

Atrocity Prevention and Outcomes of the UN Human Rights Council's 49th Session

The 49th regular session of the UN Human Rights Council (HRC) was held in Geneva between 28 February and 1 April 2022. As the primary international human rights body, the HRC has the capacity to prevent and respond to mass atrocity crimes, as systematic violations and abuses of human rights can be an indicator of potential genocide, war crimes, crimes against humanity or ethnic cleansing. The summary below highlights major outcomes and relevant dialogues from the 49th session as they relate to the Responsibility to Protect (R2P), atrocity prevention and populations at risk of atrocity crimes. During the session Luxembourg delivered a statement on behalf of the Group of Friends of R2P during an Interactive Dialogue with the Special Rapporteur on Minority Issues.

MASS ATROCITY SITUATIONS AND THE HRC

RESOLUTIONS

Democratic People's Republic of Korea

The outgoing Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK), Tomás Ojea Quintana, presented a report to the HRC, urging the government of DPRK to cease ongoing crimes against humanity. The Special Rapporteur called on the HRC to ensure continued documentation of human rights violations and crimes against humanity and preservation of information that may be used in future accountability processes. The HRC adopted an annual resolution on the DPRK by consensus, reiterating deep concern about the systematic, widespread and gross human rights violations that in many instances constitutes crimes against humanity. The resolution renewed the mandate of the Special Rapporteur and requested that the UN High Commissioner for Human Rights organize a series of consultations and outreach activities with victims, affected communities and other relevant stakeholders. The HRC also called upon all parties concerned, including UN bodies, to consider implementation of the recommendations made by the Commission of Inquiry (CoI) on DPRK, which, in 2014, had established responsibility at the highest level of government for ongoing crimes against humanity. The resolution also recalled the “responsibility of the Democratic People's Republic of Korea to protect its population from crimes against humanity.”

Israel and the Occupied Palestinian Territory

In his report from 21 March, the outgoing UN Special Rapporteur for the situation of human rights in the Palestinian Territories occupied since 1967, Michael Lynk, concluded that the international crime of apartheid is being practiced by Israel in the Occupied Palestinian Territory (OPT). Under the International Convention Against Apartheid and the Rome Statute, apartheid is a crime against humanity. The report also determined that an institutionalized regime of systematic racial oppression and discrimination, as well as a dual legal and political system, has been built upon the regular and widespread practice of inhumane acts, including extrajudicial killings, torture, denial of fundamental human rights, arbitrary detention and collective punishment. Last year Special Rapporteur Lynk concluded that Israeli settlements amount to a war crime. The HRC adopted a resolution – by a vote of 37 in favor, 3 against and 7 abstentions – expressing grave concern at reports of possible war crimes and crimes against humanity in the OPT, including East Jerusalem, and requested that the UN High Commissioner for Human Rights, Michelle Bachelet, report on Israel's adherence to international legal obligations, as well as any progress in holding perpetrators of violations and abuses accountable, at the HRC's 52nd session.

Myanmar (Burma)

The HRC held an Interactive Dialogue with the High Commissioner Bachelet on her report on Myanmar. During the dialogue the High Commissioner warned that since the February 2021 military coup, credible sources have recorded the death of over 1,600 individuals, many of whom were engaged in peaceful protest, as well as the detention of 12,500 individuals in an attempt to target and intimidate opponents. The HRC also held an Interactive Dialogue with the Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, who stressed that the military is committing possible crimes against humanity and war crimes. Special Rapporteur Andrews called on the international community to uphold its responsibility to protect by imposing a global arms embargo, refusing recognition of the military junta and establishing a multinational task force to identify, hunt down and freeze the assets of the military and its cronies. The Special Rapporteur published a Conference Room Paper, entitled “Enabling Atrocities: UN Member States’ Arms Transfers to the Myanmar Military,” that details arms transfers since 2018 that could be used by the military to attack civilians. The HRC also held an Enhanced Interactive Dialogue on the report of the Secretary-General on concrete action to address the recommendations contained in the so-called Rosenthal report from May 2019. The HRC renewed the mandate of the Special Rapporteur for one year.

