

## EDITORIAL

### INTRODUCTION

In 2007, while human rights violations, including gross and systematic violations, continued with undiminished intensity in many parts of the world, the international human rights system continued to gaze inwards. The United Nations (UN) principal human rights organ, the Human Rights Council (the Council), did little substantive work on the protection and promotion of human rights. Some of its mechanisms, such as the Advisory Committee and the complaint procedure, simply did not work at all. The treaty-monitoring bodies, however, continued their important work of examining States' performance of treaty obligations, considering complaints, and promoting the implementation of treaties.<sup>1</sup> Their work was largely unaffected by the institutional challenges elsewhere in the system but there was very little progress with discussions of necessary reforms of the treaty bodies themselves. Meanwhile, across the Atlantic, the Security Council retreated from its strong statements of 2006 on the responsibility to protect, avoiding action in relation to the situation in Burma/Myanmar until events there left no alternative but to act.

The urgent need for reform of the international human rights machinery generally proved far easier to identify than to address successfully. Divisions among States, the outright hostility of some States towards effective human rights protection, and the intransigence of institutions and cultures that are resistant to change all proved a great obstacle to progress during the year. In many areas, reform processes proved ineffectual or even regressive. In other areas it was impossible even to initiate serious discussion of reform. The rhetoric of universal support for the universal human rights standards was not matched by action in international forums. The adoption of new human rights standards also posed challenges to the international system during the year. Indeed, it was only after months of difficult and politically charged negotiations in the General Assembly, and more than 20 years of discussion in the UN system, that the *Declaration on the Rights of Indigenous Peoples* was finally adopted.<sup>2</sup>

As in the preceding year, most of the focus in the international human rights system in 2007 was directed towards the new Human Rights Council and its institution-building work. The General Assembly Resolution establishing the Council required that the review of mechanisms, the construction of the new universal periodic review (UPR) mechanism, and the organisation of the Council's own procedures and agenda be completed by the end of its first year.<sup>3</sup> The final result was far less than what was needed and desired but far more than what had been feared. Of necessity, much of this 2007 edition of the *Human Rights Monitor* reports and discusses developments within the Human Rights Council.

### THE HUMAN RIGHTS COUNCIL

#### Institution building

The Human Rights Council was established on 19 June 2006 to replace the Commission on Human Rights (the Commission).<sup>4</sup> The establishment of the Council was accompanied by high rhetoric that promised, or at least looked to, a new era in the UN's human rights work. There was much talk of new beginnings, new starts, new chances.<sup>5</sup> The truth, however, was that no one believed it was going to be easy to effect real change. The Council was conceived in the context of the destruction of its predecessor<sup>6</sup> and politically charged debates in the General Assembly between those States wanting a Council with no real teeth and those that argued for a body that was more effective than the Commission. After a year and a half, an initial assessment can be made: the Council is neither as good as it needs to be nor as bad as it could be. Indeed it is proving to be significantly better than many defenders and activists had feared, though it still has a long way to go before it can be said to be an effective protector and promoter of human rights.<sup>7</sup>

<sup>1</sup> See pp. 93-120 for a full report on the work of the treaty bodies in 2007.

<sup>2</sup> The Declaration had been adopted by the Council on 29 June 2006. It was approved in the General Assembly on 13 September 2007 by a vote of 143 in favour, four against, and 11 abstentions, *Resolution 61/295*.

<sup>3</sup> General Assembly *Resolution 60/251* (15 March 2006). Also see Rachel Brett, *Neither Mountain nor Molehill, UN Human Rights Council: One Year On*, Quaker United Nations Office (Geneva August 2007), p.3.

<sup>4</sup> General Assembly *Resolution 60/251* (15 March 2006).

<sup>5</sup> See for instance the International Service for Human Rights' (ISHR) report on the inaugural session (19 June 2006), available on the ISHR website.

<sup>6</sup> See ISHR, *Human Rights Monitor 2006* (Geneva, 2007), pp. 7-31.

<sup>7</sup> See pp. 15-31 for a full report and assessment of the Council's institution-building work in 2007 and pp. 33-55.

