

AMNESTY INTERNATIONAL

ASSESSMENT OF OUTCOMES AT THE 41ST SESSION OF THE UN HUMAN RIGHTS COUNCIL AND RECOMMENDATIONS TO UN MEMBER STATES FOR FOLLOW UP

This briefing contains Amnesty International's assessment of some of the key outcomes and developments at the 41st session of the UN Human Rights Council (HRC41) and provides recommendations for UN member states to consolidate and build on these outcomes moving forward, including at the 42nd session (HRC42) and other UN forums. More detailed recommendations in relation to HRC42 will be shared with UN member states nearer to the session.

Amnesty International welcomes strong leadership at HRC41 on several important new initiatives, including the first-ever HRC resolution on the Philippines (41/2) and a joint statement by 24 states on the Xinjiang Uyghur Autonomous Region in China. We also appreciate the commitment of some states to ensuring the continuity of other critical initiatives, including by ensuring the renewal of various Special Procedure mandates, particularly where a vote was called, including the mandates of the Independent Expert on Sexual Orientation and Gender Identity and the Special Rapporteurs on Eritrea and Belarus, as well as continued reporting on Ukraine.

ASSESSMENT OF COUNTRY SITUATIONS

We were pleased to see several important initiatives at HRC41 to “address situations of violations of human rights, including gross and systematic violations”. Despite attempts by some HRC members to use their positions to shield themselves, and others, from scrutiny, overall, we were pleased to see the **increasing commitment to holding HRC members to a higher level of scrutiny**, demonstrating that HRC membership cannot shield a state from scrutiny, with the resolutions on the Philippines and Eritrea, the joint statement on China, and the presentation of the High Commissioner's report on Venezuela (a member when the resolution mandating it was passed). The issue of holding HRC members to higher scrutiny, and practical recommendations in this regard, are a key focus of the report we launched during HRC41 on *Opportunities for strengthening and leveraging membership of the UN Human Rights Council*.¹

Another trend we hope to see develop and solidify going forward was the wide, cross-regional group of states which took action and positions on the basis of the “**objective criteria for HRC action**” identified in the joint statement delivered by Ireland on behalf of 32 states at the 32nd session of the HRC². These criteria are valuable indicators not only of the seriousness of a human rights situation, but the level of willingness on the part of the State to engage to address concerns.

Recommendation: We encourage states to continue and expand their reliance on the objective criteria in future sessions.

On the other hand, while we welcome the HRC's renewal of OHCHR reporting on **Ukraine**, we note that entire blocks of countries were largely absent from the debates regarding Ukraine, as well as on **Belarus** and **Georgia**.

Recommendation: All states should consider how they can engage meaningfully with issues in all regions and on all themes, underscoring the universality of all human rights.

¹ Joint report, *Opportunities for strengthening and leveraging membership of the UN Human Rights Council*, 1 July 2019, Index: IOR 40/0631/2019, <https://www.amnesty.org/en/documents/ior40/0631/2019/en/>.

² Joint Concluding Statement to HRC32, <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelands-statements-hrc-32nd-session/preventingrespondingtoandaddressinghumanrightsviolations-jointconcludingstatement/>

PHILIPPINES

The adoption of the HRC's first resolution on the **Philippines (40/2)**, was a vital, yet modest, step to address extrajudicial executions and other serious human rights violations committed under the guise of the so-called "war on drugs." Iceland showed principled leadership, taking an incremental approach to addressing a critical situation which meets³ all the "objective criteria for HRC action".

By adopting this resolution, the HRC sent a message to victims and perpetrators alike that the international community will not allow impunity to prevail for the violations which Amnesty considers meets the threshold of crimes against humanity.⁴ We thank those states that voted in favour of, and/or co-sponsored, the resolution for standing with the victims and their families, and others seeking justice, rather than the perpetrators.

Recommendation: We urge the Philippines to cooperate with OHCHR including by allowing full and unfettered access and urge the HRC to continue to monitor the situation closely and be ready to take further action as necessary.

