

CETIM ADVISES YOU THE FOLLOWING READINGS

Kinshasa et les importations avicoles. En finir avec les catastrophes sanitaires et économiques

By Denis Horman

The Democratic Republic of the Congo holds immense wealth, not only below the ground but above as well, particularly in agricultural potentials, given the favourable climatic conditions, which are beneficial to practically all crops.

However, more than 75% of the Congolese live below the level of poverty. The urban population in particular is becoming more and more dependant on importations from the food processing industries. More than 90% of the animal proteins (poultry, fish, pork, beef...) eaten by the 8 million inhabitants of Kinshasa are imported.

The massive importations of frozen pieces of hens and chicken (thighs, feet, wings, parson's nose, skin...) as well as eggs sold cheaply on the local markets are destroying the local poultry chain. The breakdown of the cold chain has created a real sanitary catastrophe: according to a study done by the FAO in Kinshasa, more than 89% of the food sold in public places is contaminated.

Impressed by a campaign pursued in Cameroon concerning the importing of frozen chicken and the results obtains, associations in Kinshasa have begun to take action. *RAUKIN*, a network of urban agriculture in Kinshasa is organizing a campaign of information and awareness, lobbying for the restructuring of the poultry chain in the Democratic Republic of the Congo.

The network has set about to elaborate a "blue book" on the economic, social and health consequences of poultry importation, the obstacles and advantages of a local chain as well as the political measures that must be taken in order to control and develop the production of chicken and eggs. *RAUKIN* counts on our support to complete this campaign successfully.

Price: 3 € 28 pages, Ed. GRESEA (Belgium), Cahiers des Alternatives N°7, Decembre 2006. Please order from GRESEA by fax: 0032/2/2196486 or by internet: www.gresea.be.

Voyageur, certes! Solidaire, vraiment?

By Christophe Vadon, Denys Leplus, Joëlle Soret, Bernard J. Lecomte

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Price: CHF 17.- / 10.50 € 50 pages, GRAD, France, 2007, can be ordered from CETIM or GRAD: www.grad-france.org.

Etat des résistances dans le Sud - 2007. Points de vue du Sud

Joint Publication Vol. XIII (2006) n°4

The international community spends more energy talking about "the fight on poverty" than focusing on the actual struggles of the poor. Probably because the latter brings in less money... And yet the demonstrations against the rise in the cost of living in Niamey, or the struggles of the farmers in India against the dumping of agricultural produce, or the campaigns against the privatization of public services in Santiago, Montevideo or Johannesburg all testify that the "losers" in globalization are rallying in order to resist and make their voices heard. These social resistances deserve more attention: They are signs of collective tensions that cross societies, societies whose very foundations have been deeply weakened by a series of adjustments to the canons of a world economy. The different forms that these resistances take on are linked to the very culture and history of the people concerned, as well as depending on the latitude offered by the political systems. It is the same with their impact: if, on one hand, in Latin America, several governments have come into being thanks to large popular movements, on the other hand, the existence of forces of opposition remain a challenge in many African and Asian countries whether they are tolerated reluctantly by regimes long trained in the art of the two-faced democratic speech or those threatened by dilution in the strategies of "participation" proposed by the technicians of development.

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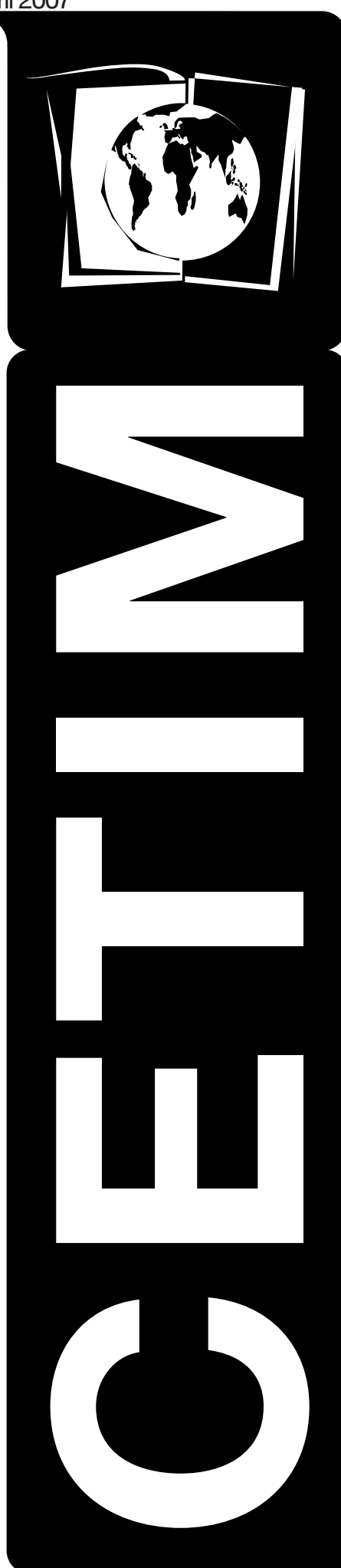
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EDITORIAL