South Sudan

The Commission on Human Rights in South Sudan (CHRSS) presented its annual report on the human rights situation in South Sudan, as well as a Conference Room Paper on conflict-related sexual violence against women and girls, warning that nearly all 14 of the risk factors in the UN’s Framework of Analysis for Atrocity Crimes are now present in South Sudan. Despite these risks, the government of South Sudan, assisted by several HRC members, ran a sustained campaign aimed at terminating the mandate of the CHRSS. As a result, for the second consecutive year, the HRC adopted two resolutions on South Sudan. In a resolution adopted by a vote of 19 in favor, 11 against and 17 abstentions, the HRC renewed the mandate of the CHRSS, recalling that “the Government of South Sudan has the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity.” A second resolution, which was adopted by consensus and also recalled that “the Government of South Sudan has the primary responsibility to protect the population,” requested the High Commissioner to provide the government with technical assistance and capacity-building, including on the establishment of the transitional justice institutions under chapter V of the Revitalized Peace Agreement.

Syria

The CoI on the Syrian Arab Republic submitted a report to the HRC warning that after more than a decade of conflict, the government and all other parties continue to perpetrate patterns of grave violations of fundamental human rights and International Humanitarian Law (IHL), including likely war crimes and crimes against humanity. The CoI reported increased indiscriminate aerial bombardments and shelling in northern Syria, as well as targeted killings, unlawful detention and torture perpetrated by all parties. The Commission, which had previously documented more than 130,000 arbitrary detentions, abductions or disappearances since 2011, also called for the creation of an independent mechanism with a mandate to coordinate and consolidate claims regarding missing persons, including persons subjected to enforced disappearance. The HRC renewed the mandate of the CoI for one year, demanding that “the Syrian authorities meet their responsibility to protect the Syrian population.” The resolution was adopted by a vote of 23 in favor, 7 against and 16 abstentions.

Ukraine

On 3 March the HRC held an urgent debate on the situation of human rights in Ukraine stemming from the Russian aggression. The following day the HRC adopted a resolution – by a vote of 32 in favor, 2 against and 13 abstentions – establishing an independent international CoI on Ukraine with a mandate to investigate all alleged violations and abuses of International Human Rights Law (IHRL) and IHL in Crimea and certain areas of Donetsk and Luhansk since 2014, and in other areas since 22 February 2022. The mandate involves the consolidation and collection of evidence, identification of perpetrators and provision of recommendations on further accountability measures. On 30 March the President of the HRC announced the appointment of Erik Møse, Jasminka Džumhur and Pablo de Greiff to serve on the Commission. That same day the High Commissioner delivered an oral update on the situation of human rights in Ukraine, expressing great concern regarding the growing number of civilian casualties resulting from indiscriminate attacks utilizing explosive weapons in populated areas, which may amount to war crimes.

ADDITIONAL INTERACTIVE DIALOGUES AND REPORTS

Afghanistan

The HRC held an Interactive Dialogue with the High Commissioner on her report on the situation of human rights in Afghanistan on 7 March. High Commissioner Bachelet highlighted that from 15 August 2021 to 15 February 2022, the UN Assistance Mission in Afghanistan and the Office of the UN High Commissioner for Human Rights (OHCHR) documented at least 1,153 civilian casualties, including 397 deaths. The High Commissioner also emphasized the “disturbing cases” of enforced disappearances and incommunicado detention of civil society activists and protesters across the country, as well as the credible reports of extrajudicial killings of more than 100 persons affiliated with the former government. OHCHR confirmed the appointment of Richard Bennett as the UN Special Rapporteur on the situation of human rights in Afghanistan.

Central African Republic

During the high-level interactive dialogue on the human rights situation in the Central African Republic (CAR) on 30 March, High Commissioner Bachelet denounced the number of incidents involving serious human rights violations and abuses in CAR – and the increasing role of the defense forces and their allies in those violations. The High Commissioner expressed concern regarding the pattern of violations, including targeted discrimination, ill-treatment and arbitrary arrests, perpetrated against minority and already vulnerable communities, including Muslims and Fulanis (Peuhls), because of their presumed association with armed groups. The Independent Expert on the human rights situation in CAR and High Commissioner noted that these violations risk setting off a new cycle of violence along communal, religious and ethnic lines.