SAUDI ARABIA

The HRC's dialogue with the Special Rapporteur on Summary Executions and her report on the extrajudicial Execution of Jamal Khashoggi at HRC41 marks the third consecutive session with meaningful scrutiny of the Human Rights situation in **Saudi Arabia**.⁵ During the dialogue, a broad cross-regional range of states called for accountability and guarantees of non-recurrence. As we said in our HRC41 oral statement,⁶ the operation against Jamal Khashoggi can only be understood against the Saudi government's systematic and organized crackdown against journalists, human rights defenders, and others in civil society. We believe there is momentum building to put Saudi Arabia itself on the HRC's agenda.

Recommendation: We reiterate our call⁷ for a resolution on Saudi Arabia and urge states to fully support this effort. HRC42 will put in sharp focus Saudi Arabia's policies with respect to Yemen, but the HRC must continue to pay attention to other important aspects of the human rights situation with respect to Saudi Arabia, including the continued crackdown on women human rights defenders and journalists.

CHINA: XINJIANG UYGHUR AUTONOMOUS REGION

The joint statement by a group of 22 countries⁸ expressing concern over the arbitrary detention, surveillance and other violations against Uyghurs and other ethnic minorities in **China's Xinjiang Uyghur Autonomous Region**⁹ was another important first step. It is notable that this statement received almost twice as many signatories as the last joint statement on China (led by the United States in March 2016¹⁰), a sign of the significant international concern over the situation in Xinjiang. It was disappointing but not surprising to see China continue to respond with denial and obfuscation, as they delivered their own statement days later defending their policies in Xinjiang.

More surprising was the fact that while not one Organization of Islamic Cooperation (OIC) member state joined the statement expressing concern over the predominantly Muslim ethnic minorities in Xinjiang, more than a dozen signed onto a defensive

³ Amnesty International, *Assessment of the human rights situation in the Philippines against Objective Criteria for Action by the UN Human Rights Council*, 31 May 2019, <https://www.amnesty.org/en/documents/ior40/0466/2019/en/>.

⁴ Amnesty International, *'They just kill': Ongoing extrajudicial executions and other violations in the Philippines' 'war on drugs,'* 8 July 2019, <https://www.amnesty.org/en/documents/asa35/0578/2019/en/>.

⁵ HRC 39 witnessing the extension of the mandate of the Group of Eminent Experts on Yemen, which will continue to examine and report on actions of the Saudi led Coalition in Yemen, and HRC 40 witnessing Saudi's UPR adoption and a joint statement by 36 states expressing concern about the human rights situation in Saudi, including related to the continued crackdown on women human rights defenders and other parts of civil society. See <https://www.government.is/diplomatic-missions/embassy-article/2019/03/07/Joint-statement-on-the-human-rights-situation-in-Saudi-Arabia/>.

⁶ Amnesty International, *Saudi Arabia: Oral Statement to UN Human Rights Council on the Extrajudicial Execution Of Jamal Khashoggi*, 26 June 2019, Index: IOR 40/0602/2019, <https://www.amnesty.org/es/documents/ior40/0602/2019/en/>.

⁷ Joint Statement, *Saudi Arabia: 40 Human Rights Groups Call on States to stand up for Human Rights in the Kingdom*, 26 June 2019, Index: MDE 23/0511/2019: <https://www.amnesty.org/download/Documents/MDE2305112019ENGLISH.pdf>.

⁸ Joint statement signed by 22 states: https://www.hrw.org/sites/default/files/supporting_resources/190708_joint_statement_xinjiang.pdf. A further two states signed the statement subsequently.

⁹ Amnesty International welcomes statement at Human Rights Council addressing China's appalling violations in Xinjiang, 11 July 2019, Index: IOR 40/0711/2019, <https://www.amnesty.org/en/documents/ior40/0711/2019/en/>.

¹⁰ <https://geneva.usmission.gov/2016/03/10/item-2-joint-statement-human-rights-situation-in-china/>.

statement praising China's human rights record,¹¹ including in Xinjiang, delivered in response to the original joint statement delivered by 22 states. As noted by HRW, "China's campaign of repression in Xinjiang has been a key test of whether OIC members will press an increasingly powerful China to end its systemic abuses against Muslims."¹²

Recommendation: We call on other states, including OIC states, to work together with the signatories of the joint statement towards further action. We urge China to take steps to address the concerns, and to provide full and unfettered access to Xinjiang to independent human rights monitors, including as requested by OHCHR and Special Procedures. If they do not, the HRC should take more robust action at future HRC sessions, including by mandating an independent and impartial investigation to separate fact from fiction.

