

THE GENERAL ASSEMBLY AND HUMAN RIGHTS

The General Assembly is the main deliberative organ of the United Nations (UN). It is composed of representatives of all member States and has a general mandate to discuss and make recommendations on any matters within the scope of the *United Nations Charter*. Under Article 13 of the Charter, the General Assembly is specifically mandated to ‘initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’.

The regular session of the General Assembly runs from the beginning of September to the end of December. During this time, six main committees help the General Assembly in its tasks. Issues related to human rights are generally included in the programme of work of the Third Committee (the Social, Humanitarian and Cultural Committee). After completing their work, these six main committees submit draft resolutions to the General Assembly for final adoption. This section primarily focuses on the human rights debates of the Third Committee. Among other things, it discusses: thematic and country-specific developments and controversies; deliberations over new human rights standards; action taken with regard to the Office of the High Commissioner for Human Rights (OHCHR); the situation of special procedures; and non-governmental organisation (NGO) participation.

OVERVIEW

This was the Third Committee's first session since the creation of the Human Rights Council (the Council) in March 2006. The Human Rights Council was created in March 2006 as a subsidiary body of the General Assembly. It replaced the Commission on Human Rights (the Commission), which was a subsidiary body of the Economic and Social Council (ECOSOC) and as such reported to the General Assembly indirectly via ECOSOC and then the Third Committee. The Council however enjoys a more elevated position in the UN hierarchy with the mandate

to report to the General Assembly. However, it remains unclear whether the Council will follow the Commission's example and continue to report to the Third Committee or, in line with its status, report directly to the General Assembly Plenary. Moreover, since both the Third Committee and the Human Rights Council are subsidiary bodies of the General Assembly there remains numerous questions and concerns about duplication.

Discussions on the interplay between the Third Committee and the Council were exacerbated by the timing of the Council's second

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September to December 2006.

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General Assembly *Resolution 61/173*.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, General Assembly, 61st session, A/61/259 (14 August 2006).

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Operative Paragraph 3, General Assembly *Resolution 61/173*.

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Operative Paragraph 17, *Ibid.*

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'Gender Equality Architecture and UN Reforms' (17 July 2006), available at: <http://www.wedo.org/files/Gender%20Equality%20Architecture%20and%20UN%20Reform0606.pdf#search=%22Gender%20Equality%20Architecture%20and%20UN%20refor%22>. It was commissioned by the Center for Women's Global Leadership (CWGL) and Women's Environment and Development Organisation (WEDO) for submission to the UN Secretary-General's High Level Panel on System-wide Coherence and was endorsed by over 100 national, regional and international organisations including Amnesty International, Asia Pacific Women's Watch, and the Global Fund for Women.

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This recommendation is part of the Panel's Report, which puts forth a series of recommendations to overcome the fragmentation of the UN. See the *Report of the High-level Panel on United Nations System-wide Coherence in the areas of development, humanitarian assistance and the environment*, entitled 'Delivering as one', General Assembly, 61st session, A/61/583 (20 November 2006), available at <http://www.un.org/events/panel/>.

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An Under-Secretary-General of the United Nations (USG) is a senior official within the United Nations system, normally appointed by the General Assembly on the recommendation of the UN Secretary-General for a repeatable term of four years. Many USG's sit on the UN's Senior Management Group (SMG), which is a committee of senior UN managers that serves as the Secretary-General's cabinet and the central policy planning body of the United Nations. Its objective is to ensure strategic coherence and direction in the work of the organisation. The cabinet was approved by the General Assembly in 1997 as part of the reform proposal submitted by Secretary-General Kofi Annan.

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See Women's Environment and Development Organization and Center for Women's Global Leadership, 'Update: UN Reform and the Gender Equality Recommendations' (6 December 2006), available at <http://www.wedo.org/files/UNReform-Update1206.pdf>

session. Given delegations' fears of duplication between the two bodies, the start of the Council's second session just one week before the start of the Third Committee made it difficult for many to decide on their thematic and country-specific priorities. The eventual postponement of the conclusion of the Council's second session to the week beginning 27 November (after the Third Committee had concluded most of its work) did not help matters. In many instances, the relationship between the two bodies appeared to be duplicative with both bodies discussing and adopting similar thematic resolutions.

This new positioning of the UN's premier human rights body within the UN system also brings into question the long-term relevance and added value of the Third Committee. As both are subsidiary bodies of the General Assembly, continued allegations of duplication could undermine the credibility and the perceived usefulness of the Third Committee. Moreover, the relevance of the Third Committee's work could be affected by the Council's review of special procedures and possible changes to their reporting obligations since those special procedures reporting to the Third Committee remain the body's main source of information on human rights violations occurring worldwide.

KEY DEVELOPMENTS AT THE GENERAL ASSEMBLY IN 2006¹

The following section outlines the main discussions and debates at the General Assembly during 2006, with particular reference to the human rights dimensions of its work. It is organised on a thematic and regional basis.

Thematic issues

At its 61st regular session, the General Assembly dealt with a number of thematic human rights issues.

Civil and political rights

This year, the Third Committee considered reports and adopted resolutions on a number of different civil and political rights. For the first time since 2002, it adopted a resolution on **extrajudicial, summary or arbitrary executions**.² The Resolution builds on Commission *Resolution 2005/34* and General Assembly *Resolution 57/214*. Despite opposition from Azerbaijan and many Asian and African States, it addressed extrajudicial executions linked to sexual orientation by calling on all States to protect the right to life of all persons under their jurisdiction. It also urged States to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons and those committed for any discriminatory reason, such as sexual orientation. The Resolution also maintained its call on all States retaining the death penalty to comply with their obligations under relevant provisions of international human rights instruments. This was despite the call from Azerbaijan (supported by many Asian and African States) for the deletion of the reference to States retaining the death penalty.

Deliberations on **torture and other cruel, inhuman or degrading treatment or punishment** centred around the annual report of the Special Rapporteur on torture³. The three main subjects under discussion were the non-admissibility of evidence extracted by torture; the need to uphold the standard terms of reference for fact-finding missions by special procedures; and an increased future focus on gender issues, such as female genital mutilation and stoning of women. The Resolution on torture, introduced by Denmark, builds on Commission *Resolution 2005/39* and General Assembly *Resolution 60/148*. Additions include more explicit reference via a separate paragraph to 'the importance of States ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms'.⁴ The Resolution also acknowledges the entry into force of the optional protocol to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with appreciation and urges States to consider early ratification.⁵ However, some important references were deleted during informal consultations, including a reference to the non-admissibility

of evidence obtained through cruel, inhuman or degrading treatment or punishment and a reference to States' responsibility to prevent violations committed by non-State actors with the consent of the State.

Gender mainstreaming within the UN system

The UN took a step towards addressing the concerns of women's organisations about the UN architecture on gender-related issues. Women's organisations have criticised UN structures dealing with gender issues for being fragmented, under-resourced and under-prioritised: 'They constantly must fight an uphill battle as a result of their low place in organisational hierarchies, small size, limited mandate, and the lack of autonomy and connection to key constituencies'.⁶ These concerns were addressed by the report of the Secretary-General's High-Level Panel for UN System-wide Coherence (Coherence Panel). Released on 9 November 2006, the Report will be considered by the General Assembly in early 2007.

