more information, see <http://bit.ly/95AyFS>.

⁶ *Resolution 15/21*.

⁷ *A/HRC/RES/15/23*.

discrimination against women and several debates in the Council, most recently at this session (see below). In an effort to reach consensus, initial plans to create an Independent Expert were shelved at the last minute in favour of the working group.

The resolution calls on States to revoke any legislation that discriminates against women, both in law and in implementation. The Working Group is mandated to report annually to the Council on the continued existence of laws that discriminate against women and good practices in revoking them. The resolution was adopted by consensus despite opposition from several States, including Egypt, Bangladesh, Pakistan, Libya, and Iran. While they argued a new special procedure would duplicate work of existing UN mechanisms and questioned the availability of the financial resources for another special procedure, their opposition seemed more ideological. This was demonstrated by Saudi Arabia's proposed amendment put forward at the time of adoption, which would limit States to respect only the commitments towards women's equality they have signed up to under international law. Since many OIC States in particular have made declarations under CEDAW that limit their obligations where they conflict with Sharia law, this amendment would have greatly hindered the effectiveness of the new mechanism. The amendment was narrowly defeated in a vote, with 22 against, 18 in favour and four abstentions. The original resolution was then adopted without a vote.

The Council will appoint the new mandate holders in March 2011 and OHCHR is seeking candidates by 3 December 2010 (see the Upcoming Opportunities section for more details).

THEMATIC DEBATES

Women's equality and gender integration

The Council's panel discussion on women's equality before the law featured Ms Victoria Popescu, Ms Rashida Manjoo, Ms Lee Waldorf, Ms Maria de los Angeles Corte Rios, Mr Vitit Muntarbhorn, and Ms Nyaradzayi Gumbonzvanda. Recurring comments made during debate included that discrimination against women is evident in all regions and within all traditions around the world, and that national laws must be brought into line with international human rights standards.

The panellists highlighted that despite existing normative frameworks at the international, regional and national levels, inequalities between women and men still exist. While all States acknowledge the need for further work to be done to improve women's equality, many States did not support the proposed new mandate, including Pakistan (on behalf of the OIC) and Syria (on behalf of the Arab group). These States voiced the belief that the potential of existing mechanisms should first be fully explored before a new mandate be considered. The panellists sought to placate Islamic States that expressed concern about being targeted by the new mandate because of their legal systems. The panellists stressed that no country will be exempt from scrutiny and that women's inequality in law and practice is prevalent in all countries.

Rights of indigenous peoples

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr James Anaya, presented his third annual report to the Council. Many States welcomed the report's focus on the duties of corporate entities with respect to indigenous peoples' rights.⁸ Mr Anaya expressed his hope that the US and Canada would reverse their opposition to the UN Declaration on the Rights of Indigenous Peoples. The Council also received the report of the Expert Mechanism on the Rights of Indigenous Peoples. Several States welcomed the progress on its study on indigenous peoples and the right to participate in decision-making.⁹

Denmark and Norway said the rescheduling of the debate on indigenous issues had meant that some indigenous people had not been able to participate in the debate. The States called for greater predictability in the scheduling of the Council. This concern was also raised by indigenous groups during the debate.

The Council will hold a half-day panel discussion in September 2011 on the role of language and culture for indigenous peoples.

Racial discrimination

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai, presented his report on defamation of religions. He concluded the most effective way to remedy religious intolerance is to implement policy measures that tackle the root causes of such defamation. He also presented a report on 'Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance', highlighting the need for States to strike a balance between the right to freedom of expression and countering extremist political parties, movements and groups.

States were divided on the issue of defamation of religions, with Western States again rejecting the concept and OIC States claiming it a violation of human rights. Some States criticised the Special Rapporteur for deviating from the report's mandate, or for the level of accuracy or methodology used.¹⁰ The Special Rapporteur, responding directly to these criticisms in his closing remarks, said shortcomings of his methodology only served to emphasise the need for State cooperation with special procedures mandate holders.

Sexual orientation and gender identity

A high-level panel discussion on ending violence and criminal sanctions based on sexual orientation and gender identity took place in parallel to the Council's formal session. UN Secretary-General Ban Ki-moon, High Commissioner for Human Rights Ms Navanethem Pillay, and Nobel Peace Prize winner Archbishop

⁸ Mexico, US, Norway, Brazil, and the EU.

⁹ EU, Mexico, China, Guatemala, Chile, Argentina, Australia, and Denmark.

¹⁰ Iran, India and Bangladesh.

Desmond Tutu, delivered statements at the event calling for an end to such violations.

During the Council's debate under its agenda Item 8, several States¹¹ also raised concerns that many people around the world continue to face human rights violations because of their sexual orientation and gender identity. They said criminalising people on these grounds violated the principle of non-discrimination.

OTHER ISSUES AND OUTCOMES

The Council adopted without a vote a resolution on 'Human Rights and access to safe drinking water and sanitation' presented by Spain and Germany. Importantly, the resolution recalled General Assembly *Resolution 64/292* of 28 July 2010, which declared the right to safe and clean drinking water and sanitation a human right.¹² It was interesting that some State positions had changed since July, with the Netherlands, Denmark and Slovakia co-sponsoring the Council's resolution, and the US joining consensus after abstaining on the vote in the General Assembly. However, the UK maintained its position opposing a right to sanitation and disassociated itself from the consensus.

The announcement by a US pastor that he planned to burn the Koran sparked dismay among many States, with Pakistan (on behalf of the OIC) introducing a draft resolution condemning the event.¹³ However, the initiative was shelved in favour of a more balanced Presidential 'declaration' condemning religious intolerance. This was a novel approach and could set an interesting precedent for the future.

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, presented a draft convention on private military and security companies and recommended the Council develop it further. Despite opposition from the US and EU, a resolution sponsored by South Africa, setting up an inter-governmental working group to draft a binding legal instrument on the 'regulation, monitoring and oversight on the impact of private military and security companies, on the enjoyment of human rights,' was adopted.¹⁴

During the debate on follow-up to the Vienna Declaration and Programme of Action (Item 8) the Russian Federation spoke of the resolution adopted in September 2009 on traditional values and human rights amidst 'prejudice and doubts,'¹⁵ in which

the Council decided to hold a seminar in October to discuss the issue.¹⁶

COUNTRY SITUATIONS

Report on Burundi postponed again

The presentation of the report of the Independent Expert on Burundi was postponed again at the 15th session. The previous holder of the mandate, Mr Akich Okola, had been extended an exceptional invitation¹⁷ to report to the Council's 14th session in June 2010, but due to personal reasons he had not been able to attend. The new mandate holder, Mr Fatsah Ouguergouz, had therefore been scheduled to present the report at the 15th session. Burundi objected that it had not received the report, but agreed that it could be considered at the 16th session.

Minimal progress on Cambodia

The interactive dialogue with the Special Rapporteur on Cambodia, Mr Surya Prasad Subedi, saw strong support from South East Asian States in particular, for the efforts being made by the Government of Cambodia. They welcomed the Special Rapporteur's constructive approach, and Mr Subedi said that during his two missions to the country he had enjoyed a good level of cooperation from the Government.

Many of the same criticisms raised during the interactive dialogue held at the Council with the Special Rapporteur a year ago were aired again. These included land rights, freedom of expression and the weak judiciary, as well as the continued existence of legislation criminalising defamation and 'disinformation'.¹⁸ Last year the Special Rapporteur had spoken of his intention to offer advice to Cambodia on the latter issue, as the country worked to establish a new penal code. At this session he reported the Government had been receptive to his suggestions. Although there were few indications of improvements, the situation did not appear to be worsening. The Council also renewed the mandate of the Special Rapporteur for another year.¹⁹

Momentum lost on the Goldstone report

The situation in the occupied Palestinian territories was the subject of two interactive dialogues, the first with the fact-finding mission into the Gaza flotilla incident,²⁰ and the second with the Committee of independent experts mandated to follow up on

11 Belgium (on behalf of the EU), and Slovenia (on behalf of Argentina, Brazil, Colombia, Finland, France, Ireland, Mexico, Norway, Romania, the US, and Uruguay).

12 ISHR: 'GA pre-empto Council and recognises the human right to water and sanitation', available at <http://bit.ly/dmDH5r>.

13 A/HRC/15/L.1.

14 A/HRC/RES/15/27. Adopted by 32 votes in favour, 12 against and three abstentions.

15 See ISHR's Human Rights Monitor, 2009, The Human Rights Council in 2009: between inertia and another reform, p. 17, available at <http://bit.ly/c9bdPc>.

16 For an overview of the seminar, see <http://bit.ly/9xgmRH>.

17 The resolution creating the mandate asks the mandate holder to report to the Council only once a national human rights institution has been established. However as Mr Okola had completed a country visit in May 2010, and as Burundi had also held elections in June 2010, it was considered appropriate that Mr Okola should report to the Council on developments since his last report in September 2008.

18 For more information, see: ISHR. 'Council interactive dialogue with Special Rapporteur on Cambodia', <http://bit.ly/cTolzh>.

19 A/HRC/RES/15/20, <http://bit.ly/dj3a8L>.

20 A/HRC/15/21, <http://bit.ly/d7ksW0>.

the Goldstone report.²¹ Both sessions were predictably polarised, with both the US and Israel criticising the final reports as biased. The report from the fact-finding mission was referred to the General Assembly, after a majority vote by the Council supported a resolution on follow-up.²²

However, in the case of the report of the Committee of independent experts, despite the Committee reporting serious concerns that international standards of impartiality had not been met by the Israeli investigations, the Council chose not to refer the report to the General Assembly to consider further action. Instead, it chose to extend the mandate of the Committee of independent experts to continue to monitor progress of the investigations.²³ This is effectively to designate the Committee the appropriate body to continue to assess any investigations, and it will report to the Council again in March 2011. There seems to be no political will to ensure international justice for the crimes committed, through a referral to the International Criminal Court.

New initiative on Somalia

The standalone panel debate on Somalia was a new initiative by the Council, aimed at discussing ways to enhance the effectiveness of UN efforts to support human rights promotion and protection in the country.²⁴ Efforts to ensure the panel included representatives from civil society were successful, with the Chairman of Somali Peace Line and a member of the National Union for Somali Journalists joining the panellists.²⁵ It is hoped the inclusion of civil society representatives on this panel, as has been the case on many thematic panels in the past, will avoid the need to advocate for such representation in the future. Nevertheless, it was regrettable only two NGOs were able to take part in the debate from the floor due to time constraints.

There was interest in how effective this format could be as a means for the Council to develop responses to human rights situations. While States identified many of the problems Somalia faces, the debate did not develop a coherent strategy for improving the situation in the country. There was disagreement about key strategies, such as the Independent Expert's recommendation to create a commission of inquiry, which some States felt would be divisive²⁶ or ineffective.²⁷ As is the nature of debates at the Council, the combination of pre-prepared statements and time constraints prevented States and panellists from discussing areas of disagreement in a constructive manner. In addition, requests for specific

assistance, such as the call for more troops to be allocated to AMISOM, or funds to be allocated for the increase of salaries to the troops, failed to produce specific pledges from States.

However, there was consensus the mandate of the Independent Expert should be renewed, and on 1 October, the Council adopted by consensus the resolution to extend the mandate for another year.²⁸

Renewal of the mandate of the Independent Expert on the situation of human rights in the Sudan

The Council had originally scheduled the presentation of the report of the Independent Expert on the Sudan, Mr Mohamed Chande Othman, for the 14th session in June 2010, but Mr Othman had been unable to attend due to illness.²⁹ As a result, the Council exceptionally extended the mandate until the 15th session. The debate at this session revealed the divide between States as to whether the mandate of the Independent Expert should be renewed. Mr Othman felt it would be premature for the Council to disengage itself at this point, particularly given the upcoming referendum on independence for Southern Sudan, a position that had support from Western States.

However, there was strong opposition to renewal of the mandate from OIC States³⁰ and from the Sudan itself, which emphasised that it had improved its human rights situation and was committed to implementing all recommendations received (a statement weakened by the fact that the Sudan has implemented only five of the 45 recommendations made by the Special Rapporteur). However, in an example of the Council managing to rise above politics and as a result of key positive votes from Gabon, the Maldives, Uganda, and Zambia, the mandate was renewed for one more year.³¹

Weak response to mass rapes in the DRC

In response to the mass rapes committed in the Democratic Republic of Congo (DRC) between 30 July and 2 August, there had been talk of holding a special sitting of the Council to address the issue. However, due to the inability of the Minister for Justice and Human Rights of the DRC to attend, this special sitting had to be cancelled. Instead an informal meeting with high-level UN officials was called.³² The meeting was boycotted by the Government of the DRC, and attended by very few African States, although many other States were present. While effort to respond to the events is welcome, the sequence of events at the Council and failure to address the matter within the official framework of the Council's agenda, epitomise the inability or unwillingness of the Council to give serious situations of human rights violations the attention they warrant. ■

21 The Goldstone report calls for independent and impartial investigations by Israeli and Palestinian authorities into violations by their troops during the Gaza conflict. For more information see, ISHR 2010, 'Follow-up on Goldstone report: Secretary-General passes baton to Human Rights Council', 15 October 2010, <http://bit.ly/9ZryNv>.

22 A/HRC/RES/15/1, <http://bit.ly/9DiZZ2>.

23 A/HRC/RES/15/6, <http://bit.ly/cIIIE7>.

24 The debate was held pursuant to Council resolution HRC/DEC/14/119 introduced at the initiative of the African Group.

25 For more information, see: 'Concept Note on the stand-alone interactive dialogue on assistance to Somalia in the field of human rights', <http://bit.ly/cBBIpf>.

