

HUMAN RIGHTS MONITOR

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Political and social changes in the Middle East and North Africa have been a focus of the international and regional human rights systems this quarter. The 17th session of the Human Rights Council (p. 1) demonstrated continued momentum for positive developments initiated at the March session, following the events of the 'Arab Spring'. This included follow-up debates on the situations of Libya, Syria and Côte d'Ivoire, and a short procedural decision on Yemen. Also highly significant was the adoption of a landmark resolution condemning violence and discrimination on the basis of sexual orientation and gender identity.

Developments in the Middle East and North Africa caught the attention of the treaty bodies. The Committee on the Rights of Persons with Disabilities (p. 15) highlighted the opportunity presented by political changes in Tunisia for improving recognition of the rights of persons with disability. Meanwhile, the importance of children's rights in times of crisis was a concern for the Committee on the Rights of the Child, including during reviews of Bahrain and Egypt (p. 27). The question of how international and regional human rights mechanisms have responded to human rights concerns during the Arab Spring is addressed in the regional focus of this issue (p. 35). While in some cases the response has been strong and unprecedented, in others it has remained inadequate or non-existent. Throughout, civil society engagement has been essential to focusing attention on developing human rights situations in the region.



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

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

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

OUR VISION

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

OUR MISSION

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

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

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Protesters in Egypt, January 2011.

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CLOSING OF THIS EDITION

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HUMAN RIGHTS COUNCIL

Momentum maintained but weaknesses remain



Photo: UN/Jean-Marc Ferré

A lively scene at the United Nations Human Rights Council's 17th session as delegates hold up their plaques, requesting the floor.

The 17th session of the Human Rights Council (the Council) was an important measure of whether the shifting dynamics observed at the 16th session, following on in large part from the events of the 'Arab Spring', would be sustained. Those events had given momentum to a trend whereby States had begun to show a willingness to set regional and national interests at least a little to one side, demonstrated by the engagement of troubled States with the Council, such as Tunisia and Côte d'Ivoire, and a readiness on the part of many other States to reach across regional groups to work on joint initiatives. In general the 17th session (30 May - 17 June 2011) did build on the achievements of the March session, with some particularly striking developments.

The undoubted highlight of the session was the adoption of a resolution on sexual orientation and gender identity, led by South Africa, with the active support of the Group of Latin American and Caribbean Countries (GRULAC) and backed by the Western European and Others Group (WEOG). Not only is this the first time the United Nations (UN) has adopted a resolution that focuses specifically on human rights related to sexual orientation and gender identity, but the leadership demonstrated by the 'Global South' on this matter is yet another indication that the old dynamics of the Council continue to shift.

The 17th session also saw the Council sustain the deeper engagement in country situations noted at the 16th session. Follow-up debates were held on the situations in Libya, Syria and Côte d'Ivoire; a short procedural decision was adopted on Yemen, inviting the High Commissioner to present her report on Yemen to the Council; and resolutions were adopted on Kyrgyzstan and Belarus.

However, these generally positive developments were offset by the Council's continued failure to approach all situations with the same degree of concern. The most striking omission has been the failure of the Council to address the situation in Bahrain and its continued silence with respect to Sri Lanka. On the thematic front, a disappointment was the failure of Canada to insist on the inclusion of language relating to sexuality-based violence against women in the resolution on violence against women.

Despite these low points, the session overall can be considered successful. This article provides an overview of developments at the 17th session, but does not attempt to discuss the session exhaustively. For more detailed information see the report of the session, UN press releases, and ISHR news stories published throughout the session.¹

INSTITUTIONAL DEVELOPMENTS

Following the adoption by the Council of the review of its work and functioning at the previous session, the 17th session saw the adoption of two follow-up decisions. The first concerned the revised modalities for the second cycle of the UPR, which will begin in June 2012. According to that decision, the second cycle of the review will follow the same order of countries as for the first, with provision made that the length of a review 'could' be extended to three and a half hours. Additionally, steps are taken with this decision to ensure that all States, both members and observers, who wish to speak during the review are able to do so, by cutting speaking time to as short as necessary to accommodate all inscribed speakers.

¹ The report of the session containing details about the proceedings and co-sponsors is available at <http://bit.ly/pRh1EO>; United Nations press releases at <http://bit.ly/btifvi>; ISHR stories at www.ishr.ch/council. You can also find the full list of resolutions and decisions adopted, and voting records, at <http://bit.ly/rqSK9k>.

The decision also emphasised that the second and subsequent cycles should focus on, amongst other things, the implementation of accepted recommendations in the State under review. The specific highlighting of accepted recommendations does not preclude revisiting rejected recommendations, and it is important that the second cycle does not neglect those recommendations. Instead, States should be encouraged to accept them in subsequent cycles. Nevertheless, the explicit emphasis on implementation of accepted recommendations could restrict the way in which States approach the upcoming cycle. It is crucial that States do not narrow the scope of the UPR by losing sight of the bigger picture within a country – which includes the thornier issues States under review are likely to not accept. The UPR should not become a means for following up only on accepted recommendations, which would allow States under review to limit the scope of their human rights obligations.

The second decision to follow from the review of the Council establishes an Office of the President of the Council. The stated purpose of the creation of such an office is not only to provide the President with secretarial and drafting support, but also to ensure that institutional memory is retained within the office from one President to the next. However the selection of staff and their management remains the responsibility of each President, and while the resolution 'strongly encourages' an incoming President to retain one or more staff from his or her predecessor's office, it remains to be seen how far this new office will actually improve the Council's institutional memory. The office is to be operational no later than the seventh cycle of the Council, which will begin in January 2013.

COUNTRY SITUATIONS

Coherent follow-up to Commissions of Inquiry

Generally, the 17th session continued along the trend set at the March session, with the Council as a whole and also individual States demonstrating willingness to commit to longer-term engagement in country situations and ensure adequate follow-up. The session saw reports by the Commissions of Inquiry set up to investigate the situations in Libya and Côte d'Ivoire, following the special sessions held on each country.²

In both cases, the Council established some form of follow-up mechanism. While in the case of Libya the mandate of the Commission of Inquiry was continued, for Côte d'Ivoire the Council established an Independent Expert on the situation in the country, notably with the support of Côte d'Ivoire itself. However, although in theory the creation of a new special procedure marks the Council's use of a stronger tool than a Commission of Inquiry, the mandate of the new Independent Expert is restricted to follow up on the recommendations made in the report of the Commission of Inquiry. Although

the recommendations lack in specificity and in that sense limit the Independent Expert in his or her tasks, they substantively cover all of the most important themes. It will therefore be key to find a qualified and independent mandate holder with the capacity to interpret his or her mandate in a broad manner.

Mixed results on Middle East protests

Côte d'Ivoire's cooperation was not mirrored by the actions of Syria, also considered at a recent special session.³ Syria has refused to allow access to the fact-finding mission established to investigate allegations of human rights violations in the country, as a result of which the Commission was unable to report to the June session. Another sign that individual States are attempting to find innovative solutions and taking more responsibility in ensuring the implementation of the Council's clear mandate was a strong cross-regional joint statement on behalf of 54 States. It called for Syria to cooperate with the fact-finding mission, condemning the Government's failure to respond to the calls from the Council, the High Commissioner, and the UN Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect to 'respect the will of its people and to implement reforms'.

Notably, 73 States (comprising the EU and Arab Group) delivered a joint statement on the situation in Yemen, with the support of the Government of Yemen, commending the Government for its promise of free access to the High Commissioner's mission to the country, and calling on the High Commissioner to ensure that her report contains recommendations for addressing the situation in Yemen directed both to the Government and the international community. A short procedural decision was adopted, requesting the High Commissioner to report back to the Council in September on the results of her visit to Yemen. While this is the minimum that could be expected, the adoption of the decision at least puts the situation in Yemen on the Council's agenda, and provides human rights defenders with an opportunity to follow-up and report on further developments.

An initiative by Switzerland, on the promotion and protection of human rights in the context of peaceful protest, presented an opportunity to go some way towards redressing the failure of the Council to attend to recent repression of peaceful protest in several countries in the Middle East, North Africa (MENA) and beyond. Ideally, this initiative could have been used to establish a strong mechanism whereby the High Commissioner could report on such cases of repression. However, the decision by the Council fell short of this goal, requiring only that a panel debate take place in September and that the High Commissioner produce a report on it. The panel will permit human rights defenders from countries beyond the MENA region, who have witnessed recent political protests and repression, to have their voices heard by the international community. However, it is unfortunate that the decision restricts the initiative of the High Commissioner to

² See ISHR news stories on the Commission of Inquiry on Libya at <http://bit.ly/qzYfPm> and on the special session on Libya at <http://bit.ly/n57szz>.

³ See ISHR news story at <http://bit.ly/qor502>.

investigate and report on all situations of widespread human rights violations in the context of protests.

Silence on Bahrain and Sri Lanka

Unfortunately, these positive engagements do not point to an across-the-board improvement from the Council. The Council's weaknesses remain, as evident in the case of Bahrain, which has been consistently ignored by the Council despite the on-going violations and deteriorating situation. The Council's failure to address the situation reveals how important the political will of member States remains if action is to be taken. In this particular case, the US, which has taken a strong leadership role in many similar situations, has been reluctant to speak out against its political ally. During the general debate under Item 4 the US pointed to the Bahraini Government as having responsibility to ensure accountability, thereby implicitly claiming that the Government still has the necessary legitimacy to do so and effectively denying a role for the Council to step in.

In the case of Sri Lanka the Council continues to maintain its silence, despite the best efforts of human rights defenders, the High Commissioner, and special procedures to ensure the continued visibility of the magnitude of the violations suffered by the people of Sri Lanka. At this session the Council heard an appeal from the High Commissioner to reflect on the new information included in the report of the Secretary-General's Panel of Experts on Sri Lanka,⁴ which concludes that allegations of serious international crimes by both Government forces and the Tamil Tigers are credible, and to keep in mind its mandate to combat impunity worldwide. The Special Rapporteur on extrajudicial, summary or arbitrary executions added his voice to the growing condemnation of Sri Lanka, affirming that video evidence of alleged human rights violations in the country have now been sufficiently verified to show that serious international crimes have been committed.⁵

Small steps in relation to Belarus, Kyrgyzstan and Somalia

Other developments included the European Union's (EU) attempt to establish a mandate on the situation in Belarus. Although the EU at first persisted in pushing through the special procedure, in the end they opted for an incremental approach to the situation in Belarus. This built more cross regional support, including from the Maldives, Uruguay, Chile, and Argentina, who were reluctant to support the establishment of a special rapporteur. The resolution was adopted by a vote of 21 in favour, 19 against and 5 abstentions. This represents almost no shift from when the resolution was last adopted by the Commission on Human Rights in 2004.⁶

4 For the full text of the High Commissioner's address to the Council see <http://bit.ly/pKqtpd>.

5 See ISHR news story at <http://bit.ly/rpxSad>.

6 On that occasion the voting was 23 in favour, 13 against and 17 abstentions, with four States voting differently at the Council's 17th session

The Council resolution requests the High Commissioner to monitor the situation following the December 2010 elections, report orally to the 18th session of the Council, and produce a comprehensive written report by the 20th session to be the basis of an interactive dialogue.

The Council also adopted resolutions on Kyrgyzstan, renewing the Office of the High Commissioner for Human Rights' (OHCHR) mandate to continue to provide technical assistance, and on Somalia, renewing the mandate of the Independent Expert on the situation in Somalia and requesting OHCHR to provide technical and financial assistance for implementation of the country's UPR recommendations.

Sudan: serious challenges for protection of civilians as South Sudan celebrates independence

The protection of civilians remains one of the most pressing challenges since South Sudan marked its independence on 9 July 2011.

Following violence that erupted in Abyei⁷ in May, the Security Council adopted a resolution (the Resolution) establishing an interim security force in the area for six months, consistent with the 20 June 2011 agreement between the Government of Sudan and the Government of South Sudan.⁸

Mr. Mohamed Chande Othman, the Human Rights Council's Independent Expert on the situation of human rights in the Sudan, warned in March that the deteriorating situation in Abyei could derail the entire peace process.⁹ The UN Interim Security Force for Abyei (UNISFA) established by the Resolution will be composed of 4,200 Ethiopian troops. It follows a previous deployment of troops drawn from the United Nations Mission in Sudan (UNMIS), which however failed to provide adequate protection to civilians. While the Resolution was a welcome development from a protection standpoint, it fell short insofar as it does not provide for specific monitoring and reporting on the situation of human rights to the Human Rights Council. Close cooperation between Mr Chande Othman and UNISFA will be essential to allow the Council to follow human rights developments on Abyei.

than in 2004. Notably, despite the EU's flexibility in supporting an incremental approach as requested by GRULAC States, Mexico and Guatemala both changed their vote from a 'yes' to abstention. Gabon went in the opposite direction, voting 'yes' on the Council resolution having abstained on the Commission's resolution, while the Ukraine, which had voted 'no' in 2004, was absent at the latest vote (abstention).

7 Abyei is an oil-rich area that straddles north and south Sudan and is claimed by both sides. According to a 2005 peace agreement, Abyei is supposed to be administered by a committee of northern and southern Sudanese.

8 S/RES/1990 available at <http://bit.ly/ndxaqF>.

9 See UN news story at <http://bit.ly/mExahG>.

The Resolution follows a forceful Presidential Statement¹⁰ on 3 June 2011 demanding the withdrawal of the Government of Sudan and its military elements from the disputed area, and a 22 May 2011 press statement.¹¹ The press statement condemned the attack by Southern forces and subsequent escalation of military operations by Sudanese Armed Forces, who took control of Abyei on 21 May 2011. The Independent Expert echoed those concerns, strongly urging parties to the conflict to ensure the protection of civilians at all times.¹²

The Presidential Statement also expressed deep concern about tensions in the Blue Nile and Southern Kordofan states, calling on both parties to resume discussions on post 9 July security arrangements; it also mentions the structures set up by the Comprehensive Peace Agreement in 2005. However, the security and humanitarian situation in South Kordofan and Blue Nile has deteriorated significantly since then. Some progress was achieved with a 28 June 2011 framework agreement, calling for the formation of a Joint Political Committee to address all relevant issues related to the contested border states.¹³

One week prior to the independence of South Sudan, the future of UN-mandated peacekeeping missions in Sudan and South Sudan remained unresolved. The Government of Sudan demanded that UNMIS leave the North by 9 July 2011, while South Sudan requested a continued UN presence. Beyond UNISFA, the Security Council underlined the need for a continued UN presence, in particular in South Kordofan, Blue Nile, and along the north-south border. Civil society organisations called on the Security Council to ensure that any new missions make protection of civilians a clear priority, via a Chapter VII mandate.¹⁴

The Secretary General, on his part, recommended a three month rollover in his report,¹⁵ to allow UNMIS to downsize in Khartoum and begin the transition to a United Nations Mission in Southern Sudan (UNMISS). The Secretary General recommended that UNMISS be established under Chapter VI of the UN Charter but also include a Chapter VII mandate to provide protection of civilians.¹⁶ In the meantime, the Human Rights Council has not yet decided on the implications of an independent South Sudan for the mandate of the Independent Expert on the situation of human rights in the Sudan or the Universal Periodic Review.

10 A Presidential Statement reflects the consensus of the Council's 15 members but is not legally binding. S/PRST/2011/12 available at <http://bit.ly/ods8Jj>.

11 SC/10262 available at <http://bit.ly/rdyTuj>.

12 Statement of the Independent Expert available at <http://bit.ly/jP5qKE>.

13 Framework agreement available at <http://bit.ly/l3JS9S>.

14 Chapter VII of the United Nations Charter allows the Security Council to 'determine the existence of any threat to the peace, breach of the peace, or act of aggression' and to take military and non-military action to 'restore international peace and security'.

15 S/2011/314 available at <http://bit.ly/o62JEA>.

16 Para. 41, S/2011/314.

Unable to negotiate even a gradual downsizing of UNMIS, the Council adopted a resolution on its withdrawal on 11 July 2011, stating UNMIS would end effective from that day. The resolution requested the transfer of appropriate staff and supplies from UNMIS to UNMISS and UNISFA. In addition, the resolution requested the Secretary-General to consult with 'the parties, the African Union High-Level Implementation Panel and other partners' and present options to support security arrangements in Blue Nile and South Kordofan.

THEMATIC

Landmark advance on sexual orientation and gender identity

The most striking thematic development was the adoption of the resolution 'Discrimination and violence on the basis of sexual orientation and gender identity'.¹⁷ In itself, the resolution is relatively minimalist, requesting a report commissioned by the High Commissioner, documenting discriminatory laws and practices and acts of violence against individuals on the basis of their sexual orientation and gender identity. It also sets up a panel discussion to be held at the 19th session of the Council to discuss the findings of the report and follow up.

Placed into historical context, however, the adoption of this resolution is remarkable. At the 16th session a joint statement on sexual orientation and gender identity had been presented to the Council. This joint statement was seen by many defenders working on the issue of sexual orientation and gender identity, and States friendly to the issue, as a step in the direction of an eventual resolution on the subject. Nevertheless at that stage a resolution still remained only a distant possibility. Also at the 16th session, however, South Africa tabled what was apparently a negative initiative, proposing the creation of an intergovernmental working group as the exclusive forum for discussing issues relating to sexual orientation and gender identity.¹⁸ This prompted the US to propose a counter-resolution, in an attempt either to get South Africa to withdraw its resolution, or to reduce some of the negative impact of South Africa's initiative. There were worrying indications that the debate on sexual orientation and gender identity would return to the very divisive phase it had been trapped in at the time of the Commission on Human Rights.¹⁹

However, in the course of the 17th session, South Africa surprised many by demonstrating a commendable willingness to engage with civil society, to listen to concerns, and to reverse the entire import of its resolution in consequence. The sustained engagement of South African human rights defenders in Cape Town, and subsequently Geneva, was particularly

17 *Resolution 17/19*, available at <http://bit.ly/qKQs3R>.

18 See ISHR's *Human Rights Monitor Quarterly*, issue 2/2011 at <http://bit.ly/qWvR6x>.

19 For more information on the background to this resolution, see <http://bit.ly/kkmHM3>.

noteworthy. Their advocacy was a success in the way it connected defenders' national level concerns with the Council's actions at an international level, resulting in South Africa presenting a resolution with the full backing of national human rights defenders.