Democratic Republic of the Congo

During an Enhanced Interactive Dialogue on the Democratic Republic of the Congo (DRC) on 29 March, Nada Al-Nashif, Deputy High Commissioner for Human Rights, highlighted the deteriorating security situation in the eastern provinces, particularly the persistence of attacks by armed groups against civilians. In 2021 the UN Joint Human Rights Office in the DRC recorded nearly 7,000 cases of human rights violations and abuses across the country. The Deputy High Commissioner called on the authorities to implement measures to put an end to the violence, uphold the rule of law and ensure that perpetrators are held accountable. Bacre Ndiaye, President of the Team of International Experts on the situation in Kasai, requested that any drawdown process for the UN peacekeeping mission in the DRC be coupled with an acceleration of national capacity-building to prevent gaps in reporting on human rights violations and to strengthen the fight against impunity.

Eritrea

During an Interactive Dialogue on 4 March, the Special Rapporteur on the situation of human rights in Eritrea, Mohamed Abdelsalam Babiker, warned that there was no evidence of progress on the human rights situation in Eritrea. The Special Rapporteur also expressed concern about the impact of the ongoing war in Ethiopia’s northern regions, where Eritrean forces are actively engaged in fighting. The Special Rapporteur also condemned attacks on Eritrean refugees in Ethiopia’s Tigray and Afar regions and called on all parties to the conflict to respect the protected status of refugee camps and allow unfettered access to aid agencies.

Ethiopia

During an Interactive Dialogue on the situation of human rights in the Tigray region of Ethiopia on 5 March, High Commissioner Bachelet warned that the situation in Ethiopia’s northern Tigray region had continued to deteriorate, with the conflict expanding to neighboring regions. The High Commissioner stated that all parties to the conflict continued to violate IHL, including through attacks on civilians and civilian objects. The High Commissioner also expressed concern regarding over 15,000 cases of arbitrary arrests and detentions of Tigrayans.

Libya

During an Interactive Dialogue with the Fact-Finding Mission (FFM) on Libya on 30 March, the Chair of the FFM, Mohamed Auajjar, presented the findings of the Mission’s second report, which found reasonable grounds to believe that some of the incidents committed during the armed conflict in 2019 and 2020 may constitute war crimes. The FFM’s

report also highlighted findings concerning the treatment of migrants, refugees and asylum seekers in Libya, including evidence of crimes against humanity in Libya's migration detention centers, trafficking hubs and elsewhere.

Mali

The Independent Expert on the human rights situation in Mali, Alioune Tine, briefed the HRC during an Interactive Dialogue on 29 March, warning that the deterioration of the overall security situation in Mali had passed a critical threshold, with the failure of State institutions increasing the threat of attacks on civilians by violent extremist groups which continued to consolidate their presence and control. He also expressed his grave concern regarding allegations of violations of IHRL and IHL attributed to the Malian Defense and Security Forces and called on the Malian authorities to carry out thorough, independent, impartial and effective investigations. The Independent Expert recommended that the International Criminal Court (ICC) urgently open investigations to establish responsibility for crimes under the Rome Statute. The HRC subsequently adopted, by consensus, its annual resolution on technical assistance and capacity-building for Mali, renewing the mandate of the Independent Expert for one year.

Sudan

On 7 March, during an Enhanced Interactive Dialogue on the situation of human rights in the Sudan, High Commissioner Bachelet expressed deep concern about the sharp reversal of human rights achievements following the military coup in October. The High Commissioner noted that a wide range of human rights violations have been documented since the coup in a context of total impunity, including the use of excessive force by security forces against peaceful protesters; attacks on hospitals, medical facilities and staff; arbitrary arrests and detentions; violations of the rights of children; and rape, gang rape and other forms of sexual violence. She urged the Sudanese authorities to investigate such violations in a rapid, independent and objective process and make public the results.

Venezuela

The HRC held an Interactive Dialogue on the situation of human rights in Venezuela with High Commissioner Bachelet on 17 March. The High Commissioner recalled that the Memorandum of Understanding between the ICC and the government of Venezuela is an opportunity for authorities to demonstrate their commitment to ending impunity. During a separate Interactive Dialogue on 18 March, the FFM on Venezuela warned how the persistent lack of judicial independence was perpetuating impunity for possible crimes against humanity. The FFM reiterated their concerns that domestic investigations are limited in scope – only targeting low-level, material perpetrators – and that the lack of disaggregated data and key information on the crimes charged or the rank or level of responsibility of the perpetrators remains an obstacle to assessing the State's efforts to investigate and prosecute violations and abuses.