26 Egypt.

27 Somalia.

28 A/HRC/RES/15/28, <http://bit.ly/9aUnZt>.

29 ISHR, 'The Council Discusses Human Rights in the Sudan', 23 September 2010, <http://bit.ly/8ZaGvs>.

30 China, Iran, Iraq, the Democratic People's Republic of Korea, Pakistan (on behalf of the OIC), Qatar, and Syria (on behalf of the Arab Group).

31 A/HRC/RES/15/27, <http://bit.ly/9sATcW>.

32 For ISHR's summary of the meeting, please see <http://bit.ly/9JHb3n>.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

Four recommendations adopted. Mandate of the Committee in question



Photo: Diego Wylie

The right to food was one of the focuses of the Human Rights Council Advisory Committee's 5th session.

The Human Rights Council Advisory Committee (the Advisory Committee) held its 5th session from 2 to 6 August 2010. Four recommendations were adopted, including the 'Principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members'. These guidelines were noted with appreciation by the Human Rights Council (the Council) at its 15th session,¹ which requested the High Commissioner for Human Rights distribute them as appropriate, and called on the General Assembly to consider ways of further promoting the principles.

The three other recommendations adopted concerned the right to food (assigning the drafting group to finalise the report taking into account comments from Council member States, UN agencies and other relevant stakeholders, and assigning the group to prepare a preliminary study on the rights of people working in rural areas); the right of peoples to peace (creating a drafting group to begin work on a draft declaration); and the enhancement of international cooperation in the field of human rights (creating a drafting group to explore ways and means to enhance international cooperation).² The Advisory Committee also discussed its study on missing persons, which the drafting group has been working on since January 2009 with view to submitting it to the Council at its 16th session in March 2011.

At the start of the session, the Advisory Committee held a minute's silence in memory of former member Mr Miguel Alfonso Martinez. Mr José Antonio Bengoa Cabello was nominated to take up his place on the working group on communications.³

MANDATE OF THE ADVISORY COMMITTEE

The session revealed continuing confusion about the mandate of the Advisory Committee.⁴

Ms Halima Embarek Warzazi said she had received a note from India explaining its belief the Advisory Committee was not mandated to take up any matter on its own initiative, and the reference in its mandate that it 'may propose research proposals within the scope of the work set out by the Council'⁵ only allowed it to make proposals within the framework of a proposal already made to it by the Council.⁶ India has been one of States most vigorously opposed to the role of the Advisory Committee, stemming from its dislike of the work the Committee inherited from the Sub-Commission on descent-based discrimination, and is attempting to limit the Advisory Committee's power even further through the review.

¹ A/HRC/15/L.18, <http://bit.ly/cSLAY1>.

² Advisory Committee reports, studies and recommendations from its 5th session are available at: <http://bit.ly/ahqKIA>.

³ The working group on communications is designated by the Human Rights Council Advisory Committee from among its members for a period of three years (mandate renewable once). It consists of five independent experts. The working group assesses the admissibility and the merits of communications received under the Human Rights Council's complaint procedure.

⁴ For past discussions see, ISHR, 'Advisory Committee', Human Rights Monitor Quarterly, April 2010, <http://bit.ly/bcMFTH>, and ISHR, 'Advisory Committee: testing its independence', Human Rights Monitor, 2009, <http://bit.ly/d4E2F0>.

⁵ A/HRC/RES/5/1, para. 77, <http://bit.ly/bje7GE>.

⁶ A/HRC/13/G/22, <http://bit.ly/9Q4WWb>.

There is, therefore, confusion not only on the part of the Advisory Committee, but also from States about how far the Advisory Committee is mandated to act on its own initiative.

Mr Dheerujlall Seetulsingh said it was his belief the Advisory Committee was mandated to make suggestions to the Council about the scope of its work. However, uncertainties surfaced when the Advisory Committee discussed the review of the Council's work and functioning. As a subsidiary body of the Council, the Advisory Committee will be part of the review. While many members felt they should prepare a submission on the Advisory Committee's work for the review process, others were wary in case the Council should view this beyond the terms of the Advisory Committee's specific mandate.⁷

Ultimately it was agreed the Chairperson of the Advisory Committee will submit written input ahead of the first session of the open-ended intergovernmental working group on the review. The Committee also decided to continue discussions on the review at its next session in January.

THEMATIC DEBATES

Principles and guidelines on elimination of leprosy

The Advisory Committee adopted the draft principles and guidelines on the elimination of discrimination against persons affected by leprosy and their family members, which was requested by the Council in June 2008.⁸ The Council had previously asked the Advisory Committee to consult more widely with stakeholders, which it had done and included the majority of stakeholder's suggestions in the new draft presented at the session.

Japan, which has a long-standing interest in the issue, cautioned against making drastic changes to the draft at this stage, which it felt would require holding stakeholder consultations all over again. It also mentioned specific reservations it had on the text. This caused the Advisory Committee members to accuse Japan of interfering in its work at a point where the drafting group's report had not yet been seen by the members themselves. In the end, almost all textual amendments suggested by members were incorporated into the final document, with States⁹ generally supporting the text.

Declaration on human rights education

During the discussion on the draft declaration on human rights education and training, Morocco took the floor to update the Advisory Committee on progress in the Council. It said the Advisory Committee's draft had been well-received so far, that there was no longer any question about whether

Drafting a new UN declaration on human rights education

On Friday 3 September 2010 the second open-ended informal consultation on the drafting of a 'UN Declaration on Human Rights Education and Training' (the declaration) was held in Geneva.

The Human Rights Council Advisory Committee submitted its draft declaration to the 13th session of the Human Rights Council.¹ The draft was debated by the Council, which established an open-ended Working Group to continue drafting the declaration.² The Working Group will meet in early 2011,³ but in preparation for its meeting, the Platform on Human Rights Education and Training⁴ planned a series of informal meetings to facilitate further discussion. An informal meeting in November is expected to continue this process.

A central point of the discussion was the reluctance by many States⁵ to recognise the right to human rights education as a separate right to the already well-established right to education. Some States also argued that human rights education should be limited to certain human rights issues. Pakistan and others suggested limiting the scope of human rights education to 'universally recognised human rights'. In other Council debates and in the context of the universal periodic review, States have been encouraged to 'promote all universally agreed human rights and fundamental freedoms, and continue to resist attempts to enforce any values or standards beyond the universally agreed ones'. Although Pakistan did not receive much support for this proposal, it will be important to ensure a new declaration does not detract from the universality of all human rights.

Many States⁶ expressed hope for a more streamlined and action-oriented document. Complicated language used in parts of the draft allowed these States to argue for the deletion of entire paragraphs in the declaration in the name of 'streamlining'. This has resulted in a weakening of the draft declaration. For example, the Russian Federation suggested removing the already weak reference to the essential role of human rights defenders. Several States suggested the deletion of an entire section pertaining to the implementation and international monitoring of the declaration.

The Moroccan Permanent Mission in Geneva is receiving written input on the draft declaration, and coordinating the informal meetings on behalf of the Platform. Interested stakeholders may send suggestions to hret@mission-maroc.ch.

⁷ Mr Chen Shiqui.

⁸ A/HRC/RES/8/13, para. 5, <http://bit.ly/9dVhiT>.

⁹ Those present were Brazil, Indonesia, Japan, Mexico, and the Philippines.

¹ See the Advisory Committee's page dedicated to the draft declaration at <http://bit.ly/cbc8ay>. The draft declaration is available at <http://bit.ly/9t0U2F>.

² A/HRC/RES/13/15.

³ It is currently scheduled to meet from 10 to 14 January 2011.

⁴ Costa Rica, Italy, Morocco, Philippines, Senegal, Slovenia, and Switzerland.

⁵ Including Canada, China, Pakistan, the Russian Federation, UK, and USA.

⁶ Including Canada, the Russian Federation, UK, and the USA.

a declaration was needed, and that the primary concern was simply one of the length of the current draft.

Right to food

The Advisory Committee also held a discussion on the many stakeholder comments received on its study on the right to food. Ms Mona Zulficar presented the study and said all comments, including those not accepted, would be included in the final report in the interests of transparency. She spoke out strongly against the complicity of the World Bank and World Trade Organization (WTO), as well as European Union (EU) States and the USA, in violating the right to food. She stated the drafting group believed the Advisory Committee should 'stand up' to organisations such as the WTO, and denounce their policies.

Belgium, on behalf of the EU, said the current version of the study does not meet the terms of the mandate given. In particular it noted the use of the term 'hunger refugees', which is not used in the Convention Relating to the Status of Refugees. Mr Jean Ziegler said the Advisory Committee was seeking to create this new norm as part of the Council's mandate to make recommendations for the further development of international human rights law.¹⁰

The drafting group also recommended the development of a new legal instrument on the right to food. Some members of the Advisory Committee felt this would be to overstep the given mandate, but Ms Zulficar said they were mandated to 'consider potential recommendations...on possible further measures to enhance the realisation of the right to food' and a new legal instrument would fit this requirement.¹¹

Missing persons

The drafting group on the study on missing persons reported to the Advisory Committee on comments it had received. Mr Latif Hüseyinov said the drafting group had been cautious in interpreting its mandate. He pointed out that, although there is no explicit reference to armed conflict in the part of the document mandating the Advisory Committee's study,¹² the spirit of the document and the many references to armed conflict throughout clearly requires the study be limited to missing persons in armed conflict. The report will be adopted at the January session of the Advisory Committee for consideration by the Council at its 16th session.

Declaration on right of peoples to peace

The Advisory Committee began work on the draft declaration on the right of peoples to peace. Mr Vladimir Kartashkin noted

the Council had held informal consultations with States, and was critical that Advisory Committee members had not been invited to the meeting. He requested that, in the future, the Council ensures the Advisory Committee is involved in such complex issues from the very beginning. He was dissatisfied that the Council only seems to seek the Advisory Committee's guidance on issues that are 'too politicised or complex' to be handled by the Council. Mr Wolfgang Stefan Heinz requested all interested parties, including NGOs, send information and comments, which he will compile.

International cooperation

On the mandated study on international cooperation, the Advisory Committee assigned a drafting group, which decided to develop a questionnaire as a first step towards answering the question 'What measures have been taken to enhance international cooperation?' Egypt, as main sponsor of the resolution, was eager to guide the work of the Advisory Committee on this subject, stating it wanted to first know what international cooperation means in the field of human rights, in order that gaps could then be identified and filled.

The session was criticised by members as being too short to allow them to make substantial advances in the many areas it is studying at the Council's request. In particular, members objected to recommendations needing to be prepared by the third day of the five day meeting, to allow time for them to be translated. It was surprising issues such as these had not been resolved earlier in the Advisory Committee's existence. Its work at this session also suffered from weak leadership from its Chairperson, which often resulted in prolonged and confused debates on procedural issues. However, despite this, the debates on substantive issues raised many important points and can generally be viewed as fruitful. The Advisory Committee was also generally responsive to the comments made by NGOs. Where it did not agree with them, it acknowledged their points and explained its reasons for disagreeing.

However, the continuing lack of clarity regarding the Advisory Committee's mandate is taking up a great deal of working time and hampering it from operating more effectively. The review of the Council is an opportunity to clarify this and strengthen the Advisory Committee. ■

¹⁰ A/RES/60/251, para. 5(c), <http://bit.ly/cliOS8>.

¹¹ A/HRC/RES/7/14, para. 34, <http://bit.ly/c8TQzP>. The paragraph also requests the Committee to 'bear in mind the priority importance of promoting the implementation of existing standards'.

¹² 'Summary of the panel discussion on the question of missing persons prepared by the Office of the United Nations High Commissioner for Human Rights', A/HRC/10/10, 7 January 2009, <http://bit.ly/9x1Teu>.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Discrimination against Roma in Europe a major concern in Bosnia, Denmark, Estonia, France, Romania, Slovenia, and Uzbekistan



Photo: Barbara Dieu

The Committee on the Elimination of Racial Discrimination (the Committee) held its 77th session in Geneva from 2 to 27 August 2010. The reports of 11 State parties to the International Convention on the Elimination of all Forms of Racial Discrimination (the Convention) were considered, including: Australia, Bosnia and Herzegovina, Denmark, El Salvador, Estonia, France, Iran, Morocco, Romania, Slovenia, and Uzbekistan. This was the second time the Committee ran for four consecutive weeks, which allowed it to review a large number of State reports, in an attempt to deal with its backlog.

Dominant themes of the session included the scarcity of reliable statistical indicators for many States under review, the status of indigenous peoples and ethnic minorities, and the situation of Roma people. Other important developments included the implementation of a new working method by the Committee, and a separate formal meeting held to discuss NGO involvement in the Committee's work.

ENGAGEMENT BY STATE PARTIES

The majority of States under review were represented by officials from relevant line ministries rather than foreign affairs ministries. Delegation sizes ranged from small representations of four to six people (e.g. Bosnia and Herzegovina, El Salvador, Estonia, and Uzbekistan) to large delegations of more than ten people (e.g. Australia, Denmark, France, Iran, Romania, Slovenia, and Morocco). Romania's State delegation was led by the 'politically independent' National Council for Combating Discrimination, which is not accredited by the International Coordinating Committee of National Human Rights Institutions.

The spirit of engagement by States being reviewed varied. El Salvador was receptive to concerns expressed by the Committee, and readily admitted to challenges and flaws in implementation of the Convention. Romania, Slovenia and Morocco were also constructive in their engagement. Conversely, Australia was defensive in its responses. The State said its Government was in 'caretaker mode', which was said to prevent the delegation from being able to address issues of policy. France and Denmark were also defensive in their dialogue with the Committee.

NGO AND NHRI PARTICIPATION

The level of NGO engagement, represented by the number of NGO reports submitted to the Committee, was lower than usual and varied significantly between States under review. For example, Estonia and Uzbekistan received no NGO reports, while Australia and France each received six.

