



Making progress, preventing regress

Civil society at the UN
Human Rights Council
in 2017

As civil society space closes and risks rise at the national level, many defenders are turning to international and regional human rights mechanisms to expose violations, promote accountability and build pressure for change on the ground. International and regional mechanisms can also provide defenders and victims with a powerful platform to tell their story and to exercise the right to freedom of expression and dissent denied at home.



Sonia Acabal | Guatemala

■ The UN Human Rights Council in Geneva is a key mechanism for civil society, meeting three times per year in ordinary session, convening special sessions on crises and emergencies, and overseeing both the Universal Periodic Review and the work of Special Procedures (the UN’s independent human rights experts).

Throughout 2017, ISHR provided strategic advice and support for defenders to engage with and leverage the Council, while also playing a leading role in conceptualising and coordinating civil society efforts to strengthen the Council and make it more accessible, effective and protective for human rights defenders and victims of violations.



Human rights monitoring and accountability

For many civil society actors, the decision made by consensus at the 36th session of the Council in September to establish an independent investigative body on the conflict in Yemen was the highlight of 2017, albeit a decision that should have been made at least two years earlier in line with calls by the UN High Commissioner for Human Rights. The body – comprising eminent international and regional experts – is mandated to investigate war crimes and other violations perpetrated by all parties to the conflict, both with a view to promoting accountability and to deterring future abuses. Such crimes include the bombing of civilians, torture and enforced disappearances, the use of landmines and cluster bombs, and the denial of access to food, water and humanitarian aid, among other gross deprivations. The adoption of the resolution followed sustained advocacy by a coalition of over 60 Yemeni, regional and international NGOs, including ISHR, complemented by principled leadership by a group of States led by the Netherlands, together with Canada, Luxembourg, Belgium and Ireland. Significant in its own right, the adoption of the resolution also sent a strong message to the likes of Saudi Arabia that membership of the UN Human Rights Council is not a guarantee against scrutiny by that body and may even expose a country to heightened international attention.

While the Yemen resolution came at least two years too late, the Council did act more quickly, albeit not preventatively, in relation to gross human rights violations in Myanmar. It established a Fact Finding Mission at its 34th session in March, extended the mandate of that Mission at its 36th session in September, and then convened a special session on the situation in early December. The special session was significant, with the call for this meeting initiated by Bangladesh with strong support from other members of the Organisation of Islamic Cooperation – States better known for championing principles of sovereignty and non-interference than those of accountability and justice. It remains to be seen, however, whether this is a posture particular to the ethnic and religious dynamics of the situation. To date, the government of Myanmar has refused to cooperate with the Fact Finding Mission, demonstrating the need for such mechanisms to be complemented and supported by other actors with leverage, such as States and multinational enterprises with business, trade and investment interests in the country.

**PERCENTAGE OF
RECOMMENDATIONS
MADE BY ISHR**

60%
adopted

by the UN treaty body to which they were directed

90%
taken up

by States in the Universal Periodic Review

With each ISHR UPR recommendation made by an average of 6 States

While action on Yemen and Myanmar were significant positive developments, the year was also marked by inaction on a range of other serious situations of concern, with the Council failing to address gross and systematic violations in States including China, Bahrain, Egypt, the Philippines, Turkey and Venezuela, to name just a few. This is despite the situations in those countries manifestly meeting the objective criteria for action committed to by a group of more than 50 States through joint statements led by Ireland (in 2016) and the Netherlands (in 2017). Lack of State leadership and political will – rather than any lack of information, capacity or tools – remains the greatest impediment to the Council's effectiveness.

Civil society space and participation

Countering the global trend, civil society organisations partnered both to prevent regress and achieve some progress in protecting defenders at the Council in 2017.

Against the backdrop of what the UN's independent expert has described as an 'unprecedented attack' on defenders, in March the Council adopted a Norwegian-led consensus resolution extending the mandate of the Special Rapporteur. In November, the Third Committee of the UN General Assembly similarly adopted a resolution on defenders, drafted with significant inputs from ISHR. Although the consensus masked

some fractures – with China disassociating itself from a paragraph referring to the work of defenders as 'legitimate' – the General Assembly resolution was co-sponsored by States from all regions. This included a number of African States – such as Côte d'Ivoire, Burkina Faso and Mali – that have not been traditional co-sponsors but have all recently adopted laws on the protection of defenders, with support from ISHR.

Countering reprisals

Acts of intimidation and reprisals against human rights defenders, victims and others who seek to cooperate with the UN not only violate the rights of the individuals concerned, but amount to an assault on civil society and a rules-based international order. Seen this way, a September report by the UN Secretary-General which found evidence of 'a strategy on the part of some States to prevent the activities of individuals providing information or otherwise cooperating with the United Nations' is profoundly disturbing. The report highlighted that the incidence of reprisals is becoming 'broader', and the 'means used increasingly blunt'. It contained cases of travel bans in Saudi Arabia and Bahrain; the freezing of NGO assets in Egypt; intimidation of defenders in India and Myanmar; torture of defenders in Burundi and Egypt; arbitrary detention of defenders in the United Arab Emirates, Uzbekistan





“We don’t have space to work in Egypt. We need the United Nations and the international community to support and protect civil society in Egypt. Our future depends on it.”