ERITREA

The mandate of the Special Rapporteur on the human rights situation in **Eritrea** was renewed thanks to a last-minute initiative by a small group of States (Australia, Austria, Belgium, France, Germany, Netherlands). We regret that this was necessary due to the failure of the traditional sponsors of the resolution to table a resolution, despite the fact, clearly set out in the Special Rapporteur's report to the session, that there has been no tangible improvement of the human rights situation on the ground,¹³ and the fact that despite its membership of the HRC, Eritrea continues to refuse to cooperate with the Special Rapporteur.

Recommendation: We urge UN member states to encourage Eritrea to start to cooperate with the Special Rapporteur and to make concrete improvements to the human rights situation on the ground, in line with the Special Rapporteur's benchmarks for achieving meaningful and lasting progress in human rights. Only with significant improvements in this regard could the HRC credibly consider changing or ending the mandate.

BELARUS

We followed with interest the negotiations regarding potential changes to the resolution on **Belarus**. As detailed in our statement, we considered that any resolution must extend the mandate of the Special Rapporteur at this critical time in the lead up to the presidential and parliamentary elections which, in the past, have served as catalysts for a crackdown on human rights.¹⁴

Recommendation: We urge states to encourage Belarus to engage with the Special Rapporteur on Belarus in a spirit of cooperation.

ISRAEL/OCCUPIED PALESTINIAN TERRITORIES

While we regret that we are still waiting for the Office of the High Commissioner to fully and finalize publish the database of all businesses engaged in listed activities related to **Israel's** settlement enterprise, we welcome the clear and coordinated message sent by almost 100 states, through two joint statements delivered under Item 10: one delivered by Tunisia on behalf of 65 states and one delivered by Peru on behalf of 27 states.

The clear messages from those statements are: that the High Commissioner should "give urgency to fulfilling the [database mandate] in its entirety"; that it is crucial that the High Commissioner can operate and execute her mandates in an independent manner without interference; and that all states, in particular those states that are members of the HRC, should at all times cooperate in the fulfilment of all mandates entrusted by the HRC to the High Commissioner and her Office, irrespective of their position on the individual mandate itself or the resolution that created it.

Recommendation: We urge states to follow these principles, including by cooperating with all HRC mandates, irrespective of their substantive view of the mandate, whether regarding the Philippines, Venezuela, the Special Rapporteur on Sexual Orientation and Gender Identity, or this Database.

¹¹ Available at https://www.hrw.org/sites/default/files/supporting_resources/190712_joint_counterstatement_xinjiang.pdf.

¹² Human Rights Watch, *China: Muslim-Majority States Whitewash Abuses*, 17 July 2019, <https://www.hrw.org/news/2019/07/17/china-muslim-majority-states-whitewash-abuses>

¹³ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/53.

¹⁴ Amnesty International, Oral Statement on Belarus at 41st session of the Human Rights Council, 1 July 2019, Index: IOR 40/0628/2019, <https://www.amnesty.org/en/documents/ior40/0628/2019/en/>

MYANMAR

The holding of two discussions on the human rights situation in **Myanmar** was important, ahead of the presentation of the final report of the Fact-Finding Mission in September (HRC42). In our two oral statements¹⁵ delivered during these discussions, we highlighted the fact that the human rights situation remains critical, with a continued lack of accountability for crimes under international law; ongoing violations of international human rights and humanitarian law by the military, in particular in conflict-affected ethnic minority areas; entrenched discrimination and segregation of the remaining Rohingya; restrictions on humanitarian access; and ongoing restrictions on the rights to freedom of expression, peaceful assembly, and association.