A number of national human rights institutions (NHRIs) attended the session and engaged with the Committee. In line with the practice established in 2008, NHRIs were permitted to take the floor during a formal session, on the morning of the second day of the review of their respective countries. Generally this right is reserved for NHRIs that comply with the Paris Principles. However, the Committee takes a somewhat flexible approach and also provides the opportunity to institutions that are not in full compliance. The Committee was critical of States that do not have an independent national institution in compliance with the Paris Principles and suggested this be a desirable goal.

Australia, Denmark and France each had their respective NHRI present, and all allowed them to take the floor. Involvement by the Australian Human Rights Commission can be seen as 'best practice', as it was both constructive and appropriately critical of the shortcomings of its Government's efforts. The Commission also brought elders from Aboriginal communities to address the Committee during informal meetings. This was an innovative step and provided a much-needed human face to the problem of racism.

Disappointingly, other independent NHRIs were less substantive in their suggestions. The Danish Institute for Human Rights largely agreed with government policy, and in critical areas, which merited further attention, only recommended the Committee request additional information from the Government in its next periodic report.

Early warning and urgent action procedure on Kyrgyzstan

The Committee adopted a decision under its early warning and urgent action procedure on Kyrgyzstan. It expressed alarm at the reported attacks and killings that occurred in June 2010 as a result of tensions between Uzbek and Kyrgyz ethnic groups in the country. It also expressed serious concern about reports indicating the ethnic Uzbek community had been subjected to threats, unlawful arrests and detentions, disappearances, torture and denial of access to justice. The Committee urged the Government of Kyrgyzstan to ensure the protection of all its citizens from ethnic hatred. It called on the Government to ensure those responsible for human rights violations be held accountable, to facilitate access to justice for victims, and to promote dialogue between different ethnic groups. The Committee also urged the Government to support the creation of an international independent commission of inquiry. Finally, the Committee requested the Government provide information on the measures taken to address these concerns by 31 December 2010.

MAIN THEMES

Scarcity of reliable statistical indicators

A lack of reliable statistical information from several States¹, particularly clear disaggregated data on the composition of minority groups and indigenous peoples, was a key issue highlighted by the Committee. As at the 76th session, it said a lack of reliable data prevented it from gaining accurate insights into the issues and challenges faced by States.

Most States (including Bosnia and Herzegovina, Romania, and Uzbekistan) responded constructively to the criticism and noted the inaccuracies and inconsistencies in prior data collection methodologies. Furthermore, the States indicated a

desire to conduct new censuses to better gauge the ethnic and nationality composition of their countries. The Committee called for these to be conducted in a manner that reduces inaccuracies, with special care towards quantifying the number of people of Roma descent within the population.

Status of indigenous peoples and ethnic minorities

The status of indigenous peoples was a key theme in relation to four States,² and the situation of ethnic minorities was taken up in five State reviews.³

Of the four States with indigenous issues, the Committee examined in detail the situation of the Pipil and other indigenous peoples in El Salvador, the Amazigh in Morocco, Aboriginal people and Torres Strait Islanders in Australia, and the Thule Tribe of Greenland with Denmark.

The protection of indigenous and minority languages was highlighted as an issue for Denmark, Estonia and El Salvador. The Committee welcomed opportunities for mother tongue tuition and/or bilingual education; however some States (especially Denmark and Estonia) raised the need for learning the majority language for successful integration and economic success. However, the Committee warned there is a fine line between 'integration' and 'assimilation'. Due care and diligence must therefore be utilised to ensure people are not forced to assimilate to the majority language, it said.

Status of Roma people

The status of Roma people was discussed with seven States⁴ and received significant media attention during the session. In particular, the eviction of Roma people from camps in France and their deportation to Romania prompted strong negative reactions from civil society and European institutions.

Many Committee members highlighted the plight of the Roma people across Europe. In stark contrast to this, one member (Mr José Augusto Lindgren Alves) questioned whether the Roma suffered any discrimination at all in several of the countries under review. Some Committee members argued European human rights institutions should be responsible for tackling the problems facing Roma people in Europe.⁵

It was particularly noteworthy that the Committee used its 'urgent action procedure' to address letters to the Secretary General of the Council of Europe and the President of the European Commission. The letters called on both institutions to address discrimination against the Roma in accordance with their mandates.⁶ It is the first time the urgent action procedure

¹ Bosnia and Herzegovina, El Salvador, Iran, Romania, and Uzbekistan.

² Australia, Denmark, El Salvador, and Morocco.

³ Estonia, France, Romania, Slovenia, and Uzbekistan.

⁴ Bosnia and Herzegovina, Denmark, Estonia, France, Romania, Slovenia, and Uzbekistan.

⁵ Mr Nourredine Amir, Mr José Francisco Cali Tzay.

⁶ Letter to the Council of Europe available at <http://bit.ly/deeSGO>. Letter to the EU available at <http://bit.ly/cVFSEf>.

has been used to raise concerns in relation to a particular region, and with regional intergovernmental institutions rather than individual Governments. It will be interesting to see how the institutions respond to the Committee's calls for action.

Committee members highlighted that many minority or indigenous groups, especially Roma, have been denied formal recognition as a group in their respective countries of residence. Committee members therefore attached great importance to self-identification by indigenous and minority groups, as the basis for official recognition by the State.

OTHER DEVELOPMENTS

New working methods: List of themes

As treaty bodies look for ways to increase the efficiency and effectiveness of their work, many are introducing new methods of sourcing information from State parties. This session was the first time the Committee used a list of themes as the basis of the review of State reports, rather than a list of issues. Previously, States would often write lengthy responses to the list of issues. Instead, the list of themes is intended as a guideline for dialogue between the State and the Committee.

While it is still too early to judge the full effectiveness of the list of themes, early indications suggest it is a useful tool for guiding a constructive dialogue.

NGO meeting

Following poor NGO attendance at previous sessions, a formal meeting between the Committee and NGOs was held on Tuesday 3 August to explore how the collaboration could be strengthened.

The Committee recognised the important role played by civil society in reporting, briefings and presence at Committee meetings. Many participants, including Committee members and NGO representatives, noted their dissatisfaction with the current practice of informal NGO lunchtime briefings. It was widely recognised the meetings are often held at times when Committee members are unable to attend and that the time set aside is inadequate.

Ideas were proposed by civil society on how to better organise interaction with the Committee. Several NGOs wished for formal briefing sessions, like in the Committee against Torture (CAT).⁷ There was no agreement among Committee members about whether briefings should continue to be informal (Mr Lindgren Alves) or be part of the official programme (Mr Chris Maina Peter). Mr José Francisco Cali Tzay promoted the idea of holding a single formal meeting at the start of the session, whilst maintaining informal lunchtime meetings before each country case. However, it was agreed the current practice should be maintained for the time being. Further discussion will follow and Mr Thornberry will be the 'focal point' for the NGO agenda.

NGOs, including Amnesty International, Centre for Civil and Political Rights, and the International Service for Human Rights, indicated a desire for increased use of new technologies (e.g. Skype, websites and webcasts) to engage national and regional NGOs in State reporting and other Committee procedures. Ms Anastasia Crickley agreed all tools available, including technology, should be made the most of. However, she was concerned those groups most in need of communication with the Committee would still be unable to make contact, due to restricted technological access in many developing countries.

There were calls from several NGOs for Committee members to conduct State visits.⁸ Committee members agreed this would be beneficial; however, resource constraints present an obstacle.

Concern about threats to civil society in some States, as a result of engagement with the Committee, was highlighted. The Committee recognised protection should be afforded to human rights defenders and requested information on alleged reprisals. However, beyond this recognition of the issue, no firm plan of action was agreed.

For all related documents, including lists of themes and concluding observations, please visit the CERD 77th session sub-page on the OHCHR website: <http://bit.ly/bogwvQ> ■

⁷ Amnesty International, Human Rights Law Resource Centre, International Movement Against All Forms of Discrimination and Racism, International Service for Human Rights.

⁸ Centre for Civil and Political Rights.

Facts about the Committee

| | |
|----------------------------|--|
| Number of members: | 18 |
| Treaty: | International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) |
| Ratifications: | Signatories: 85. State Parties: 173 |
| Individual communications: | May consider individual communications relating to States parties who have made the necessary declaration under article 14 of the Convention |
| NHRI participation: | Formally allowed to address the Committee on the second day |
| NGO participation: | Informally allowed to organise meetings and briefings. NGOs official capacities under review |

HUMAN RIGHTS COMMITTEE

Focus on Cameroon, Colombia, Estonia, and Israel



Photo: Amanda Slater

The Human Rights Committee (the Committee) held its 99th session in Geneva from 12 to 30 July 2010, and reviewed reports from Cameroon, Colombia, Estonia, and Israel. Dominant topics of discussion included the legal status of the International Covenant on Civil and Political Rights in domestic law, the principle of non-discrimination, targeted and extrajudicial killings, and detentions and ill-treatment.

ENGAGEMENT BY STATE PARTIES

A wide range of approaches towards engagement with the Committee were displayed by States. Israel's delegation stood out for its defensiveness and unwillingness to participate in constructive dialogue. The delegation often avoided addressing difficult issues, despite Committee members being quick to follow up on unanswered questions. Nevertheless, the delegation agreed to return for a third session, rather than the usual two, to ensure all questions from the Committee could be addressed. The extended length of the review was partly due to the failure of the Committee members to keep their questions succinct. Almost half of Israel's delegation was from the permanent mission in Geneva, including the head who is the Permanent Representative in Geneva.¹

The review of Colombia also ran overtime into a third session, but the delay was primarily caused by the lengthy opening statement and answers provided by the delegation. Colombia focused mostly on explaining national level policies, rather than providing concrete examples of the impact of those policies. For example, the delegation noted the country's legalisation of abortion in certain cases. However, it provided no information in response to repeated questions, from Mr Fabian Omar Salvioli, about whether women were effectively able to access the right – especially given the right of health service providers to refuse to perform abortions for reasons of conscience, and the Procurator-General's lack of support for enforcement of the relevant Constitutional Court ruling. Other Committee members made similar efforts to encourage the delegation to provide examples of policy effectiveness, but without success.²

Although Committee members clearly felt there was a lack of concrete information provided by Colombia, they nevertheless praised the delegation for the quantity of information presented, which was copious and detailed.³ The information also demonstrated substantial knowledge on the part of the delegation, largely due to the State's efforts to ensure a broad range of government ministries were represented.⁴

¹ List of delegates for the review of Israel, available at <http://bit.ly/de4v1F>.

² Mr José Luis Perez Sanchez Cerro asked the delegation to highlight improvements resulting from the prevention measures Colombia had implemented to prevent conflict between armed actors when the civilian population is displaced. Ms Hellen Keller asked how Colombia intends to ensure there is no gap between policies decided in capital and what is implemented at departmental and municipal level. She noted this was a concern also raised by Mr Walter Kälin, the Special Rapporteur on internally displaced persons, in his last report.

³ The detailed amount of information provided by the State was in marked contrast to their appearance before the Committee on Economic, Social and Cultural Rights in May 2010, when the delegation failed to provide pertinent information in response to the Committee's questions, possibly due to a lack of expertise.

⁴ List of delegates for the review of Colombia, available at <http://bit.ly/cNIGdl>.

There was tense interaction at the review of Cameroon, partly due to the consideration of sensitive issues, such as capital punishment and the criminalisation of homosexuality. The delegation, drawn largely from their permanent representation in Geneva,⁵ seemed to lack detailed knowledge about the human rights situation on the ground in Cameroon. Mr Michael O'Flaherty criticised the narrow representation of the delegation, which also included only one woman, as 'unhelpful'. The representation was in marked contrast to the delegation sent by Cameroon for the Universal Periodic Review in February 2009, he said.

The Committee praised the Estonian delegation for directly answering questions in a succinct, constructive and informative manner. The delegation was well informed, as a result of the wide representation from various relevant government ministries, and with a good gender balance.⁶ The success of the dialogue was also due to the precise and focused questions asked by Committee members. Members followed-up on unanswered questions and unclear responses. Combined with the willingness of Estonia to respond to questions, this resulted in a highly fruitful review.

The lack of adequate translation of documents continues to hamper the Committee's work. Colombia provided its own translation of its written replies to the list of issues, from Spanish into English. Cameroon was criticised for not providing its documents in both French and English. Mr Ibrahim Salama, Director of the Human Rights Treaty Division of the Office of the High Commissioner for Human Rights (OHCHR), noted the OHCHR is aware of the persisting problem and reiterated a resolution to the issue is imperative.

NGO PARTICIPATION IN THE 99TH SESSION

The Committee held a closed session for formal briefings by NGOs on the first day of the session, followed by informal lunchtime and morning briefings before the reviews of Cameroon, Colombia and Israel. There were also NGO briefings for the country report task forces, in order to draft the list of issues on Ethiopia, Kazakhstan and Togo.

During the formal briefing, NGO participation ranged from high, e.g. Israel had seven NGOs present and received 18 written submissions, to non-existent in the case of Estonia. The briefing was not much of a dialogue, since only one question was asked by a Committee member. During an informal meeting between NGOs and interested Committee members, it was generally agreed the formal briefing at the beginning of the session is not sufficient and the Committee should explore introducing a formal briefing by NGOs before each country examination.

Although Israel received the most attention from NGOs, their informal briefings were poorly organised and could have been greatly improved by better coordination between NGOs beforehand. As an example of good practice, the Centre for Civil and Political Rights was key in organising and presenting information on behalf of up to 20 local NGOs (in the case of Togo). The NGO also organised conference calls with national NGOs to facilitate the Committee's country report task force in drafting the lists of issues.

Committee members cited information received from NGOs several times during the reviews of States. Estonia and Colombia were generally receptive to issues concerning civil society. Estonia agreed with the Committee's concern regarding the low turn-out of NGOs for the country's review, and expressed hope for greater civil society participation in future. However, Cameroon claimed NGOs were politicised. The small number of NGOs in Cameroon (only 16 registered, none of which are human rights focussed) is due to strict laws on the registration of NGOs.