The fact that the resolution was led by South Africa, with the active participation of members of GRULAC, in particular, Colombia, Argentina, Brazil, Mexico, and Uruguay, in the negotiations marks a welcome assumption of a leadership role on this issue by countries from the 'Global South'. With issues of sexual orientation and gender identity often portrayed as a Western import, this leadership was significant. South Africa placed itself in a particularly difficult position, isolating itself from most of its African Group colleagues. During the informal negotiations on the draft text, this isolation was marked through the absence of almost all of the African Group and Organisation of the Islamic Conference (OIC).²⁰ During the adoption, however, the harsh criticism South Africa faced from Nigeria (claiming to speak on behalf of the African Group) revealed the high level of resolve that South Africa required to maintain its position. Its strong breakaway from the regional group is a welcome sign that the dominance of those groups is not unshakeable. Similarly, the OIC presented an almost unified position, providing a string of explanations of vote at the adoption (including from Pakistan, Saudi Arabia, Bahrain, Bangladesh, Qatar, and Mauritania). The only State to distance itself from this position was Burkina Faso, member of both the OIC and African Group, which abstained in the vote.

The resolution was adopted with 23 votes in favour, 19 against and 3 abstentions.²¹ Mauritius also broke from the African Group by voting in favour, while Burkina Faso, Zambia and China abstained, and Kyrgyzstan was absent. In explanations after the vote, Mauritius noted that while it respected Nigeria's position on the resolution and its position as leader of the African Group, in this particular case its own position was 'more nuanced'.

The lack of engagement by almost all members of the African Group and OIC in the informal negotiations and the strong opposition expressed at the adoption by many members of these groups, may hamper the High Commissioner's efforts to gain their cooperation when she undertakes the commissioned study on violations and discrimination suffered on the basis of sexual orientation and gender identity. It is not unlikely that this almost complete disengagement by some States was an effort to reduce the legitimacy of the resolution and its outcomes. A similar lack of engagement could be expected during the panel discussion at the 19th session.

Sliding back on violence against women

In the midst of this success, the dropping of language relating to sexuality-based violence from the draft resolution on violence against women, focusing on protection, was disappointing. The phrase had been a source of debate throughout informal consultations on the resolution. Despite sustained pressure on the sponsors, Canada, to retain the language it was in the end removed in favour of progressing with the resolution on a less contentious footing. Canada's weak position on this point is all the more disheartening when set against the strong and inspirational leadership shown by South Africa, regarding the resolution on sexual orientation and gender identity, in the face of consistent and even virulent opposition from its own regional group. Nevertheless, the text of the violence against women resolution is on the whole substantive. As this is part of a cycle of three resolutions, the first having focused on prevention, this year's on protection, and the third on remedies, Canada may also be able to address the omission in this resolution by including it in the final one of the series.

OTHER SIGNIFICANT DEBATES AND OUTCOMES

The Council also held a panel discussion entitled 'Strengthened international efforts to foster a global dialogue for the promotion of a **culture of tolerance** and peace at all levels, based on respect for human rights and diversity of religions and beliefs'.²² The discussion was required as part of the adoption of a resolution on combating intolerance against persons on the basis of religion, led by Pakistan at the 16th session and supported by all States, which replaced the long-standing resolution on defamation of religions. The panel marked an opportunity to clarify the implications of the new resolution and the move beyond the noxious 'defamation of religions' debate. While there were many positive points about the panel and the debate, including the fact that it was a consensus initiative, the panel did not mark the clear-cut watershed moment that could have been hoped for. In particular, Iran made an outspoken intervention in which it continued to identify 'defamation of religions' with incitement to hatred. Cuba too included 'defamation' and 'ideological discrimination' as part of the discrimination that needed to be addressed. Although the panel marked a step in the right direction, more work needs to be done to consolidate the rejection of 'defamation of religions' as a concept at the international level for addressing religious intolerance.

The Secretary-General's report on **reprisals** against those who have cooperated or sought to cooperate with representatives of UN human rights bodies, due to be discussed at the 17th session, could not be presented for 'technical reasons'. The delay is testament to the general lack of urgency with which the Council approaches the issue of reprisals.²³

20 With the exception of Egypt, which engaged in some of the earlier consultations, primarily to express its belief that the concepts of sexual orientation and gender identity need defining.

21 The full voting record can be found here: <http://bit.ly/qOFlw5>.

22 See ISHR news story at <http://bit.ly/rcVcgP>.

23 The issue was the subject of discussion at a side event organised by

The **renewal of several special procedures mandates**, in particular the mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extra-judicial, summary or arbitrary executions, represented an opportunity to consolidate the increasing recognition of reprisals as an issue with the potential to undermine the Council's functioning, as implied in the outcome of the Council's review process.²⁴ The inclusion of specific language relating to reprisals against those who cooperate with special procedures would have operationalised the general condemnation of reprisals by the Council. However, the general trend to renew special procedures mandates on the basis of previous resolutions may have blocked progress in this respect. The mandates were both adopted without a vote.

The mandate on **human rights and transnational corporations** was also renewed, but the post of Special Representative of the Secretary-General will be replaced by a Working Group. However, the mandate of the Working Group focuses almost exclusively on the implementation of the Guiding Principles developed by the outgoing mandate holder, Mr John Ruggie. This is despite concerns raised, both during the informal consultations on this mandate and during the interactive dialogue with Mr Ruggie, that the Guiding Principles should not be seen as the end point when it comes to implementation of the Respect, Protect and Remedy Framework.²⁵

Other thematic mandates renewed were:

- Special Rapporteur on trafficking in persons, especially in women and children
- Special Rapporteur on the human rights of migrants
- Independent Expert on the question of human rights and extreme poverty
- Independent Expert on human rights and international solidarity

New complaints mechanism for children's rights violations

On 17 June, the Council adopted the final draft Optional Protocol to the *Convention on the Rights of the Child* on a communications procedure for children's rights violations. Read more about this development on page 27.

CONCLUSION AND NEXT STEPS

The apparent change in dynamics observed at the 16th session of the Council continued to manifest itself at the June session. South Africa's leadership in the face of opposition from its regional group was extremely positive. It is hoped South Africa will continue to assert itself in this way and that its principled stance may set an example for other States within the African Group. This

ISHR during the session. See <http://bit.ly/nnz1A8>.

24 See para. 30 of the *Outcome of the review of the work and functioning of the Human Rights Council*, at <http://bit.ly/fb258h>.

25 See ISHR news piece at <http://bit.ly/pTfruq>.

may also help to reduce the stranglehold that regional and political groups often hold on Council deliberations.

In other cases, however, there was less clear breaking from old regional and political ties. In this regard, Egypt's role at this session had been watched with great interest following the change of government there. It was hoped the delegation would play a more positive role. A strong opening statement set the bar high, with Egypt saying human rights would be placed at the centre of the ongoing transformation in the country. However, this rhetoric did not translate into particularly positive behaviour during the rest of the session. Egypt was, for example, the only African State to engage, albeit briefly, in consultations on the resolution on sexual orientation and gender identity – taking the negative position that this was a new concept and in need of definition. The delegation also played a negative role in discussions on the violence against women resolution. However, Egypt did support the decision on peaceful protests, although the weakness of the initiative does not make it a good test of Egypt's commitment to the human rights of its people.

It should also be kept in mind that, while the greater commitment demonstrated by the Council to engage in country situations is to be welcomed, it has also resulted in an unprecedented level of pressure on OHCHR, both financially and in terms of human resources. There were 12 resolutions at this session that called for additional work on the part of OHCHR, all 'within existing resources'. This is part of an upwards trend and as such is unsustainable.²⁶ It is up to States to ensure that the financial resources are available to ensure decisions taken by the Council can be implemented effectively, and adverse effects on OHCHR's other areas of work are avoided.

Finally, the session marked the end of the 5th cycle of the Council and the end of the tenure of the Ambassador of Thailand, Mr Sihasek Phuangketkeow. The incoming President is Ms Laura Dupuy Lasserre, the Ambassador of Uruguay, and the first woman President. She will serve for a period of 18 months, to enable the Council to bring its cycle into line with the calendar year. This extended term puts Ms Dupuy Lasserre in the unique position of having more time than any other President to develop plans and bring innovative ideas to fruition. In particular, it is hoped she will capitalise on this opportunity to consolidate the positive developments of recent sessions. ■

26 In her address at the Organisational Meeting for the Council's 6th cycle, the High Commissioner stated that while OHCHR welcomes the activism of the Council, the \$9.5 million budget required, half of which is to be supported by OHCHR, places the Office in a difficult position. She noted, for example, that OHCHR is still trying to absorb the costs of the original mandate of the Commission of Inquiry into Libya and is now faced with the renewal of that mandate. She urged State representatives in Geneva to work closely with colleagues in New York to ensure that the Council's work is backed by financial resources from New York. Available at <http://bit.ly/qXfaXJ>.

REVIEW OF THE COUNCIL

General Assembly status review another lost opportunity



Photo: Kevin Labianco

The Manhattan, New York skyline, including the United Nations headquarters.

On 17 June 2011, the General Assembly adopted a resolution on the review of the Human Rights Council (Council), 154 votes in favour and four against, with no abstentions.¹ The vote ended seven months of negotiations in New York on the review of the 'status' of the Council.² This followed the Council's adoption by consensus of the outcome document of the five-year review of the Council's work and functioning on 25 March in Geneva.³

Although it was clear early on that the review would not be used to elevate the 'status' of the Council from a subsidiary body of the General Assembly to a principal body of the United Nations (UN),⁴ it was possible the General Assembly would use the process to give fuller effect to the election-related provisions in Resolution 60/251, the founding document of the Council.⁵ Many human rights organisations advocated that the General Assembly reaffirm and make commitments to a competitive and principled process for future Council elections, and establish a public pledge review mechanism, among other improvements.⁶ However the adopted resolution contains only a few bureaucratic changes and offers no new measures that would help enforce the high membership standards envisaged by *Resolution 60/251*. This result compounded the disappointment felt by many about the weak outcome of the Geneva phase of the review.⁷

The procedural changes that will occur as a result of the adoption of the resolution include:

- The annual report of the Council will cover the period from 1 October to 30 September;⁸
- The Council's cycle will be aligned with the calendar year instead of starting in June each year;
- The previous ad-hoc arrangements of the Council's reporting to both the General Assembly's plenary and its Third Committee will be institutionalised.

THE PROCESS AND NGO PARTICIPATION

In March 2010, the President of the General Assembly appointed two co-facilitators (the Ambassador of Liechtenstein and the Ambassador of Morocco) to conduct the New York review process.

Discussions on broad topics took place between December 2010 and May 2011, with broad participation at the ambassadorial level. The topics of these discussions included the financing of Council decisions, the reporting lines between the Council and the General Assembly, and membership-related issues. In the final month, the 'expert' delegates took over and negotiated the

1 Resolution A/65/L.78, available at <http://bit.ly/kh6fmF>. The four States to vote against the resolution were Canada, Israel, US, and Palau.

2 Operative Paragraph 1 of A/RES/60/251 provides for a status review of the Council by the General Assembly. See <http://bit.ly/h4sQpE>.

3 A/HRC/RES/16/21, available at <http://bit.ly/oilnnp>.

4 A previous ISHR article on the Council review process analyses why an elevation of status was an unlikely outcome. Available at <http://bit.ly/jWvErA>.

5 See <http://bit.ly/h4sQpE>.

6 Joint NGO statements made during the process are available at <http://bit.ly/kllW7X>.

7 An article on the Geneva segment of the review process is available at <http://bit.ly/pigW1T>.

8 The Council's annual reporting cycle was previously 1 July to 30 June. The new reporting cycle ensures the September session will be included in the report considered by the General Assembly.

draft texts paragraph by paragraph. Throughout the process, the co-facilitators held bilateral and group consultations with States and NGOs.

Several working documents were central to the negotiations.⁹ On 23 November 2010, the co-facilitators circulated their first non-paper, which outlined possible topics to be covered by the review. A further non-paper on funding arrangements for the Council's decisions formed the basis for discussions in late January. On 12 April the co-facilitators issued another draft non-paper that laid out elements that could be included in a resolution. A 5 May 'zero draft' contained suggested language for a draft resolution, as did the 31 May 'take two' revised draft.

NGOs in New York effectively participated in the review process, even exercising speaking rights in the informal plenary discussions, an unusual development for General Assembly meetings addressing human rights issues. This was largely due to the commitment to accountable and transparent proceedings by the co-facilitators of the New York review process.

MAIN ISSUES

Membership

The membership issue proved to be the most divisive topic of the New York portion of the review. Although a majority of States,¹⁰ argued that election-related issues fell outside of the review mandate of the General Assembly, a large cross-regional group of States¹¹ supported using the review process to elaborate on how States could best implement the election-related provisions of *Resolution 60/251*.¹²

Specific proposals included calls for the establishment of a public pledge review mechanism to improve Council members' accountability for fulfilling pledges and the standards in *Resolution 60/251*, and a call for language promoting the use or presentation of 'open slates' by regional groups during Council elections.¹³

Despite the strong stance of Canada, the EU and the US that the outcome should include substantive elements on

membership, even a weak election-related provision¹⁴ was eventually traded off against negative cross regional proposals¹⁵ that proved unacceptable to these States. These proposals sought to establish Council oversight of the special procedures, and to create a supervisory relationship over the Office of the High Commissioner for Human Rights (OHCHR) by the Council, among others.¹⁶ The proposals built on those from the Geneva phase of the review, when the Non-Aligned Movement (NAM), Organization of the Islamic Conference (OIC) and the Russian Federation called for the creation of a legal committee to report on compliance with the Code of Conduct for special procedures. The standoff between States on these issues led to the removal of all language that would have substantively strengthened the Council.¹⁷

Council's annual report

Since the Council's creation, States have engaged in contentious debates each year on which body should consider the Council's annual report.¹⁸ The same discussion played out during the review process. Some States¹⁹ preferred that the Council report directly to the General Assembly plenary, in line with its status as a subsidiary body to the General Assembly. Others favored the Council reporting to the Third Committee,²⁰ arguing that the Third Committee has the human rights expertise to address the relevant issues and recommendations in the Council's report. In the end, the status quo was retained, except for the addition of an interactive dialogue between the President of the Council and the Third Committee. This new element was viewed positively by States with limited representation in Geneva as an opportunity to more meaningfully participate in debate regarding the Council's work.

9 First non-paper (23 Nov 2010) available at <http://bit.ly/kvlzgl>. Non-paper on funding arrangements for the Council's decisions (Jan 2011) available at <http://bit.ly/kspcmK>. Non-paper (12 April) available at <http://bit.ly/f6N3oV>. 'Zero draft' (5 May) available at <http://bit.ly/kgJ3ib>. Revised draft (31 May) available at <http://bit.ly/k6TROc>.

10 Led by Arab Group, the African Group, OIC, and Russian Federation. Also Non-Aligned Movement (NAM), China, Cuba, Iran, Nicaragua, Pakistan, Philippines, Syria, and Venezuela.

11 Led by Canada, EU, and US. Also Albania, Australia, Bulgaria, Brazil, Chile, Costa Rica, Croatia, Hungary, Iceland, Israel, Italy, Japan, Republic of Korea, Ireland, Maldives, Macedonia, Moldova, New Zealand, Mexico, Norway, Peru, Serbia, Sweden, Switzerland, and UK.

12 Operative paragraphs 8 and 9.

13 Open slates require regional groups to present more candidates than there are vacant seats available. Running closed slates can all but guarantee victories for candidates, regardless of their human rights records.

14 'Underlines the importance of creating an opportunity for States to present to the membership their voluntary pledges and commitments made in connection with their candidatures to the Human Rights Council.'

15 Russia led a cross-regional group comprised of China, Pakistan, Venezuela, Bolivia, Nicaragua, Belarus, Syria, Iran, Vietnam, Algeria, and Yemen. Many of the group's proposals appeared to be bargaining tools to gain concessions on membership-related language.

16 Another Russian-led proposal, supported by the OIC, Arab Group, and African Group, sought to include a clause that would require all candidates for the Council to declare their candidature within 45 days of elections. The US forcefully opposed this, arguing that it was a thinly veiled attempt to protect abuser states from being pressured out of candidatures, as happened with Syria in the most recent Council elections.

17 Brazil and Singapore (supported by some non-EU Western States and Argentina and Mexico) unsuccessfully attempted to bridge the gaps with compromise language on the OHCHR. However, this language was rejected by many States and deemed unsatisfactory by human rights organisations. They were concerned that even the softer language represented a risk to OHCHR's independence since the Council could interpret or build on it to exceed its authority in relation to OHCHR in the future.

18 More information available at <http://bit.ly/a6hqCi>.

19 Argentina, Canada, Costa Rica, the EU, Japan, Lichtenstein, Mexico, New Zealand, Switzerland, and Uruguay.

20 The African Group, the Caribbean Community and Common Market (CARICOM), OIC, Egypt, Cuba, Russian Federation, US, and China.

Financing Council decisions

Another element of contention was how to best ensure that Council decisions are funded adequately and in a timely manner. Due to the lack of a clearly-defined procedure to assess and approve resources required to implement Council decisions, such as fact-finding missions,²¹ OHCHR has only been able to carry out these tasks by diverting funds away from other activities. Some States²² proposed the creation of a 'contingency' mechanism for unexpected expenses, which would be managed by the Secretary General.²³ However this did not find broad support because many States preferred that budgetary decisions remain in the inter-governmental forum of the Fifth Committee.²⁴ Ultimately, the General Assembly did not take any decision and postponed addressing the issue again until the 2011-12 General Assembly session.²⁵

Future review of the Council

The timetable for another review was also controversial. Several Latin American States wanted the Council reviewed again in five to ten years. There was concern that efforts to limit future reviews were attempts to prevent the Council from gaining status as a principle body of the UN. Others, notably Russia, advocated for ambiguous language that set no clear timetable for another review. Most States preferred no review at all, arguing that the General Assembly has the authority to call a review at any time and therefore text to spell this out further ought not to be necessary. The compromise allowed for a new review in 10 to 15 years.²⁶

The Geneva outcome

Though the final resolution was stripped of the membership-related issues that had spurred the major controversies among States, the US remained unhappy with the provision that referred to the Geneva review outcome. The US wanted a more 'neutral' tone and sought language that 'took note' of the outcome, rather than adopting or endorsing it. Its key concern was the Council's specific focus on the situation in the Occupied Palestinian Territories and Israel through the retention of agenda Item 7. The co-facilitators compromise of 'adopting the outcome' in the final resolution did not satisfy the US, though it was Israel that called for the vote.

21 Such as the Commission of Inquiry on Côte d'Ivoire.

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

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

24 Another underlying tension is that Geneva-based Council delegates want to see their decisions implemented immediately, while New York's Fifth Committee delegates evaluate their decisions in a much broader context of the UN budget in general.

25 The General Assembly hereby requests the Secretary-General to present possible options on financing 'unforeseen and extraordinary expenses' to the Fifth Committee in the 66th session.

26 'Decides to consider again the question of whether to maintain this status...at a time no sooner than ten years and no later than fifteen years.'