Recommendation: The human rights situation in Myanmar should remain a top priority for the international community. We urge states to continue to monitor developments in the country closely and to explore options for further HRC action, including at HRC42 in September 2019 where the final report of the UN Independent International Fact-Finding Mission on Myanmar (FFM) will be presented. We also urge states to request the head of the FFM to brief the UN Security Council ahead of the final report. We call for the swift operationalization of the Independent Investigative Mechanism for Myanmar (IIMM) and remind states that there should be no gap between the end of the mandate of the FFM and the operationalization of the IIMM.

SUDAN

Despite some positive developments, the biggest disappointment of HRC41 was the HRC's failure to take robust action on the human rights crisis in **Sudan**. Specifically, the HRC missed a significant opportunity by failing to convene a special session or urgent debate on the escalating human rights crisis in Sudan, which was a bitter disappointment for Amnesty and other human rights organizations and defenders. Given the HRC's failure to respond to the human rights crisis in a timely manner, it is now vital that states work together in the context of the scheduled HRC42 resolution on Sudan to put in place a robust monitoring and reporting mechanism, as called for in June by Amnesty¹⁶ and other organizations,¹⁷ as well as a group of Special Procedures.¹⁸ Such a mechanism should be designed to ensure complementarity and coordination between the UN and African Union (AU) and should, to the extent possible, draw on the expertise of appropriate regional and international bodies, such as the African Commission on Human and Peoples' Rights.

Recommendation: It is now vital that states work together in the context of the scheduled HRC42 resolution on Sudan to put in place a robust monitoring and reporting mechanism on the situation there.

VENEZUELA

We regret that there was no resolution on **Venezuela** to respond to the comprehensive written report (A/HRC/41/18) presented by the High Commissioner for Human Rights during the session due to the urgency of the situation but hope to see robust action on this in September. As outlined in the High Commissioner's report, millions of people have fled Venezuela due to the dire lack of access to food, medicines and basic goods; and the ruthless policy of repression, comprised of systematic and widespread extrajudicial executions, torture, arbitrary detentions, intentional lethal use of force and other crimes that could amount to crimes against humanity.

As noted in Amnesty's oral statement¹⁹ during the interactive dialogue on Venezuela at HRC41, victims of human rights violations in Venezuela have no access to effective remedies at the national or regional level. Nor do there appear to be opportunities at national or regional levels to address and improve the human rights situation on the ground. This makes an effective international response crucial. Despite heightened international scrutiny, including the visit by the High

¹⁵ Amnesty International, *Myanmar: Fresh military violations highlight ongoing impunity in Myanmar*, 3 July 2019, Index ASA 16/0638/2019, <https://www.amnesty.org/en/documents/asa16/0638/2019/en/> and Myanmar: Ongoing discrimination and persecution exacerbated by fresh military violations in Rakhine state, 10 July 2019, Index: ASA 16/0642/2019, <https://www.amnesty.org/en/documents/asa16/0642/2019/en/>.

¹⁶ Amnesty International, *UN Human Rights Council must convene Special Session on Sudan*, Index: IOR 40/0520/2019, 12 June 2019, <https://www.amnesty.org/en/documents/ior40/0520/2019/en/>.

¹⁷ Amnesty International, *Open Letter: UN Human Rights Council must convene Special Session on Sudan*, 13 June 2019, <https://www.amnesty.org/en/documents/ior40/0526/2019/en/>.

¹⁸ OHCHR, *Sudan: UN human rights experts call for independent investigation into violations*, 12 June 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24689&LangID=E>.

¹⁹ Amnesty International, *Oral Statement on Venezuela*, 5 July 2019, Index: IOR 40/0666/2019, <https://www.amnesty.org/en/documents/ior40/0666/2019/en/>.

Commissioner last month and the presence of two OHCHR staff in the country, grave human rights violations continue unabated.

Recommendation: We call on states to take action at HRC42 to mandate an Independent International Commission of Inquiry to investigate and to contribute to justice, truth and reparation in Venezuela.

UNIVERSAL PERIODIC REVIEW

We welcome the adoption of the UPR outcomes of the 14 states that had been reviewed during the 32nd session of the UPR Working Group in January 2019. For the UPR process to be effective, states must continue to pay attention to key human rights challenges remaining in the countries reviewed.