The Coherence Panel's recommendations on reforming the UN's gender equality architecture⁷ incorporate many of the suggestions made by women's organisations and networks. In particular, the Report recommends the establishment of a well-resourced and independent women-specific entity, which would combine the existing Office of the Special Advisor on Gender Issues (OSAGI), the Division for the Advancement of Women (DAW) and the United Nations Development Fund for Women (UNIFEM). It further recommends that the entity have both normative and operational responsibilities through a dual mandate combining both policy and country-level operational functions. The proposed new entity would work closely with governments and civil society organisations and would be led by an Under-Secretary General, thus helping to guarantee influence in UN system-wide decision-making.⁸

Mr. Kofi Annan, the UN Secretary-General tried to fast-track some of the recommendations in the Report, including the creation of an Under-Secretary-General (USG) position to head the new women's agency. The new USG would have had the responsibility for oversee-

ing the consolidation of UNIFEM, OSAGI and DAW into one entity. However, due to opposition to this initiative, the General Assembly will instead enter a longer inter-governmental process next year to consider the Report's recommendations.⁹

The General Assembly is expected to start reviewing and debating the Panel's recommendations in early 2007. Women's groups are urging governments to endorse the Coherence Panel's recommendations on creating stronger gender equality architecture in the UN, and to establish and adhere to a process and timeframe for implementation.¹⁰

Human rights and human responsibilities

Unfortunately references to human responsibilities continued to appear during the General Assembly's 61st session, most noticeably in the interactive dialogues with the special procedures.¹¹ Cuba criticised the report of the Special Representative of the Secretary-General on human rights defenders¹² for not placing enough emphasis on the responsibilities of human rights defenders. Worryingly, the USA requested the Special Rapporteur on migrants to study the responsibility of migrants to adhere to the laws and rules of their destination countries. By asking the relevant special procedures to examine the responsibilities of certain groups of right holders, both States seem to suggest that human rights are conditional upon the fulfilment of certain duties or obligations vis-à-vis the community and/or the State.

Human rights defenders

The General Assembly continued to hear about the precarious situation of human rights defenders worldwide, both via the report of the Special Representative of the Secretary-General on human rights defenders¹³ and the reports of several country-specific mandate holders. The latter drew attention to the precarious situation of human rights defenders in Burundi,¹⁴ Myanmar,¹⁵ the Sudan,¹⁶ the Democratic Republic of Congo,¹⁷ Turkmenistan¹⁸ and Uzbekistan.¹⁹ Delegates also heard from the Special Rapporteur on the promotion and protection of human

10 Women's Environment and Development Organization and Center for Women's Global Leadership, 'Statement on reforming the Gender Equality Architecture of the United Nations', (9 November 2006), available at <http://www.wedo.org/files/UNReformStatement1106.pdf>. This statement was co-signed by over 120 women's and human rights organisations.

11 For several years, States have used the concept of human responsibilities to suggest that human rights are conditional on the performance of duties. It first emerged in 2000, when at the initiative of the Like Minded Group, the former Commission on Human Rights decided to request its Sub-Commission on the Promotion and Protection of Human Rights to undertake a study on the issue of human rights and human responsibilities. (Commission *Resolution 2000/63*). The resulting report on *Human rights and human responsibilities* (E/CN.4/2003/105) challenged the concept of universality of the *Universal Declaration of Human Rights*, and overlooked significant existing international human rights standards referring to responsibilities, including Articles 10, 11, 16 and 18 of the *Declaration on Human Rights Defenders*. Of most concern the attached pre-draft declaration on human social responsibilities contained several articles that seriously challenge and undermine existing human rights standards.

12 *Report of the Special Representative on the situation of human rights defenders*, General Assembly, 61st session, A/61/312 (5 September 2006).

13 *Ibid.*

14 See *Interim report of the independent expert on the situation of human rights in Burundi*, General Assembly, 61st session, A/61/360 (19 September 2006).

15 See *Report of the Special Rapporteur on the situation of human rights in Myanmar*, General Assembly, 61st session, A/61/369 (21 September 2006).

16 See *Report of the Special Rapporteur on the situation of human rights in Sudan*, General Assembly, 61st session, A/61/469 (20 September 2006).

17 See *Report of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo*, General Assembly, 61st session, A/61/475 (28 September 2006).

18 See *Report of the Secretary-General on the situation of human rights in Turkmenistan*, General Assembly, 61st session, A/61/489 (3 October 2006).

19 See *Report of the Secretary-General on the situation of human rights in Uzbekistan*, General Assembly, 61st session, A/61/526 (18 October 2006).

rights while countering terrorism,²⁰ who highlighted the negative impact of 'the war on terror' on freedom of association and peaceful assembly, paying particular attention to the situation of human rights defenders.

In her report, the Special Representative of the Secretary-General on human rights defenders examines recent trends in violations of defenders' right to freedom of assembly, before analysing provisions of the *Declaration on Human Rights Defenders*²¹ and other international human rights instruments that protect this right. She expresses serious concern over the apparent increase in violations of defenders' rights to freedom of assembly. The Special Representative also highlights the particular challenges faced by women human rights defenders, defenders working for the rights of lesbian, gay, bisexual and transgender (LGBT) persons and defenders in conflict situations, and stresses that these groups should be given particular attention and protection. In conclusion, her recommendations focus on State actions to further enhance and ensure full implementation of the right to freedom of assembly. It urges States to properly investigate allegations of excessive use of force by law enforcement officials and to ensure that there is no impunity for harm inflicted to human rights defenders.

The ensuing interactive dialogue with the Special Representative proved to be less confrontational than the one held during the second session of the Council, when Hina Jilani was heavily criticised for allegedly taking action beyond her mandate.²² State delegations focused their comments on a variety of substantive issues relating to the protection of defenders and Ms. Jilani's mandate. No States censured Ms. Jilani's activities under the mandate, and instead delegates commented on a variety of substantive issues relating to the protection of human rights defenders and to the Special Representative's mandate. These included the impunity of State officials and non-State actors for actions directed at human rights defenders, and the use of judicial procedures to prosecute human rights defenders.

This year, Norway did not table a resolution on human rights defenders²³ since the Resolution on human rights defenders is biennial and one was already adopted last year. The issue of human rights defenders however, was brought

up in other resolutions adopted by the General Assembly, including resolutions on extrajudicial, summary or arbitrary executions²⁴ and on the situation of human rights in Myanmar,²⁵ Belarus,²⁶ and the Islamic Republic of Iran.²⁷ These resolutions criticise human rights abuses committed against defenders in the countries concerned and take issue with the criminal prosecution of defenders and impingements on defenders' freedom to pursue their activities.

Rights of the child

This year, the General Assembly focused considerably on the issue of violence against children with the consideration of a UN study on all forms of violence against children, the first comprehensive UN study of this kind and the first global study to engage directly with children.²⁸

The Study provides a global picture of violence against children with an action-orientated perspective on what can be done to prevent and reduce violence against children. It calls on States to prohibit all forms of violence against children, including corporal punishment, harmful traditional practices, and sexual violence. It also strongly recommends that the General Assembly request the Secretary-General to appoint a Special Representative on violence against children who would periodically report to the General Assembly and the Council.

Unfortunately however, the General Assembly did not build on these recommendations. Despite being the subject of informal negotiations, General Assembly *Resolution 61/146* on the rights of the child did not incorporate many of the Study's recommendations. In particular, it failed to provide for the creation of a Special Representative of the Secretary-General on violence against children. Many NGOs believed such a Special Representative was vital in 'ensur(ing) effective follow-up to the Study, maintain(ing) high-level visibility to these crucial issues, and guarantee(ing) that the momentum created by the study is not lost.'²⁹ The mandate holder would have been able to comprehensively address aspects of violence against children currently not covered by existing UN special procedures including violence against boys, peer violence, violence within homes, schools, and care and justice systems. Moreover, unlike a

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See *Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism* General Assembly, 61st session, A/61/267 (16 August 2006).

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The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly, 53rd session, A/RES/53/144, (9 December 1998).

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At the Human Rights Council's second session, Algeria, on behalf of the African Group, strongly criticised the Special Representative for having sent a communication to ECOSOC members regarding their refusal to grant consultative status to three NGOs working on human rights for lesbian, gay, bisexual and transgender (LGBT) persons. For further information please see International Service for Human Rights, *Council Monitor Daily Update*, 22 September 2006, available at http://www.ishr.ch/hm/council/updates/22_September_06.pdf.

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The most recent resolutions on human rights defenders are General Assembly *Resolution 60/161* (A/RES/60/161), and Commission *Resolution 2005/67* (E/CN.4/RES/2005/67).

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General Assembly *Resolution 61/173*.

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General Assembly *Resolution 61/232*

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General Assembly *Resolution 61/175*.

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General Assembly *Resolution 61/176*.