Since March 2006, the Human Rights Council (HRC) has replaced the Commission on Human Rights. As described in Bulletin N°26, the reform process of the major human rights machinery, is not proceeding smoothly at all.

One year on, rules of procedures of the HRC are still not established. The working groups charged with developing different procedures are progressing very slowly. This is mainly due to the very divergent positions defended by Council member states.

This situation is very worrying for the future of UN human rights machinery - the Council is not, after all, being built on virgin territory. It is building on 60 years' experience of the Commission on Human Rights (CHR), which had remarkable mechanisms at its disposal.

Last year, we already expressed our fears - in relation to the reform process - that human rights protection mechanisms at international level were being weakened rather than reinforced.

While it may be too soon to say that mechanisms have been weakened, there is a real danger of an institutional vacuum if the process of establishing a HRC continues much longer. At the moment the Council - with a few exceptions - is concentrating on procedural questions and neglecting serious problems or only addressing them as and when they arise.

This bulletin presents a global review of the first year of existence of the HRC.

Transition from Commission to Council

One year after its creation, the Human Rights Council has still not established rules of procedure - nor even an agenda! Of course, the General Assembly has extended its deadline by a year, starting from its first session but the HRC has already held four ordinary sessions and four extraordinary sessions in addition to meetings of three working groups and many official consultations. It cannot be denied that the Council has not advanced on this matter given that the positions of its members appears irreconcilable on certain issues such as mechanisms for universal periodic review or the consultative expert body.

In these circumstances, the organization of HRC work is difficult and haphazard. Indeed, the HRC did not even establish an agenda for its ordinary sessions until the last minute, leaving very little room for manoeuvre for delegations and NGOs participating in its work.

The risk of an institutional vacuum is real. The Council, with some exceptions, has done no more than recording reports that have been submitted by special procedures. Furthermore, the effectiveness of its extraordinary sessions (Palestine, Lebanon and Darfour) has yet to be demonstrated. The two sessions on Palestine were not followed up because the Israeli government refused to receive the high level Palestinian delegation and the Special Rapporteur for Palestine. As for the special session on Darfur, the high level delegation –the composition of which was the result of a base compromise– was refused entry into the territory, by Khartoum.

Why is the setting up of the HRC going so slowly?

Firstly, it should be noted that certain members would like to start from scratch and ignore the experience of the former Commission on Human Rights (CHR) and existing mechanisms which have been shown to be effective. This attitude goes against the resolution which set up this new body. Disposition 6 of Resolution 60/251 of the General Assembly is very clear. "The Council will assume, re-examine and if necessary improve all the mandates, mechanisms, functions and attributes of the HRC, in order to maintain the regime of special procedures as well as the mechanisms of advice and complaint (...)". In other words, the General Assembly requires the Council to keep the essential of the old CHR, with some modification. The main difference between the CHR and the Council which is worth mentioning is the setting up of a new mechanism called the "universal periodic review" which stipulates an assessment of the human rights situation in all countries without exception.

Secondly, there is distrust between Northern and Southern states. Although all claim that they do not wish to fall into the trap of the Commission on Human Rights, the fact is that the Human Rights Council continues to be a political battlefield (in the sense of political partisanship). By way of example, the western camp does nothing to exert pressure on the Israeli government in relation to the activities of its army in the occupied territories. Worse still, it defends its principal ally in the region come what may.

