

Atrocity Prevention and the UN Human Rights Council's 50th Session

The 50th regular session of the UN Human Rights Council (HRC) was held in Geneva between 13 June and 8 July 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 50th session as they relate to the Responsibility to Protect (R2P), atrocity prevention and populations at risk of atrocity crimes. During the session Luxembourg delivered two statements on behalf of the Group of Friends of R2P.

MASS ATROCITY SITUATIONS AND THE HRC

RESOLUTIONS

Afghanistan

During an Interactive Dialogue on the situation of human rights in Afghanistan on 15 June, the UN High Commissioner for Human Rights, Michelle Bachelet, highlighted the institutionalized and systematic oppression of women and girls, which is characterized by severe restrictions of their rights, including barriers to participation in public life and restrictions on freedom of movement. The High Commissioner alerted that the UN has received credible reports of arbitrary arrests and detention, ill-treatment and extrajudicial killings, particularly of persons associated with the former government. Her update also drew attention to killings, enforced disappearances, incommunicado detention, attacks, harassment and threats against civil society actors, as well as targeted attacks on ethnic and religious minorities, all of which may constitute early warning signs of atrocities. The HRC also held an urgent debate on the situation of human rights of women and girls in Afghanistan on 1 July, consistent with a call from a joint NGO letter on 1 June. The HRC adopted a resolution without a vote, which condemned ongoing violations and abuses against women and girls and urged the Taliban to end all restrictive measures. The resolution also called for an Enhanced Interactive Dialogue at the HRC's 51st session.

Eritrea

On 13 June the UN Special Rapporteur on the situation of human rights in Eritrea, Mohamed Abdelsalam Babiker, presented evidence demonstrating that there has been no measurable progress on the situation of human rights in Eritrea since April 2021. The Special Rapporteur issued a report dated 6 May that highlighted that Eritrea's involvement in the war in parts of neighboring Ethiopia has exacerbated the abuses related to Eritrea's practice of indefinite military conscription. The Special Rapporteur reiterated findings from the joint investigation by the Ethiopian Human Rights Commission and the Office of the UN High Commissioner for Human Rights (OHCHR), which reported in November 2021 that there were reasonable grounds to believe that during the conflict in Tigray, Eritrean forces had committed human rights violations, some of which may amount to war crimes and crimes against humanity. The Special Rapporteur also expressed concern about Eritrean refugees who remain stranded in Libya and recalled that in October 2021 the Fact-Finding Mission (FFM) on Libya found that the widespread and systematic violence perpetrated by state authorities, armed groups and traffickers against migrants in Libya could amount to crimes against humanity. The Special Rapporteur recommended member states exercise universal jurisdiction over alleged crimes against humanity and grave human rights violations or extradite them to another state in accordance with international obligations. On 7 July the HRC adopted a resolution extending the mandate of the Special Rapporteur for a period of one year by a vote of 21 in favor, 10 against and 16 abstentions.

Libya

During an Interactive Dialogue on 6 July, the Chair of the FFM on Libya, Mohamed Auajjar, presented evidence of abuses perpetrated during the armed conflict in 2019-2020 that may constitute war crimes. In a report dated 27 June, the FFM highlighted that it had reasonable grounds to believe that the Libyan National Army (LNA) perpetrated direct attacks on civilians that amount to war crimes and that the crimes against humanity of murder, torture, imprisonment, rape, enforced disappearance and other inhumane acts have been committed in Libya since 2016. The FFM also noted that it has reasonable grounds to believe crimes against humanity are occurring in prisons against those suspected of being members of terrorist organizations, or to repress freedom of expression, thought and association with the aim to silence ideological opponents, journalists, activists and actual or perceived critics of the LNA. Furthermore, the FFM found reasonable grounds to believe that the al-Kaniyat militia was responsible for the crimes against humanity of imprisonment, enforced disappearance, extermination, torture and persecution against actual and perceived opponents and critics and their relatives.