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See *Report of the independent expert for the UN study on violence against children* General Assembly, 61st session, A/61/299 (29 August 2006), available at: <http://www.unviolencestudy.org/>.

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'Letter to the Ambassadors and Permanent Representatives to the United Nations entitled Re: Secretary-General's study on violence against children' (21 September 2006) by Defence for Children International, Human Rights Watch, Global Initiative to End All Corporal Punishment of Children, International Federation of Social Workers, ISPCAN, Save the Children, World Organisation against Torture (OMCT) and World Vision. The letter is available at http://www.crin.org/docs/subgroup_letter2006.doc.

special rapporteur, the Special Representative would have been able to effectively relate to all UN agencies having violence against children as part of their mandates.³⁰

Secret detention

The Third Committee, for the first time, had before it a resolution dealing with the 'inadmissibility of human rights violations through the practice of secret detentions and unlawful

transfers while countering terrorism' (tabled by Belarus). According to Amnesty International, 'The General Assembly has for too long ignored the abhorrent practice of prolonged or indefinite secret detentions of persons held in connection with alleged terrorist offences'.³¹ They endorsed the draft resolution, believing 'the proposed text is an important contribution to attempts to halt and prevent practices of secret detentions and covert transfers which involve participation of a range of countries in at least four continents'.³²

The draft resolution

- Expresses grave concern about the numerous human rights violations stemming from the practice of secret detention, including violations of the right to fair trial and the prohibition against torture and cruel, inhuman or degrading treatment or punishment;
- Urges States to fulfil their obligations under international law and eliminate practices of secret detention and inter-State transfers of detainees;
- Urges States to protect human rights defenders; end all practices of torture and cruel, inhuman or degrading treatment or punishment; end impunity for human rights violations relating to practices of secret detention; and fully cooperate with relevant special procedures and the International Committee of the Red Cross;
- Invites relevant human rights mechanisms to address the issue of secret detention and make recommendations on ways of eliminating practices of secret detention and unlawful transfers.

The draft resolution was eventually withdrawn. When withdrawing the draft resolution, Belarus noted that the Third Committee's attention had now been brought to the issue and indicated that consultations on the draft would continue during the 62nd session of the General Assembly.

Sexual orientation

People continue to experience violations of their human rights based on their real or perceived sexual orientation and gender identity. These violations range from extrajudicial execution, criminal sanctions, police harassment and rape to beatings, forced disappearances and discrimination in education, employment, health and housing. As the international focus shifts away from standard-setting and towards implementation, there are justifiable concerns that the rights of lesbian, gay, bisexual and transgender peo-

ple will remain inadequately protected. While the General Assembly, former Commission on Human Rights and the current Human Rights Council's attention has been drawn to this issue on numerous occasions,³³ none of these bodies has as yet adopted a resolution on the issue. Such a resolution would safeguard the principles of universality and call on States to ensure that all persons are treated as free and equal in dignity and rights, including on the grounds of sexual orientation and gender identity.

At the General Assembly's 61st session, the Secretary-General's report on violence against women³⁴ drew delegates' attention to the violence women may encounter due to social prejudices regarding their sexual orientation, including non-partner sexual violence; sexual enslavement; forced marriage; murder; and incarceration of lesbians for gender identity disorders in mental hospitals. The Report calls on

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The special representatives of the Secretary-General enjoy a higher position in the UN hierarchy than special rapporteurs and as such are able to exert more influence over the whole UN system. One Special Representative (Ms. Radhika Coomaraswamy, the Special Representative for Children and Armed Conflict) for instance sits on the UN Senior Management Group (SMG). The SMG is a committee of senior UN managers that serves as the Secretary-General's cabinet and the central policy planning body of the United Nations. Its objective is to ensure strategic coherence and direction in the work of the organisation.

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Amnesty International 'The Third Committee of the General Assembly must put concern for human rights before politics and vote on the merits of major proposals to strengthen human rights protection before it' (16 November 2006), available at <http://web.amnesty.org/library/index/engior410222006>.

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Ibid.

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Various special procedures have in their annual reports highlighted violations against individuals because of their sexual orientation including the Special Rapporteur on extrajudicial, summary and arbitrary executions, and most recently the Special Representative of the Secretary-General on Human Rights Defenders. For further information please see the following compilation of references: International Commission of Jurists, *International Human Rights References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity*, second updated version (October 2006), available at: http://www.icj.org/IMG/UN_references_on_SOGI.pdf.

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See *Report of the Secretary-General on the in-depth study on all forms of violence against women*, General Assembly, 61st session, A/61/122/Add.1 (6 July 2006), available at http://www.unifem.org/news_events/story_detail.php?StoryID=514.

States to recognise and protect women's right to control their bodies and their sexuality; and develop diverse strategies that take into account the different intersecting factors, including sexual orientation, affecting the type of violence against women. Early drafts of the resolution on violence against women responded to the concerns expressed in this Report by urging 'States to strengthen prevention efforts that address discriminatory practices and social norms, notably with regard to women who need special attention, such as women belonging to minority groups and women who are otherwise discriminated against, including on the basis of HIV status or **sexual orientation**'. References to sexual orientation were unfortunately later removed during the negotiation process.³⁵

³⁵ In early drafts of the Resolution, Operative Paragraph 7 urged States to take action to eliminate all forms of violence against women, and to this end to take positive measures to address the structural causes of violence against women. It also urged States to strengthen prevention efforts that address discriminatory practices and social norms, notably with regard to women who need special attention, such as women belonging to minority groups and women who are otherwise discriminated against, including on the basis of HIV status or sexual orientation.

³⁶ ARC International, the International Service for Human Rights and the International Lesbian and Gay Association, 'NGOs From around the World Celebrate Historic UN Statement on Sexual Orientation and Gender Identity' (5 December 2006).

³⁷ In 1967, the Commission moved beyond its standard-setting role, and took on a human rights monitoring role by creating a number of investigatory mechanisms to examine, monitor and publicly report either on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide (the system of special procedures). Due to their important work in shedding light on the human rights violations committed, concealed or justified by States, these mechanisms face increasing attacks from States from all regional groups, who question the authority and credibility of some special procedures. Such attacks range from individual verbal complaints and criticisms both during and outside the proceedings of the Commission, to the adoption of resolutions targeting the system as a whole.

³⁸ About one third of the special procedures report to the General Assembly via its Third Committee according to the OHCHR, *Fact Sheet N. 27: Seventeen Frequently Asked Questions about United Nations Special Procedures*, available at: www.ohchr.org/english/about/publications/docs/factsheet27.pdf.

Similarly, the Special Representative on human rights defenders brought the General Assembly's attention to the particular challenges faced by defenders working for the rights of LGBT persons. These concerns were followed up by Norway in the ensuing interactive dialogue with the Special Representative, but were not incorporated into any resolution since there was no resolution on human rights defenders this year.

General Assembly *Resolution 61/173* entitled 'Extrajudicial, summary or arbitrary executions' remained the only thematic resolution that addresses human rights violations linked to sexual orientation. Building on previous resolutions of the Commission, it calls on all States to ensure the effective protection of vulnerable groups from extrajudicial, summary or arbitrary executions including persons discriminated against on the basis of sexual orientation.

A joint statement at the Council's third session gave the issue further prominence within international fora. Norway on behalf of 54 States condemned human rights violations directed against people because of their sexual orientation or gender identity and urged the Council to pay due attention to the issue at an upcoming session. In response various human rights organisations welcomed this landmark statement and praised the attention given by the special procedures and other human rights mechanisms to this issue, claiming that 'the era of invisibility is over'.³⁶ However, there still remains a long way to go in ensuring that human rights violations based on sexual orientation and gender identity

receive the international scrutiny and condemnation they deserve.

Special procedures

This year the role of the Human Rights Council's special procedures³⁷ came under particular spotlight. While many special procedures³⁸ continued reporting to the General Assembly, drawing international attention to pressing human rights situations such as in Sri Lanka,³⁹ discussions behind the scenes were to a large extent dominated by the current review of special procedures taking place in Geneva. This review forms part of the Council's review of the mechanisms and mandates of the former Commission on Human Rights and has considerable implications for the whole UN human rights protection system. Some commentators fear that this review presents a clear opportunity for many States to further undermine the effectiveness of the special procedures in drawing international attention to human rights violations committed, concealed or justified by States. At the recent session of the Third Committee, both States and various mandate holders discussed the challenges affecting the current system, the future work and activities of the special procedures, and the role of the Third Committee in this regard.