MAIN THEMES

Legal status of the Covenant

In its concluding observations the Committee called on all four States examined to fully implement provisions of the *International Covenant on Civil and Political Rights* (the Covenant) in domestic laws. Israel disagreed with the Committee on the application of the Covenant in the Occupied Palestinian Territories (OPT), arguing the Government lacks the required control of the area. However, all the UN treaty bodies have concluded Israel does in fact have control of the OPT and therefore has human rights obligations in the area. Members repeatedly expressed disappointment in the State's failure to provide advance answers to questions in the list of issues relating to the OPT. Members also expressed exasperation at the delegation's failure to make reference to the ruling of the International Court of Justice (ICJ),⁷ which states the Covenant is applicable when a State acts to exercise its jurisdiction outside its own territory. In his concluding remarks the Chairperson, Mr Yuki Iwasawa, reiterated the Committee's position that Israel has obligations under the Covenant in the OPT and regretted Israel's refusal to respond to many questions in the list of issues. However, to Israel's credit, the State did provide oral responses to the questions.

Under Cameroon's legal system, the ICCPR enters into domestic force as soon as it is ratified. However, in its written replies only one example was given by the State of the Covenant being used by a court.⁸ The Committee criticised the response

5 List of delegates for the review of Cameroon, available at <http://bit.ly/bFOX0h>.

6 List of delegates for the review of Estonia, available at <http://bit.ly/9Y6TMA>.

7 'Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory', Advisory Opinion, I.C.J. Reports 2004, p. 136, available at <http://bit.ly/c38hMK>. See also the press release, available at <http://bit.ly/a2Nnfq>.

8 When a person detained for two years and five months was found to have had his right to be tried within a reasonable timeframe violated,

as unacceptable, a criticism also made of the State's written replies in general, but the delegation failed to provide further examples.

Estonia was similarly questioned regarding the lack of application of the ICCPR by the courts. The delegation noted there is greater knowledge and awareness of the European Convention on Human Rights but that efforts are being made to introduce the ICCPR to judges. Mr Krister Thelin said several countries, including Estonia, seem to place greater importance on the implementation of EU requirements than the UN human rights treaties. This issue also arose when human trafficking was discussed. It was noted that Estonia has signed onto the Council of Europe Convention on Action Against Trafficking. The delegation said the State is now in the process of ensuring domestic legislation is in conformity with the Convention, before taking the step of ratification. While the Committee congratulated Estonia for this progress, Mr O'Flaherty expressed concern the State has not perceived international obligations as having the same compelling force.

Principle of non-discrimination

The Committee repeatedly questioned the States about application of the non-discrimination principle, contained in Article 26 of the ICCPR.⁹ The criminalisation of homosexuality in Cameroon was raised numerous times, with the Committee stating this to be a clear violation of the Covenant. Cameroon's response was that 'tradition' supports the criminalisation of homosexuality, and the culture cannot be changed.

During the review of Israel, questions were raised about whether Arab detainees are made to sign papers in Hebrew,¹⁰ a language which a detainee would not be likely to understand. Mr O'Flaherty drew attention to a report by the NGO Adalah (the Legal Center for Arab Minority Rights in Israel), which found that many Arabs are unable to access information or to submit important official forms in Arabic.

Israel often made claims without providing corresponding data. The Committee refused to take statements at face value and pressed the delegation to provide corroborating statistics. For example, evidence was requested by Ms Christine Chanet to support the claim Palestinians were not disproportionately affected by a policy to demolish illegally built houses in the West Bank, and that residence permits are awarded in a non-discriminatory manner. The proof was not forthcoming.

Ms Hellen Keller brought to the Colombian delegation's attention statistics from an NGO showing 85 percent of all cases of violence against women in the country are against minors. The head of the Colombian delegation responded that, while the State did not believe the real figure was as high

as 85 percent, it did agree the situation is unacceptable. The Committee recommended all cases of sexual violence should be properly documented and investigated, and that women and girls should have access to justice to ensure there is no secondary victimisation.

Targeted and extrajudicial killings

Colombia came under scrutiny regarding the extensive number of extrajudicial executions of civilians reported as 'killed in combat'. Particular concern was expressed over a policy of providing financial incentives to police, which has allegedly resulted in civilians being killed and their bodies dressed as guerrillas in order to claim the reward. However, the delegation said rewards were only provided to members of the general public who supply information to police that produces an outcome.

Israel was questioned about targeted killings of suspected terrorists, described by some Committee members as extrajudicial killings. The delegation responded that Israel did not use targeted killings as a means of deterrence or of punishment, but only as an extraordinary measure when there is no other feasible way to apprehend a terrorist. Although terrorists cannot be considered combatants under the law of armed conflict, the delegation pointed to an Israeli Supreme Court ruling that considers terrorists as directly engaged in the conflict and therefore legitimate targets.¹¹

Detention and ill-treatment

The Committee asked many questions of the Estonian delegation on the issue of the detention of more than 800 individuals during the Bronze Night disturbances of 2007. The delegation agreed there were serious concerns about whether the detention was legal as, at the time, the law did not allow for administrative detention for the purpose of checking identification. However, it also said no one had been held for more than 24 hours and there were therefore no plans to pay compensation to those detained.

Cameroon was questioned regarding the number of individuals awaiting trial in its prisons. The Committee referred to NGO figures for one prison, showing that of 3,049 inmates, 85 percent have yet to be convicted. Ms Zonke Zanele Majodina referred to 'alarming' reports from NGOs concerning conditions in prisons, and Mr Mahjoub El Haiba spoke of concerns voiced by NGOs about torture in detention centres, the use of force and violence. The Cameroon delegation was generally sceptical of the findings of the NGOs, describing them as 'politicised' and dismissing the findings of one organisation as 'amplified'.

Ms Keller asked Israel what its specific guidelines on the use of torture were. The Israeli delegation said it has guidelines, but regarded them as 'classified'. The delegation was criticised by Mr Salvioi for its lack of cooperation on the matter.

⁹ under Article 9 (3) of the ICCPR.

⁹ ICCPR, Article 26.

¹⁰ Language is included in Article 26 of the ICCPR as one of the grounds on which discrimination is prohibited.

¹¹ HCJ 769/02, December 11 2005, <http://bit.ly/9VRFJj>.

Other issues

Other issues addressed during the examinations included questions about a pending law in Israel to regulate the financing of NGOs, which would require 'political' organisations to register. 'Political' has been defined in the legislation as 'attempting to influence public opinion', under which description, Mr O'Flaherty pointed out, human rights NGOs would fall. The delegation responded there are concerns about foreign entities financing groups within Israel who seek to influence Israeli policies. They noted other countries have similar rules.

The issue of national human rights institutions (NHRIs) was raised (Cameroon, Estonia and Colombia). Estonia was encouraged to seek accreditation for its office of Chancellor of Justice as an independent NHRI, in order to gain access to International Coordinating Committee meetings of NHRIs and benefit from shared best practice. The delegation said it had considered doing so, but the Chancellor of Justice did not fulfil all the functions set out in the Paris Principles to achieve an A-rating, and there was concern a B or C rating would suggest the institution had some problems.

As with previous sessions, the current draft of the document was not made public, and was available only to those observing the Committee's work. The reason given for this decision was that wider dissemination could cause confusion as to which draft was the most recent. However, it was emphasised stakeholders would have the opportunity to review and comment on the draft once the first reading is completed.

The Committee also considered and adopted its revised guidelines for State reports, and discussed the points of agreement from the 11th Inter-Committee Meeting and the 22nd Chairpersons Meeting. Concern was expressed that, while recognition was given in the points of agreement to the significant role NHRIs play in the work of the Committee, similar language was not used with respect to the role of NGOs. Mr O'Flaherty stressed that those who represent the Committee at the meetings need to do more to ensure the specific working methods of the Committee are reflected in the final document. ■

OTHER DEVELOPMENTS

The Committee continued its first reading of the draft general comment on the right to freedom of expression.¹² Discussion focused on delineating the permissible restrictions that can be placed on freedom of expression, and was continued at the October 2010 session of the Committee. An update can be found on ISHR's website.

¹² For more information on the Draft General Comment, please see ISHR's website, <http://bit.ly/ddlshC>.

Facts about the Committee

| | |
|--------------------|---|
| Number of members: | 18 |
| Sessions: | Three sessions a year (usually in March/April in New York, and July and October in Geneva) |
| Ratifications: | 166 State parties to ICCPR, 113 State parties to the first optional protocol (communications procedure) and 72 State parties to the second optional protocol (aiming at the abolition of the death penalty) |
| General Comments: | 33 (see http://bit.ly/ammoPT) |
| NGO participation: | NGOs can brief the Committee on the first day of its session on the human rights situation in States that will be examined during that session |

COMMITTEE ON THE RIGHTS OF THE CHILD

Towards a new communications procedure, and upcoming election of members



Photo: UN/Eskinder Debebe

The Committee on the Rights of the Child (the Committee) met during its last session in two chambers¹ from 13 September to 1 October 2010, and resumed its work in one chamber for the 56th pre-sessional working group (4 to 8 October 2010). In addition to reviewing 18 State reports during the 55th session, and conducting a preliminary review of 10 reports in the presence of NGOs and/or UNICEF during its pre-session, the Committee made headway with key developments in relation to the *Convention on the Rights of the Child* (CRC) and its other areas of work. These include the adoption of treaty-specific reporting guidelines; an expert meeting and the adoption of an ‘elements paper’ in relation to the new Optional Protocol to the CRC establishing a communications procedure; and a decision on themes for the next two days of general discussion.

As the NGO Group closely follows the elections of Committee members by encouraging State parties to nominate the most qualified experts from among their nationals, it has been actively involved in preparations for the up-coming elections (21 December 2010).

This article will focus on the new developments in the work of the Committee and the elections process. The analysis of the 55th session and 56th pre-session will be covered in the next issue of the Human Rights Monitor Quarterly (January 2011).

A NEW OPTIONAL PROTOCOL TO THE CRC: NEGOTIATIONS ON A COMMUNICATIONS PROCEDURE START ON 6 DECEMBER 2010

In March 2010, the Human Rights Council (the Council) mandated the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to draft the new Optional Protocol, and requested the Chairperson prepare a proposal as the basis for the negotiations.

On 6 August 2010, the Chairperson circulated a proposal for a draft optional protocol, which took into account the expert submissions and views provided during the first session of the Open-ended Working Group. It also considered the views expressed during expert consultations held in June 2010 with United Nations and civil society experts, including the Chairperson and a Vice-Chairperson of the Committee.

The draft uses agreed language from the optional protocols and/or provisions of the treaties, which have created the existing communications procedures under the core human rights treaties. It also offers new language, including a provision allowing collective communications by national human rights institutions, ombudspersons and NGOs.

On 1 October 2010, the Committee adopted a paper featuring its comments on the Chairperson’s proposal for a draft Optional Protocol. This paper provides the Committee’s comments on key articles of the proposal and makes suggestions to strengthen the draft. The Committee stressed that State parties to the Optional Protocol on Sale of Children, Child Prostitution, and Child Pornography (OPSC), and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), should not be given the option to exclude any of [the instruments] from the scope of the communications procedure, and strongly supported collective communications, including by non-ECOSOC NGOs.¹ Civil society also prepared a joint submission in response

¹ The Committee worked for three sessions in two chambers in 2010, to reduce the backlog of reports.

to the draft, which was submitted through the NGO Group for the CRC.

The first negotiations by States of the optional protocol will be held from 6 to 10 December 2010 at Palais des Nations in Geneva, Switzerland. The resolution adopted in March 2010 by the Council, which mandated the drafting of the Optional Protocol, also provides for a second session of five days, which will be held in February 2011.

For more information on the Open-ended Working Group, including the proposal for a draft, the Committee's paper and the NGOs' joint submission, see <http://bit.ly/bRjQXO>. If you would like to find out more about the process, please contact Anita Goh (goh@childrightsnet.org).

THE IMPACT OF THE NEW TREATY-SPECIFIC GUIDELINES ON REPORTING UNDER THE CRC, THE OPSC AND OPAC

In accordance with harmonised guidelines on reporting to the international human rights treaty bodies, the Committee adopted its own treaty specific reporting guidelines on 1 October 2010.² In addition to providing information on how to prepare a treaty specific report under the CRC, the guidelines explain how to incorporate information on OPSC and OPAC in the periodic reports.³ This information is timely, as some States have started reporting on the CRC and its Optional Protocols, but have provided the information in a variety of ways, and in some cases insufficient information has been included on the Optional Protocols.

States which have not yet submitted their initial reports under the CRC, OPSC or OPAC, should continue to use the original reporting guidelines for their initial reports.⁴ As there is a backlog of reports pending examination until early 2013, these guidelines will only affect States which have not yet submitted their reports.

The NGO Group will also be revising its reporting guidelines for preparation of alternative reports by NGOs, to inform them on how best to report on the CRC and its Optional Protocols. In the meantime, the existing guidelines still apply.⁵

2 The guidelines can be found at: <http://bit.ly/aVo1jm> and the annex at: <http://bit.ly/9qQwmu>.

3 State parties have to send initial reports on the OPSC and OPAC and then include follow-up information in the main periodic report on the CRC.

4 Initial reporting guidelines on the Convention; CRC/C/5 were adopted on 30 October 1991 and the Committee has adopted specific guidelines for OPSC; CRC/C/OPSC/2, (3 November 2006), and for OPAC; CRC/C/OPAC/2 (19 October 2007).

5 A guide for Non-Governmental Organizations Reporting to the Committee on the Rights of the Child, available at <http://bit.ly/c98b0a>.