When the General Assembly established the Council in June 2006 it gave it a burdensome work programme for its first year: to review, rationalise and improve the Commission's systems of special procedures, expert advice, and complaint procedure; to construct a new universal periodic review mechanism; and to develop the Council's own rules of procedure, agenda and programme of work. At the same time the Council was responsible for the promotion and protection of human rights. The institution-building tasks dominated the Council's agenda during the year to the disappointment of victims of human rights violations and human rights defenders. There were however some positive initiatives. It is worth highlighting the successful use of a new and innovative working method in the panel discussion on how to integrate a gender perspective into the work of the Council.<sup>8</sup>

The Council was fortunate to have had Mexican Ambassador Luis Alfonso de Alba as its first President. It is generally considered that no one else could have steered the institution-building work as successfully and productively. At the end he produced a package that was far better than could reasonably have been expected at the commencement of the year and, in quite controversial circumstances, succeeded in having it adopted by consensus at midnight on 18 June 2007, the end of his term as President.<sup>9</sup> The institution-building package was adopted by the Council on 18 June<sup>10</sup> and by the General Assembly on 22 December 2007.<sup>11</sup> After intense divisions during the process itself, the final package received overwhelming endorsement in the General Assembly, with only seven States opposing it.<sup>12</sup>

<sup>8</sup> For a detailed overview of the discussion, please see ISHR's *Daily Update* of 20 and 21 September 2007.

<sup>9</sup> For a full account of these processes, see ISHR's *Daily Updates* of 18 and 19 June 2007.

<sup>10</sup> Human Rights Council *Resolution 5/1* (18 June 2007).

<sup>11</sup> General Assembly *Resolution 62/434* (3 December 2007).

<sup>12</sup> Australia, Canada, Israel, Marshall Islands, Micronesia, Palau and the United States (US).

<sup>13</sup> See pp. 16-19 for a full report of the review of the system of special procedures.

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### Political manipulation

The institution-building work of the Council would have been demanding and difficult in the best of circumstances. It proved to be extremely complex in the highly political environment of the Council. Part of the critique of the old Commission was that it was 'politicised', selective in dealing with country situations, lacking in objectivity, unbalanced, and confrontational. The General Assembly Resolution provided a basis for a different kind of body but in fact much of the same can be said of the new Council. The poli-

tics of regional and other blocs of States within the Council continued to make positive work difficult and at times impossible. Often the maintenance of political conflict took priority over substantive results.

While blocs remain deeply problematic, the year saw some progress in individual States taking more responsibility for their actions within the Council. Within the African Group in particular, States that had uncritically followed the lead first of Algeria and then of Egypt began to assert their independence, requiring important improvements to the draft code of conduct for special procedures promoted by Algeria and supporting continued Council action in relation to serious human rights situations in Africa. The positive roles that can be played by individual African States and others in future years will be critical to the success of the Council. The question is whether they will be prepared to break ranks from their partners to play these positive roles.

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### Special procedures

Part of the institution-building work was a review of individual mandates and of the system of special procedures as a whole.<sup>13</sup> Critical issues in the review were the method of appointment of mandate holders, the proposal for a code of conduct for mandate holders, and the future of country mandates. The process by which the review was conducted was itself problematic. The Council proved itself unable to undertake a thorough, comprehensive review of the system as a whole but proceeded by way of a piecemeal approach that resulted more in a collection of individual mandates based on individual decisions than a properly constructed and integrated system.

While the systemic review was abandoned by mid-year, the review of individual mandates was still underway at the end of 2007. In the meantime, the individual special procedures mandate holders were expected to continue their work and perform their duties as if nothing were happening. They did so with admirable commitment to the responsibilities given to them, handling complaints, undertaking missions, and reporting to the Council as previously. Indeed, one of the positive developments of the year were the many very good interactive dialogues with man-

date holders. Individual mandate holders are to be commended for their professionalism and diligence in carrying out their mandates in the transitional period.

Clearly, in this period of uncertainty, the mandate holders faced greater difficulty in obtaining State cooperation than in the past. Many States took advantage of the uncertainty by refusing to answer inquiries, issue invitations or make arrangements for visits. With short-term extensions of the mandates over the 18 months since the Council was established and pending their review, mandate holders found it difficult to develop programmes for their work or to make plans for specific activities. Many of them are now in the second year after their personal mandate was due to expire.<sup>14</sup>

The Council commenced the review of individual mandates in September 2007. In March 2008 the first new appointments will be made since 2005.<sup>15</sup> At that stage it is hoped that the system will start to settle down and mandate holders can return to a more strategic and planned approach to their work than has been possible for the past two years.