The FFM also noted that under customary international law, Libya has a duty to investigate war crimes allegedly committed on its territory; however, few investigations have taken place. The FFM's report continued to document that the treatment of migrants, refugees and asylum seekers in Libya may amount to crimes against humanity. On 1 July the FFM also released a conference room paper on the situation in Tarhuna, finding evidence of crimes against humanity committed by militia groups until 2020. On 8 July the HRC renewed the mandate of the FFM by consensus for a non-extendable period of nine months to allow the mission to present its final and concluding recommendations on technical assistance and capacity building in Libya.

Myanmar (Burma)

On 13 June the HRC agreed to postpone the consideration and adoption of the report of the Universal Periodic Review (UPR) on Myanmar until the General Assembly makes an official decision on the representation of Myanmar. During an Interactive Dialogue on 14 June, High Commissioner Bachelet provided an oral update on the crisis in Myanmar, in which she expressed concern about the rapidly declining human rights situation, emphasizing that abuses against civilians are widespread and systematic and likely constitute war crimes and crimes against humanity. During an Interactive Dialogue on 29 June, the Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, expressed concern about the escalation of the military's campaign of violence, including war crimes and crimes against humanity. The Special Rapporteur also released a conference paper entitled "Losing a Generation: How the military junta is attacking Myanmar's children and stealing their future."

On 15 June the HRC held a panel discussion on the root causes of human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar. On 7 July the HRC adopted a resolution on the human rights situation facing Rohingya Muslims and other minorities in Myanmar without a vote. In the resolution, the HRC requested the High Commissioner monitor and follow up on the implementation of the recommendations made by the FFM on Myanmar. The HRC decided to hold a panel discussion on the Rohingya at the HRC's 53rd session and asked the High Commissioner to submit a report on the panel at its 55th session.

Sudan

In a report dated 9 May High Commissioner Bachelet outlined human rights violations and abuses committed since the 25 October 2021 military takeover in Sudan. During an Enhanced Interactive Dialogue on 15 June, Nada Al-Nashif, UN Deputy High Commissioner for Human Rights, and Adama Dieng, Expert on Human Rights in Sudan, echoed the findings of the High Commissioner's report, highlighting that the security forces in Sudan have consistently used excessive and deadly violence against protesters since the military coup. They also noted the increased risk of inter-communal violence and atrocities in Darfur. A joint NGO letter from 19 May urged the HRC to support the adoption of a resolution that ensures continued attention to Sudan's human rights situation through enhanced interactive dialogues. On 7 July the HRC adopted a resolution without a vote, calling for an oral update at the Council's 52nd session and an interactive dialogue at 53rd session.

On 4 July the HRC adopted the outcome of Sudan's review under the UPR, which contained 283 recommendations made by member states, including to ratify the Rome Statute of the International Criminal Court (ICC) and incorporate

all of its provisions into domestic law. Several speakers urged Sudan to redouble efforts to address abuses by state authorities and to address inter-communal conflict in the country. Sudan accepted 244 recommendations and noted 39 for constitutional and legal reasons.

Syria

On 17 June the Commission of Inquiry (CoI) on the Syrian Arab Republic released a paper entitled, “Syria’s Missing and Disappeared: Is there a Way Forward?,” which included recommendations for the establishment of a mechanism to investigate cases of missing and forcibly disappeared persons in Syria. The report built upon repeated calls issued by the CoI since 2016. The CoI elaborated that such a mechanism should be mandated to consolidate claims to effectively track and identify those missing and help their families and to coordinate technical assistance to parties to the conflict regarding detainees and missing persons and their remains.

