

SNAPSHOT OF THE WORK OF THE TREATY MONITORING BODIES IN 2006

TREATY BODY REFORM

High Commissioner's proposal for a unified standing treaty body

The High Commissioner for Human Rights (the High Commissioner) stated in her plan of action that she would develop proposals for a unified standing treaty body.¹ In 2006, the Office of the High Commissioner for Human Rights (OHCHR) published a concept paper elaborating on her proposals, which was meant to provide the basis for discussions on options for the reform of the system.²

The concept paper pointed out that there are currently seven treaty bodies, with 115 treaty body experts. These numbers will increase with the establishment of the Subcommittee on the Prevention of Torture under the *Optional Protocol to the Convention against Torture* and two other new treaty monitoring bodies under the *International Convention on the Protection of All Persons from Enforced Disappearance* and the *Convention on the Rights of Persons with Disabilities*, once these two treaties come into force.

The **current challenges** facing the system were identified as:

- The failure of States to submit reports or considerable delays in the submission of reports;
- The steep increase in the workload of treaty bodies and the increase in the number of

treaties and ratifications, which has led to backlogs in the consideration of reports and individual complaints and increasing resource requirements;

- Duplication in the work of treaty bodies;
- Election of part-time experts serving in a voluntary capacity without receiving any remuneration for their work, which has led to uneven levels of expertise, independence, geographical distribution, and gender balance;
- Different working methods of various treaty bodies and limited coordination and collaboration amongst treaty bodies, which has led to a lack of coherence and clarity for State parties and others engaged in the system;
- Under-utilisation of individual complaint procedures;
- Unfamiliarity of victims with the system's complex procedures;
- Poor media coverage; and
- Limited use of inquiry procedures and State-to-State complaint mechanisms.

The concept paper took the view that current efforts aiming to harmonise working methods and streamline reporting guidelines will go some way towards addressing the problems of predictability and coherency but will not address the underlying challenges in the system.

The proposal for a unified standing treaty body suggests replacing the seven existing treaty bodies with **one single permanent body**, which would be

¹ A/59/2005/Add.3, 26 May 2005. Paragraph 147, p. 30.

² HRI/MC/2006/2, 22 March 2006.

composed of permanent full-time professionals and have the ability to meet throughout the year. States would still be assessed only with respect to the treaties that they have ratified. Various operational models for how the unified treaty body could function are identified in the concept paper. These include that it could work as one body, in chambers operating in parallel, in chambers along functional lines (reports, complaints, follow-up etc.), or in chambers along treaty, thematic or regional lines. The proposal is based on the premise that the system needs to function and be perceived as a single, coherent entity in order to increase its visibility and accessibility.

The **advantages of the unified standing treaty body** that were identified by the concept paper were:

- It would be available to victims on a permanent basis and could respond rapidly to grave violations;
- It is more likely to produce consistent and authoritative jurisprudence;
- It would provide a framework for a comprehensive, cross-cutting, and holistic approach to implementation of treaties;
- It would be able to develop innovative working methods and develop clear procedures for the participation of all stakeholders;
- It would introduce a single cycle of reporting, making it easier to do a deeper and more cross-cutting analysis of a State's performance against all its relevant human rights obligations;
- The treaty body would also issue a single document with all its recommendations, making it easier for all stakeholders, such as non-governmental organisations (NGOs) and national human rights institutions (NHRIs) to follow-up on these recommendations;
- It would extend the period of dialogue from one to up to five days (depending on the numbers of treaties ratified), allowing for better exchange of views;
- It would provide flexibility in terms of timing and venue of the treaty body's sessions, allowing it to group several States from one region over a few weeks or convene sessions in the regions; and
- It could also absorb new standards and monitoring functions set up under a new instrument.