Yemen

During her Oral Update to the HRC on 8 March, High Commissioner Bachelet highlighted the situation in Yemen, drawing particular attention to the significant increase in civilian casualties immediately following the termination of the mandate of the Group of Eminent Experts (GEE) during the HRC's October 2021 session. She also highlighted that during January 2022, there was a 275 percent increase in coalition airstrikes as compared to 2021's monthly average. The High Commissioner noted that this increase underscored "the importance of the key role [the GEE] had played in monitoring the situation."

Sri Lanka

During her Oral Update on the situation of human rights in Sri Lanka on 4 March, High Commissioner Bachelet warned that the current government has incorporated military officials implicated in alleged war crimes into the highest level of government, demonstrating its unwillingness to pursue accountability for past international crimes and serious human rights violations and abuses. The High Commissioner called on the HRC to pursue alternate strategies to advance accountability at the international level.

RELEVANT THEMATIC AREAS

RESOLUTIONS

Prevention of Genocide

The HRC adopted a bi-annual resolution on the Prevention of Genocide by consensus. The resolution, which recalled the 2005 World Summit Outcome, stressed that the identification of root causes and early warning signs constitutes an important factor in the prevention of genocide, and reaffirmed its full support for the mandate of the Special Adviser to the Secretary-General on the Prevention of Genocide. The resolution encouraged states and regional organizations to use the UN's Framework of Analysis for Atrocity Crimes and other relevant frameworks in their prevention work. The HRC urged states to consider the appointment of focal points on the prevention of genocide and encouraged the Special Adviser on the Prevention of Genocide to enhance systematic exchange with the High Commissioner for Human Rights and all relevant Special Procedures. Before its 56th session the HRC will convene a one-day intersessional meeting to mark the 75th anniversary of the Genocide Convention and to discuss the role of social media platforms and their instrumentalization by those seeking to spread hate.

ADDITIONAL INTERACTIVE DIALOGUES AND REPORTS

Cultural rights

In her report from 31 January, the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, recalled that the fight against the destruction of cultural heritage was substantially strengthened by the 2016 Al-Mahdi judgement of the ICC, where for the first time the Court convicted an individual for war crimes associated with the destruction of cultural heritage. The Special Rapporteur also recalled that cultural rights cannot prevail over absolute rights, including prohibition from torture and other forms of ill-treatment, slavery and genocide.

Freedom of religion or belief

In his report from 2 March, the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, recalled that violating the rights of religious or belief minorities may constitute atrocity crimes, that one group being targeted based on their religious identity could form an element of a crime, and that intentionally attacking religious sites during conflict may violate international criminal law and IHL. The Special Rapporteur expressed his deep concern at the scale, severity and systematic nature of human rights violations against minorities, often partly based on their faith identity, that may amount to atrocity crimes.

Minority issues and the rights of persons belonging to national or ethnic, religious and linguistic minorities

During an Interactive Dialogue on 22 March the Special Rapporteur on minority issues, Fernand de Varennes, warned that hatred, incitement to violence, and war and genocide target minorities around the world. In his written report to the HRC from 15 March, the Special Rapporteur noted significant increases in violence and hate speech targeting minorities around the world in recent years, as well as increasing ethnic conflicts. He warned that the conditions for atrocity crimes are ever more present and prominent – and the main targets are overwhelmingly minorities. The Special Rapporteur also expressed his concern that dehumanizing language, often reducing minority groups to animals or insects, normalizes violence that can lead to genocide. The Special Rapporteur's report also noted that on 4 October 2021, he participated as keynote speaker at the virtual meeting of the Global Network of R2P Focal Points, organized by the Global Centre for the Responsibility to Protect.

The Special Rapporteur also released a report on the recommendations of the 14th session of the Forum on Minority Issues on 31 December. Participants recommended states develop and implement early warning systems, including by proactively using the UN's Framework of Analysis for Atrocity Crimes, to identify risk factors and early warning signs of atrocity crimes and identify situations of concern involving minorities. Participants also called on the UN Security Council to take firm action to protect populations and hold perpetrators accountable when states fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The recommendations also encouraged the Special Rapporteur and other relevant mandate holders to work with the UN Office on Genocide Prevention and R2P to develop an early warning mechanism to monitor and respond to violations of minority rights.