On 28 June OHCHR released updated data on the civilian casualty toll in Syria, estimating that 306,887 civilians were killed from March 2011 to March 2021 as a direct result of armed conflict. An Interactive Dialogue was held with the CoI on 29 June, during which the CoI provided an update on ongoing hostilities and violations of international law. On 8 July the HRC passed a resolution with a vote of 25 in favor, 6 against and 15 abstentions. The resolution condemned the continued use of arbitrary detention, torture and ill-treatment, involuntary or enforced disappearance and summary executions, and highlighted the need to end impunity and implement a survivor-centered approach in preventing and responding to sexual and gender-based violence. The resolution also demanded that “the Syrian Arab Republic meet its responsibility to protect its population.”

ADDITIONAL INTERACTIVE DIALOGUES AND REPORTS

Central African Republic

During an Interactive Dialogue on 6 July, the Independent Expert on the human rights situation in the Central African Republic (CAR), Yao Agbetse, provided an oral update regarding technical assistance and capacity building in the field of human rights. The Independent Expert emphasized the need to combat impunity by calling upon the government to implement the CoI’s conclusions on allegations of atrocities committed by the Central African Armed Forces and their allies, guarantee the independence of the Special Criminal Court and support independent investigations conducted by the Human Rights Division of the UN peacekeeping operation. The Independent Expert expressed concern regarding the propagation of hate speech and incitement to violence, noting that inflammatory rhetoric threatens peace, stability and social cohesion in CAR. He also stressed the need to bridge the gap between UN mechanisms and bodies, including the HRC, Security Council and Peacebuilding Commission, to ensure a holistic approach to technical assistance and capacity building in CAR.

China

On 10 June a group of 42 UN experts released a statement urging the Chinese government to cooperate with the UN human rights system. The experts noted that the High Commissioner’s trip to China in May 2022 does not replace the urgent need for a complete assessment of the human rights situation in the country, especially in the Xinjiang Uyghur Autonomous Region (XUAR), the Tibet Autonomous Region and the Hong Kong Special Administrative Region. The experts also urged the HRC to convene a special session on China. During the Interactive Dialogue on High Commissioner Bachelet’s Annual Report on 14 June, the Netherlands delivered a joint statement on behalf of 47 states that expressed concern about the human rights crisis in XUAR and encouraged the High Commissioner to release her office’s report on the human rights crisis in XUAR and publish more information on her visit to China, including on restrictions she faced on the ground. Cuba delivered a joint statement in support of China on behalf of 69 countries.

Ethiopia

On 30 June the International Commission of Human Rights Experts on Ethiopia (ICHREE) provided its first oral update to the HRC in an Interactive Dialogue, focusing on progress made by the ICHREE in establishing operations and beginning its investigations. The ICHREE noted its alarm that violations continue to be perpetrated with impunity in Ethiopia amidst the spread of conflict and a deteriorating humanitarian crisis. The commission also called for individuals, groups and organizations to submit information and documentation relevant to its mandate.

Israel and the Occupied Palestinian Territory

In the first report issued since its mandate was established in May 2021, the CoI on the Occupied Palestinian Territory (OPT), including East Jerusalem, and Israel concluded on 9 May that continued occupation by Israel of Palestinian territory, as well as discrimination against Palestinians, are key root causes of the recurrent tensions, instability and protraction of conflict in the region. The CoI noted that Israel's settlement policy runs contrary to its obligations under article 49 of the Fourth Geneva Convention and that the transfer, directly or indirectly, by an occupying power of parts of its own civilian population into the territory that it occupies constitutes a war crime under the Rome Statute. The CoI highlighted that other investigative mechanisms established by the HRC, including those on the 2009 and 2014 Gaza conflicts, previously found that violations of the International Humanitarian Law principles of distinction, proportionality and precautions in and from the effects of attacks by the Israeli military forces and Palestinian armed groups may have amounted to war crimes.