Last year, the Special Rapporteur on extrajudicial executions attributed the loss of credibility of the Commission to its failure to take up cases in which particular governments have not invited or permitted appropriate access to special procedures.⁴⁰ He called on the Council to address this as one of its first major challenges. During his recent presentation to the Third Committee, the Special Rapporteur built on these sentiments by once again specifically highlighting States' lack of cooperation with the special procedures. He argued that the failure of States to extend invitations to him to visit the country has reached 'critical mass' and observed that eight of these 19 countries were Council members. Rather than addressing this lack of cooperation, he further criticised Council members for devoting their efforts to constraining the current system. Similarly the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regretted that his visit to the Russian Federation was cancelled after the Government could not ensure that he would be allowed to

conduct unannounced visits to detention facilities and hold private meetings with prisoners. He believed this was inconsistent with the 'terms of reference for fact-finding missions by Special Rapporteurs/Representatives of the Commission',⁴¹ whose application have been thoroughly elaborated on in his report to the 62nd session of the Commission.⁴²

Despite the emphasis placed by several special procedures on the importance of State cooperation, resolutions were cautious in their treatment of the issue. The Resolution on torture for instance addressed the importance of State cooperation by calling on States to seriously consider responding favourably to the Special Rapporteur's requests to visit their country and to enter into constructive dialogue with the mechanism. Unfortunately, however, the Resolution does not elaborate further on how States should cooperate with the special procedures by failing to mention and thus give weight to the 'terms of reference'.⁴³ While early drafts of the Resolution called on States to seriously consider responding favourably to the Special Rapporteur's requests to visit their country **in accordance with the standard terms of reference**, the mention of the terms of reference was eventually deleted after a lengthy informal negotiation process.

The controversy surrounding the current system of special procedures and the ongoing review taking place in Geneva was evident throughout the negotiations on the resolutions. Some main sponsors of resolutions refrained from making any recommendations to the relevant special procedure due to fears of prejudging the review. This was the case with Mexico's treatment of its annual resolution on protection of human rights and fundamental freedoms while countering terrorism. The Resolution merely requests all governments to cooperate with the Special Rapporteur and decides that the 62nd session of the General Assembly shall consider the report of the Special Rapporteur. The General Assembly's annual resolution on torture on the other hand provides a set of recommendations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. These include requesting the Special Rapporteur to consider including in his report information on the follow-up by States to his recommendations, visits and communications. While these recommendations were

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The Special Rapporteur on extrajudicial, summary or arbitrary executions warned that Sri Lanka is on the verge of a major crisis. He explained the need for more high-level international involvement in the country along with an international human rights monitoring mechanism to replace the defective national counterpart. Concluding, he called on the General Assembly to establish an international human rights monitoring mission in Sri Lanka. See the *Interim Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, General Assembly, 61st session, A/61/311 (5 September 2006).

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See *Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions*, Commission on Human Rights, 61st session, E/CN.4/2006/53, (8 March 2006). While this Report was originally submitted to the 61st session of the Commission, it was eventually considered by the second session of the Human Rights Council. All reports submitted to the 61st session of the Commission are available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm. ISHR has produced unofficial summaries of these reports, available at <http://ishr.ch/hrm/council/SPs/specialprocedures.htm>.

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The *Terms of reference for fact-finding missions by Special Rapporteurs/Representatives of the Commission on Human Rights* were adopted by the fourth annual meeting of special procedures in 1997. They can be found in Appendix 5 to the report of their fourth meeting entitled *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Follow-Up to the World Conference on Human Rights*, E/CN.4/1998/45 (20 November 1997).

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See *Annual Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Commission on Human rights, 62nd session, E/CN.4/2006/6 (23 December 2005). While this Report was originally submitted to the 62nd session of the Commission, it was considered by the second session of the Human Rights Council.

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These terms of reference are important in evaluating a government's cooperation with the special procedures. An invitation to visit a country on its own is not sufficient. As specified in the terms of reference, governments must, among other things, guarantee special procedures freedom of movement within the whole country and freedom of inquiry.

heavily debated during the informal negotiations, Denmark (the main sponsor) remained adamant that such recommendations would not prejudice the review. The delegation argued that it is the Council that will decide on the continuation of the mandate, and the Third Committee is merely providing recommendations should the mandate be continued.

Violence against women

The Third Committee extensively discussed the issue of violence against women. In addition to hearing the oral report of the Special Rapporteur on violence against women, members of the Third Committee also had before them the Secretary-General's in-depth study on all forms of violence against women.⁴⁴

The Study draws from existing research and knowledge at the national, regional and global levels, and was prepared through extensive consultations with States, relevant UN entities, experts, regional organisations and NGOs.⁴⁵ It outlines the broad context within which violence against women occurs and discusses its causes and consequences. It particularly recognises that the intersection of gender with other factors such as sexual orientation shapes the forms of violence women can experience.⁴⁶ The Study establishes States' responsibility for preventing and addressing violence against women, whether committed by State or non-State actors, and sets out a number of recommendations for action by different actors.

Women's organisations welcomed the Study for classifying abuse against women (whether in the home or elsewhere) as a human rights violation and settling any outstanding debate on the matter. Commentators praised it for clearly establishing the obligation of States to hold perpetrators accountable and protect women from violence. What now remains to be seen is whether governments and the UN will commit to acting on the Study's conclusions and recommendations.

The General Assembly's Resolution on violence against women incorporates a few of the Study's recommendations. Amongst other things it requests: the Secretary-General to establish a coordinated database on the extent, nature and consequences of all forms of violence against

women; and the Statistical Commission to develop and propose (in consultation with the Commission on the Status of Women and building on the work of the Special Rapporteur on violence against women) a possible set of indicators to assist States in assessing the scope, prevalence and incidence of violence against women. Sponsors of the Resolution also maintained language from the *HIV/AIDS Political Declaration*⁴⁷ urging States to ensure that women can exercise control over their sexuality to protect themselves from HIV infection. However, due to strong objections by the Russian Federation in particular, the sponsors weakened the original draft text by merely 'taking note' of the Study and 'considering with interest' its recommendations rather than welcoming or endorsing them.

The failure of the General Assembly to endorse or even welcome the Study's recommendations questions the commitment of States to further build and act on its findings. Nonetheless, the Study remains a tool in strengthening governments' accountability for protecting women against violence. It contains extensive recommendations directed at both member States and various UN bodies and programmes that can be used by human rights activists to pressurise governments and other relevant actors, including the incoming UN Secretary-General, to fulfil their responsibilities to protect women from violence.

World Conference against Racism

This year, the question of appropriate follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (World Conference against Racism) and the role of the Council proved to be particularly controversial.

South Africa proposed in its draft resolution⁴⁸ on the follow-up to the World Conference against Racism that the Human Rights Council undertake preparations for a 2009 review conference on the implementation of the *Durban Declaration and Programme of Action* and formulate a concrete plan by 2007. Many delegations (particularly the European Union) saw this as unacceptable given the Council's tremendous work schedule in 2007. Following extensive negotiations between South Africa and the EU, a compromise was found suggesting that the Council make use of its existing

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See Report of the Secretary-General on the in-depth study on all forms of violence against women, General Assembly, 61st session, A/61/122/Add.1 (6 July 2006), available at http://www.unifem.org/news_events/story_detail.php?StoryID=514. The terms of reference for this study can be found in General Assembly Resolution 58/185.

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The NGOs in the Task Force included Amnesty International, Asia Pacific Forum on Women, Law and Development, Center for Reproductive Rights, Center for Women's Global Leadership, Latin American and Caribbean Committee for the Defense of Women's Rights, Equality Now, African Women's Development and Communication Network, European Information Centre Against Violence, Human Rights Watch (Women's Rights Division), International Gay and Lesbian Human Rights Commission, International Indigenous Women's Forum, NGO Working Group on Women, Peace and Security, Open Society Institute (Network Women's Program), Women in Law and Development in Africa and Women's Commission for Refugee Women and Children.