The greatest **difficulties of this proposal** are legal and practical in nature. Every State party to all the current human rights treaties would need to consent to this proposal, and this would require universal ratification of any amending protocol or other instrument used to create the unified treaty body. As State parties to each treaty elect the members of the corresponding treaty monitoring body, the membership of the new body and the process of selection of experts would have to be carefully discussed. States would also resist being examined under any treaty that they have not ratified and therefore the treaty body will have to develop working methods that allow it to vary the examination of States by the treaties they have ratified. The proposal also raised concerns about losing the specific focus on certain groups such as children, women, and migrant workers that are provided for by treaty bodies concentrating only on these issues. The concept paper puts forward some proposals to address all these issues. This is probably the weakest part of the concept paper and in the opinion of the author, though it is an initial document to generate discussion, would have benefited from a deeper analysis of the pros and cons of each proposal outlined to address these issues (the concept paper only does this for the different operating models it put forward for the unified body).

The concept paper suggests that the unified treaty body could be created by amending each human rights treaty, or by a consolidated amending protocol to all the treaties. Other options that are identified are to gradually transfer the powers of all the treaty bodies to one of the existing bodies, or to a new body created through a General Assembly resolution. It also suggests some transitional arrangements. It acknowledges concerns about loss of specificity and suggests that this issue be focused on while designing a unified body.

The proposal has not met with much support. It was discussed at the Inter-Committee meeting in 2006 and most treaty monitoring bodies raised concerns about the substance of the proposal and the way in which it was introduced. It also appears to have limited support amongst States and very few NGOs and States have publicly spoken out in favour of the proposal. There is more support from the treaty monitoring bodies and from some NGOs for the idea of creating a single body to consider all individual complaints.

Comment on the treaty body reform process

While most attention was focused on the institution-building work in the new Human Rights Council, other parts of the international human rights system went about their business as usual. The treaty monitoring bodies in particular continued as the principal independent expert mechanisms for State accountability for the performance of their human rights obligations. Here too reform was on the agenda but in this area the reform push has stalled.

In May 2005, the High Commissioner launched the most sweeping drive for treaty body reform, proposing the replacement of all seven treaty bodies with one permanent, standing committee of full-time experts. The proposal was the subject of an options paper early in 2006 but, contrary to hopes and expectations, the paper presented only one option, the most dramatic. Inevitably it encountered widespread opposition, but opposition based on different factors from different sectors. Many human rights NGOs and some States feared the loss of specialist expertise and focus on specific areas of human rights if all existing treaty bodies were merged into one. Other States feared that a standing committee of full-time experts would be more effective and place greater pressure on States.

There was virtually no support whatsoever for the High Commissioner's proposal among States and so by early 2006 it was dead in the water. Indeed, there are more treaty bodies not less. During the year the *Optional Protocol to the Convention Against Torture* came into effect and the new treaty body under it was established and its members elected. At the end of the year the General Assembly endorsed two new human rights treaties, one on enforced disappearances and the other on the rights of persons with disabilities, each with its own treaty body to be established when the treaties come into effect.

Whatever the advantages and disadvantages of the High Commissioner's proposal, the need for reform of the treaty bodies remains obvious and urgent. The Committees need more coordinated approaches. They need better ways to encourage, or even force, States to meet their reporting obligations. They need higher quality State reports and more NGO involvement. They need more follow-up on their recommendations. These problems all go back to operating methodologies and State cooperation. The most fundamental problem, however, lies within the Committees themselves: the quality of their membership. While some of the world's pre-eminent human rights experts are or have been independent experts on treaty bodies, many other members of the Committees are not experts or not independent or neither. There is an urgent need to improve the average quality of treaty body membership, both individually and collectively.

The failure of the High Commissioner's proposal for a single treaty body should not lead to the end of efforts for treaty body reform. The reform effort has stalled but it is still urgently required if the treaty bodies are to meet what is required and expected of them.