Thirdly, the western camp, in particular Europe –the cradle of human rights– continues to give lessons to others, as if it held a monopoly on knowledge and represented a model of good behaviour.

It is, however, no secret that Europe has become an accomplice to the USA in treatment of prisoners in the context of the fight against terrorism, not to mention its own deplorable policies on asylum and migration.

At the moment, no government can claim to be irreproachable in terms of respect for human rights. In any case, in the international arena, states must genuinely work together, if results are to be obtained. This is also true for human rights. If we want the new standards of human rights that are currently being developed to be universally applied, participation of all states is crucial.

Fourthly, it must be acknowledged that states were not at all ready to organize – even under the best possible conditions – the transition from the Commission to the Council even though most of them had been calling for the replacement of the Commission by another body for several years.

Future perspectives

In this atmosphere of distrust, it looks unlikely that Member States of the HRC will reach agreement by mid June. The apparent consensus in the follow up on Palestine and Darfur, during the 4th ordinary session of the HRC, barely disguises the dissent within delegations in relation to dealing with human rights situations in the world. In fact, there is a real risk of deep division within the HRC if Member States cannot reach agreement on the implementation of the famous universal periodic review, with equal treatment in terms of these procedures for all UN member states³.

Everything is in the balance between now and mid June, given that the Human Rights Council will hold working group meetings on these procedural questions. The conclusions of the latter will be approved or not during the 5th session of the HRC which will be held from 11 - 18 June 2007.

¹ As this bulletin goes to press, the 4th ordinary session of the HRC is taking place.

² This delegation was composed of 3 experts and 2 ambassadors.

³ Cf. Written statements of CETIM on this question www.cetim.ch.

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WHO ARE WE?

Through its publications and its work with the UN, the CETIM denounces the maldevelopment in general, ecological as much as economic and social, and promotes an exchange of critical views from both Southern and Northern societies. The CETIM is focuses in particular on respect for, implementation and promotion of economic, social and cultural rights, as well as issues related to the right to development.

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There was also the study conducted by the Sub-Commission on this question and the “Guidelines for the realization of the right to drinking water and sanitation” adopted by the Sub-Commission and sent to the Human Rights Council for consideration.

Access to medicines in the context of a pandemic such as HIV/AIDS, tuberculosis and malaria

By a decision adopted without a vote¹⁰, the Council requested the Secretary General of the UN, in his report to be submitted to the Council, “to include a study on the exploration of new and innovative financing mechanisms, (...) which can help improve the access to medications that fight those pandemics...” and “to include an assessment of the impacts of intellectual property rights on access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria from the perspective of human rights”.

It is to be hoped that the new Secretary General will accord to this the importance necessary for following through on this decision, which shows that governments have finally begun to be preoccupied by the consequences of intellectual property rights. Indeed, these rights have been diverted from their initial objective and used abusively by transnational corporations in the unbridled pursuit of profit¹¹.

¹ More than 40 mandates and several countries were under scrutiny by the Human Rights Council. Among the countries, one may distinguish three categories: those accused of “serious violations of human rights” (Belarus, North Korea, Cuba and Myanmar), those under “technical cooperation” (Afghanistan, Burundi, Cambodia, Haiti, Liberia, Nepal, Somalia and Sudan) and Palestine, which merited its own agenda item.

² For example, no resolution was adopted on Guantánamo, although, for the first time, the United States were accused of violations of human rights committed at Guantánamo by a joint report submitted by four special rapporteurs: E/CN.4/2006/120.

³ It is worth noting that the Human Rights Council considers itself a permanent body, and, in the absence of set rules, resolutions are postponed to the next session if time does not allow their consideration. This practice was repeated at the fourth session of the Council.

⁴ To wit the Special Rapporteur on Summary and Extra-Judicial Executions, Mr Philip Alston; the Special Rapporteur on the Right to Health, Mr Paul Hunt; the Special Rapporteur on the Right to Adequate Housing, Mr Miloon Kothari; and the Special Representative of the Secretary General for Displaced Persons, Mr Walter Kälin.

⁵ A/HRC/3/2.

⁶ A/HRC/2/8.

⁷ Ibid.