Recommendation: We urge Member States to engage regularly with the states reviewed on a bilateral basis to encourage and support follow up and implementation of accepted recommendations.

ASSESSMENT OF THEMATIC AND INSTITUTIONAL ISSUES

RESOURCING OF THE COUNCIL'S MECHANISMS

As outlined in our Item 5 Oral Statement²⁰, we are concerned about the recent crisis in funding which is jeopardizing the mandated activities of the UN's human rights mechanisms. We understand that the combination of delays in payments of states' assessed contributions to the regular budget and the 25% cut to travel of UN representatives, including treaty body experts and Special Procedure mandate holders, and other budget cuts (2018-2019) are having an adverse impact on the capacity of various human rights mechanisms to carry out their mandates effectively and is expected to continue for 2020 and 2021.

Recommendation: We call on states to ensure that its mechanisms are provided with the full resources required to perform the activities they have been mandated to undertake, including during states' preparation for Fifth Committee discussions at GA74 later this year.

COOPERATION WITH SPECIAL PROCEDURES

Once again at this session, we noted the flagrant, persistent and selective non-cooperation of some states with the Special Procedures, as highlighted in the report of the annual meeting of Special Procedures presented to the HRC in March. It notes that 14 UN Member States have not yet accepted any request for visits, while several Special Procedure country mandates, namely those covering Belarus, the Democratic People's Republic of Korea, Eritrea, the Islamic Republic of Iran, Myanmar and Israel have not been able to carry out visits. The most recent communications report also provides a worrying picture where Bangladesh, Egypt, Indonesia, Israel, Malawi, Philippines and the United States of America all failed to respond to two or more communications. India failed to respond to 11 communications. Most concerning of all are public announcements by states that they will not cooperate with certain mandate holders at all, attempts to replace mandate holders, and public smear attacks on mandate holders and members of Commissions of Inquiries for carrying out their work by Burundi, Eritrea, Maldives and the Philippines.²¹

Recommendation: We urge states to engage in discussions on how to make non-cooperation more costly, including at the time of HRC elections, following the recommendation of the annual meeting that "[t]he Council should ... provide a space where good stories and examples of cooperation could be shared," and to take meaningful steps to address cases of persistent or flagrant non-cooperation with the Special Procedures.

SEXUAL ORIENTATION AND GENDER IDENTITY

We welcomed the adoption of the technical resolution to renew the mandate of the Independent Expert on **sexual orientation and gender identity (SOGI)**, and the rejection of the ten tabled amendments that would have seriously weakened

²⁰ Amnesty International and International Service for Human Rights, Joint Oral Statement, *Cooperation with the Special Procedures*, 3 July 2019, Index: IOR 40/0774/2019, <https://www.amnesty.org/en/documents/ior40/0774/2019/en/>

²¹ Amnesty International and International Service for Human Rights, *Joint statement to HRC 37: Item 5: Human Rights Bodies and Mechanisms* 14 March 2018, Index: IOR 40/8032/2018, <https://www.amnesty.org/en/documents/ior40/8032/2018/en/>

the Independent Expert's mandate. During the session, Amnesty International joined 1,311 other non-governmental organizations from 174 States and territories in calling for the renewal.²²

The resolution sends a clear message that violence and discrimination against people of diverse sexual orientations and gender identities cannot be tolerated and reaffirms that specific, sustained and systematic attention is needed to address these human rights violations and ensure that LGBTI people can live a life of dignity. By voting to adopt the resolution, the HRC has reinforced the universal nature of human rights law, and that no one can be left behind due to their sexual orientation or gender identity.

Recommendation: We urge all states to cooperate fully with the UN Independent Expert on SOGI in this important work to bring about a world free from violence and discrimination for all people regardless of sexual orientation and gender identity.

CLIMATE CHANGE AND HUMAN RIGHTS

The Special Rapporteur on extreme poverty and human rights' report highlighted the severity of the **impact of climate change on human rights** and gave a clarion call to states and civil society on the urgent need for transformational change. We welcome the continuous engagement of the HRC on this issue through the adoption of its annual resolution and the panel discussion on women's rights and climate change at this session.