## COUNTRY SITUATIONS

During the year, the capacity and willingness of the international system to deal with country situations became even more problematic. Every excuse was used in every body to avoid taking action. Whenever a critical situation was raised in one body, the argument would be raised that responsibility lay in another.

In the years after the Cold War ended, the Security Council showed increasing willingness to deal with situations of gross human rights violations. From the early 1990s it accepted that these situations could pose threats to international peace and security and so were within the Security Council's jurisdiction. The 2005 *World Summit Outcome Document* recognised the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>16</sup> In 2006, the Security Council adopted a resolution on the responsibility to protect, declaring that each State had primary

responsibility to protect and promote human rights within its territory but that, if the State was unable or unwilling to discharge that responsibility, then in certain severe circumstances the international system had a responsibility to act.<sup>17</sup> In spite of its widely applauded adoption in 2006, during 2007 the Security Council showed itself increasingly unwilling to address even the most serious human rights situations.<sup>18</sup>

Early in the year, the Security Council discussed the situation in Burma/Myanmar but failed to adopt a resolution. Several Security Council members said that the situation fell within the jurisdiction of the Human Rights Council, not the Security Council. Yet in Geneva, when Human Rights Council action was proposed, the same States argued that it should be considered only through the UPR procedure, that is, once every four years, and not as an urgent matter. In the end, the situation in Myanmar deteriorated to such an extent in September that both the Security Council and the Human Rights Council felt compelled to take action.<sup>19</sup> It seems that States will be willing to act on human rights violations not to prevent them but only after they have occurred and even then only with the greatest reluctance.

Similar opposition arose in relation to the review of the Human Rights Council's system of special procedures. Some States argued that there should be no country mandates or that country mandates should only be established with the consent of the concerned State. This position was not adopted in the final institution-building package. Country mandates were maintained as part of the system but two specific mandates, those on Belarus and Cuba, were discontinued immediately. During the review of individual mandates still underway, persistent attempts have been made to achieve the same result, on a case-by-case basis.<sup>20</sup> Fortunately, many African States have been unwilling to support this, both in relation to African mandates that are supported by the concerned State and in relation to the mandate on the Sudan.

At this stage, results in addressing country situations in the General Assembly and its Third Committee have been more positive but there too the pressure is intense. Many States have argued, as some Security Council members did, that country situations should be left to

<sup>14</sup> Eleven special procedures have exceeded their six-year term.

<sup>15</sup> The review of two mandates were completed in September 2007 and another six in December. *Resolution 1674* endorses paras 138-139 of the 2005 *World Summit Outcome Document*. The Security Council invoked the responsibility to protect for the first time in *Resolution 1704* (October 2006) on Darfur.

<sup>16</sup> Paras 138-139, 2005 *World Summit Outcome Document*, General Assembly *Resolution 60/1*, (24 October 2005).

<sup>17</sup> Para 4, Security Council *Resolution 1674* (28 April 2006).

<sup>18</sup> See pp. 73-80 for an overview of developments and discussions in the Security Council.

<sup>19</sup> See ISHR's report on the Council's special session on Burma/Myanmar and p. 74 on the action by the Security Council.

<sup>20</sup> See the discussions on the review of the mandate on Burundi (ISHR's *Daily Update* of 26 September 2007) and on the Sudan (ISHR's *Daily Update* of 13 and 14 December 2007).

the Human Rights Council, in particular to the Council's UPR mechanism. No-action motions were moved on this basis to prevent Third Committee debate on country resolutions. In general, the Third Committee and the General Assembly in plenary have continued to support country resolutions but the margin by which they are adopted seems to grow narrower each year.<sup>21</sup>

Country situations will continue to be hotly contested within the UN system. States have legal and moral obligations, individually and collectively, to prevent and redress gross violations of human rights wherever they occur. The integrity and credibility of each part of the system, particularly the Security Council and the Human Rights Council, will depend on how these issues are addressed.