Committee on the Elimination of Racial Discrimination

The Committee held two sessions in 2006; from 20 February to 10 March 2006 (68th session)

and 31 July to 8 August 2006 (69th session). During these sessions, the Committee examined reports submitted by Bosnia and Herzegovina, Botswana, El Salvador, Guatemala, Guyana, Lithuania, Mexico, Uzbekistan, Denmark,

Estonia, Mongolia, Norway, Oman, South Africa, Ukraine, and Yemen.³

The Committee took action against the following States whose reports were seriously overdue:⁴ Antigua and Barbuda, the Republic of Congo, Ethiopia, Malawi, Mozambique, Namibia, Nicaragua, Papua New Guinea, Seychelles, and Saint Lucia. After discussions with Antigua and Barbuda, the Republic of Congo, and Nicaragua the Committee decided to postpone the reviews of these countries because they indicated that they would submit the requested reports shortly. The Committee reviewed the situation in Ethiopia and Mozambique in the absence of a report and sent a list of questions to these countries. These countries were also informed that in the absence of a response, the Committee would proceed with the adoption of concluding observations under its review procedure. The Committee held preliminary debates with delegations from Malawi and Namibia and following assurances by both delegations, requested them to submit their overdue reports no later than 30 June 2007. The Committee adopted provisional confidential concluding observations on the situation in Seychelles at its 69th session. It also sent a letter to Saint Lucia during the same session asking it to respond to the list of issues sent in August 2005.⁵

Israel was scheduled for examination at the 69th session but at the State party's request, the Committee postponed the consideration of the report till its 70th session (19 February to 9 March 2007).

Early warning and urgent action procedures

The Committee adopted two decisions under its early warning and urgent action procedures.⁶ The first decision related to the situation of the Western Shoshone indigenous peoples in the United States of America (the USA) and was based on requests submitted by the Western Shoshone National Council and other indigenous entities. The Committee expressed concern about the USA's position that Western Shoshone people's legal rights have been extinguished through gradual encroachment despite the fact that they have continued to use and occupy the lands and natural resources.

Concern was also expressed about the privatisation of ancestral lands, destructive activities that were planned or being conducted on areas of cultural and spiritual significance to the Western Shoshone peoples, resumption of underground nuclear testing on ancestral lands, and the lack of consultation and difficulties encountered by the Western Shoshone in accessing remedies. The Committee recommended that the State party respect and protect the human rights of the Western Shoshone people, without discrimination, in accordance with the Convention. It urged the initiation of a dialogue with the representatives of the Western Shoshone and asked the State party to adopt measures to stop activities that are planned or being conducted on the ancestral lands without consultation with the Western Shoshone until a final decision or settlement on the status of the lands was reached.

The Committee also adopted a decision on Suriname in which it reiterated its concern about the State party authorising additional exploitation and infrastructure projects that posed a threat of irreparable harm to indigenous and tribal peoples without any notification to the communities, their prior agreement or informed consent. The Committee recommended that the State party take a number of steps in accordance with its General Recommendation 23 to legally acknowledge the rights of indigenous peoples to control and use their communal lands and natural resources, ensure a right to a remedy, reach agreement with the peoples before awarding concessions on the use of the land, and extend an invitation to the Special Rapporteur on indigenous peoples to visit the territory.

Decisions on individual complaints

The Committee adopted two decisions on merits of individual complaints. In *Dragan Durmic v. Serbia and Montenegro*,⁷ the Committee found that the failure of the State party to initiate proceedings on a case where an individual of Romani origin was refused access to a place intended for the use of the general public violated Article 6 of the Convention.⁸ In *Mohammed Hassan Gelle v. Denmark*,⁹ the complainant asserted that a newspaper had published a letter by a member of the Danish Parliament in which

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The Committee's concluding observations, State reports and other useful documents are available at www.ohchr.org/english/bodies/cedr/sessions.htm. The International Service for Human Rights (ISHR) has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb

4

Overdue by five years or more.

5

Report of the Committee on the Elimination of Racial Discrimination, submitted to the General Assembly for consideration at its 61st session, A/61/18,

6

ibid, pp. 7 – 11.

7

Communication 29/2003, decision available at www1.umn.edu/humanrts/country/decisions/29-2003.html.

8

Article 6 requires that the State provide effective protection and remedies against acts of racial discrimination.