⁸ What is proposed is a merger of the current treaty oversight committees, a proposal made in May 2005 by the High Commissioner within the framework of the reform of the United Nations system: A/59/2005/Add3.

⁹ Sponsored jointly by Germany and Spain and adopted on 27 November 2006: A/HRC/2/DEC/104.

¹⁰ Sponsored by Brazil and adopted on 27 November 2006: A/HRC/2/DEC/107.

¹¹ In this regard, see our brochure, *The Right to Health*, Éditions CETIM, 2006.

Third Session of the Council

The Council devoted the work of its third session (29 November to 8 December 2006) essentially to procedural matters, to wit to the setting up of this new institution. The reports presented by the facilitators of the Council’s two working groups (on the universal periodic review and the review of all the mandates) as well as the debates that followed showed that the positions of the member states remain very far from those of the working groups on all matters dealt with – the universal periodic review, the review of the special procedures, the complaint mechanism and the consultative expert body.

Also, the International Commission of Inquiry regarding the targeting and the systematic murder of civilians by Israel in Lebanon presented its report to the Council. Most of the countries of the South were satisfied with the report, which stated, *inter alia*, “every Lebanese civilian was considered as a potential enemy”; the Israeli army made no distinction between “civilians objects and military targets”; the purpose of the Israeli attacks was to subject the Lebanese to “collective punishment”; etc. Israel and the Western group denounced the bias of the report, since it did not take into account the Israeli victims¹.

The HRC also organized an interactive dialogue with the Special Advisor of the Secretary General on the Prevention of Genocide, Mr Juan E. Méndez, who presented his report to the HRC. The discussion centered particularly on the situation in Darfur. It is also worth noting that the High Commissioner was criticized quite virulently for her reports on Palestine and Darfur, both of which were judged to be biased.

Resolutions adopted

In addition to the creation of a new working group entrusted with formulating concrete recommendations on its agenda, its annual work program, its working methods and its internal rules, the HRC adopted by vote two resolutions on racism: one providing for the creation of a committee that will draft supplementary norms to fill in the gaps in the International Convention for the Elimination of All Forms of Racial Discrimination, the other requesting the General Assembly to call a world summit in 2009 as a follow up to the Durban conference on racism and for which the HRC will function as a prep committee.

Regarding country specific situations, the HRC adopted two resolutions of which the first dealt with Palestine. It is worth recalling that the Commission of inquiry, which had been set up during the special session of July 2006, has not been



able to visit Palestine. As for the second resolution, it dealt with the report of the Commission of Inquiry on Lebanon. The Council requested, in essence, the High Commissioner for Human Rights, along with the Lebanese government, to look into how to implement the recommendations in this report.

¹ One should note that the mandate of the Commission of Inquiry was limited to “the grave situation of human rights in Lebanon caused by the Israeli military operations”.

Fourth Session of the Council

Beyond the participation of some 80 ministers during its first three days, the work of the fourth session (12 to 30 March 2007) dealt essentially with the review of reports of its three procedural working groups (see below), the presentation of numerous reports deriving from the special procedures (special rapporteurs etc) and the follow up of decisions of the Human Rights Council¹.

If most of the reports presented, like those of the second session, were interesting², almost no follow up was decided, for the Council reserves the right to review all the mandates and these mandates run until June³.

Resolutions adopted

As for resolutions adopted by the Human Rights Council at the end of this session, three merited our particular attention.

1) By a resolution adopted without a vote⁴, the Council, acknowledging the work carried out by the special procedures in the area of economic, social and cultural rights, on the one hand “encourages” the High Commissioner for Human Rights to, *inter alia*, “reinforce” her support to the Committee on Economic, Social and Cultural Rights, and, on the other hand requests the Secretary General to submit to her an annual report on the promotion and realization of economic, social and cultural rights.

2) In another resolution adopted without a vote⁵, the Council decided to undertake a process aiming to rectify the judicial statute of the Committee on Economic, Social and Cultural Rights with a view to putting it on an equal footing with the other treaty bodies.

3) In a resolution dealing with globalization and adopted by a vote⁶, the Council insisted on the necessity of broadening and reinforcing the full and effective participation of developing countries in the making of economic decisions and in the establishment of norms at the international level in order to assure an equitable sharing of

the fruits of growth of sustainable development in an economy that is globalizing.