ADOPTION

Supporting Israel, Canada and the US explained their vote by criticising the institutional bias of the Council in regard to Item 7, and the lack of measures to improve the Council's membership.²⁷ Comments after the vote divided into two basic themes: States that felt the review represented a major missed opportunity to enhance the legitimacy of the Council, and States that bemoaned that consensus was not achieved on an important document. Several Latin American States²⁸ also reiterated their views that the Council's annual report should only be presented in the plenary²⁹ and that the Council should be transformed into a principal organ of the UN.

LOOKING FORWARD

The final outcome of the lengthy review was a watered down document that failed to address many of the key issues discussed during the negotiation process. However, as the Ambassador of Liechtenstein stated following the resolution's adoption, the process of the review has planted the seed on ways to improve candidatures for the Council, and ideas raised may evolve further in another context.

Human rights organisations also pointed out that States can still immediately implement measures that respect the spirit and letter of *Resolution 60/251* that do not require the adoption of a separate text. These include regional groups running open slates in all future Council elections, and States committing to presenting and discussing their pledges in the General Assembly before future elections.³⁰ In particular those States that made proposals in this regard, should be expected to do so. ■

27 Australia and the EU also expressed criticism.

28 Uruguay, Peru and Chile.

29 Also supported by EU and Mexico.

30 Letter to States from NGOs available at <http://bit.ly/kIIW7X>.

UNIVERSAL PERIODIC REVIEW

11th Session of the UPR – majority of recommendations remain pending



Photo: Brad Smith

Migrant workers in Skagit Valley, Washington, USA.

The Working Group on the Universal Periodic Review (UPR) held its 11th session from 2 to 13 May 2011, during which 16 States were examined: Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone, Singapore, Suriname, Greece, Samoa, Saint Vincent and the Grenadines, Sudan, Hungary, and Papua New Guinea.

As was seen at the last session, there were again some instances of tension based on territorial disputes and use of proper United Nations (UN) terminology when referring to States. The latter involved China objecting to the Solomon Islands' reference to 'Taiwan', requesting that it be referred to as 'China'. The President of the Human Rights Council (the Council) had encouraged all delegations to use the term officially recognised by the UN. There was also anticipation surrounding the UPR of Sudan ahead of Southern Sudan's upcoming independence in July 2011.

ENGAGEMENT BY STATES UNDER REVIEW

Hungary was represented by the largest delegation (13 members) while Saint Vincent and the Grenadines had only two representatives. Most delegations demonstrated gender parity in the selection of their representatives for the UPR. One positive illustration of representation was shown by Sudan whose delegation was made up of representatives from both North and South regions. The majority of States reviewed were represented by high-ranking government officials such as ministers of foreign affairs and a few ministers of justice. The delegation of Singapore was made up of representatives from the ministries of health, law, home affairs and community development.

Although Hungary had the largest delegation, the questions posed were answered solely by the Minister of State for Social Inclusion at the Ministry of Public Administration and Justice. Many other States followed this practice of having only one member answer all questions, including the Solomon Islands, Papua New Guinea, Belgium, the Seychelles, and Saint Vincent and the Grenadines. Palau, Latvia and the Solomon Islands, on the other hand, were amongst those delegations that ensured that representatives with the most relevant expertise on the subject answered questions.

Most States responded to previously submitted written questions during the presentation of their report and to new questions raised in the dialogue throughout the remainder of the review. Many Small Island Developing States (SIDS) called on the international community to be patient and understanding, and to continue their support for the Island States in regard to financial and climate change issues.

ENGAGEMENT BY THE WORKING GROUP

Some States under review received a considerable amount of participation from 'friendly' or less critical States or from those located in a common regional area to the State under review. For example, during the review of SIDS,¹ an increase in participation of other island States was seen. Because of the small number of States overall that participated in the UPR reviews, the comments of 'friendly' States were more prominent. This contrasted with reviews of EU countries, where there was limited or less obvious participation by 'friendly' States. The indication seems to be that States with more problematic human

¹ SIDS under review at this session were Palau, Seychelles, Solomon Islands, Singapore, Suriname, Samoa, Saint Vincent and the Grenadines, and Papua New Guinea.

rights records demonstrate loyalty towards those with similar human rights problems, presumably in expectation that they will receive similar support when the time comes for their own review.

Sudan, Singapore and Somalia had the highest number of speakers during their reviews. These were the only reviews in which not all members of the Working Group were able to speak.

The main issues raised by States varied highly and ranged from concerns about stateless persons (Denmark), migration (Greece), and corporal punishment (Singapore), to the issue of child soldiers (Somalia) and the treatment of Roma (Hungary).

Cuba made recommendations regarding education and health in many of the reviews. The following subjects were also brought up at the majority of the reviews: violence against women, human trafficking, female representation in national decision-making, citizenship, and racial and religious discrimination. Some recommendations were made irrespective of region, such as the recommendations to ratify international treaties, while others showed regional patterns. For instance, there were many recommendations concerning migration directed at the European countries under review, such as Greece.

There were also recommendations made specific to certain countries, such as in the case of Sudan. The UPR review for Sudan was particularly interesting considering the independence of South Sudan on 9 July this year. States emphasised the link between encouraging peace in troubled areas, such as Darfur and Abyei, and the long term stability of South Sudan. The UPR recommendations for South Sudan could have a great impact on the peaceful future of the independent State. The representative of South Sudan said the State is committed to improving the human rights situation and added that the civil and political rights in Southern Sudan are centered on the bill of rights in its constitution. Useful recommendations included the implementation of policies to decriminalise apostasy, and retention of human rights protections in the new constitutions of the North and South.

The events of the Arab Spring also had an impact on the recommendations made by a number of countries. Due to the growing number of refugees from the Middle East and North Africa (MENA) regions, a number of countries, such as Pakistan, criticised the disproportionate burden of refugees on MENA countries. Recommendations were made for European countries to ensure the opening of their borders to refugees escaping repression in countries such as Libya, Syria and Bahrain.

As issues regarding the UN human rights system as a whole were raised, the delegation of Saint Vincent and the Grenadines highlighted the lack of standing open invitations to special procedures issued by members of the MENA region. The delegation said European countries issued the majority

of standing invitations. However, it argued the absence of standing invitations from SIDS should not be seen as a lack of political will, but as a consequence of many countries lacking the funds and capacity to receive special procedure mandate holders. This issue was raised by a number of other SIDS and African countries under review.

NGO ENGAGEMENT IN THE UPR PROCESS

A total number of 172 stakeholders' submissions were made, with Somalia attracting the most (26 submissions), while Saint Vincent and the Grenadines along with the Seychelles only attracted three submissions each. All SIDS had a low number of NGO submissions, ranging from three to ten. This could be linked to a low number of NGOs in these States and a lack of government capacity to promote the UPR to civil society, but also points to a lack of capacity on the part of NGOs to engage.

NGOs displayed particularly strong interest in the reviews of Somalia and Sudan, as both countries are dealing with conflict and transitional governments. The review of Singapore also attracted a high level of submissions from NGOs, especially on the issues of corporal and capital punishment.

With regard to European countries, a number of NGOs highlighted concerns regarding flawed migration policies. Overall however, European countries under review prompted less NGO engagement. Denmark had a relatively high number of NGO submissions (15) – the most amongst European countries. One concern brought up by a number of NGOs in the stakeholder report of Denmark was the lack of ratification of international human rights conventions in the Faroe Islands and Greenland, regions that are partly under Denmark's jurisdiction. Several States also raised this concern during the review of Denmark.

The Danish delegation stated the Government's strong desire to include NGOs in the UPR cycles, stressing its appreciation and hope for NGO engagement with regard to future reviews. It stood out as the only delegation to specifically mention its readiness to take into account recommendations made by NGOs.

Moreover, the head of the Danish delegation said he desired for the Danish Institute for Human Rights, a national human rights institution (NHRI), to have an opportunity to speak as part of the review. As part of the outcome of the review of the work and functioning of the Council, NHRIs will be able to speak immediately after the State under review, but only during the adoption of the report in plenary. However, this provision will come into force at the beginning of the second cycle of the UPR in June 2012 and will therefore not apply to the Danish NHRI in this round.

OUTCOMES AND RECOMMENDATIONS

The number of recommendations made to States under review varied. SIDS received nearly equivalent numbers of recommendations, amounting to an average of approximately 100 per State. Larger States received between 120 and 190 recommendations.

There was no significant disparity in State responses to recommendations at this session, with many leaving decisions pending until the 18th session of the Council in September 2011. States that left all recommendations pending were Denmark, Palau, Solomon Islands, Seychelles, Sudan, and Somalia, which shows a change from previous sessions. For example, at the 10th session of the UPR (January – February 2011), only three States left all recommendations pending. Considering this is a cross-regional phenomenon, it could potentially indicate a trend towards States not giving positions on any recommendations until the Council adoption of the report. Hungary, Papua New Guinea, Sierra Leone and Suriname left more than 20 recommendations pending. Nevertheless, the higher rate of pending recommendations also resulted in a lower rate of immediately rejected ones. It is hoped discussions in capital over the coming months will result in constructive responses to the pending recommendations. In addition, the higher rate of pending recommendations provides NGOs with extra space to lobby governments and push for their acceptance.

Certain questions and recommendations, such as the ratification of outstanding human rights conventions, were either not addressed or sidelined, mostly by SIDS or less developed countries. Other States raised concerns that lack of capacity was used by some countries as a pretext for this refusal. European countries received many recommendations related to the ratification of the *International Convention on the Protection of All Migrant Workers and Members of their Families* (CMW). However, none agreed to ratify this convention as most governments claimed the rights therein were already enshrined in their legislation and guaranteed by the European Convention on Migrants. States appear to be fearful that opportunities to change migrant policy will be reduced if they ratify the CMW, particularly the implications this may have for being able to remove migrants who lose or leave the employment for which permission to enter the country was granted.

Similar to previous sessions, many recommendations were considered by the States examined to be either 'already implemented' or 'in the process of implementation.' This was especially the case for Samoa and Sierra Leone, who both considered 50 recommendations to be already implemented out of 102 and 129 recommendations respectively. Recommendations made to Sierra Leone that were already considered by the State to have been implemented included the elimination of female genital mutilation and the abolition of the death penalty.

Other prominent recommendations were related to the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and same-sex relationships, and the treatment of women and children. These came up frequently during the reviews of SIDS. Particularly prominent as reasons for rejecting these recommendations was the appeal to traditional and religious beliefs. Saint Vincent and the Grenadines, for instance, stressed it was unable to accept recommendations to decriminalise same-sex relations, claiming this would contradict traditional values.

Saint Vincent and the Grenadines also immediately gave a negative response to recommendations concerning the abolition of the death penalty. Some countries, in particular Suriname, Samoa and the Solomon Islands, were recommended to raise the minimum age of criminal responsibility. However, all of them replied within the session that they were not willing to do so.

The delegation of the Transitional Federal Government of Somalia was quick to blame the problem of impunity within the country on the fact that many human rights violations are committed by actors not under the government's control, such as non-government militant factions. One such violation was the recruitment of child soldiers.

The protection of national identity was another reason States used to rationalise negative responses to recommendations. For example, the delegation of Latvia cited this as its reason for promoting Latvian over minority languages, such as Russian. This was in response to the Russian Federation's concerns about the lack of citizenship and language rights afforded to ethnic minorities in the country.

The delegation of Singapore unapologetically stated its position not to ratify any further international human rights conventions without first investigating the practical steps required to implement them. In a similar vein, the State was blunt in its refusal to ban corporal punishment, claiming it to be necessary to ensure national security and stability. Despite this, Singapore was praised by a number of States for its successful promotion of economic, social and cultural rights. Many States referred to Singapore's success in enabling the majority of its population to access these rights, and demonstrated an interest in learning from these achievements to benefit their own people.

With so many States under review opting to leave their positions on recommendations pending until the 18th session of the Council, it is difficult to judge at this stage how fruitful the review was in terms of accepted recommendations. However, as the first cycle draws to a close it will also be important to keep in mind that rejected recommendations remain important. Human rights defenders will get an opportunity in the course of the second cycle of the UPR, starting in 2012, to encourage States to reconsider their positions on those recommendations. ■

GENERAL ASSEMBLY

Migration discussion highlights disconnect with human rights framework



Photo: UN/Paul Banks

On 19 May 2011, the President of the General Assembly hosted an Informal Thematic Debate on International Migration and Development (the Debate).¹ The Debate was intended to build on the ongoing dialogue on the issue and contribute to the process leading to the second General Assembly High-level Dialogue on International Migration and Development in 2013. It brought together Member States, United Nations (UN) agencies, observers, the private sector and numerous non-governmental organisations (NGOs) to consider achievements to date and best practices for promoting migration's positive contributions to development. The Debate was framed in two interactive panel discussions: the first on the contribution of migrants to development; the second on improving international cooperation on migration and development.

Many participants at the first High-level Dialogue in 2006 considered that the UN is the natural venue in which to continue the global conversation on international migration and development. However, in the end, States favoured the creation of the Global Forum on Migration and Development (GFMD) – an informal, voluntary, State-led process outside the UN² that would not produce negotiated outcomes or normative decisions.³ The relationship between the GFMD and UN continues to be the subject of some discussion and a number of States and civil society representatives at the Debate broached the issue of whether the dialogue should return to the UN. This issue is of great importance to civil society actors who have faced greater constraints to effective cooperation with governments in the framework of the GFMD. In this regard, the civil society representative for the 2011 GFMD⁴ called for the 2012 assessment of the GFMD to examine civil society engagement and the value added of a more inclusive framework for stakeholder participation and cooperation.

Morocco noted that it is time for the process to mature and achieve a more appropriate, formal nature. Others, including El Salvador and Argentina stated their positions that the UN is the appropriate forum for discussions on migration and development. Citing the purposes of the UN in Article 1 of the UN Charter, Mexico argued that the GFMD cannot replace the role of the UN to harmonise the actions of nations on this issue.

Others, including Sweden and the EU, affirmed their support for a continued State-owned, open-ended, consultative and non-decision-making process in the GFMD. The US seemed to indicate that its cooperation was contingent on the dialogue remaining outside the UN, attributing the effectiveness of the current process to its non-binding, informal, voluntary nature.

1 See <http://bit.ly/f7OX4S>. The General Assembly decided in RES/63/225 (para. 17) to convene a one-day Informal Thematic Debate on International Migration and Development at its sixty-fifth session in 2011.

2 A number of ad-hoc mechanisms and institutions on migration have proliferated across the UN in the absence of a comprehensive multilateral regime on migration, or a single agency with a comprehensive mandate. Though a complete review is beyond the scope of this article, these include the Special Rapporteur on the Rights of Migrants, the *Convention on the Rights of Migrant Workers and their Families* and the Committee on Migrant Workers, a number of ILO Conventions regarding the labour rights of migrants, the Special Representative of the Secretary General on Migration and Development, and the Global Migration Group (an inter-agency group composed of 16 agencies that deal with aspects of migration). The Human Rights Commission, Human Rights Council and General Assembly have addressed the issue of migration in past resolutions. A helpful consolidation of resolutions and reports in the General Assembly from 1999 onward is available at <http://bit.ly/mjZ4kZ>. In addition, OHCHR prioritised the protection of human rights in the context of migration as a thematic area in its 2010-2011 Strategic Management Plan, available at <http://bit.ly/9J1Z8i>.

3 Note by the President of the General Assembly on the Summary of the High-level Dialogue on International Migration and Development, General Assembly, 61st Session, A/61/515 (13 October 2006).

4 John Bingham, Head of Policy, International Catholic Migration Commission.

The Philippines articulated its position that the UN is the ideal venue. However, recognising the sensitivity of the issue for many States, the Philippines considered that a 'realistic' approach would be to maintain bilateral and regional dialogues parallel to discussions at the UN so that those on the ground benefit from improved policies in the meantime.

The Secretary-General's Special Representative on International Migration and Development, Sir Peter Sutherland, highlighted another shortcoming of the voluntary nature of the GFMD in his remarks, noting the reluctance of Member States to provide stable funding to the process and their lack of willingness to host future meetings. He also criticised States for the lack of practical cooperation achieved through the GFMD; the 'yawning chasm' between the scale of the problems and the opportunities presented by migration and the size of the efforts made to address the challenges.

In addition to more effective cooperation with governments, civil society has long argued that multilateral cooperation within the UN would ensure that migration is considered within the already established normative framework. This in turn would lead to more effective protection of migrants' rights. Algeria also linked the two issues, stating that global policy coherence can only be achieved through debate within the UN and the ratification and implementation of relevant conventions, in particular the *Convention on the Rights of Migrant Workers and Members of their Families* (the Convention).

Amidst rhetoric from most States at the Debate that a human rights based approach to migration is appropriate, civil society representatives voiced their concern at the lack of attention and focus on the Convention. This view was echoed by certain States, including Morocco, which noted the apparent contradiction between the calls for greater respect of migrants' rights and the position of the majority of States vis-à-vis the Convention.

Since its adoption by the General Assembly on 18 December 1990, the Convention has been ratified by 44 States and signed by a further 31. To date, none of the major labour receiving States in the Western hemisphere, nor other significant receiving States such as the Arab States of the Persian Gulf and India, have ratified the Convention.

During their Universal Period Reviews at the Human Rights Council,⁵ these States attempted to justify their refusal to ratify with specious arguments. These arguments included that the Convention contradicts other international obligations;⁶ that ratification is not required to achieve protection of rights as these are already adequately protected by legislation and/or existing human rights commitments;⁷ that the Convention

does not draw any distinction between 'regular' and 'irregular' migrants⁸ and the lack of distinction does not 'encourage' legal residence;⁹ that the Convention is not compatible with domestic legislation, in particular with regard to 'extra rights' given to 'illegal' migrants;¹⁰ that the situation of migrant workers is much better than the non-ratification might suggest.¹¹ In addition, some European States argued that ratification is precluded by the fact that competence on matters relating to migrant workers lies with the European Community.¹²

The General Assembly will consider the future of multilateral cooperation at the second High-level Dialogue on International Migration and Development in 2013. In the meantime, the current Chair of the GFMD (Switzerland) has invited States to express their views on whether the dialogue should continue in the GFMD through a questionnaire sent to capitals. ■

5 For documentation associated with the Universal Periodic Review, see <http://bit.ly/m8PFEa>.

6 Austria para. 60, A/HRC/17/8, available at <http://bit.ly/oQwBGc>.

7 Lichtenstein A/HRC/10/77/Add.1, Austria para. 60, A/HRC/17/8, Norway A/HRC/13/5/Add.1, UK paras. 62-63, A/HRC/8/25/Add.1,

Finland para. 33 A/HRC/8/24, New Zealand para. 2, A/HRC/12/8/Add.1, Switzerland para. 64, A/HRC/15/11. Available at <http://bit.ly/11ELfu>.