Promotion and protection of human rights and fundamental freedoms while countering terrorism

During an Interactive Dialogue on 15 March the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, recalled that secret detention amounts to enforced disappearance, and when its use is widespread and systematic, it must be assessed under the rubric of a crime against humanity. The Special Rapporteur also recognized the value of formal legal processes, such as extradition, to address crimes that relate to gross violations of human rights, including crimes against humanity and war crimes. Referring to the situation of Muslim Uyghurs, the Special Rapporteur recalled that when there are concerns that a state may be perpetrating systematic and grave violations of international law, particularly violations that may constitute crimes against humanity, it is imperative that free and unhindered access, meaningful fact-finding missions and close scrutiny are guaranteed.

ANNEX 1 – Statement by the Group of Friends of the Responsibility to Protect re: Item 3 – Interactive Dialogue with the Special Rapporteur on Minority Issues

22 March 2022

Mr. President,

I have the honour of delivering this statement on behalf of the Group of Friends of the Responsibility to Protect (R2P). The Group of Friends of R2P wishes to take this opportunity to reiterate its strong commitment to the multilateral human rights system and the integrity and independence of Special Procedures. We also wish to thank the Special Rapporteur on minority issues for his report and his leadership in highlighting when persons belonging to national or ethnic, religious or linguistic minorities around the world face threats, discrimination, or legal obstacles abusing or violating their human rights and fundamental freedoms.

We strongly oppose the misuse of the language of R2P or of the protection of persons belonging to minority groups for political purposes, in particular as a tool to divert attention from, or justify, violations of international law, including human rights law.

Human rights violations and abuses are often early indicators of atrocities. In this regard, Special Procedures – including both thematic and country-specific mandate holders - are often the first to raise alarm and recommend robust action in light of emerging warning signs. They also directly engage with concerned states to alert them of these risks, help strengthen protection capacities and contribute to follow-up technical assistance and capacity building measures. As such, they play an indispensable role in helping UN member states uphold their individual and collective Responsibility to Protect.

Persons belonging to minorities are often particularly at risk of becoming targets of the commission of genocide, war crimes, crimes against humanity or ethnic cleansing. Early risk indicators range from attacks on religious or ethnic minorities to their exclusion from decision-making processes and public life. Often, unequal access to resources further exacerbates the vulnerable situation of persons belonging to minority groups. Xenophobia, incitement to hatred or violence, and discriminatory rhetoric often fuels further mistrust and tensions, putting minority groups at heightened risk. Together with aggravating circumstances, such as deteriorating economic conditions, increasing inequalities or rising political instability, this may create an environment conducive to the commission of atrocity crimes.

In this context, the mandate of the Special Rapporteur on minority issues plays an essential role in highlighting situations of risk and engaging with concerned countries, as well as the wider multilateral system, to enhance protection capacities and address context-specific concerns. As women and girls belonging to minorities often experience unique challenges, the application of a gender lens within the mandate of the Special Rapporteur has also been instrumental in ensuring a more robust analysis of gender-sensitive indicators of early warning signs of atrocity crimes.

As the systematic undermining of human rights of members of national, ethnic, religious, racial or linguistic minorities continues around the world, we call on all UN Member States to cooperate actively with the Special Rapporteur, and to utilise the recommendations and analysis of his reports to identify gaps and challenges in domestic legal protection frameworks for members of minorities. Putting in place strong, resilient and robust protection mechanisms for persons belonging to minority groups is a core element of enhancing national resilience to atrocity crimes and building structural prevention capacities at home, in line with Pillar I of R2P and Item 10 of this Council's agenda. Thus, the work of the Special Rapporteur should also be used for technical assistance and capacity building measures for countries in need of stronger political and legislative protections and mitigation strategies to protect members of minority groups.

Mr. President,

Special Procedures regularly provide us with early warning information and analysis, including in situations where governments are unable or unwilling to protect their populations. We as an international community must become better at utilising this information in a timely manner. We therefore encourage governments to amplify concerns expressed by the Special Rapporteur for situations of risk, and to use early warning information to mobilise early action better to protect populations from atrocity crimes.

Thank you for your attention.