DOAA HASSAN, CRIMINAL JUSTICE PROGRAMME DIRECTOR AT THE EGYPTIAN COMMISSION FOR RIGHTS AND JUSTICE AND PARTICIPANT IN ISHR’S 2017 HUMAN RIGHTS DEFENDER ADVOCACY PROGRAMME



@ISHRglobal

‘The International Criminal Court will open an investigation into the situation in Burundi! A big step into the right direction has been taken. Next step: Suspension of Burundi from the UN Human Rights Council. #BurundiOut’

and China; and killing of defenders in Honduras, among others. Spurred by this report, together with the strategic advocacy of NGOs led by ISHR, the Council adopted a significant but contested resolution on reprisals in September – the first such resolution since 2013.

The resolution – negotiated by a core group comprising Ghana, Hungary, Ireland, Fiji and Uruguay – affirmed the right of all people to safe and unhindered access to and communication with international human rights bodies. It also mandated the Council to hold a dedicated dialogue to address acts of intimidation and reprisals and affirmed the particular responsibilities of the Council’s Members, President and Vice-Presidents to investigate and promote accountability for such acts. The holding of a dedicated dialogue within the Council will increase the visibility of acts of intimidation and reprisals, provide a platform to denounce and seek accountability for such acts, and increase the political cost for perpetrators.

Prior to the vote on the resolution, ISHR coordinated a coalition of 50 NGOs from all over the world to call on Member States to reject 19 hostile amendments led by China, Egypt, India, Russia and Venezuela (perhaps not coincidentally, each of those States has been accused by the UN Secretary-General and UN experts of perpetrating reprisals in recent years). Despite these disingenuous and bad faith efforts by a small minority of States, the ultimate adoption of a strong, substantive resolution by an overwhelming majority sends a clear message that reprisals will not be tolerated and must end.

Making the Human Rights Council more accessible, effective and protective

The world needs a legitimate and influential high-level human rights body that is accessible, effective and protective for rights holders, defenders and victims.

In 2016, on the occasion of the Council’s tenth anniversary, a group of 20 international, regional and national NGOs coordinated by ISHR collaborated to develop a series of practical recommendations to strengthen the Council. 2017 saw a number of these recommendations taken up by progressive States, partly in response to a problematic US push to reform the Council, demonstrating the potential to craft opportunities from crises. Most significantly, at the 35th session of the Council in June, the Netherlands worked in close partnership with ISHR and Human Rights Watch to devise a joint statement subsequently endorsed by almost 50 States from all regions, outlining and committing to a series of 11 measures to enhance the Council’s legitimacy and effectiveness.

Among other measures is a commitment by signatory States to strive for competitive elections to the Council and support candidates based primarily on human rights-based considerations. States that are responsible for gross and systematic human rights violations, or that refuse to cooperate fully with the UN and uphold a rules-based international order should have no place at the Council. The ongoing Council membership of Burundi, together with the recent election of the Democratic Republic of Congo, demonstrate the imperative of operationalising this commitment.

States signatory to the Dutch-led joint statement also pledged to be guided by objective and human rights-based criteria (previously elaborated in an Irish-led joint statement in 2016) in determining whether and how the Council should respond to situations of



concern. These criteria include whether the UN's human rights experts have recommended or called for action, the extent of the country's cooperation with the UN human rights system, and the situation of human rights defenders and other civil society actors in the

country. Such an approach to triggering action at the Council has been long advocated by ISHR and other NGOs and the onus is now on States to demonstrate principled leadership in applying the criteria. If a small State such as Iceland can lead a joint statement on extrajudicial killings in the Philippines, as it did at the Council's 35th session in June, then it behoves other States that profess a commitment to human rights and their defenders to show similar resolve. Civil society organisations have less and less patience for States that espouse a rhetorical commitment to thematic human rights issues – such as the protection of human rights defenders, freedom of expression or peaceful assembly – but that fail to take up those issues in concrete situations where perceived political, economic or other interests may be at stake.

Looking ahead – the role of civil society in building a Council fit for purpose

The Council approaches a critical juncture in 2018. While there is no formal review or reform process presently mandated, it is clear that the Council will have to strengthen its approach to prevention and implementation, become more streamlined and efficient in its working methods, and find ways to enhance State cooperation and adherence to membership standards if it is to be the credible and responsive human rights body the world needs.

For States that share a vision of the Council as a vital mechanism for monitoring and exposing violations, promoting accountability for perpetrators, and achieving access to remedy and justice for victims, civil society must be an indispensable partner in strengthening efforts. A reform agenda motivated primarily by a desire for efficiency or friendly dialogue, or devised exclusively by international actors and think tanks, will not be fit for purpose and will not respond to the real and pressing needs of rights holders, defenders and victims on the ground.