It also requested the international community to take all necessary and adequate measures for an increase in public aid to development, a search for a durable solution to the problem of foreign debt, access to markets, the reinforcement and the diffusion of technical knowledge with a view to integrating developing countries into the world economy. This resolution needs no comment given the very sharp division in the voting, and it demonstrates, if need be, the gap separating member states on these questions.

Through a resolution dealing with the right to development, the Council decided to extend by two years the mandate of its working group on this question and that of the high level special team⁷. In an oral statement, the CETIM deplored that the working group had strayed from its initial mandate.

Regarding country specific situations, by a resolution adopted without a vote⁸, the Council enjoined the High Commissioner for Human Rights to give effect to decisions voted during the special sessions on Palestine, which translates into sending urgent inquiry missions. In fact, these missions have not yet received the Israeli government’s permission to visit the Occupied Palestinian Territories.

In another resolution sponsored jointly by the European Union and the African Group and adopted without a vote⁹, the Human Rights Council decided to create a group of experts –presided by the special rapporteuse on Sudan– to follow up on the implementation of the resolutions on Darfur adopted by the various UN bodies and appertaining to human rights.

¹ Mostly the follow up of the decisions adopted during the special sessions.

² To be more precise, some twenty Rapporteurs/Experts on more than forty mandated subjects presented their reports during the fourth session. The others will do likewise during the fifth session.

³ The Human Rights Council last year extended all the mandates by one year, pending the results of the working group entrusted with this matter.

⁴ A/HRC/4/RES/1.

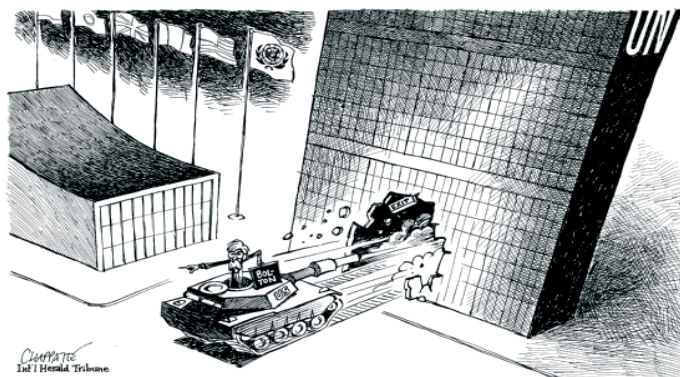
⁵ A/HRC/4/RES/7.

⁶ 34 in favor, 13 against (Canada, Czech Republic, Finland, France, Germany, Japan, Netherlands, Poland, Rumania, South Korea, Switzerland, Ukraine, and the United Kingdom) and no abstentions, A/HRC/4/RES/6.

⁷ A/HRC/4/RES/4.

⁸ A/HRC/4/RES/2.

⁹ A/HRC/4/RES/8.



The US ambassador John Bolton quits the UN.
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THE WORKING GROUPS

At its first session, the Human Rights Council set up two working groups charged respectively with re-examining all the mandates inherited from the former Commission on Human Rights¹ and the establishment of rules and procedures for universal periodic review².

The HRC set up a third working group, in its 3rd session, charged with developing recommendations for the agenda, annual work programme, work methods and internal rules³. The Council also voted⁴ a decision entitled “Intergovernmental working groups charged with re-examining mandates” requesting the above group to “develop a project for a code of conduct for work relating to special procedures (...)”⁵. In a statement, the CETIM stated that the project for a code of conduct should not be used to muzzle the mandate holders or restrict the scope of their work. In collaboration with other NGOs, the CETIM presented several written statements relating to the above procedural issues during the last two sessions. Below are brief summaries of our positions⁶:

Re-examination of special procedures

The mandates should be clearly defined. The Council must ensure a correct balance between civil and political rights and social, economic and cultural rights. The mandate holders should be chosen on the basis of their qualifications, their impartiality, and their independence from governments and from political and ideological influence. In order to avoid any ambiguity, it is preferable for mandate holders to be elected by the Council for a maximum of two consecutive mandates, respecting geographical representation. The holding of several mandates simultaneously should be avoided.