9

Communication 34/2004, decision available at www1.umn.edu/humanrts/country/decisions/34-2004.html.

she questioned why a Danish-Somali organisation was amongst the organisations that would be consulted about a bill criminalising female genital mutilation, something she described as a 'crime mainly committed by Somalis' as this in her view corresponded to asking the association of paedophiles whether they had any objections against child rape. The Committee found that the failure of the public prosecutor to open an investigation into whether or not the statements were racially discriminatory constituted a violation of Articles 2 (1) (d), 4 and 6 of the Convention.¹⁰

Committee against Torture

The Committee held two sessions in 2006; from 1 to 19 May 2006 (36th session) and 6 to 24 November 2006 (37th session). During these sessions, the Committee examined reports submitted by Burundi, Guatemala, Guyana, Hungary, Mexico, Peru, Qatar, the Republic of Georgia, the Republic of Korea, the Russian Federation, South Africa, the USA, Tajikistan, and Togo.

The Committee did not issue any general comments during 2006. It began consideration of a methodology to adopt a comment on Article 2 of the *Convention Against Torture*.

Five new members were elected to the Committee to serve from 1 January 2006 to 31 December 2009. The new members are Ms. Saadia Belmir (Morocco), Mr. Andreas Mavrommatis (Cyprus), Ms. Nora Svaaess (Norway), Mr. Alexander Kolalev (Russian Federation), and Mr. Xue-ran Wang (China).

Decisions on individual complaints¹¹

In *Suleymane Guengueng v. Senegal*,¹² the Committee considered a complaint by seven individuals from Chad who claimed that they had been victims of torture by agents of President Habré between 1982 and 1990. The complainants lodged a complaint against President Habré in Senegal where he has been residing since 1990. The Committee held that Senegal had violated Article 7 of the Convention by failing to prosecute President Habré itself or to extradite him to Belgium who had issued an

international arrest warrant for him. In *M.Z. v. Sweden*,¹³ and *A.E. v. Switzerland*,¹⁴ the complainants argued that their removal to Iran and to the Sudan respectively would violate Article 3 of the Convention. The Committee held that the complainants had not demonstrated the existence of substantial grounds for believing that their return to such countries would expose them to a real, specific, and personal risk of torture and therefore no violations of the Convention were found.

Committee on the Rights of the Child

The Committee on the Rights of the Child met in two chambers in 2006 to reduce the backlog of reports it had to consider. The Committee held three sessions in 2006 and considered 47 reports. It considered reports submitted by Azerbaijan, Benin, Colombia, Ethiopia, Ghana, Hungary, Ireland, Jordan, Kiribati, Latvia, Lebanon, Lithuania, Liechtenstein, Mauritius, Mexico, Oman, Peru, the Republic of Congo, Saudi Arabia, Samoa, Senegal, Swaziland, Tanzania, Turkmenistan, Thailand, and Uzbekistan. It considered reports on the implementation of the *Optional Protocol to the Convention on the involvement of children in armed conflict* by Andorra, Bangladesh, Belgium, Canada, the Czech Republic, El Salvador, Iceland, Kazakhstan, Malta, Vietnam, and Switzerland. It considered reports on the implementation of the *Optional Protocol to the Convention on the sale of children, child prostitution and child pornography* by Andorra, Denmark, Iceland, Italy, Kazakhstan, Morocco, Qatar, the Syrian Arab Republic, Vietnam, and Turkey.¹⁵ The examination of Marshall Islands was postponed till 2007.

In the view of the Committee, the methodology of working in two chambers was successful in reducing the backlog of reports and the time between the submission of the report by the State party and its consideration by the Committee.¹⁶

The Committee held a day of general discussion on the right of the child to be heard and discussed the role of children as active participants in society and the child's right to be heard in judicial and administrative proceedings.¹⁷

¹⁰ Article 2 (1) (d) requires State parties to prohibit and end racial discrimination by any person, group or organisation. Article 4 obliges States to condemn all propaganda and dissemination of ideas based on theories of superiority of one race or group of persons of one colour or ethnic origin. Article 6 requires that the State provide effective protection and remedies against acts of racial discrimination.

¹¹ See *Report of the Committee against Torture*, General Assembly, 61st session, A/61/44, pp. 82 – 123.

¹² *Communication 181/2001*.

¹³ *Communication 256/2004*.