During an Interactive Dialogue with the CoI on 13 and 14 June, the Commissioners highlighted a range of factors contributing to recurring cycles of violence, including forced evictions and displacement of Palestinians, the transfer of the civilian population through illegal Israeli settlement construction and expansion, Israeli settler violence targeting Palestinians and the 15-year blockade of Gaza. The Commissioners identified double standards in accountability, and that the international community has thus far failed to ensure compliance with international law in the region. The CoI presented three overarching recommendations to address these root causes: (1) immediately ending Israeli occupation, (2) affording all persons in Palestine and Israel equal access to all their human rights, including the right to live in peace and security, and (3) ensuring respect for international law in the region and working toward accountability for those responsible for crimes in Israel and the OPT.

South Sudan

On 4 July the HRC adopted the outcome of South Sudan's review under the UPR. South Sudan received 258 recommendations in total, out of which 222 recommendations had been accepted. While South Sudan was commended for its progress made in implementing the 2018 Peace Agreement, several speakers expressed concern about unresolved political issues and conflict and violence, including the high levels of sexual and gender-based violence. South Sudan indicated that ratifying the Rome Statute was not one of its priorities.

Venezuela

During an Interactive Dialogue on 29 and 30 June, High Commissioner Bachelet presented the findings of her report on the latest human rights developments in Venezuela, as well as an assessment of the implementation of previous recommendations issued by OHCHR. The High Commissioner reiterated her concerns about restrictions to civic and democratic space, of which her office has documented 166 instances between May 2021 and April 2022, including stigmatization, criminalization and threats against dissenters. The High Commissioner also reiterated her call for independent and timely investigations of all perpetrators of human rights violations and abuses, regardless of rank, as well as for full reparations for victims and families. During the Interactive Dialogue, cross-regional delegations also emphasized the need for ongoing monitoring, reporting and investigations by the FFM on Venezuela, particularly ahead of elections scheduled for 2024 and 2025. The FFM's mandate is set to expire in September 2022. On 1 July the HRC adopted the outcome of Venezuela's review under the UPR, which included 328 recommendations made by member states. Venezuela issued 12 voluntary commitments, including strengthening state institutions in charge of the justice system and deepening cooperation with the HRC and other human rights mechanisms. To date, Venezuela has refused to cooperate with the FFM, including by denying access to the country.

Ukraine

During an Interactive Dialogue on 16 June, High Commissioner Bachelet decried the assault on Mariupol, which experienced the deadliest violence in Ukraine from February to April 2022. According to OHCHR, the intensity and extent of hostilities, destruction, death and injury strongly suggest that serious violations of international law have occurred in Mariupol. The High Commissioner called for the pursuit of justice to ensure reparations for all victims. On 5 July the High Commissioner also provided an oral presentation on cooperation with and assistance to Ukraine in the field of human rights.

RELEVANT THEMATIC AREAS

RESOLUTIONS

Violence Against Women, Its Causes and Consequences

The UN Special Rapporteur on violence against women, its causes and consequences, Reem Alsalem, released a report dated 21 April, which focused on violence against indigenous women and girls. The Special Rapporteur highlighted that indigenous women and girls who have been displaced by armed conflict are at heightened risk for gender-based violence. Violations and abuses against indigenous women and girls manifest itself in multiple ways, such as through ethnic cleansing or forceful deportation, sexual violence, trafficking, extortion, criminality or labor exploitation in situations of poverty. Providing concrete examples of justice and reparations for victims, the Special Rapporteur highlighted the *Sepur Zarco* case regarding the atrocities committed during the Guatemalan civil war. This case was the first time a national court considered charges of sex slavery during armed conflict and recognized the act as a war crime, leading to important reparations for the affected community. The Special Rapporteur also emphasized that that UN Women, civil society organizations, women's human rights defenders and public prosecutors came together to support indigenous Q'eqchi' women in winning the historic ruling by the Guatemalan court on sexual violence as a war crime. The Special Rapporteur also referred to the acknowledgment of truth, responsibility and fault as an important form of moral and non-monetary reparation. In this context, the Special Rapporteur highlighted the conclusion of a three-year inquiry by Canada which found that Canada had committed genocide against its indigenous population. The HRC adopted a resolution on 7 July to extend the mandate of the Special Rapporteur.