8 Italy A/HRC/14/4/Add.1, the Netherlands para. 10, A/HRC/8/31/Add.1*. Available at <http://bit.ly/11ELfu>.

9 France para. 5, A/HRC/8/47/Add.1, para. 13, A/HRC/WG.6/2/FRA/1. Available at <http://bit.ly/11ELfu>.

10 Switzerland para. 34, A/HRC/8/41, available at <http://bit.ly/pLBQU4>.

11 Lichtenstein para. 43, A/HRC/10/77, available at <http://bit.ly/pZUOUU>.

12 Luxembourg para. 2, A/HRC/10/72/Add.1, Italy A/HRC/14/4/Add.1. Available at <http://bit.ly/11ELfu>.

COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

Political changes in Tunisia an opportunity for disability rights, says Committee



Photo: Imagen en Accion

The Committee on the Rights of Persons with Disabilities (the Committee) met for its 5th session from 11 to 15 April, a meeting that marked a number of firsts. It was the first time the enlarged Committee, which has grown from 12 to 18 members, came together and engaged in dialogue with a State party – Tunisia – and adopted a set of Concluding Observations. The dialogue also took place during a period of significant political change for Tunisia, which the Committee in its Concluding Observations presented as a unique opportunity for persons with disability to have their rights further recognised and to contribute to the development of the country. Significant themes of the session included: definitions and terminology on persons with disabilities, legal capacity, and a focus on civil and political rights.

ENLARGED COMMITTEE, NEW BUREAU

At the opening of the session, the eight newly elected members, Ms Theresia Degener (Germany), Mr Carlos Rios Espinosa (Mexico), Mr Gabor Gombos (Hungary), Mr Hyung Shik Kim (Republic of Korea), Mr Stig Langvad (Denmark), Ms Silvia Judith Quan Chang (Guatemala), Ms Fatiha Hadj Salah (Algeria), and Mr Damjan Tatic (Serbia), who took up their functions in January 2011, were officially inaugurated as Committee members.

A new bureau was elected as follows: Mr Ronald McCallum (Australia), re-elected as Chair; Ms Maria Soledad Cisteras Reyes (Chile), Ms Jia Yang (China) and Ms Edah Maina (Kenya) as Vice Chairs; and Ms Theresia Degener (Germany) as Rapporteur. During the election process, Committee members agreed the bureau should have a balanced geographical representation, which was effectively achieved.

FIRST-EVER DIALOGUE WITH A STATE PARTY

The delegation of Tunisia, including representatives of the principal ministries and headed by the Minister of Social Affairs, presented its introductory statement to the Committee in just over 20 minutes. Committee member, Ms Al Suwaidi (Qatar), the country rapporteur, opened questions following the State's address with a review of the principal issues of concern, which were subsequently deepened in the dialogue.

The questions posed by the Committee touched upon almost every provision of the *Convention on the Rights of Persons with Disabilities* (the Convention). Those that stood out as not addressed were Articles 20 (personal mobility), 26 (habilitation and rehabilitation), 28 (adequate standard of living and social protection), and 30 (participation in cultural life, recreation, leisure and sport).

Committee members were vocal in their questions relating to the low reported number of persons with disabilities in Tunisia, particularly women with disabilities. They linked this to the restrictive definition of 'persons with disabilities' currently employed in domestic legislation. The Government of Tunisia said its definition had departed from the 'medical model' and is currently in line with the World Health Organization (WHO) classification of persons with disabilities. In response, Mr Gábor Gombos indicated that the Convention goes beyond the WHO approach, with Mr Langvad expressing concern that the restrictive definition of persons with disabilities in Tunisian law could limit the application of the Convention to a subset of the rights holders for which it was intended.

In response to questions regarding the use of degrading terminology to refer to persons with disabilities in the Tunisian report and in legislation,¹ the State delegation responded that such terms are used internationally, for example in French legislation. It argued that as long as this continues to be the case, Tunisian legislation would not be amended in this respect. In a strong counter response, Ms Jia Yang clarified that the Tunisian Government has an opportunity to take the lead in the evolution of terminology with respect to persons with disabilities, and the Convention provides standardised language that reflects the recognition of the rights of persons with disabilities.

Another point of contention between the Committee and the delegation was with respect to Article 12 on the legal capacity of persons with disabilities. Several Committee members (Mr Gombos, Ms Maina, Ms Maria Soledad Cisteras Reyes, Ms Ana Palaez Narvaez, and Mr Rios Espinosa) questioned the compatibility of the Tunisian system of guardianship with Article 12 of the Convention. This system restricts individuals with 'mental incapacity' in the exercise of certain rights, while Article 12 states that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Mr Kim highlighted that the Convention does not permit distinctions between different types of disabilities,² and that the right to legal capacity applies to everyone equally. The State delegation conceded that it was perhaps not fully aware of the latest developments on the exercise of legal capacity and expressed its willingness to discuss and exchange information on the subject. However, Committee members did not have a chance to elaborate and provide guidance to the State on the precise scope and meaning of Article 12. This is regrettable as Article 12, often referred to as 'the heart of the Convention', impacts upon all of the rights, but is also of the provisions of the Convention most commonly misunderstood.

CIVIL SOCIETY PARTICIPATION

Given the repressive nature of the former Tunisian Government and the political changes that occurred in January 2011, Tunisian organisations of persons with disabilities (DPOs) were not in a position to make submissions to the Committee at any stage of the review process. To fill this gap, the International Disability Alliance (IDA) conducted a mission in Tunisia at the end of March to meet with national and local DPOs, in an effort to collect information on the situation of persons with disabilities on the ground and to formulate recommendations to the Committee. IDA made a written submission and was granted a 15-minute private meeting with the Committee members in the lead up to the dialogue with Tunisia. The Committee did not receive any other written submissions from NGOs.

1 The report used terms such as 'persons lacking in mental capacity', 'persons suffering from the disability of mental retardation', 'persons suffering from the disability of insanity'.

2 The State delegation had earlier explained that persons with physical disabilities retain full legal capacity.

Depending on the State examined, and the capacities of national and local DPOs, the ideal way of engaging with the Committee may vary. Future practice will shed more light on this, and may provide additional guidance on how best to engage.

CONCLUDING OBSERVATIONS

The Concluding Observations on Tunisia adopted by the Committee were made public on 29 April 2011.³ One positive point emphasised in the Concluding Observations is the unique opportunity for persons with disabilities to participate in the building of a new country, and to contribute both as members of the Constitutional Council, the body designated to draft the new Constitution, and through being actively involved in consultations by the Council.⁴

In general, the Concluding Observations focus more on civil and political rights than economic, social and cultural rights. They do not, for example, include any mention of social protection nor support to families of children with disabilities. This is despite IDA having made recommendations to the Committee on Articles 19 (living in the community), 20 (personal mobility), 25 (right to health), 26 (habilitation and rehabilitation), 28 (adequate standard of living and social protection), and 30 (participation in cultural life, recreation, leisure and sport). The absence of representatives of Tunisian DPOs deprived the Committee of the opportunity to hear more concrete examples of how the economic, social and cultural rights of persons with disabilities are being infringed.

DYNAMIC INTERPRETATION OF THE CONVENTION

In its Concluding Observations on Tunisia, the Committee also raised a number of important elements, which may put to rest divergent interpretations of the Convention. In particular, as the Convention presents the latest standards on the rights of persons with disabilities, some existing texts, including some general comments of other treaty bodies, are now in contradiction to the Convention. This emerging 'jurisprudence' of the Committee is therefore particularly important, as those new concepts will no doubt be built upon by the Committee in the future. Key elements include:

- The Committee recommends a review and reformulation of the definition of disability based on the Convention to prevent the exclusion of 'in particular persons with psychosocial disabilities ("mental illness") or intellectual disabilities, or others not able to obtain a disability card, either due to disability or by association with a disability'.
- The Committee clearly states that the definition of reasonable accommodation⁵ must be incorporated into

3 Concluding Observations on Tunisia available at <http://bit.ly/rpXEnN>.

4 See para 10 of the Concluding Observations on Tunisia.

5 'Reasonable accommodation' means necessary and appropriate

the law including explicit recognition that the denial of reasonable accommodation constitutes disability based discrimination.

- The Committee recommends the State party to encourage and support the creation, capacity-building and effective participation of representative organisations, or groups of persons with disabilities and parents of persons with disabilities, in the development and implementation of legislation and policies concerning persons with disabilities, in particular to implement the Convention.⁶
- The Committee recommends replacing laws on substituted decision-making (guardianship, trusteeship) by supported decision-making in the exercise of legal capacity.⁷
- The Committee recommends repealing laws that allow for deprivation of liberty on the basis of disability, including a psychosocial or intellectual disability.⁸
- The Committee did not address freedom of expression and freedom of opinion in a paragraph of its own, instead raising it under the paragraph dealing with Article 24 on the right to education (see para. 32). It calls on the State to provide information intended for the general public in accessible formats and – especially with respect to the deaf, hard of hearing and deaf blind – to recognise and promote the use of sign language. While the paragraph does not specifically state that this recommendation applies also to the promotion of sign language in schools, there is a strong case that it does, given that the recommendation is made in the context of the Committee's considerations of the right to education.
- Regarding the right to participation in political and public life,⁹ the Committee recommends the urgent adoption of legislative measures to ensure that persons with disabilities, including those who are currently under guardianship or trusteeship, can exercise their right to vote and to participate in public life on an equal basis with others.

FOLLOW UP

Unlike the practice of some other treaty bodies, the Committee's recommendations do not oblige the State to report back on particular priority points within a specified timeframe.¹⁰ The only indicated action and timeframe

modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2, the Convention).

⁶ Article 4(3).

⁷ Article 12.

⁸ Article 14.

⁹ Article 29.

¹⁰ This is required after one year for the Committee on the Elimination of Racial Discrimination and Committee against Torture, and one to two years for the Committee on the Elimination of Discrimination

for reporting is 'to include in its second periodic report detailed information on measures taken to follow up on the recommendations in the present concluding observations'.¹¹ From the perspective of DPOs, and with a view to the effective implementation of the Convention, it is desirable that in the future the Committee will engage in facilitating follow-up by prioritising certain issues on which the State should report back within the next year – a method proven to be effective in sister treaty bodies.

However, in recognition of the role played by persons with disabilities, the Committee encourages the State party to continue in the implementation of the Convention and to involve civil society organisations, in particular DPOs, in the preparation of its second periodic report to be submitted by 2 April 2014.

OTHER DEVELOPMENTS AND UPCOMING SESSION

During the session the Committee also adopted the List of Issues on Spain. In a private briefing hosted by IDA, a DPO representative appeared before the Committee for the first time in the context of the Committee's review procedures. The representative from the umbrella organisation of persons with disabilities, CERMI (Comité Español de Representantes de Personas con Discapacidad), presented the DPO's principal issues of concern to assist the Committee in compiling its list of questions. The success of this intervention is tangible; with some minor exceptions, such as unclear language in parts of the List of Issues,¹² the questions are direct and well-tailored to the national context. IDA will continue to advocate for allocation of time within the formal session itself for DPOs and NGOs to brief Committee members. A clear advantage to this option over lunchtime briefings is the availability of interpretation, which provides the opportunity for veritable exchange between DPO representatives and all Committee members.

At the Committee's closing session, several decisions were announced. A Day of General Discussion will not be held at the Committee's September session, as has been the case since the inception of the Committee. The session will instead concentrate on State reports, holding a dialogue with Spain and adopting Lists of Issues with respect to Peru and China. Mr Rios Espinosa was named country rapporteur of Peru, while Ms Degener and Mr Kim were named as co-rapporteurs on China.

The Committee also announced the adoption of its working methods, and the approval and adoption of a guidance note on the presentation of communications under the Optional Protocol. These documents have not yet been made publicly available. The next session of the Committee will take place from 19 - 23 September 2011.

against Women.

¹¹ See para 43 of the Concluding Observations on Tunisia.

¹² Articles 12 and 33.

To read the Concluding Observations on Tunisia, the List of Issues on Spain and the submissions made by IDA and CERMI with respect to these two States, visit the OHCHR 5th session web page <http://bit.ly/fyK4zi>.

Facts about the Committee (current as of 13 July 2011)

Number of members	18 members as of January 2011
Treaties covered	Convention on the Rights of Persons with Disabilities; Optional Protocol to the Convention on the Rights of Persons with Disabilities
Total number of ratifications	103* (the Convention), 62 (Optional Protocol)
Total number of signatories	149 (the Convention), 90 (Optional Protocol)
Reports received from:	Argentina, Australia, Austria, Azerbaijan, China, Costa Rica, El Salvador, Hungary, Paraguay, Peru, Spain, Sweden, and Tunisia

* The European Union officially ratified the Convention on 23 December 2010; it is the first time an intergovernmental body has become a party to an international human rights treaty.¹³

Information on the IDA

The International Disability Alliance (IDA) is the network of global and regional organisations of persons with disabilities (DPOs), currently comprising eight global and four regional DPOs. With member organisations around the world, IDA represents the more than one billion people worldwide living with a disability, the world's largest and most frequently overlooked minority group. IDA promotes the effective implementation of the Convention on the Rights of Persons with Disabilities, as well as compliance with the Convention within the whole UN system, including in the work of other treaty bodies.

For more information on IDA and its activities: www.internationaldisabilityalliance.org.

Article by Victoria Lee, International Disability Alliance Secretariat. For more information on how to engage with the Committee, email vlee@ida-secretariat.org. ■

¹³ Under Article 44 of the Convention, 'regional integration organisations' can become a party to the Convention, and are included within the designation 'States parties'. It is the first time this provision has been included in a UN human rights treaty.

COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Discrimination and gender inequality challenge Moldova, Germany, Russia, Turkey, and Yemen



Photo: Charles Roffey

Women in Hasankeyf, Turkey.

The Committee on Economic, Social, and Cultural Rights (the Committee) held its 46th session in Geneva from 2 to 20 May 2011. The Committee reviewed reports from Turkey, Moldova, Yemen, Germany, and the Russian Federation.¹ Significant themes included the legal status of the International Covenant on Economic, Social and Cultural Rights (the Covenant), principles of non-discrimination, gender equality and women's participation in public and private sectors of the labour force.

Engagement by State Parties

The Committee examined each State report over three meetings of three hours in length. Committee members, many of whom were actively engaged throughout the reviews, divided each review into thematic quarters based on the Covenant's fifteen articles.

The Committee was impressed with the balance of gender within the delegation of Moldova, however expressed dissatisfaction over both the lack of depth and datedness of its report. In particular, the Committee was displeased with Moldova's core documents – many of which date back to 2001. Without up-to-date documents the Committee was deprived of basic statistical figures for several new initiatives in the country. The Committee was also displeased with Moldova's failure to bring a representative of its Justice ministry to the meeting. Committee member Mr Aslan Khuseinovich Abashidze stressed that judicial representation was critical in discussing specific aspects of the Moldovan penal code.

The review of Turkey was generally constructive, due in part to the extensive report submitted by the delegation. The Committee did, however, ask why the lead delegate for Turkey was not present for the review. Mr Sadi also commented on Turkey's delay in ratifying the Covenant, implying there may be a lack of political will on behalf of the Government to subscribe to certain rights within the Covenant.²

Germany was praised for its high-ranking delegation, which included Mr Andreas Storm, State Secretary in the Ministry of Labour and Social Affairs. Although the German delegation was forthcoming in answering many of the Committee's questions, the dialogue became tense when the enquiry shifted towards legality of strikes. The Committee made several allegations of overly restrictive strike regulations and inaccessible labour laws, while Germany vehemently defended its practices.

The review of Yemen was well organised and effective, however Mr Zdzislaw Kedzia said the quality of the State's report was lacking – an appraisal echoed by several other experts. This stemmed in part from the Committee's interest in following up on recommendations made at Yemen's 2009 Universal Periodic Review (UPR) session – information not included in the report.³ Although the dialogue was constructive, the tone changed when Mr Kedzia addressed Yemen's recent teacher protests, citing alleged Government involvement in the violence against peacefully assembling citizens. The delegation took a dismissive approach to these allegations, and the Committee, observing Yemen's stubbornness on the issue, moved forward in the review

1 All documents related to the 46th session are available at <http://bit.ly/ef3Mlm>.

2 Turkey became party to ICESCR on 23 September 2003.

3 UN Media coverage of Yemen's 2009 UPR Report is found at <http://bit.ly/joUGep>.

without addressing the larger, political reform protests witnessed across the country.

The Committee applauded the size and diversity of the Russian Federation's delegation, saying that, with 29 representatives, it was the second largest delegation in the history of the Committee. The Committee also appreciated the volume of the State report, yet several experts were unhappy with the lack of indicators and disaggregated data found in national statistics.

NGO participation

Keeping with previous practice, the Committee held an open meeting with NGOs on the first day of the session. Several NGOs made brief presentations and the Committee engaged in an interactive dialogue for follow-up queries and elaboration. Attention was paid to NGOs from Turkey whom focused on the construction of dams and its impact on the protection of indigenous peoples' rights, including women's rights, such as Kurdish and Roma women. NGOs from Moldova and Germany also made a strong impression on the Committee. A coalition of NGOs from Moldova advocated for the protection of vulnerable groups, such as minorities, children, women, people with HIV, and people living in poverty that affects over a quarter of the country's population. Germany's Intersex Association addressed pervasive discrimination against intersex and transsexual persons in the country, including legal barriers whereby a doctor's approval is required for making certain medical decisions.

THEMES

Legal status of the Covenant

Throughout the session, the Committee urged all five States to fully incorporate the Covenant into their domestic legal systems to ensure the equal enjoyment of economic, social and cultural rights by all individuals and groups. Although the Committee complimented Turkey and Moldova's efforts to allow direct invocation of international law, it had reservations regarding practical applicability since neither country, when questioned, was able to produce concrete examples of legal cases demonstrating this privilege. The Committee also expressed frustration over the Russian Federation's vague commitment to the Covenant; the Russian delegation argued the Covenant defined 'the spirit' of how domestic law should be drafted rather than allowing it to be invoked directly. This was akin to Germany's rationale, however the delegation claimed German domestic law is a direct reflection of international covenants and thus direct invocation would be redundant.