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It documents that women may encounter violence based on their sexual orientation, including non-partner sexual violence, sexual enslavement, forced marriage and murder, as well as incarceration for gender identity disorders in mental hospitals by family or community members.

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General Assembly Resolution 60/262.

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See General Assembly Resolution 61/149 on the Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, available at <http://www.un.org/News/Press/docs/2006/ga10562.doc.htm>.

mechanisms relating to the follow-up to the World Conference against Racism.⁴⁹

Despite these extensive negotiations in New York, the African Group tabled a resolution at the third session of the Council mandating the Council to act as a Preparatory Committee for the 2009 review conference and hold an organisational session of one week in May 2007. Coinciding completely with discussions in New York, this Resolution was tabled after the Third Committee's adoption of its own draft resolution⁵⁰ on the follow-up to the World Conference against Racism but before its final adoption by the General Assembly. In spite of protests from key States including the EU members, the African Group and in particular South Africa remained adamant in refusing to consider any significant changes to the text and the Council adopted the Resolution.

The tabling and adoption of this Resolution at the Council was in complete disregard to, and undermined and pre-empted, the negotiations in New York. It further exemplifies the duplication occurring between the Third Committee and the Council on certain issues.

New human rights standards

In December 2006, the General Assembly adopted two new human rights standards, while controversially delaying action on a third. The first session of the Council built on the standard-setting legacy established by the former Commission on Human Rights by sending two new and significant draft human rights instruments to the General Assembly for adoption, namely the *Convention for the Protection of All Persons from Enforced Disappearance* and the *Declaration on the Rights of Indigenous Peoples*. Moreover the General Assembly also had before it the *Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*.

The Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities

To much acclaim, the General Assembly adopted the *Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities* during its 61st session.

Despite clear principles of non-discrimination, persons with disabilities have seen their rights ignored and commonly violated. Examples of this worldwide deprivation and violation of rights range from forced sterilisation and sexual exploitation to denial of voting rights and lack of access of public services. In his report to the Third Committee, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea⁵¹ found that persons with disabilities are sent away and detained in areas or camps known as 'Ward 49' with harsh and subhuman conditions.

In 2001, the General Assembly established an Ad Hoc Committee to draft an international convention to promote and protect the rights and dignity of persons with disabilities.⁵² While most of the negotiations went smoothly, a number of issues were subject to more heated discussion. These included access to sexual services and reproductive rights; the definition of disability; the definition of the term 'legal capacity'; the insertion of the term 'foreign occupation' in the text; and the mandate of a separate monitoring body. With regard to the latter, compromise was eventually found by drafting an optional protocol that would stipulate the mandate of the monitoring body. After eight meetings, the Ad Hoc Committee adopted both the draft convention and optional protocol *ad referendum*⁵³ and transmitted it to the General Assembly for adoption. The General Assembly then adopted both instruments by consensus.

49 These mechanisms are the Working Group on the effective implementation of the Durban Declaration and Programme of Action, the Working Group of Experts on People of African Descent and the Group of Independent Eminent Experts. For further information on these please see <http://www.ohchr.org/english/issues/racism/index.htm>.

50 See General Assembly *Resolution 61/149* on the Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, available at <http://www.un.org/News/Press/docs/2006/ga10562.doc.htm>.

51 A/61/349 (15 September 2006).

52 See General Assembly *Resolution 56/168*.

53 Adoption '*ad referendum*' refers to the provisional adoption of a convention by the Ad Hoc Committee. The Ad Hoc Committee will then forward it to the General Assembly, which has the authority to formally adopt the text.

The Convention

- Establishes a set of general principles and obligations including the principles of non-discrimination and effective participation in society to be observed by State parties;
- Clarifies the obligations of State parties in a number of specific areas, including women and children with disabilities; awareness raising; accessibility; equal recognition before the law; access to justice; education; participation in political and public life; and national implementation and monitoring;
- Creates a Committee on the Rights of Persons with Disabilities (the Committee) with the mandate to monitor State parties' compliance with the Convention through consideration of periodic reports submitted by State parties.

The Optional Protocol

- Mandates the Committee to receive and consider individual and group complaints regarding alleged violations of the Convention committed by State parties;
- Mandates the Committee to conduct confidential investigations of allegations regarding grave or systematic violations of the Convention, if allowed, through country visits.

The adoption of the Convention and the optional protocol is just the first of many steps to be taken towards the effective enjoyment of human rights for persons with disabilities. States must now sign and ratify the two instruments once they have been opened for signature in New York on 30 March 2007. The Convention will enter into force on the 30th day after the 20th ratification. Providing the Convention has already entered into force, the optional protocol will enter into force on the 30th day after the tenth ratification.

In their comments on the new Convention, disability organisations suggested that disabled persons be included in the membership of the monitoring Committee. This would be an appropriate follow-up to the very inclusive approach taken throughout the negotiations on this instrument. It would also be fully in keeping with the motto of disability organisations that 'there shall be nothing about us without us'.

Jurists, 'The adoption of the Convention constitutes a historical step of high importance in the fight against enforced disappearances'.⁵⁴

It marks a significant point in the campaign of the families of the disappeared and human rights non-governmental and civil society organisations for an international standard to address the grave crime of enforced and involuntary disappearances. The Convention fills the gaps in the international legal framework on this issue by creating both comprehensive legal standards and a mechanism for dealing with enforced disappearances.

The Convention for the Protection of All Persons from Enforced Disappearance

In a landmark initiative, the General Assembly adopted the *Convention for the Protection of All Persons from Enforced Disappearance*. According to Federico Andreu-Guzmán, Deputy Secretary General of the International Commission of

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International Commission of Jurists, 'Third Committee of The General Assembly of the United Nations adopts Convention on Enforced Disappearances: A Historical Moment in the Promotion and Protection of Human Rights' (14 November 2006), available at: http://www.icj.org/news.php3?id_article=4050&lang=en.

The Convention

- Classifies enforced disappearance as an international crime and provides that enforced disappearances cannot be justified in any circumstances;
- Recognises the right of victims (including the disappeared person and his/her family) to know the truth regarding the circumstances of the enforced disappearances, the fate of the disappeared person, and the progress and results of any investigation;
- Requires State parties to incorporate a specific crime of 'enforced disappearance' in their national laws; investigate complaints and reports of enforced disappearance and bring those responsible to justice; and provide safeguards against enforced disappearances, judicial remedies and reparation and compensation;
- Establishes a Committee on Enforced Disappearances. This Committee, in addition to having the usual functions of a treaty monitoring body, such as reviewing State party periodic reports and considering individual and inter-State complaints, will be able to both undertake field inquiries and bring situations of widespread and systematic practice of enforced disappearance to the attention to the General Assembly.

The adoption of this Convention however should only be seen as the first of many steps to be taken in protecting all persons from enforced disappearances. States must now sign and ratify the instrument to enable its entry into force as soon as possible. The Convention will enter into force on the 30th day after the 20th ratification.

The Declaration on the Rights of Indigenous Peoples

In 2006, the Third Committee had before it the **draft declaration on the rights of indigenous peoples** for consideration and final adoption. For over 20 years, different UN bodies and indigenous peoples have worked together, drafting a normative standard bridging the gap in existing international human rights law with regard to the rights of indigenous peoples. Formal negotiations on a draft declaration began in 1995 when the Commission created the Working Group to draft a Declaration on the Rights of Indigenous Peoples. In 2006, with consensus remaining unlikely on several controversial provisions relating to self-determination, lands, territories, and resources, the Working Group's Chairperson presented a Chair's text⁵⁵ to the 62nd session of the Commission to be forwarded to the General Assembly. Consideration of this text was eventually deferred to the Council, which forwarded it to the General Assembly in June 2006 by a vote of 30 in favour, two against, and 12 abstentions.⁵⁶

The controversy that followed the drafting of the declaration was evident throughout the Third Committee's proceedings. Despite supporting the declaration at the Council, the African Group surprised many commentators by tabling an amendment to delay and reopen discussions on the declaration. Despite attempts by Peru and the co-sponsors to reach consensus language, key members of the African Group remained adamant in wishing to renegotiate the text. In its introduction of the amendment, Namibia argued that a number of the draft declaration's provisions contradicted the national constitutions of a few African countries. Given the importance of the declaration, it considered this request for more time to negotiate the text as fair and reasonable. The amendment was adopted by the Third Committee by 82 votes in favour, 67 against, and 25 abstentions. Those supporting the amendment were scattered around all five regional groups with the strongest support coming from the Asian Group⁵⁷ and CARICOM⁵⁸.