THE 2011 AND 2012 DAYS OF GENERAL DISCUSSION

During its 55th session, the Committee announced the themes for the next two days of general discussion, which will take place in September 2011 and 2012:

- Children with Parents in Prison (2011)
- Children in Migration Situations (2012)

The official titles, and information on how to contribute papers and participate in these days of discussion, will be posted on the Committee's web page and the NGO Group's website a few months before each meeting. These meetings are open to any interested parties, including representatives from governments, other treaty bodies, UN agencies, NGOs and national human rights institutions (NHRIs), as well as individual experts and children. The NGO Group will also circulate information through CRINMAIL.⁶

Days of general discussion provide an opportunity to foster a deeper understanding of the specific articles or topics related to the Convention and its Optional Protocols. The main outcome is a series of recommendations for States. Additionally, there may be recommendations that call for studies to be conducted by the UN General Assembly⁷; that make proposals for the drafting of new international instruments⁸; or that contribute to the drafting of General Comments⁹.

CRC ELECTIONS: HOW KEY STAKEHOLDERS CAN BE INVOLVED IN THE PROCESS

To ensure a high level of expertise among the members of the Committee, the NGO Group continues to advocate for States to nominate and elect the most qualified experts.

In preparation for the 13th Meeting of State parties to the CRC (New York, 21 December 2010), which will elect nine members of the Committee whose terms of office are due to expire,¹⁰ the NGO Group has encouraged States and NGOs to ensure the most qualified experts amongst their nationals are nominated. In order to ensure appropriate geographical representation, the NGO Group analysed the regional gaps amongst the nine members of the Committee who are not running for re-election.

In addition to the criteria set out in Article 43(2) of the CRC, that Committee members 'shall be of high moral standing

6 If you would like to subscribe to CRINMAIL, please go to the following website: <http://bit.ly/2fG47R>.

7 e.g. Study on Children in Armed Conflict and the Study on Violence against Children

8 e.g. OPAC and the Guidelines for the Alternative Care of Children

9 e.g. implementing child rights in early childhood; and the right of the child to express their views and to be heard. For an overview of the Committee's General Comments, see <http://bit.ly/9zkjP5>

10 The terms of the nine members will expire on 28 February 2011.

and of recognised competence in the field covered by this Convention', the NGO Group has developed a set of criteria following the monitoring of the Committee's work since its inception. These include:

- Demonstrated expertise in the field of human rights and particular commitment to respect for children's human rights
- A variety of complementary professional backgrounds
- Independence and impartiality
- The ability to devote sufficient time to the work of the Committee
- Experience working with a broad range of stakeholders (UN agencies, NHRIs, NGOs and children)
- An awareness and sensitivity to cultural differences
- Fluent in one of the three working languages (English, French or Spanish)
- Experience relevant to the Committee's likely new role of considering communications/complaints from children and those acting on behalf of them, in light of the current drafting of the new Optional Protocol

The role of NGOs in the nomination and election processes

The NGO Group wrote to States and national NGOs/coalitions to mobilise them to nominate or advocate for the nomination of the most suitable candidates. In order to inform the NGOs on the role they could play at national level, it circulated its fact sheet on elections.¹¹ Following the nomination of candidates, the NGO Group wrote to national and international NGOs¹² working in the countries, to receive feedback

on how the candidates match the criteria. Once this information was collected, the NGO Group contacted the States to provide them with supplementary information on the candidates. The NGO Group does not promote any one candidate over another.

On 21 December, 24 candidates will be elected for the nine available seats on the Committee. The election of strong candidates, well versed in and committed to the promotion and protection of children's rights, will be testament to the regard in which the international community holds the Committee for the realisation of children's rights.

Giving the candidates a chance to share their views

For the first time in the CRC elections, the NGO Group and CRIN joined forces to interview nominees. This provided candidates with the opportunity to present their experience in children's rights, what they can contribute to the work of the Committee, what they consider to be the key issues in child rights, and their vision for the Committee. They were interviewed on a voluntary basis and all the posted interviews have been checked and approved by the relevant candidates. The outcome of their interviews can be found on the following website:

<http://bit.ly/9z7nSw>. ■

¹¹ <http://bit.ly/ctjgOL>.

¹² This is not possible for all the countries which have nominated candidates, as the NGO Group does not have contacts with independent NGOs in all the countries.

Facts about the Committee

| | |
|--------------------------------|---|
| Number of members: | 18 |
| Treaties it covers: | Convention on the Rights of the Child (CRC), Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) |
| Total number of ratifications: | Signatories: 85. State Parties: 173 |
| NGO participation: | With a 3-hour pre-session per country, the Committee has one of the best models for NGO involvement in the reporting process |
| General Comments: | 12 adopted (see http://bit.ly/9zkjP5) and three under development |

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Preventing violence against women challenges all States: Albania, Argentina, Australia, Fiji, Papua New Guinea, Russia, and Turkey



Photo: Özgür Mülazimoğlu

The Committee on the Elimination of Discrimination against Women (the Committee) held its 46th session in New York from 12 to 30 July 2010. Over the course of the three weeks, seven State parties' reports were reviewed: Albania, Argentina, Australia, Fiji, Papua New Guinea, the Russian Federation and Turkey.

Amongst these States, there were a wide variety of approaches to engagement with the Committee, as well as progress in implementing the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). Fiji and Papua New Guinea were upfront about their poor reporting record¹. The Papuans also acknowledged the enormity of the challenge they face as a result of 'Big Man' culture and embedded tribal customs. Albania, though proud of its raft of legislative reforms to empower women and advance gender equality, was the first to admit the reforms were not being properly implemented or adequately monitored.

In contrast, Argentina and Australia had clearly made significant strides since their last reviews.² However the Committee rejected Argentina's attempt to blame persistent obstacles to progress in the provincial regions on the country's federal structure. Furthermore, the repeated inability of the delegates to produce disaggregated data eventually resulted in an admission that Argentina had numerous shortcomings in this respect. The Committee also refused to accept Australia's claim that because the current Government was in 'caretaker mode' in the lead-up to a national election, delegates would have difficulty answering questions about future Government actions. Several Committee members reminded Australia that as a ratifying party, it bore the legal responsibility to report to the Committee, regardless of domestic political cycles.

The make-up of government delegations also varied markedly. The Russian and Turkish delegations (each comprising 24 people) dwarfed their counterparts from Albania and Fiji, which had only a handful of delegates. All States were represented at a high-level, and generally struck a reasonable gender balance. However, the Russian Federation was headed by a man, and none of the women in the male-dominated delegation were given the opportunity to address the Committee.

The Committee was to have dealt with an 'exceptional report' from India to follow-up on the impact on women of the 2002 Gujarat massacres.³ However, at the request of the State party during the current session, consideration of the follow-up report was postponed until the following session in October. For the Indian NGOs that had travelled to New York to brief the Committee, this must have been a very frustrating and disappointing result. Nonetheless, they spoke frankly of the State's unwillingness to provide justice or reparations to the victims and their families, and argued the State had failed to provide the information requested by the Committee.⁴

1 Fiji and Papua New Guinea each presented three combined periodic reports after both had failed to report for the last 15 years. In the case of Papua New Guinea, it was the first time it engaged with the Committee.

2 Australia for example, was close to finalising a national action plan on violence against women, would introduce a new paid parental scheme in 2011, and had signed the optional protocol to the Convention.

3 The Committee requested this report in 2007 when it last reviewed India. Paragraph 67 of the Committee's Concluding Observations on India from its 37th session (CEDAW/C/IND/CO/3), dated 2 February 2007, available at <http://bit.ly/dmCtIX>.

4 NGOs from India presented oral reports to the Committee, based on field visits they had undertaken to 18 rehabilitation colonies, where they

NGO AND NHRI PARTICIPATION DURING THE 46TH SESSION

The Committee held its two regular briefing meetings with NGOs and national human rights institutions (NHRIs) on 12 and 19 July. However NGO input into the session varied considerably depending on the State of origin. At one end of the scale, Argentinean NGOs submitted some 12 separate reports and were present in New York in similar numbers. In contrast, only two NGO reports were submitted in relation to Fiji and Papua New Guinea, both authored by international human rights organisations. Although no Fijian NGOs were in attendance to brief the Committee, their counterparts from Papua New Guinea, including the autonomous island of Bougainville, were. NGOs from the other States under review made important written and oral contributions to assist the Committee, which Committee members repeatedly referenced in the interactive dialogues.

The Australian Human Rights Commission was the only national institution to submit a report, and Committee members appreciated the opportunity to engage in a substantive dialogue with the Australian Sex Discrimination Commissioner regarding her recommendations.

One development that cast a negative light on Fiji's review was its strong, negative response to an 'anonymous' NGO report. Although not publicly available, Committee members appeared to have the report. The head of the Fijian delegation spent a considerable portion of his opening statement detailing its alleged inaccuracies and political bias. However several Committee members were equally strong in their response. Ms Indira Jaising reminded the delegation that NGO reports were a manifestation of a range of civil and political rights, and anonymity was not a reason for criticising them. Together with Ms Yoko Hayashi and Ms Dubravka Simonovic, she also expressed concern about the safety of the report's author(s) and sought assurances they would not be subject to reprisals by the State as a result of their cooperation with the treaty body.

MAIN THEMES

Violence against women

The Committee's top priority remained the need for all State parties to do more to prevent violence against women. This was very clear in its concluding observations, which directed every State party under review (with the exception of Fiji)⁵ to provide a follow-up report within one to two years on its actions to address violence against women. In all cases, including Fiji,

the message was the same: develop a comprehensive national strategy; criminalise all forms of violence against women in national legislation; promptly and fully investigate all reports of violence; prosecute and adequately punish the perpetrators; undertake public education campaigns to prevent violence and empower women; provide ongoing support and assistance to all victims; and collect disaggregated data on the trends in violence and related prosecutions.

Even though the Committee was 'deeply concerned' by reports that 75 percent of Papuan women had experienced domestic violence, it was more alarmed by a recent spike in the torture and brutal killings of women and girls who were accused of witchcraft and sorcery.⁶ NGOs had appealed to the Committee to raise this matter with the State, which members did several times during the interactive dialogue. The delegation responded that although there was a traditional belief in sorcery, the related violence against women was not part of Papuan culture. Research was being undertaken, but as yet, no data was available. The Committee asked the State to take 'immediate and effective measures' to investigate reports about sorcery-related torture and killings and provide an update within two years.⁷

In the case of the Russian Federation, the Committee made the protection of the human rights of women in the Northern Caucasus, including the Chechen Republic, a priority for follow-up by the State within one year.⁸ Even though discussion about the situation of women in Chechnya was not a focus of the dialogue, and a member of the Russian delegation had cautioned 'too much attention was paid to women's rights in the Chechen Republic', the Committee called on the State to end impunity for violence against and killings of women and girls in the region.

In its review of Argentina, a number of Committee members raised questions about Argentina's treatment of female detainees, a concern that NGOs had addressed. Ms Soledad Murillo de la Vega asked about the over-representation of women in prisons and the high incidence of reports of abuse by male prison staff. When some of her questions went unanswered, Ms Yoko Hayashi asked how the State was dealing with allegations of torture and ill-treatment by women prisoners, and later, what steps were being taken to end invasive body searches of women prisoners. The sustained questioning eventually resulted in the delegation advising that it was concerned about the manner in which these searches were being performed, and was keen to address the problem.

interviewed women affected by the massacres. The follow-up report submitted by India was almost two years late, and was very concise at less than seven pages. It is available at <http://bit.ly/cqQb5E>.

5 The Committee prioritised two other issues for immediate follow-up by Fiji. Firstly holding free and fair elections and developing a new, democratic constitution. Secondly, the protection of human rights defenders, particularly women defenders. The Committee's recommendations to Fiji regarding how to address violence against women were similar to those of other State parties under review.

6 Amnesty International's alternative report to the Committee suggested these kinds of killings have doubled in recent times, from about 50 in 2008: see <http://bit.ly/cssyWY>. There was speculation the increase in killings may be linked to the worsening HIV/AIDS epidemic in Papua New Guinea, which is often blamed on black magic by witches.

7 Paragraph 28 of the Concluding Observations for Papua New Guinea (CEDAW/C/PNG/CO/3), available at <http://bit.ly/dair91>.

8 Paragraph 25 of the Concluding Observations on the Russian Federation (CEDAW/C/USR/CO/7), available at <http://bit.ly/dair91>.

Traditional values and gender stereotypes

Albania, Fiji, Papua New Guinea, Turkey, and parts of the Russian Federation were grappling with a range of customary laws and traditions that discriminated against women and often resulted in grave human rights violations. These included polygamy, bride price, so-called honour killings, early marriage and bride abductions. In the case of Turkey, Ms. Violet Tsisiga Awori referred to 800 women being murdered each year for the last five years, and asked what monitoring mechanisms were in place to assess the effectiveness of recent reforms to the legal system to tackle this problem.

Committee members were concerned about the extent to which victims were able to use the formal legal system to challenge harmful traditional practices. Where the crimes were successfully prosecuted, they questioned whether the punishments were proportionate to the seriousness of the offences. They were also interested to hear how States sought to ensure that where Sharia law was practiced, women's human rights were respected. Several States pointed to their efforts to cooperate with the media and religious leaders to help change community attitudes and portray women in positive and non-discriminatory ways. However it was clear from the Committee's concluding observations that such outreach and collaboration with civil society was only one element of the comprehensive, innovative, multi-faceted and long-term approach that States must initiate in partnership with other stakeholders.

Use of temporary special measures

Given the persistence of gender inequality in all States under review, it was not surprising the Committee strongly encouraged all States to ensure the full domestication of the Convention, including the use of special measures. Committee members were quite forceful in their view that States must take additional measures to ensure women's equal participation in all areas of public, political and professional life. For example, although Argentina's national Assembly comprised 40 percent women, the delegation was reminded that the Convention set a goal of 50 percent, and there was considerable room for improvement in women's representation at the provincial level, particularly in regard to indigenous women.