## TREATY-MONITORING BODIES

In 2006 the High Commissioner for Human Rights (the High Commissioner) proposed that the human rights treaty-monitoring bodies be replaced by a single, unified, standing body with full-time members working all year round.<sup>22</sup> The proposal was an ambitious one that came as a surprise not only to States and non-governmental organisations (NGOs), but to the treaty body members themselves, and attracted very little support. The core concern of most stakeholders was that the specialisation of the members of the individual treaty bodies, with their focus on only one of the international treaties, would be lost within a larger body dealing with all the treaties together.

While discussion of a single, unified treaty body must now be considered over, the very existence of this proposal re-invigorated debate, in particular among the treaty bodies through their Inter-Committee Meeting, on ways to harmonise their currently very varied working methods. Two new bodies are likely to be established soon to monitor the implementation of the new treaties on enforced disappearances and the rights of persons with disabilities when they come into effect. The reform process needs now to focus on specific issues that require urgent attention – such as streamlining the reporting process, clearing the backlog of reports, and ensuring

better follow-up to recommendations – each of which can be successfully addressed with a minimum of technicality and complexity. The work of individual treaty bodies and of individual members must also be subjected to closer scrutiny to assess effectiveness and identify where change is required.

## Office of the High Commissioner for Human Rights

While the political structures of the UN were pushing away from dealing with specific country situations, the Office of the High Commissioner for Human Rights (OHCHR) was becoming more and more engaged. The current High Commissioner, Ms Louise Arbour, has adopted a country engagement strategy for her Office that has led to significant increases in the number of its regional and national presences over the past two years.<sup>23</sup> The size of the OHCHR presences varies greatly, from the especially large programmes in Nepal and the Sudan to the placement of one or two persons within or attached to UN Country Teams.<sup>24</sup> The large programmes have been important and have contributed a great deal to the protection and promotion of human rights but there are questions about the viability and effectiveness of the High Commissioner's strategy on a global scale. The High Commissioner does not have the resources of large UN programmes, such as the United Nations Development Programme (UNDP) and United Nations Children's Fund (UNICEF), and her limited resources might be spread too thinly to be effective. There are differing views among NGOs and among States on this strategy.

States that have opposed country-specific action by UN bodies have been strong opponents of the High Commissioner's country strategy. They have argued in these cases and more generally that the High Commissioner's Office should be brought more tightly under the control of the Human Rights Council. The High Commissioner, with the support of other States and of NGOs, has resisted this pressure. She and they have seen it, quite correctly, as a threat to the independence of the High Commissioner and therefore an unjustified attempt to restrict her effectiveness and control her Office. At each session of the Council, the High Commissioner is

<sup>21</sup> See pp. 57-70 for an overview of developments in the General Assembly in 2007.

<sup>22</sup> The High Commissioner proposed the creation of a unified standing treaty body in her *Plan of Action (A/59/2005/Add.3, 26 May 2005)*, and elaborated it in a concept paper (HRI/MC/2006/2, 22 March 2006).

<sup>23</sup> Contained in *High Commissioner's Strategic Management Plan 2006-2007*.

<sup>24</sup> For more information on the OHCHR's work in countries, please see [www.ohchr.org/EN/Countries/Pages/WorkInField.aspx](http://www.ohchr.org/EN/Countries/Pages/WorkInField.aspx).

criticised and initiatives are regularly proposed that would have the effect of involving the Council in micro-managing the Office.

One consequence of this pressure is an apparently reduced level of engagement on the part of the High Commissioner in the work of the Council. The High Commissioner is present or represented by her senior staff at all Council sessions. However, she appears to have less involvement in the Council's work than previously. While this is understandable, given the hostility from some Council member States, it has left the Council's processes without the benefit of the expertise, advice, and experience of the High Commissioner, and that is regrettable.

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## CONCLUSION

This 2007 edition of the *Human Rights Monitor* reports on and analyses the work of the international human rights system in relation to the major issues and themes of the year. The picture it presents is a matter for concern. As we enter the year of the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*, the system is not working as effectively as it should or even as effectively as it could. That has always been true, of course. Action has never matched rhetoric as far as human rights are concerned. The hopes raised by the end of the Cold War have long since evaporated. Now it's just the hard struggle for better human rights protection and promotion in every forum, on every issue, every day. This edition of the *Human Rights Monitor* tells that story for 2007.