Freedom of Peaceful Assembly and Association

In a report dated 16 May the Special Rapporteur on the rights to freedom of peaceful assembly and association, Clément Nyaletsossi Voule, assessed the protection of human rights in the context of peaceful protests during crisis situations. The Special Rapporteur recalled that the use of unnecessary or excessive force, including lethal force, against peaceful protesters in contexts such as international and non-international armed conflicts or military occupation, may constitute war crimes or crimes against humanity. The report recalled that unless undertaken lawfully in self-defense, intentionally killing a civilian not directly participating in hostilities is a war crime. The Special Rapporteur also highlighted impunity for widespread and serious human rights violations, including violations that may constitute crimes against humanity, in many crisis contexts. The Special Rapporteur recalled that a number of investigations have been opened by the ICC into war crimes and crimes against humanity committed in the context of protests in Burundi, Israel and the State of Palestine and Libya. The HRC adopted a resolution by consensus on 8 July that extended the mandate of the Special Rapporteur on freedom of peaceful assembly and association.

ADDITIONAL INTERACTIVE DIALOGUES AND REPORTS

Annual Report of the High Commissioner for Human Rights

In her annual report, dated 26 April, High Commissioner Bachelet highlighted that the prevention of genocide and other atrocity crimes remained a priority in OHCHR advocacy. The High Commissioner noted that OHCHR contributed to the Secretary-General's report on system-wide delivery and financing of, as well as existing gaps in, technical assistance and capacity-building that support state implementation of their international human rights obligations and commitments and provided recommendations on the prevention of genocide and other atrocity crimes. The High Commissioner also emphasized that OHCHR trained officials of the Republic of Korea's Ministry of Justice and Ministry of Unification in the documentation and preservation of evidence of crimes against humanity in the Democratic People's Republic of Korea.

Human Rights of Migrants

In a report dated 26 April, the Special Rapporteur on the human rights of migrants, Felipe González Morales, expressed concern that in 2021 over 32,000 migrants were forcibly returned to Libya, where they are at risk of extensive abuses and human rights violations by both state and non-state actors. The Special Rapporteur recalled the findings of the FFM on Libya, which found that abuses against migrants were evidence of "a State policy encouraging the deterrence of sea crossings, the extortion of migrants in detention, and subjection to violence and discrimination," and that there

were “reasonable grounds to believe that acts of murder, enslavement, torture, imprisonment, rape, persecution and other inhumane acts” may amount to crimes against humanity.

Human Rights and Transnational Corporations and Other Business Enterprises

The Working Group on the issue of human rights and transnational corporations and other business enterprises issued a report dated 8 June entitled, “Tenth anniversary of the Guiding Principles on Business and Human Rights: a roadmap for the next decade of business and human rights.” The report noted that despite progress made in implementing the guiding principles, major challenges continue, most notably in conflict-affected areas or other situations where atrocities are a known risk. The Working Group recommended that business enterprises “exercise ‘heightened’ human rights due diligence when connected to conflict-affected areas or other situations where atrocities are a known risk, such as in authoritarian regimes or in situations of illegal occupation and develop mechanisms for elevating action when there is a risk of involvement in international crimes.” The Working Group also issued a report that analyzed the implications of implementing the principles of transitional justice mechanisms for the field of business and human rights, particularly focusing on reparations and how states have used transitional justice mechanisms to address business’ responsibility for their role in conflict-affected areas. The group called upon states to adopt a comprehensive framework that enables social and individual healing in the aftermath of atrocities and to make available redress through a combination of policies that provides recognition to victims, promotes trust in institutions, contributes to the strengthening of the rule of law and encourages social integration and reconciliation. It also stressed that conflicts over land tenure and use may lead to violence, and that land can become a weapon of repression or war through the use of landmines or ethnic and other forms of cleansing.

Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, issued a report dated 23 May entitled, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.” The report summarizes submissions from member states on laws and policies that criminalize hate speech and combat Nazism and neo-Nazism. The submission from Latvia noted that its State Security Service registered 111 submissions between 2016-2020 related to genocide, invitation to genocide, and acquittal of genocide and crimes against humanity, and to the triggering of national, ethnic and racial hatred. The report also highlighted how Latvia has taken steps to strengthen its legal framework, including through provisions that criminalize relevant offences, such as violating the prohibition of discrimination, genocide, crimes against humanity, incitement to hatred and the triggering of hatred. The report also noted the efforts made by Luxembourg and Hungary to memorialize victims of the Holocaust and improve Holocaust education in schools.

Extrajudicial, summary or arbitrary executions

In his report dated 16 June, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, focused on forensic medicine and examined the challenges facing medico-legal death investigation systems and contemporary forensic professionals in the investigation of potentially unlawful deaths. The Special Rapporteur highlighted that such medico-legal death investigations also play a major role in inquiries into allegations of war crimes, crimes against humanity and genocide.

ANNEX 1 – Statement by the Group of Friends of the Responsibility to Protect re: Item 3 – Interactive Dialogue with the Special Rapporteur on Violence Against Women, its Causes and Consequences

20 June 2022

Mr. President,

I have the honor to deliver this statement on behalf of members of the Group of Friends of the Responsibility to Protect.

Since women and girls are uniquely affected and targeted in many situations where atrocity crimes are being perpetrated, the systematic application of a gender lens by HRC mechanisms and procedures would enhance holistic atrocity prevention strategies and improve the effective implementation of the Responsibility to Protect (R2P).

We therefore thank the Special Rapporteur on violence against women, its causes and consequences for her continuous leadership on mainstreaming a gender perspective into the UN human rights system, and her tireless efforts to provide targeted and action-oriented recommendations on how to achieve this.

We would like to use this occasion to encourage all UN member states to support the Special Rapporteur in this endeavor, including by:

- Ensuring the inclusion of a specific reference to gender analysis and sexual and gender-based violence, including recommendations for prevention and response, when establishing or renewing mandates of HRC mechanisms and procedures;
- Regularly including gender-related questions and reflections when participating and delivering interventions at interactive dialogues at the HRC, including those addressing situations where atrocities are, or are at risk of, occurring;
- Giving visibility and providing a platform across HRC discussions and initiatives to women leaders and their organizations.

Madam Special Rapporteur, how can we further strengthen the capacity of HRC mechanisms and procedures to identify risk factors for atrocity crimes, specifically affecting women and girls, and take preventive action for situations at risk?

Thank you.

ANNEX 2 – Statement by the Group of Friends of the Responsibility to Protect re: Item 2 – Interactive Dialogue on the Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

14 June 2022

Mr. President,

I have the honor to deliver this statement on behalf of the Group of Friends of the Responsibility to Protect (R2P).

We thank the High Commissioner for the work of her office in highlighting human rights violations and abuses around the world. Such violations and abuses, especially when paired with other exacerbating risk factors such as limited civic space or high levels of political, social or economic instability, can be an indicator of potential atrocity risks. Therefore, the UN human rights system plays a fundamental role in preventing and responding to atrocities.

To further strengthen the role of the UN human rights system in the structural prevention of atrocities, we urge the High Commissioner to systematically include atrocity prevention measures in technical assistance provided by her office. In this regard, the UN Framework of Analysis for Atrocity Crimes can be an important tool in identifying a country's individual protection gaps.

The UN human rights system can and should also rapidly react when situations are at imminent risk of escalation. In this regard, we call on the High Commissioner to make systematic and regular use of intersessional briefings for member states when her office identifies situations at risk. We also call on the High Commissioner to work closely with the UN Office on Genocide Prevention and the Responsibility to Protect, mandated to provide early warning of atrocity crimes, to identify areas to strengthen cooperation and coordination, and to alert concerned states and the wider international community of necessary action in light of deteriorating crises.

Thank you.