Australia, Papua New Guinea and the Russian Federation were asked to submit follow-up reports within two years in relation to their introduction and use of special measures. The Committee's concerns about the entrenched marginalisation of indigenous women in Australia prompted it to ask that the future report detail improvements in indigenous women's access to education, health care and legal aid services. In Papua New Guinea, the Committee requested reserved seats for women in the Parliament, along with the development of 'concrete goals and timetables in order to accelerate the increase in the representation of women in all spheres of public life'.⁹ Although its recommendation to the

Russian Federation to boost women's participation in public and political life was rather general, it was accompanied by more detailed suggestions on how this could be achieved. These included providing targeted training and mentoring programmes for women candidates and politicians, as well as prospective business leaders.

Access to healthcare and reproductive health services

All States were experiencing difficulty in the delivery of these rights, particularly for vulnerable groups such as indigenous women, migrant women's, disabled women, rural women, and women belonging to ethnic minorities.¹⁰ Seeking to address some of the root causes, Committee members asked probing questions about women's and girls' access to contraceptives; the provision of comprehensive sexual education in schools; and accessibility for all women to family-planning information and services. In States such as Albania, Papua New Guinea and Turkey, where the Committee was concerned by the prevalence of HIV/AIDS among women, it sought more detailed information about how the governments were responding to the needs of those infected, and working to prevent new infections.

Access to abortion was of particular concern in Papua New Guinea, where the cost of services was prohibitively expensive for most women, and punishments were imposed on those who used them. Argentina's continued criminalisation of abortion was equally concerning to the Committee. In both States, the limited access to safe abortion had resulted in high pregnancy rates amongst adolescent girls and high maternal mortality. As a result, the Committee asked Argentina to submit a follow-up report within two years to provide more information on its efforts to reduce rates of maternal mortality, provide sexual and reproductive health education in all schools, and review its abortion legislation.

OTHER DEVELOPMENTS

In closed meetings, the Committee continued its work on three general comments: on article 2 of the Convention; older women and protection of their human rights; and the economic consequences of marriage, family relations and their dissolution. The Committee adopted the first two of these general comments at its October session - the third is still in draft form.¹¹

The Committee also continued its practice of adopting statements in relation to new developments, and developed a statement on the 10th anniversary of Security Council *Resolution 1325 on Women, Peace and Security*.¹²

⁹ Paragraph 34 of the Concluding Observations for Papua New Guinea (CEDAW/C/PNG/CO/3).

¹⁰ Albania's difficulty in providing health services to rural women, and its need to improve service delivery to women from linguistic and ethnic minorities (especially Roma women), prompted the Committee to request a follow-up report on progress in these areas after two years. Paragraph 35 of the Concluding Observations for Albania (CEDAW/C/ALB/CO/3), available at <http://bit.ly/dair91>.

¹¹ More information available at <http://bit.ly/9kVlq7>.

¹² Available at <http://bit.ly/dair91>.

New membership for CEDAW in 2011

State parties to the Convention on the Elimination of All Forms of Discrimination against Women met on 28 June 2010 at UN Headquarters in New York to elect 12 experts to the 23-member CEDAW Committee.* The new members were elected by secret ballot from a list of 21 candidates, which was provided to State parties, along with their curricula vitae.**

Most of those elected were already serving members of the Committee.*** Thus on 1 January 2011 when the experts begin their four-year term, only five new faces will appear:

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

The four experts who will leave the Committee when their term expires on 31 December 2010 are: Ms Ferdous Ara Begum (Bangladesh), Ms Saisuree Chutikul (Thailand), Ms Dorcas Coker-Appiah (Ghana), and Mr Cornelis Flinterman (Netherlands), who will take up a seat on the Human Rights Committee in 2011. An additional seat, held by Ms Hazel Gumede Shelton (South Africa), has been vacant since her resignation in 2007, but will be filled as of 2011.

Geographic representation on the Committee in 2011

| Region | Number of Experts | Nationality of independent expert |
|-----------------------------|-------------------|---|
| Africa | 4 | Algeria, Egypt, Kenya, Mauritius |
| Asia | 6 | Afghanistan, Bangladesh, China, India, Japan, Timor Leste |
| Eastern Europe | 3 | Croatia, Romania, Slovenia |
| Latin America and Caribbean | 4 | Brazil, Cuba, Jamaica, Paraguay |
| Western Europe and Others | 6 | Finland, France, Israel, Spain, Switzerland, Turkey |

* The Convention requires that candidates are 'of high moral standing and competence in the field covered by the Convention' and will 'serve in their personal capacity'. States parties should 'give consideration' to equitable geographical distribution, as well as the representation of different forms of civilisation and principal legal systems (article 17(1)).

** The candidate information is available at <http://bit.ly/ak8ejj>

*** Seven experts were re-elected to the Committee: Ms Meriem Belmihoub-Zerdani (Algeria), Ms Naela Mohamed Gabr (Egypt), Ms Ruth Halperin-Kaddari (Israel), Ms Yoko Hayashi (Japan), Ms Violeta Neubauer (Slovenia), Ms Pramila Patten (Mauritius), and Ms Dubravka Šimonović (Croatia). ■

THEMATIC FOCUS

THE TREATY BODY COMPLAINT SYSTEM 27

THE TREATY BODY COMPLAINT SYSTEM

Expanding protection against refoulement. A survey of recent views by treaty bodies on individual complaints



Photo: Matt Olson

One of the main features of the UN treaty body system is the competence of several of the Committees to receive individual communications regarding violations of their respective treaties.¹ It provides an opportunity for victims who cannot effectively access justice in their home countries to seek an international review of their case. At the same time it presents an opportunity to obtain an international legal assessment of an issue that may be of broader interest in the country in question or to the human rights community at large.

Unfortunately, the effective implementation of the individual communications procedure faces serious challenges, especially in relation to case processing and implementation of decisions. Since the first cases were decided in 1977, UN treaty bodies have adopted decisions on 1,906 individual communications, and there are currently approximately 500 cases pending before the four bodies receiving communications.² Violations of the respective treaties have been found in 33 percent of the cases. This is a high number compared to the European Court of Human Rights (ECHR). Nevertheless, it is concerning that the, severely under-resourced, treaty bodies are forced to spend time on processing 67 percent of cases without finding a violation.³

HIGH SUCCESS RATES AND SIGNIFICANT BACKLOGS

During the first half of 2010, the Human Rights Committee (HRC) and the Committee against Torture (CAT) decided on 32 individual communications, finding violations of one or more provisions of the respective treaty in 50 percent of the cases.⁴ This is a noticeable and welcome improvement from the 33 percent average. Unfortunately, the inadmissibility rate remains high at 34 percent. While it is outside the scope of this article to thoroughly analyse the factors behind these numbers, they do suggest complainants have become better at providing sufficient proof of reported violations. On the other hand, there seems to be a fundamental lack of understanding of the basic premise of the complaints system among many complainants who are refused at the admissibility stage. Common grounds for refusal are non-exhaustion of domestic remedies and an absence of proof of the alleged violation.

A serious backlog of cases and lengthy processing times remain serious problems, with an average wait of 45 months.⁵ In reaction to this and its approximate 100 case backlog, CAT, in May, renewed its call to the UN General Assembly to allocate additional meeting time to address the backlog of cases and State reports to be reviewed.⁶ One of the key factors contributing to the backlog is the high number of inadmissible cases, which alone have an average processing time of 44 months.

Since only CAT and HRC decided on individual communications in the first half of 2010, the substantive focus of the cases

¹ For further information about the competence of individual treaty bodies to receive individual communication, please see ISHR's Simple Guide to the Treaty Bodies pages 23-31. The Simple Guide is available at <http://bit.ly/dB7B73>.

² The Human Rights Committee accounts for 80 percent of all cases.

³ In 2009, the ECHR decided on 34,690 cases and in 1,504 of them (4,3 percent) found a violation.

⁴ During the first half of 2010, no individual communications were decided by the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women.

⁵ The average processing time for CAT is 30 months, while the HRC spends an average of 47 months per case.

⁶ A/65/317, §§ 27-30. A decision on this request may already have been made at the time of publication of this article.

Several of the treaty bodies can receive complaints, communications or 'petitions' regarding violations of a right or rights under the relevant treaties. This is provided the State concerned has recognised the competence of the treaty body to consider complaints against it, by ratifying the relevant optional protocol or making the required declaration under the relevant article of the treaty.

While each treaty body has its own specific requirements for receiving communications, there are certain standardised requirements, which must be met:

- The State has ratified the relevant treaty and explicitly recognised the competence of the treaty body to receive communications
- All domestic remedies have been exhausted
- The violation in question is covered by the relevant treaty and was committed while the treaty was in force on the territory of the violating State

Decisions of the treaty bodies can be found by searching for 'jurisprudence' at <http://bit.ly/dxR58B>.

More information, about whether your State has recognised the competence of any treaty bodies to receive individual communications, can be found by looking at the ratification of relevant treaties and optional protocols at <http://bit.ly/aJFNWT>.

is limited to a group of core civil and political rights issues, including the right to liberty and security of person, the right to a fair trial, the right to life, protection from torture and refoulement,⁷ the right to conscientious objection to military service under article 18, and an unusual case relating to whether taxation of tips given to casino groupiers is discrimination. The majority of these cases related to fair trial, arbitrary detention and torture, and non-refoulement. They were predominantly brought against Western States and Eastern European countries, who collectively accounted for 78 percent of all cases.⁸ CAT, which mainly receives communications related to non-refoulement, saw 100 percent of its cases relating to Western countries.⁹ While these numbers are not representative of the proportionate levels of civil and political rights violations in these regions compared to the rest of the world, they do tell a story about the degree of acceptance of treaty body complaints competence and the capacity of domestic actors to access these bodies.

BURDEN OF PROOF AND PROTECTION OF ASYLUM SEEKERS

With 32 cases decided in the period in focus, it is not possible to provide a comprehensive overview of all cases and their outcomes. Instead, the following section will focus on two areas that are central in the treaty bodies' work with individual communications. One area relates to how the treaty bodies evaluate refoulement cases, one of the few possibilities for the treaty bodies to act preventatively rather than after

violations have occurred. The other focus area is the treaty bodies' evaluation of evidence and the burden of proof.

Among the more interesting developments in treaty body practice during this period, were two cases elaborating on how the principle of non-refoulement is applied to situations where a person is subject to a general, rather than personal, threat of torture from non-State actors. The traditional approach to human rights based refoulement protection requires that a threat is personal and, as a minimum, is expected to materialise with the consent or acquiescence of State officials.¹⁰ In recent case-law, the ECHR has challenged this approach by accepting that threats against distinctive groups¹¹, and high intensity general threat levels¹², may satisfy the criterion that the threat of torture is specific to the person. In parallel, the UN Special Rapporteur on Torture, Mr Manfred Nowak, has challenged the traditional perception of torture, as acts committed by or with the acquiescence of State actors, by arguing that practices such as female genital mutilation (FGM) and other 'private' violence may constitute torture if the State does not act with due diligence to prevent such crimes.¹³

Now it seems CAT and the HRC have taken significant steps towards incorporating these two lines of theory into their jurisprudence. In the case *Eveline Njamba v. Sweden*,¹⁴ CAT prohibited Sweden from returning a woman to the Democratic Republic of the Congo (DRC) due to the general, however high, threat of violence against women in the country.

7 Non-refoulement is the right to not be returned to a country where there are substantial grounds for believing the person will be subjected to torture.

8 Complaints against Western States accounted for 50 percent of all cases.

9 Cases related to France, Sweden and Switzerland.

10 The non-refoulement principle is also found in other areas of international law such as refugee law and international humanitarian law, where the requirements for initiating protection are different.

11 ECtHR [GC], *Saadi v. Italy* (28 February 2008, App. no. 37201/06) §132.

12 ECtHR [PJ], *Kabulov v. Ukraine* (19 November 2009, App. no. 41015/04) §112.

13 A/HRC/7/3, §§ 53 and 68-76.

14 CAT, *Eveline Njamba v. Sweden* (14 May 2010, Comm. No. 322/2007).

Referring to several recent UN reports and its 2007 General Comment on Article 2 of the Convention Against Torture,¹⁵ the Committee seems to conclude the threat of violence and rape against women across the country, 'committed by men with guns and civilians', is so severe it equates to a personal threat. Since the DRC Government is not responding to the situation with due diligence the threat is attributable to the State and thus amounts to a risk of torture.¹⁶ In a similar case, the HRC afforded refoulement protection to a woman and her daughter who were to be returned to Guinea, where the daughter risked being subjected to FGM.

Compared to CAT, the HRC took a less expansive approach on the individualised threat requirement, arguing that the majority of the girl's family were in favour of performing FGM. However, the Committee did not pronounce itself in detail on the question of State responsibility and merely concludes that '...there is no question that subjecting a woman to genital mutilation amounts to treatment prohibited under article 7 of the Covenant'.¹⁷

As to the individualisation requirement, it is interesting to note that CAT, with its exclusive focus on the general threat situation, seems to depart from its traditional requirement that evidence be presented 'to show that the individual concerned would be personally at risk'.¹⁸ This is a big step forward in the protection of individuals at risk, both in relation to the substantive scope of protection and the possibility to prove a threat exists. In the past complainants have often not been able to prove they faced a personal risk of torture. The big question left to CAT is what kind of general threat level is required to activate refoulement protection, in the absence of any specific threat to the individual.