Other relevant issues included Turkey's continued reservations to the Covenant and the Committee's concern over Germany's decision to elevate its constitutional law over

that of the treaty.⁴ Each State was pressed to consider adopting the 2008 Optional Protocol, however only Turkey and Moldova mentioned concrete steps towards signing and ratification.⁵

Discrimination, vulnerable group recognition and entitlement

Vulnerable groups, including minorities, migrant workers, refugees, internally displaced persons (IDPs), people with HIV, and persons with disabilities were, as during previous sessions, a central theme throughout the State reviews. In particular, the outright refusal by States to give constitutional recognition to many vulnerable groups left the Committee struggling to elaborate comprehensive recommendations that would enhance these groups' protection. During the review of Yemen, the delegation stressed that the Al-Akhdam, an ethnic minority group making up nearly 5 percent of the Yemeni population, did not need to be recognised as a vulnerable group. This was contrary to evidence presented by the Committee of discrimination against the Al-Akhdam peoples in health services, educational development, employment and economic mobility. The Yemeni delegation claimed all persons living in Yemen were of equal legal status, thus making any law specifically protecting vulnerable groups unnecessary.

For Turkey, the socio-economic and cultural marginalisation of Kurdish and Roma populations were of concern, along with the displacement of indigenous populations in lieu of dam and hydroelectric developments by both the Turkish Government and European investment groups. The Committee also expressed alarm at Moldova's treatment of Roma populations, which includes systemic favouritism by Moldovan teachers for children and families that can pay for additional, unofficial salaries – a practice many Roma families are unable to comply with.

Other issues raised included inadequate pensions for elderly and disabled people in Germany, technical challenges and lack of political will for establishing a national birth registry in Moldova, vague and frequently revised indigenous land-protection laws in Russia, and insufficient government infrastructure for assisting vulnerable groups to exercise their legal rights in Turkey and Yemen. The insufficient human rights infrastructure in States often included a lack of viable national human rights institutions (NHRI).

During discussions on the status of minorities, the reviewed States were consistently defensive in both the tone and content of their responses. When confronted with the suggestion of constitutionally acknowledging the Al-Akhdam people, the head speaker of the Yemeni delegation, Dr Rashad Al-Rassas,

4 For details of Turkey's reservations to the Covenant see: <http://bit.ly/I9QIxi>.

5 The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008) establishes and reinforces a direct, individual complaints mechanism for the Covenant. Additional information is available at <http://bit.ly/eQKSA8>.

retorted it was a 'non-issue'. This was similar to the tone struck by the Turkish delegation regarding the Kurdish minority in the east of Turkey, and the Russian delegation regarding Chechnyan minority in the south of Russia. One factor explaining these hard-line positions may be the context of a public United Nations forum and the general political sensitivity of ethnic minority rights. The process of having independent experts review policies and recommend changes may be taken by delegations as a threat to State sovereignty. This is compounded by the devolution of power that accompanies granting rights and elevating the status of minority groups.⁶ Together, this perceived 'squeezing' of political autonomy from external and internal fronts may drive States to revert to a more defensive position on these issues.

Gender inequality and domestic violence

The issue of gender inequality in employment, education and public service was raised with all reviewed States. Turkey, Moldova and Yemen reasoned that cultural and social practices pressured young women to either work in informal sectors of the labour force or remove themselves entirely to start families.

Turkey emphasised several governmental working groups currently in force, including a newly designed 'Let's go to school' programme to promote enrolment and continued education for girls. Yemen's response was convoluted, acknowledging cultural forces that prevent women from gaining support and access to public office while nevertheless blaming women for their own slow ascendance in society. When given the opportunity to vote, women often elected men, claimed Yemen's head speaker Dr Rashad Al-Rassas – citing this as the reason why the number of female candidates in the previous local elections amounted to less than one percent.

During the review of the Russian Federation, the Committee took issue with the State's labour law that currently excludes women from more than 400 different occupations. The delegation's initial defence of this law underscored Russia's concern over female maternity and the protection of women, however after attracting criticism from the Committee, conceded the law was archaic and discriminatory.

The Committee expressed concern over the Russian Federation's non-inclusion of sexual harassment as a specific crime, choosing instead to try perpetrators under its current law on 'coercive relations'. The Committee was also troubled over Russia's workplace protocol requiring employees to obtain approval from their supervisors before filing sexual harassment suites, citing that it may lead to conflicts of interest. Several experts noted a lack of sexual harassment cases filed as evidence of this inadequate legal procedure.⁷ Such

was also the case in Turkey where, Ms Jun Cong said, the 556 cases of domestic abuse filed in 2010 are well below international averages; particularly in light of NGO reports quoted by Mr Kedzia asserting that 39 percent of Turkish women are subject to domestic violence. Mr Kedzia said the number of reported cases is likely restricted by pervasive cultural repression and fear of reprisals by men.

Discussions concerning gender-related issues were primarily introduced by the three female Committee members, Ms Jun Cong, Ms Heisoo Shin, and Ms Rocío Barahona-Riera. In addition, female delegates, when present, often led responses to these issues. In a post-session conference with human rights defenders, Committee member Mr Eibe Riedel cautioned against allowing certain issues to be co-opted by 'one group of experts over another'.

Without male participation in this debate gender inequality remains largely a women's-only matter, which may weaken the accountability of men – both Committee members and State representatives – in upholding gender equality. Unfortunately, when male delegates have referenced gender-related issues, their comments have rarely spoken directly to the challenges at hand, often preferring to sidestep arguments and avoid active engagement.

Yemen's head speaker Dr Rashad Al-Rassas concluded the discussion on women's employment by remarking that, if he is still a minister when Yemen came to provide its second report, he would make sure 'all of [his] delegation is female'. While the comment seemed to be intended in a light-hearted manner, it demonstrates unwillingness by male delegates to address gender in a substantive context, supported in part by the failure of male Committee members to tackle the subject. Having a greater balance between male and female Committee members that address gender equality could help set the tone for a more inclusive and active engagement by States.⁸

SPECIFIC CONCERNS OF THE COMMITTEE

The Committee requested more detailed information on the production of Qat, currently grown on 25 percent of Yemen's irrigable land and consuming 30 percent of the nation's threatened water supply.

De-facto discrimination and stigmatisation of drug users in the Russian Federation was also debated, with attention given to the State's rejection of the WHO's recommendation for a rehabilitation-centred approach in handling drug users.

Committee members also wanted a more detailed action plan on how to alleviate the pervasive sanitation challenges in Moldova that currently prevent 45 percent of the population from accessing clean drinking water. ■

6 Sisk, Timothy D. *Power Sharing and International Mediation in Ethnic Conflicts*. Washington, DC. US Institute of Peace Press, 1996.

7 This assessment is based on international averages that can be verified at <http://bit.ly/pTUNoe>.

8 For more information on Committee members see: <http://bit.ly/jtA9gR>.

COMMITTEE AGAINST TORTURE

Reviews of Finland, Ghana, Ireland, Kuwait, Mauritius, Monaco, Slovenia, and Turkmenistan



Photo: Paul Peracchia

The Committee against Torture (the Committee) held its 46th session in Geneva from 9 May to 3 June, and considered the compliance of eight States with the *Convention against Torture, and other cruel, inhuman or degrading treatment or punishment* (the Convention). The States under review were Finland, Ghana, Ireland, Kuwait, Mauritius, Monaco, Slovenia, and Turkmenistan. Key themes at the session included the domestic implementation of the Convention, detention conditions, abolition of the death penalty and the situation of vulnerable groups.

Finland, Kuwait, Monaco, and Mauritius submitted reports in response to the 'Lists of Issues Prior to Reporting' (LoIPR), adopted during the Committee's 45th session under the optional reporting procedure. Ghana, Ireland and Turkmenistan presented their initial reports to the Committee, all of which were at least seven years late.¹ The Committee adopted its annual report (covering the 45th and 46th sessions) and made the decision to send reminders to States whose reports have previously been submitted three or more years late.

The States examined expressed appreciation for the opportunity to engage in open and constructive dialogue with the Committee.² Most States reflected positively on the increased amount of time allocated for each State review and the prolongation of the session by one week.³ The Committee expressed its gratitude for the detailed and comprehensive reports submitted by Finland and Slovenia. However, it emphasised the need for more accurate and statistical information in the reports of Ghana, Kuwait, Turkmenistan, and Ireland.⁴

While most delegations had women as at least one third of their members, the Kuwaiti delegation had only one female representative out of 13 members. Slovenia had the largest delegation (14 members), while Finland and Monaco had the smallest (6 members).

The Committee addressed some practical and institutional issues unrelated to the more substantive State reports and reviews. It held a meeting with the Subcommittee on the Prevention of Torture (the Subcommittee) to discuss cooperation between the two bodies and other institutional matters. Mr Malcolm Evans, Chairperson of the Subcommittee, presented the Subcommittee's annual report. This was followed by questions from Committee members, mostly concerning national preventive mechanisms (NPMs) and the possibility of evaluating these. The Subcommittee responded that, while mandated to assist States with regards to NPMs, it does not have the mandate to evaluate them.

The Committee also held a meeting with States parties to discuss the Committee's working methods. Issues such as the independence of the Committee, and the ratification, implementation and practice of the new optional reporting procedure with Lists of Issues Prior to Reporting (LoIPR) were deliberated. China and Algeria expressed concerns about the reliability of information received by the Committee, claiming non-governmental organisations (NGOs) sometimes do not

1 <http://bit.ly/eub6VM>.

2 Throughout its replies and the Committee's follow-up questions, the delegation of Ghana in particular engaged in a fast-paced dialogue with the Committee, answering follow-up and other questions as soon as they were asked. However, despite the delegation's eagerness to answer all questions and its contribution to an open and frank dialogue, many Committee members noted the lack of statistical or detailed information in both the report and the answers given.

3 ISHR, *Human Rights Monitor Quarterly*, Issue 1, 2011, p. 24, available at <http://bit.ly/oUfC9l>.

4 See concluding observations at <http://bit.ly/eub6VM>.

provide accurate information, thus NGO information may be an insufficient basis for creating the LoIPR or raising issues during the actual reviews.⁵ Other States, such as the UK and Finland, expressed full support for the LoIPR procedure.

NGO AND NHRI PARTICIPATION

The Committee received numerous reports from NGOs. For the review of Ireland, seven such reports were submitted, while for Finland there was only one.⁶ The Irish Human Rights Commission was the only national human rights institution to submit a report.

As is general practice, the Committee held closed meetings with civil society before each State review. However, a disappointingly low number of NGOs participated in these meetings.

The Committee raised numerous issues during the 46th session that were in reference to and as a result of the input of NGOs. The majority of these references were in relation to individual cases.

In reference to NGO information, during the review of Turkmenistan the Committee expressed concern about the application of the right to due process by State authorities. It also referred to the NGOs' description of Turkmenistan as a closed society with little or no freedom of expression or association in its dialogue with the State delegation.

Based on NGO information, the Committee raised the issues of State restrictions on monitoring in and reporting on places of detention during multiple State reviews, and the need for some States to abolish the death penalty.⁷

NGO consultative meeting

In addition to closed meetings with NGOs in advance of the relevant country reviews, the Committee held a general meeting with NGOs, during which the positive and negative aspects of the Committee's working methods were highlighted and a number of concrete proposals were made.

NGOs generally commended the Committee for the progressive and innovative approach demonstrated by some of its working methods. For example, the LoIPR procedure, which

has since been adopted by other treaty bodies,⁸ and the scheduling of NGO meetings before each State review, which has provided the Committee with more and better tailored country-specific information. The creation of a specific webpage on follow-up, in the Committee's section of the Office of the High Commissioner for Human Rights' (OHCHR) website, was welcomed and said to be increasing the transparency and visibility of follow-up efforts.

A number of NGOs proposed the Committee give more consideration and importance to the Committee's other mandates, such as the individual communications procedure and adoption of general comments. Moreover, NGOs highlighted three main areas of concern related to the cooperation between the Committee and NGOs.

Firstly, to improve accessibility to the Committee for NGOs there should be regular and transparent scheduling of reviews, which would allow NGOs enough time to provide substantive input. Regarding this suggestion, the Committee asserted that opportunities for NGO input are promoted through the scheduling of closed NGO meetings prior to each country review but very few NGOs take up this opportunity.

NGOs suggested the creation of a transparent forum for discussion through 'the wider use of technology', such as webcasts and video conferencing, which may help to increase involvement by NGOs around the world. The Committee responded positively to this suggestion, although said it was likely to be more efficient for NGOs to implement such measures themselves.

Secondly, NGO participation in relation to the LoIPR procedure was addressed. The new procedure was expressed by NGOs to be 'a very welcome innovation'; however, timely access to information on the adoption of LoIPRs was noted as essential in order for NGOs to participate. NGOs suggested the Committee be more strategic and rigid about State report submission deadlines, to prevent information from becoming out of date, and 'should consider adopting the current procedure of the Human Rights Committee to review one non-reporting State per session'.

Finally, the involvement of NGOs in the follow-up process was highlighted as an area needing improvement. It was suggested NGOs be allowed to intervene during the Committee's meetings on follow-up to concluding observations and views. NGOs also advised the Committee to allocate more time to the discussion of follow-up issues during the session and suggested the specific rapporteur(s) assigned to each State review be more involved in the follow-up process. It was recommended the Committee improve its recommendations and concluding observations by making them more concise and offering targeted remedies; that a lack of implementation

5 China emphasised that NGOs consulted by the Committee should, at a minimum, be ECOSOC accredited to increase the reliability of information provided to the Committee. Mr Grossmann responded by saying the Committee does not accept all information from NGOs uncritically, and has included a disclaimer on the website concerning information posted there by NGOs. The Committee also expressed the desire for increased involvement of local NGOs. Since many national NGOs do not possess ECOSOC accreditation, the Committee's firm stance to not introduce such criteria is key for human rights defenders.

6 All reports can be found at <http://bit.ly/eub6VM>.

7 Ghana, Monaco and Kuwait.

8 The LoIPR procedure has subsequently been adopted by the *Committee for Migrant Workers* and the *Committee on Civil and Political Rights*.

of the Convention be addressed (for example, through follow-up country visits by Committee members); that the Committee should study best-practices to further analyse the follow-up procedure.

THEMES

The Committee raised a diverse range of issues during the session, with each Committee member focusing on similar themes for all examinations. Two rapporteurs were assigned for each State review to address issues related to the main articles of the Convention, making for a structured and organised process.

Domestication of the Convention

The domestication of the Convention and its integration into national legislation was raised in all State examinations, with the Committee stressing the need to adopt national definitions of torture in line with the Convention's definition in Article 1.⁹ Ghana and Kuwait were criticised for not having a definition incorporated in their national legislation at all, while the Committee recommended Ireland, Monaco and Turkmenistan amend their existing definitions to align them with the Convention.

The Committee reflected on the States' legal safeguards against torture and judicial or other preventive measures. The independence and accessibility of complaints mechanisms were raised as issues of concern during the reviews of Turkmenistan, Finland and Kuwait. The Committee recommended these States revise their complaint mechanism and ensure citizens are aware of their rights and the protection available to them.¹⁰

General, over-arching concerns included impunity, denial of the right to a fair trial, inaccurate records and data, and insufficient or non-existent witness protection. The responsibility of the State to end impunity and torture was underlined throughout the review of Turkmenistan.

In a similar vein, the lack of effective and adequate means for victims of torture or ill-treatment (or their families) to obtain justice and redress was raised as a matter of concern during the reviews of Turkmenistan, Kuwait, Mauritius, and Monaco. In particular, the Committee recommended the penalties for torture and ill-treatment be increased and clarified, and that accurate statistical information be recorded and presented to the Committee on cases related to torture or ill-treatment.¹¹

Conditions of detention

Prominent issues during country reviews were the conditions of detention and the procedures around detention, arrest,

interrogation and trial. The Committee recommended States address problems of overcrowding, for example, by introducing non-custodial sentences. The Committee commended Finland for its efforts to reduce overcrowding by instigating a system of 'weekend prisoners'; prisoners are given the freedom to attend to their regular duties during the week and are only in custody during the weekend.¹²

It was highlighted that the audio or video recording of all interrogations is an essential preventive measure and the Committee recommended States work to enable such recordings. The training of personnel and authorities in accordance with the Istanbul Protocol was recommended as another preventive measure.¹³

Deaths in prisons were also a matter of concern to the Committee. Recommendations were made to increase prison infrastructure and monitoring of prisoners, and on ways to decrease violence between prisoners.¹⁴

Death penalty

The Committee requested more information on the use of the death penalty and demanded its abolition in Ghana, Kuwait and Monaco. Other forms of corporal punishment were also addressed. Ms Myrna Kleopas expressed concern over the possible reform of the Kuwaiti penal code aligning it with Islamic law and, thus, allowing flogging, amputations and other forms of cruel punishment. The Kuwaiti delegation offered a short, vague response to this, stating that such forms of ill-treatment are not allowed according to Kuwait's civil laws.

Vulnerable groups

Despite the possible overlap with the mandates of other treaty bodies, the Committee addressed the situations of vulnerable groups extensively.

Committee member, Ms Nora Sveaass focused many of her queries on the situation of persons with physical or mental disabilities. She expressed concern about the possible use of electro-convulsive therapy, sterilisation of girls and women, involuntary hospitalisation, and other restrictive measures in Slovenian mental health institutions; the lack of easily accessible complaint mechanisms in Slovenia, Kuwait, Mauritius, and Ghana; and the generally abhorrent state of the healthcare system in Turkmenistan.

The situation and ill-treatment of refugees and asylum seekers

9 For more information see: <http://bit.ly/4mw1A>.

10 See concluding observations at <http://bit.ly/eub6VM>.

11 See concluding observations at <http://bit.ly/eub6VM>.

12 See concluding observations on Finland at <http://bit.ly/eub6VM>.

13 *The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* is a set of international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. For more information see: <http://bit.ly/nG41Z5>.

14 See concluding observations at: <http://bit.ly/eub6VM>.

was raised in all the reviews by the Committee Rapporteur dealing with Article 3 of the Convention¹⁵ and by other members of the Committee. The issue of non-refoulement was particularly prominent in the reviews of Monaco, Turkmenistan, Mauritius, and Slovenia. Ireland was commended for its anti-trafficking efforts, specifically with regards to protecting asylum seekers and refugees. Finland was questioned concerning its procedure for establishing the identity of asylum seekers, and whether there existed specific legal and practical procedures to protect them from trafficking.

Domestic and sexual abuse were raised as issues of concern to the Committee in most of the State reviews. The Committee asked questions concerning the use and prevention of corporal punishment of children within the home in Ireland. The Irish delegation responded that corporal punishment of children is a long accepted tradition in Irish society and its prohibition would surely be 'met with disdain' by Irish parents.

Domestic and sexual violence against women was particularly highlighted during the reviews of Ghana, Turkmenistan and Kuwait. The situation of minorities was raised briefly during the reviews of Slovenia and Kuwait, in reference to discrimination against the Roma population and the 'Bidun' (meaning: 'without nationality') people respectively.

Individual cases

The Committee referred to a number of individual cases of ill-treatment or torture by government officials, demanding more information on the status of these cases, the whereabouts of those involved and other details.¹⁶ A particularly large number of cases were raised during the examination of Turkmenistan. The delegation of Turkmenistan replied to the Committee's concerns by stating that, in most cases, the Committee's information was incorrect – denying any unjust or inhuman treatment at the hands of government officials had occurred.