As well as undermining the recently created Human Rights Council, the decision to reopen discussions jeopardises the eventual adoption of this important instrument. Since the already extensive negotiations have not brought about consensus, there is little reason to believe that more time will make a difference. In fact, reopening discussions could considerably weaken the existing text. Moreover, the amendment also failed to explicitly call on the General Assembly to adopt the draft declaration by the end of its

⁵⁵ While progress was made at the Working Group's 11th and final session (Geneva, 5 to 16 December 2005 and 30 January to 3 February 2006), with States provisionally agreeing on a vast majority of the articles in the draft, by the end of the session, consensus was not reached on several outstanding issues. These concerned the final wording of Article 45 and several articles in relation to lands, territories, and resources. The Chair stated that this would be the final meeting of the Working Group and that he would prepare a summary text based on what he believed was the middle ground. He would then present this Chair's text to the 62nd session of the Commission for approval. Some States such as the EU and Spain, expressed confidence in the ability of the Chair to produce a balanced text, while other States expressed concern with this process.

⁵⁶ For further information on the deliberations at the Human Rights Council, please see <http://www.ishr.ch/hrm/HRC/Session1/Item4WGIPs.pdf>

⁵⁷ The main supporters within the Asian Group were States also members of the Arab League.

⁵⁸ The Caribbean Community and Common Market.

61st session. Instead it ambiguously stipulated that the General Assembly must conclude its consideration of the issue by then. Both human rights and indigenous organisations were dismayed over this delay, legitimately fearing that it will derail the process altogether⁵⁹.

Report of the Human Rights Council

Delegations extensively debated how this new body should report to the General Assembly. This decision rested with the General Committee⁶⁰ who would then make a recommendation to the General Assembly. Although appearing merely bureaucratic, the decision on how the Human Rights Council should report to the General Assembly has far-reaching implications for the status of the Council within the UN system. By reporting to the Third Committee, the Council would be continuing the practice of its predecessor the Commission on Human Rights. As a subsidiary body of ECOSOC, the Commission had a much lower place in the UN hierarchy and reported to the General Assembly via the Third Committee. Continuing this practice would undermine the efforts made during the reform process to ensure that the status of the Human Rights Council reflects the importance of human rights at the institutional level.

States such as those from the African Group, Cuba, the Russian Federation and China wanted the Council to report to the Third Committee, while other States wanted the Council to report directly to the Plenary of the General Assembly, in line with its status. The decision was complicated by the Council's transmission to the General Assembly of two draft human rights instruments for adoption, in particular the draft declaration on the rights of indigenous peoples, which did not enjoy consensus. The eventual compromise agreed by the General Committee, and subsequently the General Assembly, stipulated that the Council's report would be considered by both the General Assembly and the Third Committee with the 'understanding that the Third Committee would consider and act on all recommendations of the Human Rights Council to the General Assembly, including those that deal with the development of international law in the field of human rights'.⁶¹

On the basis of this decision, the African Group delayed the Third Committee's consideration of the Council's report until Council President De Alba could address the body. To prevent any attempts to undermine the status of the Council, key delegations⁶² ensured that Ambassador De Alba addressed the General Assembly before addressing the Third Committee. They further stipulated that the address to the Third Committee should focus only on the Council's operational recommendations to the General Assembly.

Since this was an interim decision of the General Assembly, the issue will be revisited next year.

Office of the High Commissioner for Human Rights

This year, the Office of the High Commissioner for Human Rights was the subject of increased discussion and controversy at the Third Committee. The 61st session of the General Assembly saw attempts by some State delegations to micro-manage the work of the OHCHR.

While the High Commissioner has always been fairly autonomous in organising and developing the work of the Office, a lack of adequate resources has significantly limited the Office's capacity. In calling for a strengthened UN human rights framework and in particular the OHCHR, the Secretary-General requested the High Commissioner to present a Plan of Action⁶³ outlining a strategic vision for the future direction of the OHCHR in May 2005. The OHCHR's initial draft strategic plan for the years 2008 to 2009 (otherwise known as Programme 19) builds on this Plan of Action and makes explicit the OHCHR's work on peace and security, country engagement, and partnerships with civil society. It further elaborates on the emphasis placed by the *World Summit Outcome Document* on peace and security issues, development, and human rights. Significantly, the adopted Programme 19 forms part of the UN's strategic framework and will be used to hold the OHCHR accountable for its actions. It will also be the basis for budget decisions.

Previously, Programme 19 was dealt with by the Committee for Programme and Coordination⁶⁴ (CPC). Upon adoption by the CPC, it passed to the General Assembly for adoption as part of

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For further information and the statements mentioned, please see <http://www.ishr.ch/About%20UN/Reports%20and%20Analysis/CHRWG/WGDDIP/index.htm>.

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The General Committee makes decisions on organisational matters, which are then submitted to the General Assembly for adoption. It does not decide on any political questions. The General Committee is composed of the President and 21 Vice-Presidents of the General Assembly and the Chairmen of the six Main Committees.

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See A/61/250/Add.2 (25 October 2006).

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Liechtenstein was particularly active on this issue.

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The OHCHR Plan of Action: *Protection and Empowerment* (May 2005), available at <http://www.ohchr.org/english/planaction.pdf>.

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For more information on the Committee for Programme and Coordination please see <http://www.un.org/ga/cpc>.

the UN's entire strategic framework. This year however, the CPC referred both Programme 19 and amendments tabled by Cuba to the Third Committee for its consideration. Clearly fearing increased links between the OHCHR and the Security Council, Cuba deleted any reference to the OHCHR's work with peace and security. Cuba's amendments also target the High Commissioner's identification of country engagement as a key strategy for the OHCHR, and the OHCHR's relationship with NGOs. As a counterweight to these amendments, the EU tabled its own amendments and an intense informal negotiation process was initiated.

The resulting document maintains many of its original references to peace and security. Importantly, it specifies that the OHCHR will integrate a human rights perspective and develop methodologies to facilitate the inclusion of all human rights in UN programmes and activities, including on peace and security. While the damage was limited, the debate clearly demonstrated the determination of some States to influence the work of the OHCHR and specifically to limit any inter-linkages between human rights and peace and security issues.

Individual country situations

Echoing previous discussions at the former Commission on Human Rights, deliberations at the 61st session of the General Assembly on country human rights situations were particularly controversial, with the Third Committee coming under increased criticism for being selective, politicised, and applying double standards.

As early as 1946, the General Assembly established that human rights situations in specific countries are a legitimate concern of the international community by adopting a resolution on the Treatment of Indians in the Union of South Africa.⁶⁵ Since then, it has adopted resolutions on the human rights situations in a large number of countries, including Afghanistan, Cambodia, Cuba, the Democratic Republic of Congo, the Former Yugoslavia, Iran, Myanmar, Nigeria, and Rwanda.