The concept and scope of State responsibility in human rights law has been in constant development during the past decades, both in relation to its extraterritorial application and its application to violations committed by non-State actors. In the cases reviewed in this article, CAT advances a due diligence¹⁹ argument to find State responsibility, while the HRC avoids addressing the issue all together. What makes this situation particularly interesting is that the Committees are required to assess the State's observation of due diligence in a hypothetical situation where non-State actors commit violence or torture against women. This is in contrast to the normal application of the due diligence principle after the fact. Further, considering the unstable situation in the DRC with large parts of the country effectively outside the State's

control, it is questionable how far the due diligence responsibilities of the DRC Government reaches.²⁰

With their expansion of the concept of State responsibility and relaxation of the individualisation requirement, these two decisions constitute a significant development in treaty body jurisprudence. Furthermore, CAT's approach to applying the due diligence principle seems to be moving towards the concept of finding responsibility when the State is unable or unwilling²¹ to protect rights highlighted in refugee law. Indeed, the facts of the case in many ways are more similar to a classic refugee case than a classic human rights refoulement case. Due to the existence of more effective monitoring mechanisms in the human rights field, the rejected asylum seekers in the two cases highlighted have found better protection in the traditionally more narrow human rights refoulement protection avenue.

In July 2010, the Government of Sweden informed CAT it had granted Eveline Njamba a permanent residence permit.²² While the outcome of this case is welcome, it highlights a clear need to equip the Convention on the Status of Refugees with a monitoring body similar to those established in the human rights field. Doing so would ensure future cases are processed by experts with more specialised knowledge on refugee issues. It would also avoid treaty bodies being flooded by asylum claims, and help ensure the rate of non-compliance with treaty body decisions does not rise as a reaction to the expansive interpretation of human rights refoulement protection.

The ability of complainants to sufficiently substantiate their allegations has long been a key obstacle to improving the success rate for communications before the treaty bodies. Unfortunately, the latest statistics do not alleviate this concern. Of all the alleged violations considered by treaty bodies in this review period, 60 percent were deemed unsubstantiated either at the admissibility or merits stage of the proceedings, and only 22 percent were deemed sufficiently substantiated.²³ While these numbers can be partly ascribed to incomplete communications, lack of legal capacity of the complainant and what appears to be the use of a scattergun technique when submitting complaints, there also appear to exist more structural problems preventing complainants from effectively utilising individual communications procedures.

15 CAT/C/GC/2, available at <http://bit.ly/9gejdK>.

16 CAT, *Eveline Njamba v. Sweden* (14 May 2010, Comm. No. 322/2007) §9.5.

17 HRC, *Diene Kaba v. Canada* (25 March 2010, Comm. No. 1465/2006) §10.1.

18 CAT, *Eveline Njamba v. Sweden* (14 May 2010, Comm. No. 322/2007) §9.3.

19 IACtHR, *Velasquez Rodriguez v Honduras* (29 July 1988) §175.

20 ECtHR [GC], *Ilascu and Others v. Moldova and Russia* (8 July 2004, App. no. 48787/99) §§333 and 348.

21 Council Directive, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (2004/83/EC of 29 April 2004) Article 6(c).

22 Human Rights Treaties Division, Newsletter No. 9, (July-August-September 2010), p.13 (<http://www2.ohchr.org/english/bodies/docs/HRTDNewsletterNo9.pdf>)

23 123 allegations were made regarding violations of specific provisions of the human rights treaties. 74 were considered unsubstantiated; 27 were considered sufficiently substantiated; and 22 were dismissed on other grounds.

Treaty bodies are generally reluctant to engage in evidence evaluation, when this has already been done at the domestic level.²⁴ Furthermore, the time required to assess evidence is difficult to reconcile with their limited meeting time. The treaty bodies have taken the position that they will only engage in independent evidence assessment if the domestic procedure is found to be manifestly arbitrary or amounting to a denial of justice.²⁵ When this approach is combined with an inequality of arms²⁶ in relation to access to information and investigative measure at the domestic level, the complainant is left with limited options for proving the allegations.

This is especially true when the communications relate to countries where there are concerns about the effective and independent functioning of the judiciary, and where public administration documentation and transparency policies are generally less effective than in many old democracies. In the cases reviewed this has manifested itself in different ways. In relation to fair trial, arbitrary detention and torture, complainants have frequently failed to provide documentation relating to court proceedings and any kind of medical certificate to substantiate claims of torture. In refoulement cases, complainants are often unable to provide documentation of an individual threat in the form of wanted notices by the police or evidence of prior incidents of torture. One way of improving this situation would be for treaty bodies to more clearly communicate what level of substantiation they expect from a case, and provide suggestions on how this can be done within the constraints of deficient domestic procedures. This would allow victims to make a more informed decision on whether to petition a treaty body, which again would decrease the workload related to unsubstantiated cases. In this regard, it is positive to note that CAT has recently established a Working Group to focus on evidence assessment.

CONCLUSION

The treaty body system evidently faces significant capacity related obstacles to an effective performance of its mandate to receive individual communications. As highlighted in this article, one problem seems to be related to the excessive submission of communications, which do not fulfil the admissibility criteria. This is an unfortunate situation since negative admissibility decisions are a waste of valuable time, both for the treaty bodies and the complainant. This issue should be seen in close connection with the high number of cases of

alleged violations, which are rejected due to lack of sufficient substantiation. To remedy this situation, it may be worth considering providing more explicit guidelines and training for NGOs on admissibility criteria, and the level of substantiation and documentation required for a communication to be fully evaluated on its merits. This process might receive significant input if individual treaty bodies start providing more legal reasoning in their decisions. CAT has recently established a working group on evidence assessment, which gives the Committee an excellent opportunity to pioneer a more transparent evidence evaluation procedure.

The Committees are currently expanding their views on refoulement protection in what seems to be a reflection of recent developments in legal analysis authored by the ECHR and the Special Rapporteur on torture, Mr Manfred Nowak. CAT has considerably expanded protection within the concepts of personal risk and State responsibility. It will be interesting to follow how the treaty bodies further develop these concepts and how the actors most affected by them, persons at risk and States, respond in relation to frequency of complaints and compliance respectively. ■

Article by Asger Kjærum, Legal Officer at the International Rehabilitation Council for Torture Victims.

24 HRC, *R.M. v. Finland* (23 March 1989, Comm. No. 301/1988) § 6.4; CAT, *N.Z.S. v. Sweden* (22 November 2006, Comm. No. 277/2005) § 8.6; and CAT, General Comment No. 01: Implementation of article 3 of the Convention in the context of article 22 (21 November 1997, A/53/44, annex IV) § 9.

25 HRC, *Bakhrullo Minboev v. Tajikistan* (19 March 2010, Comm. No. 1174/2003) § 6.2; HRC, *Chelliah Tiagarajah v. Sri Lanka* (19 March 2010, Comm. No. 1523/2006) § 5.2; CAT, *E.Y. v. Canada* (4 November 2009, Comm. No. 307/2006) § 4.2.

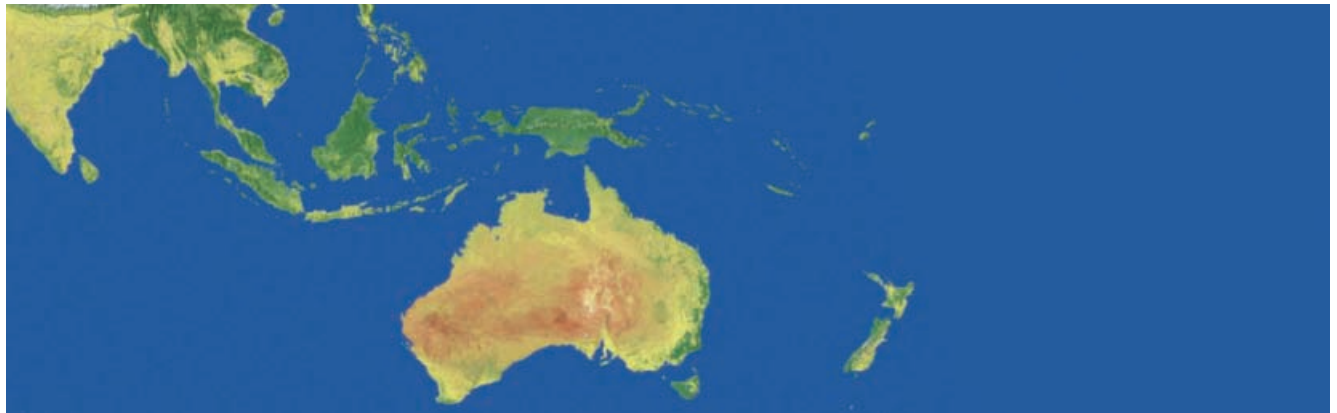
26 When one party to a case is placed at a substantial procedural disadvantage compared to the other party.

REGIONAL DEVELOPMENTS

A REGIONAL HUMAN RIGHTS MECHANISM FOR THE PACIFIC? 32

A REGIONAL HUMAN RIGHTS MECHANISM FOR THE PACIFIC?

Lessons learnt from developments in other regions



From 6 to 10 September 2010 human rights defenders across the Pacific came together for a consultation attended by the UN Special Rapporteur on the situation of human rights defenders. The meeting was organised jointly by Pacific Regional Resource Team (RRRT) based in Suva, Fiji; OHCHR Pacific Regional Office and ISHR. One of the key outcomes of the consultation was the agreement that the human rights situation in the Pacific Islands requires additional focus. It is not given much attention internationally and the common association made between 'Asia' and 'Pacific' frequently results in the latter becoming effectively invisible.

The Pacific region has by far the lowest level of ratification of major international human rights treaties in the world. This is partly the result of limited financial and human resources, and a focus on other priorities.¹ With limited access to the UN treaty-monitoring bodies, the universal periodic review (UPR) is especially important and was seen by defenders as a means of focusing attention on their particular human rights concerns. However, a main focus of debate at the consultation was the development of a regional human rights mechanism, including the role of civil society in bringing this about.

REGIONAL HUMAN RIGHTS MECHANISMS

With regional human rights mechanisms already established in the Americas, Europe, Africa and one for Arab States, the last major geographic area without its own such mechanism is the Pacific. Existing mechanisms provide a broad spectrum of experiences to draw from – from the earliest Inter-American Commission on Human Rights (IACHR) to the most recent ASEAN Intergovernmental Commission on Human Rights (AICHR). The processes to set up and develop these regional human rights mechanisms have been informed by the engagement of local civil society. The challenges faced in defining the mechanisms' mandates, structures and methods of work could provide useful lessons for the Pacific. Defenders could draw on these as they consider the needs, interests and available resources in their region, and what kind of mechanism may work for them.

To be credible and able to meet both promotion and protection requirements effectively, a regional human rights mechanism should have a minimum set of characteristics, including:

- Being able to receive and decide upon individual and interstate complaints
- Transparency and wide dissemination of documentation related to decisions and recommendations
- Potential for developing additional mechanisms, such as special procedures and subsidiary bodies on specific themes or groups. For example, this could include the development of a court empowered to make binding decisions and grant reparations in the case of human rights violations
- Cooperation with international human rights mechanisms, so as to reinforce the existing human rights framework
- Independent commissioners or representatives

¹ Pacific Culture and Human Rights: Why Pacific Island Countries should ratify international human rights treaties. P Imrana Jalal, Pacific Regional Rights Resource Team (RRRT / UNDP), April 2006, p. 6.

The Office of the UN High Commissioner for Human Rights (OHCHR) has developed a comprehensive list of what it considers to be minimum powers, responsibilities and structure a regional human rights mechanism should have.²

KEY ISSUES FOR CONSIDERATION

Requirement of a normative framework

Which comes first the commission or the convention? This question has been addressed differently in the various regions. The most developed regional mechanisms now have normative human rights frameworks in place which the mechanism works to implement. In the case of AICHR the development of the instrument – the still to be elaborated ASEAN Declaration of Human Rights – is subsequent to the mechanism. Whilst AICHR will be working within the parameters of the ASEAN Charter, there is concern that there was not a common understanding of the relevant human rights standards prior to establishing the mechanism.³

Sovereignty

Any regional mechanism is likely to prompt concerns around infringements of national sovereignty or autonomy. The international human rights framework establishes agreed principles and norms that transcend strict national concerns, including through mechanisms allowing for submission of communications by individuals against the State, and a regional human rights mechanism should reinforce this.

For States, establishing a regional human rights mechanism can meet several objectives related to the promotion and protection of human rights. Where States are required to report to a regional mechanism or respond to communications, any resulting recommendations may be more acceptable to the State, and therefore more effective, if they come from the region itself rather than outside. The work of a regional mechanism can also help further implementation of international human rights standards at the national level.

Regional values

The particular needs and interests of a region, defined along with civil society, affect the form of its human rights mechanism and are central to creating 'ownership' of the process and result. For example, one of the purposes of AICHR is 'to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities.'⁴

However, references to regional values must be in line with international human rights norms⁵. Failure to live up to the principle of universality of human rights could lead to justification of abuses, in the name of tradition and culture.

National versus regional human rights mechanism

National human rights institutions (NHRIs) can act as driving force for change. In 2007 four Asian NHRIs committed themselves to developing joint regional strategies, which included advising respective governments to take steps to establish a regional human rights mechanism.⁶ Pacific Islands have limited structures promoting and protecting human rights, and limited resources to put them in place. Only Fiji amongst the Pacific Islands has a NHRI. While credible mechanisms at national level are still essential components for ensuring the defence of rights, this does not preclude the development of a regional body, as seen in many other regions.

Evolution

One of the principles of AICHR is the 'adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN'.⁷ The continued development of the mechanism to effectively promote and protect human rights is important, as other regional mechanisms have shown. However, an evolutionary approach risks delays in responding to urgent human rights issues. By indicating fuller human rights protections could be forthcoming at some unspecified time this risks remaining simply a promise; or act as a means to establishing a weak mechanism with, for example, with a mandate for promotion but not protection of human rights. However, a constantly evolving formulation presents an opportunity for civil society to continually push for more positive developments.