LGBTI issues

Compared to the time and follow-up effort given by the Committee to the issues mentioned above, its lack of focus on the issues faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons was disappointing. None of the specific concerns raised by NGOs regarding the treatment and protection of LGBTI persons were followed up by the Committee during the reviews. However, LGBTI issues more generally were brought up in three of the eight State reviews, which is noteworthy considering the sensitive nature certain States have attributed to sexual orientation and gender identity issues.

During the review of Kuwait, Ms Sveaass referred to allegations of people being detained and abused by State officials. She emphasised that homosexuality cannot be prohibited and enquired about the State's plans to decriminalise homosexuality and stop abusive behaviour towards LGBTI people. The Kuwaiti delegation did not respond to this directly but referred to the general protection of all people and their dignity in accordance with the State's Islamic laws. The Committee recommended in its concluding observations that the State investigates all crimes and cases of discrimination and ill-treatment against all vulnerable groups.

In the case of Monaco, Ms Sveaass said the Committee had received information on the lack of legal protection for LGBTI persons and asked for more information on this. Her request was especially in light of the fact that sexual discrimination is not regarded as an aggravating circumstance in Monaco's legal system. The delegation responded openly and clearly, indicating that promoting hatred or violence against any group can be punishable by imprisonment, and those who use 'foul language' against a person based on sexual orientation can be held in prison for up to five days with a fine of 5,000 euro.

During the examination of Mauritius, Ms Sveaass asked for information regarding a new bill on equal opportunity, said to include LGBTI rights, including how this bill would be implemented in practice. Additionally, she mentioned the practice of hospitalising lesbian girls (between 2005 and 2006) as acts of ill-treatment. The only response offered by the delegation to these concerns was that the aforementioned bill was ready to be passed in a drafting committee, but this had unfortunately been preceded by the committee chairman's death. The bill had been put to one side while a new election took place and there was a change in committee members. It has not moved forward since.

Human rights defenders and reprisals

The situation and treatment of human rights defenders was addressed during the review of Turkmenistan. Ms Felice Gaer, referencing UN and civil society sources, said the Committee had received reports that civil society was being repressed. She expressed concern that certain legal reforms in the country could result in further oppression and ill-treatment of human rights defenders. The Committee mentioned alleged acts of intimidation, threats and serious reprisals (such as arrests on criminal charges) against human rights defenders, journalists, and their families. The Committee also expressed 'its grave concern about the threats against defenders by the President on public television'.

Multiple individual cases of reprisals against political activists and human rights defenders were highlighted and the Committee demanded more information about the State's investigations into the grounds for the arrests of these people and their relatives. In its concluding observations the Committee recommended the State ensure human rights

¹⁵ Article 3 of the Convention concerns the principle of non-refoulement as a preventive measure. For more information see: <http://bit.ly/4mwIA>.

¹⁶ See concluding observations at <http://bit.ly/eub6VM>.

defenders, including journalists, are 'protected from intimidation or violence as a result of their activities', and demanded the State investigate acts of prosecution and reprisals, punish the perpetrators, and provide updates on the outcomes of these investigations.

In reference to two individual cases brought to the Committee's attention, it was recommended that the State 'Implement the decision of the Working Group on arbitrary detention, and release the concerned individuals'.¹⁷ The Turkmen delegation offered defensive and vague responses to the issue of reprisals against human rights defenders and restrictions on their work. It said NGO registration is governed by the law on social organisation, as well as other legislation, and more than 200 NGOs are registered in the country, indicating a growth in civil society. In regard to individual cases, the delegation denied any wrongful action on the part of the State and blamed the Committee's concerns on inaccurate information.

COOPERATION WITH OTHER TREATY BODIES

In conclusion, it is worth noting that the Committee has made significant efforts to emphasise the importance of the work of other treaty bodies and their conventions related to torture and ill-treatment. As previously mentioned, the Committee extensively addressed the situation of vulnerable groups, such as persons with physical or mental disabilities, women, children, and migrants, and also mentioned the need for protection for human rights defenders and LGBTI people. The Committee's recommendations regarding these groups overlap with the mandates of other committees, such as the Committee on the Elimination of Discrimination against Women, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities, Committee on Migrant Workers, and others. Certain issues previously raised and recommendations made by these committees were explicitly supported by the Committee against Torture at its 46th session. This support was also highlighted by the Committee's commending of States that had ratified other treaty body conventions. ■

17 The Committee referred to Opinion No. 15/2010 of the Working Group, regarding Mr Annakurban Amanklychev and Mr Sapardurdy Khajiev.

COMMITTEE ON THE RIGHTS OF THE CHILD

Keeping children's rights on the government agenda in times of crisis



Photo: Steven Kim

The Committee on the Rights of the Child (the Committee) had a successful 57th Session in June under the new Chairmanship of Mr Jean Zermatten (Switzerland).¹ The Committee met with State representatives from Bahrain, Cambodia, Costa Rica, Cuba, the Czech Republic, Egypt and Finland.² Most notably in the current international political and socioeconomic context, the Committee had a unique opportunity to meet with representatives of the States of Bahrain and Egypt. Both States are experiencing, in quite different ways, the effects of popular uprisings that have taken place in recent months; which will, in different ways and to varying degrees, alter the experience of children growing up in these countries in the coming weeks, months and years. An unofficial but comprehensive account of each country dialogue is available on the website of the NGO Group for the Convention on the Rights of the Child.³

In the course of the pre-session week, the Committee successfully altered its working methods to accommodate two additional countries, bringing the total number of countries reviewed up from eight, to ten. Working efficiently, the Committee met with non-governmental organisations (NGOs), national human rights institutions and UN agency representatives, and later adopted Lists of Issues for each country: Azerbaijan, Democratic Republic of the Congo (DRC), Greece, Italy, Myanmar, Panama, Seychelles, Sweden, and Togo.⁴

Recent crisis situations in some of these countries were also addressed, most notably Greece and Madagascar. It is important to note that while the Committee had a clear interest in learning more about how the current situations in these countries were affecting children, it did not detract from the attention it gave to ongoing situations that challenge the realisation and enjoyment of children's rights, for example in the DRC and Myanmar. An example of the Committee's attention to detail was its consideration of how Italy handled its obligations relating to children's rights in the context of a sudden influx of asylum-seeking children arriving in the country, as a result of the crisis situations in North Africa.

STATE REVIEWS

As noted in the previous *Human Rights Monitor Quarterly* article on the Committee on the Rights of the Child⁵, the Committee continued to systematically discuss with States the need for both internal and external monitoring of the progressive implementation of the *Convention on the Rights of the Child* (the Convention), the *Optional Protocol on Children in Armed Conflict* (OPAC) and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC). In the case of Cuba, the Committee recognised the role played by the National Assembly and external organisations in monitoring; however, a discussion on the establishment of an independent monitoring mechanism in accordance with the Paris Principles was not as fruitful. Cuba encouraged the Committee to look at the Cuban Government's structure for monitoring the implementation of children's rights, not in terms of how it works in other countries but rather in the context of the Cuban reality. In the concluding observations on Cuba, the Committee reiterated its call for an independent monitoring mechanism – and thus a multi-pronged approach with internal and external oversight.⁶

1 For more information see the website of the OHCHR: <http://bit.ly/9bWe40>.

2 Egypt was considered under the *Convention on the Rights of the Child* (the Convention) and the *Optional Protocol on Children in Armed Conflict* (OPAC), as well as the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC), while the other States were only considered under the CRC.

3 'Publications – Country Reports' www.childrightsnet.org.

4 Azerbaijan (the Convention, OPAC, OPSC), Democratic Republic of the Congo (OPAC), Greece (the Convention, OPAC), Togo (the Convention, OPSC), Sweden (OPSC); Italy, Myanmar, Panama, and Seychelles (the Convention).

5 Article available at <http://bit.ly/ohRq3R>.

6 'Consideration of reports submitted by States parties under Article 44 of the Convention Concluding Observations: Cuba', page 3, para. 18.

The composition of State delegations continued to have a considerable impact on the quality and depth of the dialogue. Generally, delegations were able to respond satisfactorily to the questions posed by the Committee; however, in some cases, delegations seemed surprised at the level of detail they were being asked to provide in their answers and were unprepared for this. This highlighted that it may be useful for the Committee to prepare a guide – taking as an example the guide already used by the Human Rights Committee – to inform State representatives about what to expect of the meeting in terms of format, thus enabling delegations to better prepare for the dialogue.

CHILDREN'S RIGHTS IN TIMES OF CRISIS

The events that have been taking place in some parts of the Middle East and North Africa since early 2011, often referred to as the 'Arab Spring', have been of great interest to people all over the world and brought discussions on human rights to the fore. The world has witnessed the overt reactions of those unable to claim their rights, and watched as the responses of leaders unfolded, reflecting varied degrees of political will on the part of governments to uphold their international legal obligations and respect, protect and fulfil the human rights of all those resident in their countries.

At the 57th Session of the Committee, members acknowledged the significance of these events for children living in the countries concerned (notably here, Bahrain and Egypt), while not permitting them to overshadow or dominate the broader discussion on the implementation of children's rights in those countries. As one Committee member pointed out to the delegation of Bahrain, the responsibility to respect, protect and fulfil children's rights is constant and must remain a permanent feature of the government agenda, even during times of turmoil and crisis. Further evidence that this view is held by the Committee was that the dialogues took place as scheduled with these States and were not postponed to a later date when the political situation may have stabilised.

Of particular concern to the Committee in the dialogues with Bahrain and Egypt were issues surrounding the detention of children arrested during the demonstrations; the treatment and conditions of children in detention; the trial of children by military courts during the temporarily imposed states of emergency; and the reallocation of financial resources previously budgeted for the implementation of child policies and programmes, such as education, to military and other national security-related activities. A member of the Egyptian delegation noted that the Government will be attempting to reflect the calls made during the revolution in concrete changes to government policy; therefore, tools such as the Committee's Concluding Observations would be used to guide those plans and decisions. In this way, the dialogues with Egypt and Bahrain presented the Committee with a unique opportunity to influence the direction of the substantial policy changes taking place in these countries.

Greece and Madagascar, which were discussed during the pre-session, are countries experiencing particular difficulty in fulfilling their children's rights obligations. Information shared with the Committee again reflected that the fulfilment of children's rights should remain a government priority, regardless of the particular situation in the country. Unrest in a country, no matter what form it takes, will inevitably impact the enjoyment of rights by children; however what seemed to be of paramount importance to the Committee, was the priority accorded to these issues by the government concerned and reflected in policies that cater to the particular vulnerability of children, as well as the participation of youth in discussions around the way forward for the country.

The Committee's consideration of information received about Greece, for example, noted the difficulties being experienced by children as a result of the country's economic situation. Children are particularly vulnerable and feel the effects of the tensions permeating society, as many families face new financial challenges and public services are underfunded. Madagascar, in contrast, has not received very much international attention, yet it is a country where the political and socioeconomic situation is deteriorating quickly. According to information received by the Committee, this is creating an increasingly fragile environment for children. The Committee was also informed of an increasingly tense operating environment for civil society actors seeking to analyse the impact of the current situation on children and subsequently speak up for their rights.

INCREASING IMPACT OF NGO CONTRIBUTIONS

Representatives of national NGOs attended all State dialogues of the 57th Session, except in the case of Cuba. At the pre-session, the Committee was pleased to meet with NGO representatives who were able to elaborate on the situation of children's rights in all countries under discussion. The objective of these meetings was for the Committee to build its knowledge about the practical realities faced by children in different contexts in a country, and to ensure its members have a range of information at their disposal that will inform them of the challenges faced by the governments concerned in the implementation of the Convention and its Optional Protocols.

There seems to be an increasing awareness among children's rights NGOs worldwide that have engaged with the Committee through the alternative reporting process, that the Committee's effectiveness in monitoring the development of State practices depends on the manner in which all stakeholders, including the NGOs, engage with it. The quality of information submitted to the Committee reflects increasing professionalism within the child rights sector, as well as the positive involvement of civil society actors at the national level who are engaging with the periodic reporting process as an integral part of their ongoing monitoring activities. The submission of quality, evidence-based reports and active participation by all stakeholders with the Committee

can contribute significantly to the adoption of Concluding Observations and Recommendations that are specific to the national context. These can, in turn, be used as a basis for activities to further improve the implementation of the Convention and the Optional Protocols at the national and local levels.

OTHER DEVELOPMENTS AND NEXT STEPS

No General Comments were adopted at the 57th Session. Work continues on General Comments on the best interests of the child, the right to health and the right to play, as well as the Joint General Comment with the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) on harmful traditional practices. Preliminary work also began on a fourth General Comment by the Committee on children's rights and business, which looks at the responsibility of private sector actors to respect the rights of the child.

The Day of General Discussion on children of incarcerated parents will take place on 30 September and a dedicated webpage is now available on the OHCHR website.⁷ The webpage contains registration and programme information, and guidance on how to make a written submission.

At its 58th Session, which will take place between 19 September and 7 October 2011, the Committee will conduct a dialogue with State representatives from the Syrian Arab Republic, Greece and Myanmar, among others.

New complaints mechanism for children's rights violations

On 17 June 2011, after just two years of discussions and negotiations, the Human Rights Council (the Council) adopted the final draft Optional Protocol (OP) to the *Convention on the Rights of the Child* (CRC) on a communications procedure for children's rights violations. The OP was crafted by an Open-ended Working Group⁸ (Working Group) over ten days in December 2010 and February 2011.

The Committee on the Rights of the Child is the only United Nations treaty body that does not yet have the competence to receive and examine allegations of violations under the instruments it is tasked to monitor; the Convention, the OPSC and the OPAC.

The new OP will fill this gap by ensuring children have an international remedy available to redress violations when domestic complaints mechanisms fail. However, the rush to reach an agreement within ten working days, has led States to mainly use existing language. The OP to the Convention therefore relies heavily on the latest international communications procedure, the OP to the *International Covenant*

on Economic, Social and Cultural Rights, rather than exploring ways to ensure the new mechanism itself is genuinely child-friendly and child-sensitive.⁹

The final draft OP does nonetheless provide the core elements of a communications procedure, including a friendly settlement mechanism, an optional inquiry procedure, and innovative provisions intended to address the specific status of children. Article 2, for example, refers to the best interests and the right to be heard of the child as guiding principles for the Committee. Article 3 requests the Committee to ensure that its new rules of procedures are 'child-sensitive' and prevent manipulation of the child victim. The absence of a provision referring to national legal capacity requirements and setting legal representation requirements for child victims to access the communications procedure, despite such requests by a number of States, is an important victory. The notion of 'legal capacity' is strictly a national standard and does not exist in any regional or international human rights instrument. Similarly, legal representation requirements would have unduly restricted children's access to the procedure.

Despite these adjustments, the draft OP fails to fully account for the particular obstacles children face when seeking a remedy. In particular, the collective communications mechanism was deleted in the last day of the negotiations. It sought to allow national human rights institutions, child ombudspersons and specialised NGOs to submit communications alleging recurring violations affecting multiple victims without identifying individual victims. This loss is regrettable, as collective communications would be a key complementary tool to the individual communications procedure for unidentifiable children or particular groups of child victims. It is understood however that such allegations could be brought through the inquiry procedure.

The final draft OP has been transmitted to the UN General Assembly, which will consider it for adoption at its 66th session. Once adopted, the OP will be open for ratification by States and will enter into force after the tenth ratification. ■

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

⁷ The Committee Day of General Discussion <http://bit.ly/mSJ2Jd>.

⁸ <http://bit.ly/85QUea>.

⁹ To be child-friendly and child-sensitive, a complaint mechanism needs to take into account the specific status of children. It therefore needs to be understandable and accessible by all children, including young children, provide opportunities for the children to be heard, be speedy and diligent to avoid unnecessary delay and further distress, and be safe, by protecting the privacy and identity of the victims, if needed. For further information, visit the Child Rights Information Network's webpage on child-friendly justice and children's rights at <http://bit.ly/oP9AJD>.

THEMATIC FOCUS

THE TREATY BODY COMPLAINT SYSTEM P. 31

THE TREATY BODY COMPLAINT SYSTEM

A survey of recent decisions by treaty bodies on individual complaints



Photo: Hilary Woodward

This article provides an update to a report in the Human Rights Monitor Quarterly, Issue 3, 2010; available at <http://bit.ly/nzuFgt>.

The ability of individuals to bring complaints of violations of their human rights before United Nations treaty bodies is a cornerstone of the UN human rights treaty system. There are currently five human rights treaty bodies that can, in certain circumstances, receive individual complaints. They are the Committee on Civil and Political Rights (CCPR), Committee on the Elimination of Racial Discrimination (CERD), Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW), and Committee on the Rights of Persons with Disability (CRPD).¹ Another four treaty bodies – the Committee on Migrant Workers (CMW), Committee on Enforced Disappearances (CED), Committee on Economic, Social and Cultural Rights (CESCR) and Committee on the Rights of the Child (CRC) – have individual complaint mechanisms as well but these mechanisms are not yet in force.

The complaint procedure is a quasi-judicial mechanism, which allows the relevant treaty body to assess whether the State in question's actions violated its treaty obligations. Remedies can include payment of compensation to victims,² the repeal of violating legislation,³ and the release of prisoners.⁴ Additionally, in some cases where urgent situations require immediate intervention, the treaty bodies will adopt interim measures in order to ensure the victim is not in harm's way before the individual case can be heard.⁵ The resulting body of decisions provides a guide for States, NGOs, individuals and other stakeholders in the interpretation of relevant human rights treaty provisions.

During the second half of 2010, the various treaty bodies decided on 51 individual communications,⁶ finding violations of one or more provisions of the respective treaty in 67 percent of the cases. This is a marked improvement from the 33 percent average rate since 1977 and 50 percent violation rate in the first half of 2010. The Human Rights Committee accounts for 84 percent of all cases, followed by the Committee against Torture, which accounts for 10 percent.

Unfortunately, the inadmissibility rate remains high with most unsuccessful complaints being rejected at the admissibility stage. The most common reason for inadmissibility remains non-exhaustion of domestic remedies, which highlights a lack of understanding of the basic premise of the complaints system. This well established admissibility criteria dictates that complaints will not be considered by treaty bodies if the complainant still has available and effective domestic remedies through which to pursue the complaint. Nevertheless, complaints that are inadmissible on the basis of non-exhaustion of domestic

1 The Human Rights Committee may consider individual communications relating to States parties to the *First Optional Protocol to the International Covenant on Civil and Political Rights*; CEDAW may consider individual communications relating to States parties to the *Optional Protocol to the Convention on the Elimination of Discrimination Against Women*; CAT may consider individual communications relating to States parties who have made the necessary declaration under Article 22 of the *Convention Against Torture*; CERD may consider individual communications relating to States parties who have made the necessary declaration under Article 14 of the *Convention on the Elimination of Racial Discrimination*; and CRPD may consider individual communications relating to States parties to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

2 For example, Human Rights Committee, ICCPR, Communication No. 1377/2005 (19 July 2010), which says the State party must provide the victim with 'full reparation and appropriate compensation.'