¹⁴ *Communication 278/2005*.

¹⁵ The Committee's concluding observations, State reports and other useful documents are available at www.ohchr.org/english/bodies/crc/sessions.htm. ISHR has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb.

¹⁶ Oral Report by Mr. Jakob Doek, Chairperson of the Committee on the Rights of the Child, 61st session of the General Assembly, 13 October 2006, available at: www.ohchr.org/english/bodies/crc/docs/oral_report_61stga.doc.

¹⁷ The Committee's recommendations are available at www.ohchr.org/english/bodies/crc/docs/discussion/Final_Recommendations_after_DGD.doc.

Committee on the Elimination of all Forms of Discrimination Against Women

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The Committee's concluding comments, State reports and other useful documents are available at: www.un.org/womenwatch/daw/cedaw/. ISHR has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb.

19
Communication 3/2004, available at www.iwraw-ap.org/protocol/views.htm.

20
Requires State parties to prohibit discrimination on the grounds of marriage or maternity and take appropriate measures to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

21
Communication 4/2004, available at www.iwraw-ap.org/protocol/views.htm.

22
Requires State parties to provide access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

23
State parties are obliged to eliminate discrimination in the field of health care and ensure appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

24
Guarantees women the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights.

25
The Committee's concluding observations, State reports and other useful documents are available at www.ohchr.org/english/bodies/hrc/sessions.htm. ISHR has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb

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Report of the Human Rights Committee, General Assembly, 61st session, A/61/40 (Vol. 1), p.19.

27
The decisions of the Committee are available on the treaty body database available at: www.unhchr.ch/tbs/doc.nsf (browse under CCPR and jurisprudence).

28
The decisions of the Committee are available on the treaty body database available at: www.unhchr.ch/tbs/doc.nsf (browse under CCPR and jurisprudence).

The Committee on the Elimination of All Forms of Discrimination Against Women held three sessions in 2006; from 16 January to 3 February 2006 (34th session), 15 May to 2 June 2006 (35th session), and 7 to 25 August 2006 (36th session). The Committee examined reports submitted by Australia, Bosnia and Herzegovina, Cambodia, Cape Verde, Chile, China, Cuba, Cyprus, the Czech Republic, Denmark, the Democratic Republic of the Congo, Eritrea, Georgia, Ghana, Guatemala, Jamaica, Malawi, Malaysia, Mali, Mauritius, Mexico, the Philippines, the Republic of Moldova, Romania, Saint Lucia, Thailand, Togo, Turkmenistan, Uzbekistan, and Venezuela.¹⁸

The Committee continued its discussions towards drafting a general recommendation (general comment) on Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (the Convention) and also another general recommendation on migrant women.

Decisions on individual complaints

In *Dung Thi Thuy Nguyen v. The Netherlands*,¹⁹ the complainant claimed that the Netherlands had violated Article 11 (2) (b)²⁰ of the Convention because an 'anti-accumulation' provision in her invalidity insurance act prevented her from receiving maternity benefits both as a part-time employee and as a co-working spouse in her husband's enterprise. The Committee held that there was no violation of Article 11 as the complainant had not shown that the application of the act was discriminatory towards her on the grounds of marriage or maternity. Three members of the Committee however stated in a dissenting opinion that the anti-accumulation provision may constitute a form of indirect discrimination. In *Andrea Szijjarto v. Hungary*,²¹ the Committee considered a complaint by a Hungarian Roma woman who claimed that she had been subjected to a coerced sterilisation by medical staff at a Hungarian hospital. The Committee held that Hungary had violated Article 10 (h),²² 12,²³ and 16 (1) (e)²⁴ of the Convention by performing the sterilisation surgery without obtaining the complainant's informed consent.