HOW CAN CIVIL SOCIETY CONTRIBUTE TO THE DEVELOPMENT OF REGIONAL HUMAN RIGHTS MECHANISMS?

The full involvement of civil society in development of human rights instruments and mechanisms is essential for the credibility and legitimacy of systems. This is best achieved through formal recognition of their role in the process, to allow for ongoing and systematic collaboration as mechanisms develop.

Development of the Inter-American human rights system has benefited from considerable civil society involvement, a role which has become institutionalised. For example, NGOs play a

2 Principles for Regional Human Rights Mechanisms (Non Paper) <http://bit.ly/d0TyQi>.

3 Report of Expert Dialogue with Civil Society and NHRIs on Regional Human Rights Mechanisms in Africa, the Americas and Europe, Jakarta 4-5 May 2009, p. 15. Available at <http://bit.ly/d6P4Be>.

4 Terms of reference of ASEAN Intergovernmental Commission on

Human Rights, para. 1.4. Available at <http://bit.ly/a7472B>.

5 Including the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, in particular article 5.

6 NHRIs of Indonesia, Malaysia, the Philippines, and Thailand. Declaration of Cooperation, 28 June 2007, <http://bit.ly/aAkOVR>.

7 Terms of reference of ASEAN Intergovernmental Commission on Human Rights, <http://bit.ly/a7472B>.

role in vetting candidates for the Inter-American Commission on Human Rights. In Africa, advocacy by NGOs has been pivotal in the creation of new institutional human rights mechanisms such as special rapporteurs, working groups, and the African Court on Human and Peoples' Rights.

Civil society also played a role in pressing for the establishment of the AICHR mechanism. Through public campaigns, diplomatic briefings, and expert meetings and consultations, the need for 'The ASEAN human rights commission with TEETH! Accountable, Effective and Independent'⁸ was clearly communicated. However, a year since its establishment in October 2009, concerns about the mechanism's mandate, structure and effectiveness continue. The development of the mechanism will depend on continued civil society pressure and engagement.

Raising awareness about the existence of the mechanism, its potential value, and its current weaknesses are all potentially part of the role of civil society actors.

THE PACIFIC: WHERE ARE THINGS AT?

In the Pacific, discussions around the development of a regional human rights mechanism have been on civil society and government agendas for many years. However, it was not until the Pacific Plan, endorsed by leaders of the Pacific Islands Forum Meeting in October 2005, that regional institutions such as the Pacific Islands Forum had a human rights mandate which included exploring options for a regional human rights mechanism.

In the outcome statement from their regional consultation, Pacific Island human rights defenders said 'We see the value of developing a Pacific regional human rights mechanism and we urge our States to endorse its development'. To assist with maintaining meaningful engagement in the process, defenders resolved to establish a regional human rights defenders network. Supporting the work of defenders and strengthening national and regional human rights defenders' networks will require funding. Concerns were expressed at the consultation about changes to donor policy in the region made without consultation with affected NGOs or an analysis of the impact. Such cuts could substantially undermine the potential for civil society advocacy on behalf of a credible regional mechanism.

CONCLUSION

In the Pacific divergent cultural traditions, a lack of funds and near absence of national human rights institutions are all challenges to sustaining momentum behind a drive to establish a regional human rights mechanism. An analysis of

the various models for human rights mechanisms is currently being carried out with the aim of identifying which model might best suit the Pacific. Consultations on options including civil society are then envisaged. This will require resources. As the initiative develops, sustained and formalised involvement of civil society will be key in pressing for a mechanism that is both independent and progressive.

Interview with Mr Rafendi Djamin: Indonesian Representative for AICHR. Previously Coordinator of the Coalition of Indonesian NGOs for International Human Rights Advocacy

ISHR: *What advice would you give Pacific civil society in regard to establishing a regional human rights mechanism?*

Mr Djamin: The first thing defenders need to do is approach their government to know what its position is on establishing such a mechanism. Defenders then want to establish the aims they have and assess what they consider possible, given the reality of their region. They need to get agreement amongst themselves on these points. Thirdly, there is a need to increase awareness of the need for such a mechanism within the region. A clear proposal will help create momentum for the mechanism at regional level.

ISHR: *What challenges do you foresee them facing and what should they look out for?*

Mr Djamin: I think civil society organisations need to avoid confrontational approaches when lobbying governments on the establishment of a regional mechanism. Civil society needs a strategy which should include the following elements:

- awareness raising among people about the need for such mechanism
- identifying countries that are open to the idea, where alliances can be created

There is no need to have a national human rights institution in place before you establish a regional mechanism, as these processes are unrelated.

ISHR: *Do you see AICHR 'evolving'? Can regional civil society organisations play a part in pressing for this development, maybe in particular in regard to the protection part of AICHR's mandate?*

Mr Djamin: It is only through pressure from civil society organisations on member States and AICHR members that we can push to include protection in the mandate of the AICHR, and make this body effective. Including protection in the mandate is essential to the credibility of the body. The role of civil society organisations will be crucial to make this mechanism effective. ■

⁸ <http://bit.ly/b5MssF>, Bangkok: 200 civil society organisations demand 'ASEAN human rights commission with teeth!: accountable, effective and independent' 23 June 2009.

UPCOMING EVENTS

| | |
|--|----|
| OPPORTUNITIES FOR NGO ENGAGEMENT | 36 |
| Country Examinations and Reviews | 36 |
| Meetings | 37 |
| Special Procedures' Visits | 38 |
| Elections and Appointments | 39 |
| UPCOMING EVENTS DECEMBER 2010 - MARCH 2011 | 40 |

OPPORTUNITIES FOR NGO ENGAGEMENT

COUNTRY EXAMINATIONS AND REVIEWS

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

COMMITTEE ON MIGRANT WORKERS

What's coming up?

The Committee on Migrant Workers will hold its 13th session from 22 November to 3 December in Geneva. It will examine the reports of Albania, Ecuador and Senegal.

What can you do?

If you are working on migration in any of the countries under review, you can submit information to the Committee at any time before the examinations. Information should be submitted to the Secretary of the Committee, Ms Noemy Barrita-Chagoya, at nbaritta-chagoya@ohchr.org.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

What's coming up?

The Committee on the Elimination of Discrimination Against Women (CEDAW) will hold its 48th session from 17 January to 4 February 2011 in Geneva. It will examine the reports of Algeria, Bangladesh, Belarus, Israel, Kenya, Liechtenstein, South Africa, and Sri Lanka.

The Committee's pre-sessional working group will meet from 7 to 11 February to prepare a list of issues for States to be examined against during the 50th session. This includes Chad, but the full list of relevant countries has yet to be announced. Check the Committee's webpage for the latest information: <http://bit.ly/a3Ud11>.

What can you do?

If you are working on discrimination against women in any of the countries under review, you can submit information to the Committee by 3 January 2011 to cedaw@ohchr.org. The Committee will meet with NGOs on Monday 17 January and Monday 24 January 2011 at 3pm.

More detailed information on NGO participation is available at: <http://bit.ly/dayPAF>. Alternately, IRAW Asia Pacific can help NGOs submit reports to CEDAW. Please contact IRAW Asia Pacific on iwraw-ap@iwraw-ap.org or iwraw_ap@yahoo.com. Information should be submitted to cedaw@ohchr.org. The Secretary of the Committee, Mr Bradford Smith, can also be contacted at bsmith@ohchr.org.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

The Committee on the Rights of the Child will hold its 56th session from 17 January to 4 February 2011 in Geneva. It will examine the reports of Denmark, Afghanistan, Belarus, Lao People's Democratic Republic, New Zealand, Ukraine, and Singapore. Under the Optional Protocol on Children in Armed Conflict the Committee will examine: Belarus, Mexico and Ukraine, and under the Optional Protocol on the Sale of Children, Belarus and Mexico.

What can you do?

If you would like to submit information for upcoming examinations, you can contact the NGO group on the CRC for advice: www.childrightsnet.org. Information on NGO participation can be found in 'A Guide For Non-Governmental Organizations Reporting to the Committee on The Rights of the Child', which is available at: <http://bit.ly/bN1dR3>.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

What's coming up?

The Committee on the Elimination of Racial Discrimination will hold its 78th Session from 14 February to 11 March 2011. It will examine the reports of Armenia, Bolivia, Cuba, Ireland, Moldova, Norway, Rwanda, Serbia, Spain, Uruguay, and Yemen.

What can you do?

If you are working on racial discrimination in any of the countries under review, you can submit information to Committee at any time, but preferably two months prior to the relevant session. Information can be submitted to the Committee's secretary, Ms Gabriella Habtom, at ghabtom@ohchr.org.

COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

What's coming up?

The next session of the Committee on the Rights of Persons with Disabilities (CRPD) is not yet scheduled but is likely to take place in February 2011. The country to be reviewed first will be Tunisia and then China, Peru and Spain.

What can you do?

If you are working on disability issues in any of the countries under review you can submit information to the Committee's Secretary, Ms Safak Pavey, at spavey@ohchr.org.

The International Disability Alliance (IDA) facilitates the involvement of national organisations of persons with disabilities in the work of the CRPD. It has produced a guidance document in this regard which is available at: <http://bit.ly/ajO9Ns>. For any additional information please contact Victoria Lee from the IDA Secretariat, at vlee@idasecretariat.org.

UNIVERSAL PERIODIC REVIEW

What's coming up?

The UPR Working Group's 12th session will be held from 3 to 14 October 2011 (see below for countries to be reviewed).

What can you do?

If you would like to submit information on any of the countries to be examined, please follow these guidelines: <http://bit.ly/d07u3s>.

The deadline is 12 noon (Geneva time) on 14 March 2011 for submissions on Swaziland, Syria, Tajikistan, Tanzania, Thailand, Togo, Uganda, and Zimbabwe; and 12 noon (Geneva time) on 21 March 2011 for submissions on Antigua and Barbuda, Iceland, Ireland, Lithuania, Haiti, Moldova, Timor Leste, Trinidad and Tobago, and Venezuela.

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

MEETINGS

UNIVERSAL PERIODIC REVIEW

What's coming up?

The UPR will review the following States during its 10th session from 24 January to 4 February 2011: Nauru, Rwanda, Nepal, Saint

Lucia, Oman, Austria, Myanmar, Australia, Georgia, Saint Kitts and Nevis, Sao Tome and Principe, Namibia, Niger, Mozambique, Estonia, and Paraguay.

What can you do?

If you work for an ECOSOC accredited NGO you can attend the UPR Working Group. More information about NGO participation is available at <http://bit.ly/alfJfq>.

HUMAN RIGHTS COUNCIL

What's coming up?

The Council will hold its 16th session from 28 February to 25 March 2011.

What can you do?

If you work for an ECOSOC accredited NGO you may attend the Council's session, submit written statements and make oral statements. More information about NGO participation is available at <http://bit.ly/4ru1vs>.

WORKING GROUP ON THE REVIEW OF THE HUMAN RIGHTS COUNCIL

The Human Rights Council, Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council will hold its second session in early February 2011. The dates are still to be confirmed.

NGOs with ECOSOC status will be able to attend and participate in the working group's session.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The Human Rights Council Advisory Committee will hold its 6th session from 7 to 11 February 2011 in Geneva. See <http://bit.ly/byzWQz> for more information. You can also contact ISHR at information@ishr.ch.

WORKING GROUP ON AN OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD

The Working Group will hold its second session from 6 to 10 December 2010. See <http://bit.ly/9qg6Cz> for more information. If you would like to find out more about the process, please contact Anita Goh, at goh@childrightsnet.org.

WORKING GROUP ON THE DRAFT DECLARATION ON HUMAN RIGHTS EDUCATION AND TRAINING

The Working Group will hold its first session from 10 to 14 January 2011. See <http://bit.ly/cbc8ay>.

SPECIAL PROCEDURES' VISITS

You can stay up-to-date about upcoming visits by the special procedures to countries around the world at <http://twitter.com/unrightswire> or join the OHCHR Civil Society Unit mailing list at <http://conta.cc/c4paEC>.

ELECTIONS AND APPOINTMENTS

APPOINTMENT OF SPECIAL PROCEDURES MANDATE HOLDERS

What's coming up?

At the March session of the Human Rights Council (28 February to 25 March) the President of the Council will appoint new mandate holders to the following mandates, both of which were newly established at the Council's 15th session in September 2010:

- Five members to the Working Group on discrimination against women in law and in practice.
- Special Rapporteur on the rights to freedom of peaceful assembly and of association.

The Consultative Group will present a list of recommended candidates to the President at least one month before the beginning of the March session. Interested candidates should fill in the form at <http://bit.ly/9plH33> to be placed on the public roster. The recommendations of the Consultative Group (currently the Geneva Ambassadors of Finland, India, Panama, Romania, and Zambia) will be made available on the HRC Extranet at <http://bit.ly/9yRU8X>. The login is: hrc extranet; password: 1session.

The full list of vacancies, for mandates to be filled at the June and September 2011 sessions of the Council, are also available on the OHCHR extranet: <http://bit.ly/9yRU8X>. The vacancies include the Independent Expert on minority issues, the Special Rapporteur on the right of migrants, the Special Rapporteur on the promotion and protection of human rights while counter-acting terrorism, and the Special Representative of the Secretary-General on human rights and transnational corporations and other businesses.

(Geneva)
www.ishr.ch/trainings

APRIL 2011

Submissions for Timor Leste, Trinidad and Tobago, Bolivarian Republic of Venezuela, Antigua and Barbuda, Iceland, Ireland, Lithuania and Moldova.

APRIL 2011

UPCOMING EVENTS DECEMBER 2010 - MARCH 2011