3 For example, CEDAW, Communication. No. 18/2008 (16 July 2010), calling for the State party to remove any requirements by the legislation that sexual assault be committed by force or violence.

4 For example, Human Rights Committee, ICCPR, Communication No. 1390/2005 (25 October 2010), stating that the State party was under an obligation to provide an effective remedy, including but not limited to the victims release.

5 For example in the Human Rights Committee, such situations that fall under rule 86 of the Rules of Procedure of the Human Rights Committee.

6 CCPR 43; CAT 5; CERD 2; CEDAW 1.

remedies continue to be brought forth and fail. This further diminishes the already limited resources of the treaty bodies and prevents the process as a whole from being as effective as it could be. Furthermore, it could be considered a waste of time and resources for victims and their representatives and create a false hope of international justice.

While violations of the respective treaties have been found in about one-third of all cases brought before the treaty bodies,⁷ the effectiveness of the individual complaint system has been questioned – particularly with regard to long processing times and lack of implementation of treaty body decisions by the States in question. There have been 2,593 cases brought before the treaty bodies since the first cases were decided in 1977 and 424 cases remain pending before four treaty bodies.⁸ Of particular concern is the length of time the committees take to reach a decision on the individual complaints. Of the cases decided on in the last six months, the majority had been open for an average of more than four years,⁹ with some cases lasting more than six years.¹⁰ The significant lapse in time between the opening of a case and its conclusion illustrates the concern that the treaty bodies are under-resourced.

Another area of concern is that 39 percent of petitioners were not represented by counsel. Unrepresented petitions predominantly originated from Commonwealth of Independent States (CIS), accounting for 55 percent of such cases. While it is a worrying trend that so many people do not have access to legal aid in connection with treaty body petitions, the statistics from the second half of 2010 indicate this has limited effect on their success. Unrepresented petitions are slightly overrepresented in negative admissibility decisions (46 percent) and have a slightly lower success rate (65 percent). However, the statistical sample is too small to draw reliable conclusions and the nature of the unrepresented inadmissible petitions show a more concerning picture. These cases are usually rejected due to significant shortcomings in the petitions, such as non-exhaustion of domestic remedies, prolonged delays and totally unsubstantiated claims. To remedy this situation, it may be advisable for the Office of the High Commissioner for Human Rights' (OHCHR) petitions unit to encourage unrepresented petitioners to find representation and, if relevant, make reference to national or international NGOs undertaking such activities.

The vast majority of decisions in the second half of 2010 were decided by the Human Rights Committee and CAT. The majority of individual complaints brought before the Human Rights Committee concerned equal protection by the law without any discrimination, the right to fair trial, the risk of arbitrary

deprivation of the right to life, torture and non-refoulement, and arbitrary detention. These issues also accounted for the majority of the violations found. Reflecting what seems to be a general tendency of a relatively narrow geographical distribution of cases, 82 percent of complaints related to States from Western Europe and Others Group (WEOG), Eastern Europe or central Asia. Most of the cases brought before CAT concerned the prohibition of refoulement, with 100 percent of the complaints relating to WEOG.¹¹ Similar to the first half of 2010, the majority of cases related to Sweden and Switzerland.¹² Both cases brought before CERD in the second half of 2010 involved Denmark and concerned the right to an effective remedy against racist statements.

Case study: Human Rights Committee reacts to repression in Belarus

On 19 December 2010 Belarus held elections, another in a long line of elections accused of lacking in freedom and fairness. The lead-up and aftermath of the elections were marked by incidents of repression against political opponents and others daring to speak out against Mr Alexander Lukashenko.

In the period leading up to the December elections, the Human Rights Committee issued a number of decisions that responded to some of the main methods being used to oppress political opponents in Belarus. In the second half of 2010, the Human Rights Committee issued five decisions, with four of the victims belonging to a party or group of political opposition.

In the case of Mr Mikhail Marinich¹³ issues included the violent oppression of freedom of expression, violations of the presumption of innocence, cruel and inhumane punishment or degrading treatment, and poor conditions of detention of individuals. The case relates to a former high-level official who was a candidate for the presidential election in 2001. He claimed to have been arrested by the KGB, interrogated without legal assistance, and held in inhumane and degrading conditions both prior to his trial and after his conviction. Additionally, he claimed that a biased court had tried him on false charges. Despite becoming very ill during his imprisonment, he did not receive adequate medical treatment and suffered permanent damage to his health.

The Committee noted that States parties to the ICCPR are under an obligation to observe minimum standards in detention centers, including baseline provisions of medical care; Belarus had failed to meet its obligation. The Committee also found that the provision defining arbitrary

7 Out of the 2,593 cases, 787 have been found to be violations.

8 The total number of pending cases is 424, composed of the following: CCPR 309; CAT 102; CEDAW 9; CERD 4. At the time of writing, CRPD has not made decisions on individual communications.

9 41 months.

10 Communication No. 1344/2005 against the Russian Federation lasting 76 months, and Communication No. 1225/2003 against Uzbekistan lasting 82 months.

11 Cases related to Sweden, Switzerland, Canada, and Denmark.

12 Sweden and Switzerland accounted for three out of five cases brought before CAT.

13 Communication No. 1502/2006.

detention must be interpreted broadly to include 'elements of inappropriateness, injustice and lack of predictability'. Therefore, those in custody must be treated not only lawfully but also 'reasonably' under the circumstances. The Committee emphasised the required presumption of innocence, and noted that Belarus had violated this presumption when it aired information suggesting the victim's guilt prior to the end of the investigation and trial.

Three of the cases against Belarus involved non-violent oppression of the right to freedom of expression and association, particularly freedom to express viewpoints in opposition to the current political regime and to join opposing political parties. One case relates to Mr Vladimir Katsora,¹⁴ who was a member of a minority political party and took part in the creation of an electoral bloc to challenge the Government's proposals for amending the Constitution. While the formation of electoral blocs is permitted under Belarusian law, State registration of political parties is mandatory. The Belarusian court found the victim guilty of engaging in activities on behalf of an unregistered political party and destroyed 14,000 leaflets expressing the views of the electoral bloc.

In the case of Mr Katsora, the Committee analysed two elements to conclude a violation of freedom of expression had occurred. Firstly, it assessed whether the law restricting political activism to State registered entities creates an obstacle regarding the exercise of the freedom to impart information. Secondly, the Committee looked at whether such obstacles were justified either due to (1) respect for the rights and reputations of others; or (2) for the protection of national security or public order. The Committee found that the victim's rights under articles 14 and 19 of the Covenant were violated because the restriction imposed by the State was not necessary for a legitimate purpose.

The Committee revisited the registration requirement in a later case involving the same author and two other individuals.¹⁵ This time, the Committee held that the law stipulating the registration requirement does not meet the requirement of Article 22 in relation to the freedom of association. The Committee emphasised that in order for a State to restrict the right to freedom of association it must meet the following conditions: (1) it must be provided for by law; (2) it may only be imposed when it is necessary in the interest of national security, or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others; and (3) it must be 'necessary in a democratic society' for achieving one of these purposes. In this case, the Committee held that while the restriction was part of the law, the State party did not advance any argument as to why the restrictions were necessary and therefore found the law to be in violation of Article 22.

¹⁴ Communication No. 1377/2005.

¹⁵ Communication No. 1383/2005.

Similarly, the Committee found in the case of Mr Leonid Sudalenko,¹⁶ that the restriction of the domestic law that allows the State to refuse a person's candidacy was overly broad and could be exploited to unreasonably restrict an individual's right to take part in or conduct public affairs, vote and be elected to a public office. In both cases, the Committee emphasised the need for narrowly tailored and necessary restrictions on the right to freedom of expression and cautioned against domestic laws that could be interpreted too broadly in practice.

CONCLUSION

While the effectiveness of the treaty body complaint system seems to be improving compared to the long-term statistics and the situation in the first half of 2010, there is still progress to be made. The main concern should be to lower the frequency of complaints rejected at the admissibility stage and ensure victims have access to representation. Furthermore, as highlighted from the case examples from Belarus, where the Government continued to undertake denounced practices both before and after the December 2010 elections despite Human Rights Committee findings, there is still a significant implementation gap. These and many other issues are currently being actively debated in the context of the ongoing treaty body reform process. The consultative stage of this process is likely to be concluded by early 2012. ■

Article by Asger Kjaerum, International Rehabilitation Council for Torture Victims, and Aylin Ictemel.

¹⁶ Communication No. 1354/2005.

REGIONAL DEVELOPMENTS

MIDDLE EAST AND NORTH AFRICA P. 35

MIDDLE EAST AND NORTH AFRICA

The response of human rights mechanisms to civil society demands for change



Photo: Lorenz Khazaleh

Protesters in Tahrir Square, Cairo, Egypt.

In the earliest days of the violent repression of demonstrations in the Middle East, North Africa and beyond, international and regional non-governmental organisations (NGOs) called on the Human Rights Council (the Council) to act, noting 'Silence is Not an Option'.¹ Over the succeeding weeks mechanisms and bodies charged with promoting and protecting human rights did indeed take action, albeit to differing degrees. While in some cases the response has been strong and relevant, in others it has remained inadequate or non-existent, a reminder that politics continues to be a decisive factor in informing the discussions and decisions of States. The interplay between civil society and international and regional mechanisms to effect and support change on the ground created precedents in the responses of the mechanisms. Through the changes on the ground, opportunities have emerged to strengthen the mechanisms, increase civil society access to them, and for civil society to use the human rights systems' recommendations and presence to safeguard and solidify human rights advances.

SIGNALING POLITICAL CHANGE THROUGH HUMAN RIGHTS SYSTEMS

With revolution at home, Egypt and Tunisia have used regional and international human rights fora to signal changes to their national human rights policies and to bolster their governments' legitimacy internationally and at home. Egypt, for example, announced it would review and consider ratifying several treaties to which it was not yet party, and that it was carrying out a review of its policies on special procedures visit requests and the recommendations of treaty bodies.² This stands in contrast to Egypt's previous rejection of recommendations that the State adhere to international standards.³ In Tunisia's case, similar commitments were made, including permitting the establishment of an Office of the High Commissioner for Human Rights (OHCHR) country office, the first in any of the five North African countries bordering the Mediterranean. This set the scene for a resolution relating to cooperation between Tunisia and OHCHR, at the first Council session following the revolution.⁴ At the African Commission on Human and Peoples' Rights (ACHPR) Tunisia had indicated ratification of human rights treaties was part of the Government's aim 'to rise above oppression' and do away with 'arbitrary methods'.⁵

With successes such as Tunisia's ratification of four international human rights treaties (including two ratified on one day), it still remains to be seen whether these commitments will translate into change on the ground. Human rights defenders who monitor and report on implementation have cautioned that a general sense of euphoria needs to be tempered, fearing the ratification of treaties may result in the international community being blinded to continuing violations, that accession to a treaty could be equated with implementation, or that promises to ratify might not eventuate. For example, recently a regional NGO highlighted Egypt's failure to take steps toward ratification as promised.⁶

1 'Silence is Not an Option! Petition for immediate action by the United Nations Human Rights Council! 23 February 2011. Signed by 19 international and regional NGOs. See <http://bit.ly/gZaWeP>.

2 Statement by Egypt, 49th Ordinary Session of the African Commission on Human and Peoples' Rights, May 2011, and then statement 17th Session of the Human Rights Council, June 2011.

3 For example, Egypt refused a recommendation to adhere to the *Optional Protocol to the Convention Against Torture*, made during the country's UPR in February 2010.

4 A/HRC/16/L.32/Rev.1.

5 Statement by Tunisia, 49th Ordinary Session of the ACHPR.

6 'Addressing the new Foreign Minister: CIHRS calls for respect of human rights and an end to supporting dictatorships and continued commitment to join the International Criminal Court', Cairo Institute for Human Rights Studies, 29 June 2011.

ACTIVATING ALL MEANS AVAILABLE WITHIN THE HUMAN RIGHTS FRAMEWORK

In the case of Libya international and regional mechanisms took swift action, in what the UN described as 'a watershed moment in the emerging doctrine of the responsibility to protect' and an unprecedented example of the international community acting with such 'decisiveness in common purpose'.⁷

Shortly after the start of the repression of peaceful protests in mid-February 2011, Libya became the first member of the Human Rights Council to be the subject of a special session. The resolution adopted at the session mandated an investigation and reporting on the human rights situation in Libya by both OHCHR and a Commission of Inquiry.⁸ During an emergency session the following day the Security Council took the decision, with the unprecedented support of all members, to refer the situation in Libya to the Prosecutor of the International Criminal Court (ICC).⁹ The authorisation by the Security Council for UN member States 'to take all necessary measures to protect civilians and civilian populated areas under threat of attack' came two weeks later.¹⁰ Throughout this period several special procedures and treaty bodies also drew attention to aspects of the conflict related to their mandates.¹¹

Along with taking steps to monitor, report on, and deter State action (ultimately through military means) the Human Rights Council also resolved to recommend the suspension of Libya as a member of the Council. The General Assembly acted on this recommendation and suspended Libya, again by consensus.¹²

Throughout this process, civil society pressed human rights mechanisms to take action. For example, in a bid to secure the suspension of Libya from the Human Rights Council almost 100 NGOs and networks from all regions of the world signed a petition. This action underscored the range of voices decrying the gravity of the human rights violations, the agreement across regional and international bodies, and the risk to the credibility of the UN human rights system if the Council failed to eject a member who so seriously breached the terms of membership.¹³

7 Ban Ki-moon address to the Sofia Platform, 6 May 2011.

8 A/HRC/RES/S-16/1.

9 Security Council Resolution 1970, 26 February 2011. Include terms including: sanctions, arms embargo, freezing assets of leaders.

10 Security Council Resolution SC/101 87/Rev.1.

11 For example, Special Representative of the Secretary General on Sexual Violence in Conflict, Special Representative of the Secretary General for Children in Armed Conflict, Committee on Migrant Workers, and Committee on the Elimination of Racial Discrimination.

12 Human Rights Council members can be suspended when they commit 'gross and systematic violations of human rights', 'by a two thirds majority of the members present and voting'. OP8, General Assembly Resolution 60/251. According to the provisions of the resolution, members are expected to 'uphold the highest standards in the promotion and protection of human rights'.

13 'Civil society petition' signed by 94 NGOs. 24 February 2011, available at <http://bit.ly/e6Mahn>.

Whilst some States noted that suspension of membership should not be considered to set a precedent, nor be equated with a questioning of legitimate Statehood, civil society looked to build on the suspension to strengthen the accountability required by States. To this end, when Syria stood for election to the Human Rights Council in April 2011, civil society responded vigorously.¹⁴ A campaign opposing Syria's membership was launched across several regions, including targeting African States during meetings of regional human rights mechanisms.¹⁵ As a result, Syria withdrew its candidacy.

The significant contribution of civil society with regard to the situation in Libya, in bringing violations to public attention, providing information to the fact-finding commissions, and continuing to monitor the pace of human rights change on the ground, has been acknowledged by the United Nations High Commissioner for Human Rights and the Commission of Inquiry.¹⁶ Both these bodies have relied on civil society input and, in turn, have communicated civil society concerns to States.

THE AFRICAN HUMAN RIGHTS SYSTEM HOLDING LIBYA TO ACCOUNT

Libya was also the focus of a 'pioneering decision'¹⁷ and '...a key moment for the protection of human rights in Africa'¹⁸ when the African Court on Human and Peoples' Rights (African Court) ordered provisional measures against the State.¹⁹ This followed the unprecedented referral of the case to the Court by the ACHPR; a process initiated by a group of three NGOs that first referred the case to the ACHPR.²⁰

In May, Libya attended the 49th session of the ACHPR for its scheduled periodic review,²¹ with a report written prior to the outbreak of the civil war. Commissioners tried to ensure the relevance of the discussion, by grounding the conversation in responsibilities of the State as a signatory of the African

14 For example, Human Right Watch called the election, 'a referendum on Syria's violent suppression of protest', Human Rights Watch: <http://bit.ly/jJawll>.

15 'African States: Withhold Support from Syria for Rights Council. Syria committing the same violations for which Libya was suspended.' 28 April 2011.

16 'Statement by Mr. M. Cherif Bassiouni, Chair of the UN Commission of Inquiry to investigate all alleged violations of international law in the Libyan Arab Jamahiriya.' Human Rights Council 17th Session, 8 June 2011.

17 'Libya: African Rights Court Issues First Ruling Against a State. Libya Ordered Immediately to End Threats to Life, People's Security' Egyptian Initiative for Personal Rights, 31 March 2011.

18 Clive Baldwin, senior adviser at Human Rights Watch, quoted at <http://bit.ly/gzszXz>.

19 March 2011. These ordered Libya to 'immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party.'

20 These NGOs were Egyptian Initiative on Personal Rights (EIPR), Human Rights Watch and Interrights.

21 This is a process where member states of the African Union periodically report upon their implementation of the articles of the African Charter.

Charter. Where the Libyan delegation noted its ‘many sacrifices to ensure the liberty of Africa’, the ACHPR refused to lose sight of the standards to which Libya should be held accountable, noting that precisely because of Libya’s key position in the African Union – including holding the Chairmanship in 2009 – the State must be held to the highest human rights standards. However, Commissioner Bechir Khafallah’s decision to not ask any questions of the Libyan delegate, ‘out of respect for victims of all the bombings’, attracted criticism from many NGOs. These NGOs held that limited opportunities to hold States accountable should be safeguarded and used judiciously by those mandated to do so.