Human Rights Committee

The Committee held three sessions in 2006; from 13 to 31 March 2006 (86th session), 10 to 28 July 2006 (87th session), and 16 October to 8 November 2006 (88th session). During these sessions, the Committee examined reports submitted by Bosnia and Herzegovina, the Central African Republic, the Democratic Republic of Congo, Honduras, Hong Kong Special Administrative Region (China), Norway, the Republic of Korea, Ukraine, and the USA. The Committee also examined a report on Kosovo (Serbia and Montenegro) submitted by the United Nations Interim Administration Mission in Kosovo.²⁵

The Committee also took action under its procedure for dealing with non-reporting States. At its 86th session it considered the measures taken by Saint Vincent and the Grenadines to give effect to its obligations under the *International Covenant on Civil and Political Rights* (ICCPR) without a report from this country and adopted provisional concluding observations. After discussions with San Marino, the Committee decided to postpone its review of this country as San Marino indicated that it would submit a report by 30 September 2006.²⁶

The Committee did not issue any general comments during 2006. It continued to discuss an initial revised draft text of a general comment on Article 14 of the ICCPR (relating to the right to a fair trial).

Decisions on individual complaints

The Human Rights Committee found violations of the Covenant in *Alzery v. Sweden*, *Coleman v. Australia*, *Barney v. Colombia*, *Bazrarov v. Uzbekistan*, *Capellades v. Spain*, *Conde v. Spain*, *D and E v. Australia*, *Garcia Gonzalez v. Spain*, *Korneenko v. Belarus*, *Larrañaga v. Philippines*, *Medjnoune v. Algeria*, *Rajapakse v. Sri Lanka*, *Shchetko v. Belarus*, *Shafiq v. Australia*, *Sinitstin v. Belarus*, *Tarasova v. Uzbekistan*, *Yeo Bum and Myung Jin v. Korea*, and *Zvozkov v. Belarus*.²⁷

In *O'Neill and Quinn v. Ireland*, *Dranichnikov v. Australia*, and *Amador v. Spain*, the Committee held that there had been no violations of the Covenant.²⁸

Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights held two sessions in 2006; from 1 to 19 May 2006 (36th session) and 16 to 24 November 2006 (37th session). The Committee examined reports submitted by Albania, Canada, El Salvador, Liechtenstein, the Former Yugoslav Republic of Macedonia, Monaco, Morocco, Mexico, the Netherlands, and Tajikistan.²⁹

The Committee continued its discussions on a draft general comment on Article 2 (2) of the Covenant dealing with non-discrimination, and a draft general comment on Article 9 on the right to social security. The Committee also held an informal consultation on the impact of international trade on the enjoyment of economic, social and cultural rights.

Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families held two sessions in 2006; from 24 to 28 April 2006 (fourth session) and 30 October to 3 November 2006 (fifth session). The Committee developed its working methods further in 2006 and also started examining reports of State parties. It considered the reports of Mali and Mexico and adopted concluding observations on these reports.³⁰

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The Committee's concluding observations, State reports and other useful documents are available at www.ohchr.org/english/bodies/cescr/sessions.htm. ISHR has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb

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The Committee's concluding observations are available at www.ohchr.org/english/bodies/cmwr/sessions.htm. ISHR has published detailed reports on each country examined by the Committee, which are available at: www.ishr.ch/tmb

Authors

Meghna Abraham, Eléonore Dziurzynski, Michael Ineichen, Claire Mahon, Gergey Pasztor, Chris Sidoti and Gareth Sweeney (Geneva); Alison Graham and Cléa Thouin (New York).

Editors

Eléonore Dziurzynski (copy editor), Meghna Abraham, Alison Graham, and Gareth Sweeney (section editors).

Contributors

Jay Bahadur, Corey Barr, Nicola Brandt, Nicholas Calacouras, Maxence Delchambre, Pauline Egret, George Florea, Valeria Fruzzetti, Jessica Griffiths, Michael Ineichen, Eleni Kartsonaki, Asger Kjaerum, Brigit Morris, Gergey Pasztor, Harini Sivalingham, Arzoo Syeddah, Cléa Thouin, Una Walsh, and Brennan Webert (Geneva); Onyema Afulukwe, Jason Burns, Ean Fullerton, Brie Gettleson, Yasmin Grewal-Kok, Kiley Kane, Kristi Kenyon, Asger Kjaerum, Eva Nudd, Cléa Thouin, Christina Piaia' and Bethany Sousa (New York).

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