Recommendation: We call all states to ensure that the HRC continues to strengthen its work on this issue, given its increasing urgency for the protection of all human rights. Additionally, states should use the opportunity of the upcoming Climate Action Summit to publicly recognize the urgent need to step up climate action; announce ambitious new Nationally Determined Contributions; end the use of all fossil fuels and shift to 100% renewable energy as quickly as possible, including by ending fossil fuel subsidies; ensure that the transition towards a zero-carbon economy is just, fair, enhances human rights and reduces inequality; and ensure that all climate policies and strategies are human rights compliant.

SURVEILLANCE AND HUMAN RIGHTS

The report of the Special Rapporteur on the right to freedom of opinion and expression demonstrated that systems for controlling the use and export of targeted surveillance tools are, at present, grossly inadequate to ensure against human rights abuses, and that continuing to use, sell and export these tools in such circumstances poses grave human rights risks. The Special Rapporteur on freedom of peaceful assembly and association also highlighted the effect of targeted surveillance against human rights defenders and others.

Recommendation: We urge states, as well as the international community, to urgently put in place human rights-compliant safeguard regimes governing the sale, export, acquisition and use of targeted digital surveillance tools. We also call on states to refrain from conducting targeted surveillance – domestically as well as extraterritorially – using digital tools against members of civil society who are conducting human rights work.

RIGHT TO EDUCATION

We welcome the adoption of the resolution on the right to education which, among other things, recognizes the Abidjan Principles on the right to education²³ - the first formal recognition to date at the United Nations of this new set of standards. The resolution also recognizes "the significant importance of investment in public education" and urges states, among other recommendations, "to put in place a regulatory framework to ensure the regulation of all education providers" in order to address "any negative impact of the commercialization of education and strengthens access to appropriate remedies and reparation for victims of violations of the right to education".²⁴

Recommendation: We urge states to put the right to education at the core of education policies as well as not to rely solely on privatizing or commercializing education systems to improve delivery.

²² Joint Item 8 Oral statement, 8 July 2019, <https://arc-international.net/1316-csos-from-174-countries-urge-the-human-rights-council-to-renew-the-mandate-of-the-un-independent-expert-on-sogi/>.

²³ Abidjan Principles, <https://www.abidjanprinciples.org/en/principles/overview>

²⁴ Joint statement, *Historic recognition by States of the Abidjan Principles on the right to education by top UN human rights body*, 26 June 2019, Index: IOR 40/0820/2019, <https://www.amnesty.org/en/documents/ior40/0820/2019/en/>

CONTRIBUTION OF DEVELOPMENT TO THE ENJOYMENT OF ALL HUMAN RIGHTS

We regret that in the resolution on **the contribution of development to the enjoyment of all human rights**, China chose to again deliberately exclude long-standing consensus language from the Vienna Declaration and Programme of Action (VDPA), recognizing that “the lack of development may not be invoked to justify the abridgment of internationally recognized human rights,” thereby disturbing the careful balance established and maintained for several decades on this issue.

Recommendation: We urge states to ensure that in any future resolutions the consensus language from the VDPA is included.

CODE OF CONDUCT OF SPECIAL PROCEDURES

Finally, we were deeply concerned by a draft resolution on “rationalizing and improving the efficiency and effectiveness of the Special Procedure Mandate holders for the enhancement of their contribution to the promotion and protection of all human rights, circulated by Pakistan and the United Arab Emirates ahead of HRC41, which we understand may have been postponed to HRC42. We are alarmed by this attempt to re-open discussions on the **code of conduct of Special Procedures** and to undermine the independence that is the essence of the Special Procedures. In doing so, the resolution would risk re-opening the HRC’s “Institution Building Package”, which was a delicate consensus.

Recommendation: The initiative to table this resolution as proposed by Pakistan and the UAE, should be discontinued. We urge states which are supportive of the work and independence of Special Procedures to defend the system against this initiative which may seriously undermine their independence and could re-open the HRC’s ‘Institution Building Package’. Instead states should engage constructively with the Special Procedures, through existing procedures and avenues, to discuss concerns arising from their working methods that states may have.

For more information on any of the above issues, please contact IAP-Geneva@amnesty.org.