During the review, the provisional measures²² ordered by the African Court were acknowledged by Libya, with the delegation stating it wished to work ‘transparently and objectively with a mechanism we respect’. However, NGOs noted the failure of Libya to comply with the measures to date.²³ At the time of writing there was no update on the African Court website in regard to Libya’s compliance.²⁴

Aside from illustrating fruitful interplay between civil society and the mechanisms, the case of Libya also shows regional and international mechanisms citing each other’s decisions to validate their own conclusions. For example, as a part of its justification, the African Court decision to order provisional measures notes that ‘international organisations, both universal and regional, to which Libya is a member’ have considered the situation and denounced the gravity and degree of violations.²⁵

In addition, there is evidence that developments in one international body have altered the scope of the work of another. With referral by the Security Council of the events in Libya to the ICC, the UN Commission of Inquiry extended its focus beyond violations of international human rights and humanitarian law, to include international criminal law. Furthermore, the Prosecutor of the ICC noted that his office had cooperated with the Commission of Inquiry and was awaiting its report to assess whether further cases would need to be presented to the Court.²⁶

CRIES OF ‘DOUBLE STANDARDS’

At the end of the 16th Session of the Human Rights Council, NGOs indicated the model of the Council’s response in the case of Libya was one that offered important lessons for addressing ‘the violent repression of demonstrations in Syria, Bahrain and Yemen.’²⁷ In the cases of Syria and Yemen, disagreements and delays characterised State responses. However, following consistent NGO engagement and a joint statement by special procedures,²⁸ a special session on Syria together with a resolution, and cross-regional statements at the 17th session of the Council on both Syria and Yemen, were finally forthcoming. In regard to Bahrain however, the credibility of the Council is being seriously questioned, as it continues to fail to respond appropriately to the ongoing violations.²⁹

Although the desired outcome has not been achieved for Bahrain, in other cases, the importance of relevant civil society voices reaching key advocacy spaces to influence outcomes has been clear. The need to access advocacy opportunities has resulted in considerable NGO backing for the re-application of the Syrian Center for Media and Freedom of Expression for UN Economic and Social Council (ECOSOC) consultative status. This follows several deferrals of the application by the NGO Committee; subsequently overturned by ECOSOC.³⁰

At the ACHPR 49th session, some NGOs highlighted the repression in sub-Saharan Africa of protests reportedly inspired by events in Egypt and Tunisia. The arrest of an Ethiopian journalist after he published an article referring favourably to the protests in Egypt, and a crackdown on demonstrations in Sudan were two examples cited.³¹ Despite the ACHPR noting that the opportunities arising from these events ‘could serve as a beacon for Africa to emulate’,³² the events and their consequences received relatively little focus during the session and the NGO Forum.³³

POTENTIAL FOR CHANGE IN THE HUMAN RIGHTS SYSTEMS

Where once Egypt and Tunisia were known to take positions that could impede the promotion of human rights, with shifts in the political landscape in both countries, intriguing potential for mechanism reform has emerged.

22 The African Court adopts provisional measures in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to people. In this case they ordered the State to take immediate action.

23 See Human Rights Watch: <http://bit.ly/ehywp7>.

24 It should be noted that Libya issued an official invitation to the Commission to urgently send a field mission to Libya and the ACHPR responded asking when this might happen. To date no update is available on the ACHPR website.

25 In the matter of African Commission on Human and Peoples’ Rights v Great Socialist People’s Libyan Arab Jamahiriya. Application No. 004/2011. Order for Provisional Measures. The ruling cites the opinion of the Peace and Security Council, the Secretary General of the Arab League, and the UN Security Council Resolution 1970.

26 UN Department of Public Information: Press Conference by Prosecutor of International Criminal Court Concerning Libya. 4 May 2011. <http://bit.ly/qyCXTq>.

27 Ibid.

28 ‘UN experts call on Syria to urgently end crackdown and implement reforms’, 15 April 2011. <http://bit.ly/euLOKj>.

29 See Cairo Institute for Human Rights Studies, ‘UN Human Rights Council: Double-standards tarnish positive initiatives at international rights body’, 26 June 2011. <http://bit.ly/n7Y2L1>.

30 The NGO was granted consultative status by ECOSOC; adopted without a vote on 25 July 2011.

31 East and Horn of Africa HRD Network statement at 49th Ordinary Session of ACHPR, 28 April 2011.

32 ACHPR ‘Press statement on the Situation in North Africa’, 25 February 2011.

33 The NGO Forum did pass a resolution (CRES /005/04/2011) and made a declaration related to the situation of human rights in Africa (DEC/001/04/2011).

To take one example, access to the African Court for NGOs and individual victims of human rights violations is currently dependent on States signing a 'special declaration'. Only four States have signed to date, resulting in no direct access for the majority of the continent's NGOs.³⁴ It is reported that Egypt and Tunisia played a key role in the original establishment of this procedure, which was supported by a large number of other African States.³⁵ Whilst moving to overturn this procedure is not currently a priority for the two States or NGOs, it does provide interesting future lobbying objectives, given the apparent desire of both Egypt and Tunisia to portray themselves in a pro-human rights light.

SAFEGUARDING HUMAN RIGHTS ADVANCES

The dangers of governments gaining human rights legitimacy without genuine commitment to long term change at the national level is a concern that has been voiced by NGOs throughout this period. For example, State responsibilities in ensuring the participation of women in political life – such as those outlined in the *Convention on the Elimination of Discrimination against Women* (CEDAW) – have been repeatedly noted following the revolutionary protests in Egypt. However, a delegate of the Moroccan national human rights institution expressed fear that, instead of the change in government resulting in greater recognition for the rights for women, they may now be 'put back in boxes' in Egypt.³⁶ Egypt's recent reference to 'adhering to our most cherished traditional values' in their transition³⁷ puts a question mark over whether it will withdraw its much decried reservations to CEDAW.

Recommendations and decisions from human rights mechanisms are more likely to be implemented and human rights guaranteed with the strengthening of the overall human rights system. For example, the new OHCHR presence in Tunisia and proposed regional office in Egypt³⁸ should be a valuable source of support and expertise during the periods of political transition and consolidation. OHCHR advice on strengthening the Tunisian national human rights institution has already been noted by the High Commissioner, Ms Navi Pillay.³⁹

At the regional level, failure by the African Union to ensure Libya's compliance with the order for provisional measures could seriously undermine the credibility of the body and the system overall. At the international level, NGOs continue to

demand that criteria for election to the Human Rights Council and pledges made by States during candidacies⁴⁰ are upheld as a means of enabling Council credibility.

Human rights recommendations, such as those from the Universal Periodic Review (UPR), provide States with a guide for developing policy that is grounded in upholding human rights. They also provide civil society actors with a basis to determine and highlight desirable policy priorities. Tunisia's second review under the UPR will be in June 2012, a valuable opportunity to assess implementation of its prior UPR recommendations, including in regard to the protection of human rights defenders. Egypt will be examined for its second time in 2014.

In regard to ongoing measures, during the debate on the Commission of Inquiry on Libya, Slovakia asked how the international community will continue its engagement after the, now extended, period of monitoring and reporting of the mandate.⁴¹ NGO suggestions included a call for the creation of a country mandate on Libya to monitor implementation of recommendations and define the needs for technical assistance and capacity building.⁴²

Ongoing attention to respect for the freedoms of peaceful assembly and association will be provided by the newly created Special Rapporteur on this issue. In addition, a 'Panel on the promotion and protection of human rights in the context of peaceful protests' will take place in September 2011.⁴³ Whilst it has been suggested that this is an attempt to quieten ongoing critics of UN action where protestors continue to be abused, it will at least provide a focus of attention for these issues.

CONCLUSION

Over recent months the level of grassroots civil society protesting, engagement with human rights mechanisms, and in some cases the measures taken by those mechanisms to secure positive change and protect human rights defenders, have been striking. It is too early to judge to what degree these actions will contribute to long term human rights guarantees. Nevertheless human rights defenders have an ongoing role, in particular in ensuring that the government, however strongly it might associate itself with 'the revolution' or 'the people',⁴⁴ is held accountable including through established human rights mechanisms. ■

34 Burkina Faso, Malawi, Mali, and Tanzania.

35 'Africa's New Human Rights Court: Whistling in the Wind', Sonya Seats, Chatham House, International Law. March 2009.

36 Moroccan delegate at the meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Geneva, May 2011.

37 Egypt statement during the 49th Session of the ACHPR.

38 Press Conference by United Nations High Commissioner for Human Rights, Navi Pillay. 30 June 2011. <http://bit.ly/pa9C82>.

39 Statement by UN High Commissioner for Human Rights Navi Pillay to mark the opening of the UN Human Rights Office in Tunisia, 14 July 2011. <http://bit.ly/ovvmcL>.

40 Joint Statement by Asian Forum for Human Rights and Development, Cairo Institute for Human Rights Studies, and ISHR. HRC 16th Session, End of session statement, 25 March 2011.

41 The mandate of the Commission of Inquiry on Libya was extended through a resolution approved by consensus: 10 June 2011 A/HRC/17/L.3.

42 Recommendation of Cairo Institute during interactive dialogue with commission of inquiry, 9 June 2011. <http://bit.ly/rtaGnP>.

43 See HRC resolution A/HRC/17/L.4/Rev.1.

44 Statement from the delegation of Egypt during 49th Ordinary Session of ACHPR.

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OPPORTUNITIES FOR NGO ENGAGEMENT

August – December 2011

COUNTRY EXAMINATIONS AND REVIEWS

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

UNIVERSAL PERIODIC REVIEW

What's coming up?

The Universal Periodic Review (UPR) will hold its 12th session from 3 to 14 October 2011 in Geneva. The countries under review are Tajikistan, United Republic of Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syrian Arab Republic, Bolivarian Republic of Venezuela, Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, and Republic of Moldova. The 12th session will be the final session of the first cycle of the UPR. The first session of the 2nd cycle will start in June 2012.

What can you do?

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

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

For a tentative calendar of the second cycle see: <http://bit.ly/rmjTHC>

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

What's coming up?

The Committee on Economic, Social and Cultural Rights will hold its 47th session from 14 November to 2 December 2011 in Geneva. It will examine the reports of Argentina, Cameroon, Estonia, Israel, and Turkmenistan.

At its pre-sessional working group, from 5 to 9 December 2011, the Committee will prepare the lists of questions for Bulgaria, Ecuador, Ethiopia, Mauritania and United Republic of Tanzania, which will be reviewed at a later session.

What can you do?

NGOs may participate in parts of both the 47th session and the pre-sessional working group following it. See <http://bit.ly/hkv5nJ> for more information

COMMITTEE AGAINST TORTURE

What's coming up?

The Committee against Torture will hold its 47th session from 31 October to 25 November 2011 in Geneva. It will consider the reports of Belarus, Bulgaria, Djibouti, Germany, Greece, Madagascar, Morocco, Paraguay, and Sri Lanka.

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

What can you do?

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

The deadline for submission of information to the 47th session is 14 October 2011. Information on the States to be reviewed at the 48th session is due by 20 April 2012. Information should be sent in electronic Microsoft Word format to registry@ohchr.org, jnataf@ohchr.org, and bcorvalan@ohchr.org, and will be posted on the Internet.

COMMITTEE ON THE RIGHTS OF THE CHILD

What's coming up?

The Committee on the Rights of the Child will hold its 58th official session from 19 September to 7 October 2011 in Geneva. It will examine the reports of Iceland, Italy, Syrian Arab Republic, Panama, Madagascar, Republic of Korea, Greece, and the Seychelles. It will also review DRC and Greece under the *Optional Protocol on Children in Armed Conflict* and Sweden under the *Optional Protocol on the Sale of Children*.

What can you do?

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

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 50th session from 3 to 21 October 2011 in Geneva. It will examine the reports of Chad, Côte d'Ivoire, Kuwait, Lesotho, Mauritius, Montenegro, Oman, and Paraguay. For more information see <http://bit.ly/fRdoiC>.

What can you do?

If you are working on discrimination against women in any of the countries under review, you can submit information to the Committee in Microsoft Word format to BSmith@ohchr.org, indicating whether the materials may be published on the Committee's website; and also in hard copy to Mrs Gaynel Curry, Gender and Women's Rights Advisor, OHCHR, New York Office, Room DC1-0511, UN New York 10017, USA. All submissions should arrive by 27 June.

The Committee will meet with NGOs at 3pm on 11 and 18 July, and with national human rights institutions at 4:30pm on 11 July and 4pm on 18 July.

More detailed information on NGO participation is available at <http://bit.ly/dayPAF>. Alternatively, International Women's Rights Action Watch (IWRAP) Asia Pacific can help NGOs submit reports to CEDAW. Please contact IWRAP Asia Pacific by email to iwraw-ap@iwraw-ap.org or iwraw_ap@yahoo.com.

HUMAN RIGHTS COMMITTEE

What's coming up?

The Human Rights Committee will hold its 103rd session from 17 October to 4 November 2011 in Geneva. It will examine the reports of Jamaica, Kuwait, Norway, Iran, and Côte d'Ivoire (in the absence of a report). Lists of issues will be prepared on Armenia, Lithuania, Kenya, Cape Verde (in the absence of a report), and prior to reporting on Uruguay, Cameroon, Monaco, Denmark, and Moldova.

What can you do?

If you are working on issues related to civil and political rights in any of these countries you can submit information to the Committee for its examination to assist it in drafting the lists of issues. Please send information to Ms Nathalie Prouvez, nprouvez@ohchr.org. Information on NGO participation can be found in the '*NGO Guidelines on the Reporting Process of the UN Human Rights Committee*', which is available at <http://bit.ly/o5M1xy>.

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

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

What's coming up?

From 8 August - 2 September 2011, the Committee on the Elimination of Racial Discrimination will hold its 79th session and examine the reports of Albania, Czech Republic, Georgia, Kenya, Maldives, Malta, Mexico, Paraguay, Ukraine, and the United Kingdom.

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

What can you do?

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

MEETINGS

PERMANENT FORUM ON INDIGENOUS ISSUES

What's coming up?

The UN Permanent Forum on Indigenous Issues will possibly hold its 11th session in May 2012; however, no exact date has been set yet. The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

What can you do?

The Special Rapporteur on the rights of indigenous peoples, Mr James Anaya, will hold individual meetings with representatives of indigenous peoples and organisations. The meetings are an opportunity to raise issues relevant to the Special Rapporteur's mandate. The meetings will be held in May 2012. Requests for a meeting should be sent by April to indigenous@ohchr.org. Further information is available at <http://bit.ly/fBMUz3>. To meet with the Special Rapporteur you will also need to pre-register for the 11th session. For more information, consult the website here: <http://bit.ly/gQlvKj>.

HUMAN RIGHTS COUNCIL

What's coming up?

The Human Rights Council (the Council) will hold its 18th session from 12 to 30 September 2011 in Geneva. An organisational meeting will take place on 26 August.

What can you do?

If you work with an ECOSOC accredited NGO you may attend all sessions of the Council. You may also submit written statements and request rooms to organise parallel events (deadline 24 August). You may also register to deliver oral statements under all agenda items. The speakers' list for oral statements opens at 8am Geneva time on 12 September. More information about the Council and NGO participation is available at <http://bit.ly/dSkbHC> and www.ishr.ch/council.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The Human Rights Council Advisory Committee will hold its 7th session from 8 to 12 August 2011, in Geneva. NGOs can participate in all public sessions. More information on this meeting will be made available here: <http://bit.ly/byzWQz>.

SPECIAL PROCEDURES' VISITS

You can stay up to date about upcoming visits by the special procedures to countries around the world at <http://twitter.com/unrightswire> or join the OHCHR Civil Society mailing list at <http://conta.cc/c4paEC>. At the time of writing, information about the following 2011 visits was available:

- The Special Rapporteur on trafficking in persons, Ms Joy Ngozi Ezeilo, will visit Thailand from 8 to 19 August. See <http://bit.ly/pfaYM1>.
- The Special Rapporteur on violence against women, Ms Rashida Manjoo, will visit Jordan from 11 to 27 November. See <http://bit.ly/qKi1Ad>.
- The Special Rapporteur on water and sanitation, Ms Catarina de Albuquerque, will visit Uruguay from 13 to 18 November. See <http://bit.ly/o9RTLM>.
- The Special Rapporteur on freedom of opinion and expression, Mr Frank La Rue, will visit Israel from 4 to 18 December. See <http://bit.ly/pYS1Gz>. ■

ISHR ACTIVITIES:

	<p>NGO FORUM ON THE ASIA PACIFIC FORUM</p> <p>5 - 6 September (Bangkok)</p>	<p>FRENCH GTC TREATY BODIES AND UPR</p> <p>2 - 14 October (Geneva)</p>	<p>NGO FORUM ON AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS</p> <p>20 - 22 October (Banjul)</p>
REGIONAL MEETINGS:			

	<p>ASIA PACIFIC FORUM ANNUAL MEETING</p> <p>7 - 8 September (Bangkok)</p>	<p>AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS</p> <p>24 October - 8 November (Banjul)</p>
UN MEETINGS:		

		<p>CEDAW</p> <p>3 - 21 October (Geneva) Chad, Côte d'Ivoire, Kuwait, Lesotho, Mauritius, Montenegro, Oman, Paraguay</p>	<p>CESCR</p> <p>14 November - 2 December (Geneva) Argentina, Cameroon, Estonia, Israel and Turkmenistan</p>
CERD		<p>UPR</p> <p>3 - 14 October (Geneva) Tajikistan, Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syria, Venezuela, Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, Republic of Moldova, Haiti</p>	<p>WG ON ENFORCED DISAPPEARANCE</p> <p>2 - 11 November (Geneva)</p>
<p>8 August - 2 September (Geneva) Albania, Czech Republic, Georgia, Kenya, Maldives, Malta, Mexico, Paraguay, Ukraine and United Kingdom</p>		<p>SOCIAL FORUM</p> <p>3 - 5 October (Geneva)</p>	<p>WG ON ARBITRARY DETENTION</p> <p>16 - 25 November (Geneva)</p>
<p>HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE</p> <p>8 - 12 August (Geneva)</p>	<p>HUMAN RIGHTS COUNCIL ORGANISATIONAL MEETING</p> <p>26 August (Geneva)</p>	<p>COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)</p> <p>19 September - 7 October</p>	<p>CESCR PRE-SESSIONAL WG</p> <p>5 - 11 December (Geneva) Bulgaria, Ecuador, Ethiopia, Mauritania and United Republic of Tanzania</p>
	<p>WG ON ARBITRARY DETENTION</p> <p>29 August - 2 September (Geneva)</p>	<p>HUMAN RIGHTS COUNCIL</p> <p>12 - 30 September (Geneva)</p>	<p>CAT</p> <p>31 October - 25 November (Geneva) Bulgaria, Djibouti, Germany, Greece, Madagascar, Morocco, Paraguay, Sri Lanka, Tunisia</p>
	<p>CRPD</p> <p>19 - 23 September (Geneva) 6th session Spain</p>	<p>HUMAN RIGHTS COMMITTEE</p> <p>10 - 28 October (Geneva) Jamaica, Kuwait, Norway, Iran, Côte d'Ivoire</p>	<p>COMMITTEE ON ENFORCED DISAPPEARANCE</p> <p>8 - 11 November Inaugural session</p>
			<p>FORUM ON MINORITY ISSUES</p> <p>15 - 16 December (Geneva)</p>
AUGUST	SEPTEMBER	OCTOBER	NOVEMBER
			DECEMBER

UPCOMING EVENTS AUGUST – DECEMBER 2011