The role of the General Assembly in adopting country-specific resolutions is increasingly being

undermined by certain States, such as Cuba, Pakistan, and the Sudan, who call upon the Third Committee to avoid politicisation, selectivity, and double standards. At the General Assembly's 60th session, a successful use of a procedural motion (no-action motion⁶⁶) prevented the adoption of a resolution on the situation of human rights in the Sudan. Moreover certain States unsuccessfully tried to use no-action motions to block consideration of four country-specific human rights resolutions on Iran, Myanmar, Turkmenistan and Uzbekistan. In 2006, several States again tried to use no-action motions to prevent the discussion and adoption of several country-specific resolutions with varying degrees of success. They used the creation of the Council to increase their arguments against country resolutions, drawing attention to the apparent commitment of the international community to avoid selectivity and politicisation. Further adding to this momentum, Cuba repeatedly called attention to the September 2006 Summit Conference of the Non-Aligned Movement (NAM) where heads of States or governments re-emphasised that the exploitation of human rights for political purposes, including selective targeting of individual countries for extraneous considerations, which is contrary to the Founding Principles of the Movement and the *UN Charter*, should be prohibited.⁶⁷

In this vein, Belarus controversially tabled a resolution entitled 'Promotion of equitable and mutually respectful dialogue on human rights'. The Resolution stresses the need to avoid politically motivated and biased country-specific resolutions on the situation of human rights.⁶⁸ Following its adoption by the Third Committee, many States invoked selected elements of the text in their arguments against the country-specific resolutions currently under consideration by the Third Committee and subsequently the General Assembly.

While key delegations such as the EU appeared keen to maintain momentum in the ability of the Third Committee to adopt country-specific resolutions, they were reluctant to duplicate or undermine the work of the Council. They appeared to be playing a waiting game, taking stock of what was happening at the Council before deciding which country resolutions to put forward at the General Assembly. In the end, the EU only tabled country resolutions on the Democratic People's Republic

⁶⁵ See General Assembly *Resolution 44(I)* (1946), available at <http://www.un.org/documents/ga/res/1/ares1.htm>.

⁶⁶ A successful no-action motion is a procedural motion preventing the body from taking further action on an issue, including voting on a resolution, thus preventing the issue from being substantively considered. The use of this procedure is deplored by both NGOs and some governmental delegates, including the EU, for violating several key principles namely non-selectivity, impartiality and transparency. While no-action motions have been commonly used during the deliberations of the former Commission on Human Rights, they have only recently been used at the General Assembly to gag discussions on certain human right situations.

⁶⁷ See Paragraph 234.6, Final Document 14th NAM Summit, Havana, Cuba 11 – 16 September 2006.

⁶⁸ See Operative Paragraph 4, General Assembly *Resolution 61/166*.

of Korea (DPRK) and Myanmar, while the USA tabled resolutions on Belarus and Uzbekistan, and Canada tabled a resolution on Iran. Iran tabled a resolution on the 'situation of indigenous peoples in Canada', and Belarus tabled a resolution on the 'situation of democracy and human rights in the United States of America'.

Africa

Despite considering several reports dealing with the human rights situation in different African countries, the General Assembly did not adopt a human rights resolution on an African country.

The Third Committee considered country reports on the human rights situation in Burundi,⁶⁹ the Democratic Republic of Congo,⁷⁰ and the Sudan.⁷¹ These Reports drew delegations' attention to serious human rights abuses including: violations of the right to life and the right to physical integrity; arbitrary detention; sexual violence; and torture and other cruel, inhuman and degrading treatment.

Several thematic reports and presentations also drew attention to particular situations in African countries. The Special Rapporteur on extrajudicial, summary and arbitrary executions for instance briefly touched upon his recent visit (June/July 2005) to Nigeria and the report of this mission. The Report concluded that serious problems exist regarding extrajudicial executions carried out by the police, security forces, and vigilante groups.⁷² The Special Representative of the Secretary-General for Children and Armed Conflict drew attention to the situation of internally displaced persons in Darfur, the Sudan. She observed, 'the international community has witnessed alarming levels of sexual violence, often as a deliberate strategy of humiliation and ethnic cleansing ... especially against the large populations of internally displaced girls and women.'⁷³

Asia

This year the General Assembly adopted resolutions on the human rights situation in the DPRK, Iran, Myanmar and Palestine.⁷⁴ It also adopted a resolution on the human rights situation arising from the recent Israeli military operations in Lebanon. While the USA tabled a resolution on

the situation of human rights in Uzbekistan, the successful adoption of a no-action motion prevented it from being voted on by the Third Committee and transmitted to the General Assembly for final adoption. The Third Committee also heard information on the human rights situation in other Asian countries.

The Resolution on the DPRK⁷⁵ builds on General Assembly *Resolution 60/173*. It repeats its strong concern over the continuing refusal of the DPRK to recognise and cooperate with the Special Rapporteur and continuing reports of a wide range of severe human rights violations, including torture and other cruel inhuman or degrading treatment or punishment; public executions; extrajudicial and arbitrary detention; and the 'all pervasive and severe restrictions on the freedom of thought, conscience, religion, opinion and expression'. In response to the report of the Special Rapporteur on the DPRK⁷⁶, the Resolution also expresses serious concern over the continuing reports of violations of the human rights of persons with disabilities, in particular the use of collective camps. It strongly urges the Government to implement fully the measures provided in relevant resolutions of the General Assembly and the Commission on Human Rights, as well as the recommendations provided by the special procedures and treaty-monitoring bodies. It also requests the Secretary-General to submit a comprehensive report on the situation to the General Assembly's 62nd session, and the Special Rapporteur to report on his findings.

The Resolution on Myanmar⁷⁷ requests the Government to end: the systematic violation of human rights in Myanmar; military operations targeting civilians in ethnic areas; the continuing recruitment and use of child soldiers; the systematic forced displacement of large numbers of persons and other causes of refugee flows to neighbouring countries; and impunity. It further asks the Government to: release all political prisoners immediately and unconditionally; lift all restraints on peaceful political activity; and to cooperate fully with the Special Rapporteur and other UN bodies and organs and humanitarian organisations. The Secretary-General is to report on the implementation of this Resolution to the General Assembly's 62nd session.

Canada again tabled a resolution on the situation of human rights in Iran. Following the rejec-

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Note by the Secretary-General transmitting the interim report of the independent expert on the situation of human rights in Burundi, General Assembly, 61st session, A/61/360 (19 September 2006).

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Report of the independent expert on the situation of human rights in the Democratic Republic of the Congo, General Assembly 61st session, A/61/475 (28 September 2006).

71

Report of the independent expert on the situation of human rights in the Sudan, General Assembly, 61st session, A/61/475 (20 September 2006).

72

Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions on his mission to Nigeria, Commission on Human Rights, 62nd session, E/CN.4/2006/53/Add.4 (7 January 2006). While this report was originally submitted to the 62nd session of the Commission, it was considered by the second session of the Human Rights Council.

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Report of the Special Representative of the Secretary-General for Children and Armed Conflict, General Assembly, 61st session, A/61/275, (17 August 2006), Paragraph 14.

74

The resolutions on Belarus, Iran and Myanmar were adopted following the rejection of no-action motions at both the Third Committee and the General Assembly.

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General Assembly *Resolution 60/174*

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Note by the Secretary-General transmitting the interim report of the independent expert on the situation of human rights in Burundi, General Assembly, 61st session, A/61/349 (15 September 2006)

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General Assembly *Resolution 61/232*

tion of a no-action motion, the Resolution was adopted by the General Assembly by 72 votes in favour and 50 against, with 55 abstentions. The Resolution⁷⁸ repeats much of the language used in the General Assembly's previous resolution on Iran.⁷⁹ It expresses concern over human rights violations including harassment, intimidation and persecution of human rights defenders, journalists, and NGOs; the persistent failure to comply fully with the international standards in the administration of justice; the continuing use of torture and other cruel, inhuman or degrading treatment; the continuing of public executions; the continuing violence and discrimination against women and girls and ethnic and religious minorities. It makes several recommendations to the Iranian Government and also encourages the relevant thematic special procedures to visit the country.

Numerous resolutions were adopted by the General Assembly on the **Occupied Palestinian Territories**. The Fourth Committee (the Special Political and Decolonization Committee⁸⁰) put forward several resolutions that were subsequently adopted by the General Assembly. These included resolutions on: Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem⁸¹; Israeli settlements in the Occupied Palestinian Territory including East Jerusalem, and the occupied Syrian Golan⁸²; *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War*, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories⁸³; and the Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.⁸⁴ The Third Committee sent a resolution on the right of the Palestinian people to self-determination to the General Assembly for its final adoption, which merely updated the same-titled resolution adopted in 2005.⁸⁵

In the presentation of his report to the Third Committee, the Special Rapporteur on extrajudicial, summary and arbitrary executions highlighted the urgent situation in Sri Lanka and called on the General Assembly to establish an international human rights monitoring mission in Sri Lanka. The Third Committee also had

before it the report of the High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in **Nepal**.⁸⁶ The Report examines improvements in the human rights situation in Nepal since the April 2006 protests,⁸⁷ as well as ongoing human rights violations. It identifies several remaining challenges including impunity, deep-rooted discrimination, and other abuses against vulnerable groups.

Eastern Europe

For the first time, the General Assembly considered and adopted a resolution on the situation of human rights in Belarus.⁸⁸ The Resolution expresses deep concern over a number of human rights concerns, including: the Government's failure to cooperate with all mechanisms of the Council; the continuing and expanding criminal prosecutions, lack of due process and closed political trials of leading opposition figures and human rights defenders; the continued harassment and detention of Belarusian journalists covering local opposition demonstrations; and the persistent reports of harassment and closure of NGOs, national minority organisations and trade unions, among others. It gives a series of recommendations urging the Government to address these human rights concerns, and insists that it cooperates fully with all of the Human Rights Council's mechanisms.

Latin America and the Caribbean

The human rights situation in Latin American and Caribbean countries did not receive much attention by the Third Committee this year.

North America

Despite their outspoken opposition to country-specific resolutions, Iran and Belarus tabled resolutions on the 'situation of indigenous peoples in Canada,' and the 'situation of democracy and human rights in the United States of America' respectively. The Third Committee however rejected both resolutions and they were thus not transmitted to the General Assembly for final adoption.

⁷⁸ General Assembly Resolution 61/176

⁷⁹ General Assembly Resolution 60/171

⁸⁰ For further information on the Fourth Committee please see <http://www.un.org/ga/61/fourth/fourth.shtml>.

⁸¹ General Assembly Resolution 61/117.

⁸² General Assembly Resolution 61/116.

⁸³ General Assembly Resolution 61/115.

⁸⁴ General Assembly Resolution 61/114.

⁸⁵ General Assembly Resolution 60/152.

⁸⁶ A/61/374 (22 September 2006).

⁸⁷ On 5 April 2006, the Seven-Party Alliance launched a four-day strike, which turned into a 19-day protest movement.

⁸⁸ General Assembly Resolution 61/175

The draft resolution on the 'situation of indigenous peoples in Canada'⁸⁹ expressed concern about the situation of indigenous peoples and immigrants in Canada, especially in relation to discrimination in the criminal justice system and inequalities in attainment of economic and social rights. It called on the Canadian Government to change its immigration laws and ensure full access to an effective remedy for all victims of discrimination. Given NAM's official position regarding country-specific resolutions,⁹⁰ the Resolution was not co-sponsored and there was little discussion before the Third Committee took action on the text. The Third Committee rejected the draft resolution by six votes in favour⁹¹, 107 against, and 49 abstentions.

The draft resolution on the situation of democracy and human rights in the USA⁹² expressed deep concern and dismay over *inter alia*: the state of the electoral system in the USA; continued violation in its use of the death penalty with respect to minors and the mentally ill; and the impact of its counter-terrorism measures on the enjoyment of human rights. It also made a series of recommendations to the USA, including inviting relevant special procedures to visit all places of detention and granting them unlimited access to all detention camps; taking urgent measures to bring national security legislation in compliance with the USA's obligations under the relevant international standards; and implementing a zero-tolerance policy on torture. The Third Committee rejected the draft resolution by six votes in favour⁹³, 114 against, and 45 abstentions.

NGO participation

Despite having clear relevance for human rights activists worldwide through its work in adopting human rights standards and resolutions and most recently creating the Council, the General Assembly has at best limited opportunities to hear from the organisations, individuals and coalitions working with human rights at the local, national, regional, and global levels. This year, while NGOs could make presentations during the General Assembly's consideration of the *Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*, possible NGO input into discussions and deliberations remained marginal.

In comparison with the former Commission on Human Rights and the newly created Council, NGO participation at both the General Assembly and the Third Committee remains very limited. While both the Council and the Third Committee are subsidiary bodies of the General Assembly, NGO participation within the two different bodies differs considerably. NGO involvement at the Council is provided for by General Assembly *Resolution 60/251*, which stipulates that the Council must base its arrangements for NGO participation on ECOSOC *Resolution 1996/31* and the practices employed by the Commission.⁹⁴ In contrast, there are no current stipulations for NGO participation at the Third Committee or the General Assembly, and NGO engagement is limited to bilateral meetings with key State delegations in the corridors. This also stands in contrast to the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, which allowed for extensive NGO participation throughout the negotiation process.

There have been calls for change regarding NGO participation at the General Assembly. In the *Report of the Secretary-General on the implementation of the Report of the Panel of Eminent Persons on United Nations–Civil Society Relations*,⁹⁵ Mr. Annan believed in the merit of opening the regular work of the General Assembly to increased participation by accredited NGOs. Moreover, his support of a single system of NGO accreditation for all UN intergovernmental bodies, including the General Assembly and ECOSOC conferences, has gained more pertinence following the creation of the Council. Since the Council is a subsidiary body of the General Assembly, there has been increased speculation over a possible shift of the accreditation process from the current ECOSOC-based system to a General Assembly-based system.

The importance of effective NGO participation is clear. As Secretary-General Kofi Annan has specified, 'the engagement of civil society has clearly enhanced the legitimacy, accountability and transparency of intergovernmental decision-making'.⁹⁶ Hopefully, the extensive participation facilitated by some of the General Assembly's subsidiary bodies can be used to help pave the way to achieving broader participation at the General Assembly itself.

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A/C.3/61/L.43 (2 November 2006).

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At NAM's 14th Summit Conference the heads of State or governments 're-emphasised that the exploitation of human rights for political purposes, including selective targeting of individual Countries for extraneous considerations, which is contrary to the Founding Principles of the Movement and the UN Charter, should be prohibited.' See Paragraph 234.6, Final Document 14th NAM Summit, Havana, Cuba 11 – 16 September 2006.

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Belarus, Cuba, the DPRK, Iran, Myanmar, and Syria.
92 A/C.3/61/L.42.

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Belarus, Cuba, the DPRK, Iran, Myanmar, and Syria.

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While the Human Rights Council can review and revise the rules for the participation of NGOs, under *Resolution 60/251* any change 'should ensure the most effective contribution' of NGOs.

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A/59/354 (13 September 2004), available at: <http://www.un-ngls.org/edited%20advance%20report%20of%20SG%20on%20Cardoso.pdf>.

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See *Report of the Secretary-General on the work of the Organization General Assembly, 61st session, A/61/1* (16 August 2006), Paragraph 198. Available at: <http://domapps1.unon.org/notesapps/unonnb.nsf/>

CONCLUSIONS AND NEXT STEPS

Since the development of the Human Rights Council is still at an embryonic stage, it remains to be seen how the Third Committee will define its role and establish its relevance and added value in both the short and long term.

Given the Council's ambitious work programme over upcoming months in ironing out many of its operational and procedural elements, it is understandable that a certain degree of confusion exists regarding the Third Committee's expected role and relationship with the Council. In the short term, the Third Committee must support and complement the work of the Council and try to avoid duplication and power plays between the two bodies. Sweden's tabling of the Resolution on extrajudicial, summary and arbitrary executions (the first at the General Assembly since 2002 and the only resolution adopted on this issue this year) is one example of how the Third Committee addressed a gap left by the Council's institutional and procedural focus.

In the long term, delegates need to substantively evaluate and determine the relevance, role and added value of the Third Committee in terms of human rights. While there is no doubt about the value of the Third Committee's universal membership in discussing human rights issues, its complementary role to the Human Rights Council and the General Assembly is less clear. Unless the relationship between the bodies both substantively and procedurally is clarified and developed, the already evident power play between the Human Rights Council and the Third Committee will continue to undermine instead of reinforce the UN human rights protection system.

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