Setting up of the new complaint mechanism

Future procedure for complaints must aim for efficiency (clear criteria for receivability, a time limit for procedures) and transparency (public procedures).

The matter must be given to a group of independent experts elected by the Council on the basis of geographical representation for three years, renewable once. The experts, after having examined the complaints, will transmit their recommendations to the Council.

Setting up of the universal periodic review (UPR)

1) The UPR must respect the UN Charter, the Universal Declaration and the treaties that have been ratified by the country in question in such a way that it will be impossible to ignore commitments and practices of the state concerned, in all organizations and institutions of the UN system, and more generally, at international level, in order to attract attention to those which are clearly in contradiction with commitments made in relation to human rights.

2) The implementation of the UPR should allow the Council to adopt a novel, global approach allowing, when necessary, and on the basis of objective and reliable information from a situation analysis of human rights in the country under examination, proposals and recommendations to be made to third party states so that their populations can fully enjoy their human rights.

Setting up of a new consultative expert body

A consultative expert body must be retained to replace the Sub-Commission for the Promotion and Protection of Human Rights. The new body must be subsidiary to the Council and a permanent entity. It must be composed of independent experts elected by the Council. Its composition must respect the principle of geographic and gender representation. The experts should come from various, different legal traditions and should represent all civilizations. Its principle function should be to support the activities of the Council in relation to the promotion of human rights notably through studies and research. But it must have room for manoeuvre and sufficient flexibility to take its own initiatives in response to new developments and the evolution of normative systems in the protection of human rights.

¹ Apart from special procedures, this also concerns the Sub-Commission and the procedures known as 1503 (confidential complaints procedures on violations of human rights in the world) cf. A/HR/1/DEC/102

² Cf. A/HR/1/DEC/103

³ Cf. A/HR/3/RES/4

⁴ Presented by Algeria in the name of the Africa group and adopted on 27 November 2006 by 30 votes against 15 (Germany, United Kingdom, Canada, South Korea, Finland, France, Guatemala, Mexico, The Netherlands, Peru, Poland, the Tcheque Republic, Romania, Switzerland and Ukraine) and two abstentions (Argentina and Uruguay), cf. resolution A/HRC/2/RES/2

⁵ The HRC decided without a vote, to fix the deadline for presentation of a code of conduct, for the 5th session.

⁶ All our written statements are on our website: www.cetim.ch



NGO PARTICIPATION

The participation of the NGO's within the new Council raises numerous issues. The significant increase in the number of meetings during the year does not allow most of the NGO's, based in Geneva or not, to fully participate in the works of the Human Rights Council. The speaking time given to the NGO's is also at stake. The opportunity given to participate in the “interactive dialogues” is appreciated, but only about ten of them are allowed to take the floor by segment, when everything goes well... De facto, lots of NGO's are excluded from the debates. It is an intolerable restriction if we refer to the practice of the former Commission¹ and to the paragraph 11 of the 60/251 resolution of the General Assembly which ensure full participation of the NGO's in the HRC works and maintains the modalities of the ECOSOC and the practices of the former Commission. It is strange to see that the increase of the number of the Council² meetings leads to the diminution of the NGO's speaking time !

¹ After the withdrawal of the additional meetings since 2001 by the General Assembly, the NGO's could only present 6 oral statements per session with a length of 3 minutes each, while they had more space before (oral statement on each point of the agenda, which means about twenty, and five minutes speaking time were allowed.

² The HRC has at least 10 weeks of meetings at its disposal in a year. The former Commission did only have maximum six at its disposal !

Sessions of the Human Rights Council

In 2006, the Human Rights Council held three ordinary sessions. The first session was presented in full, in Bulletin N°26.

Second session of the Council

The 2nd Session of the HRC (18 September–6 October 2006) was devoted essentially to the presentation of the High Commissioner for Human Rights report on the situation in several countries (notably Sudan, Irak, Sri Lanka and Nepal) and reports of those holding thematic and geographical mandates¹. Although discussions following the presentation of reports were interesting, no recommendations or follow up actions² were decided and the Council suspended its second session until the 3rd session for the adoption of resolutions³.

It should be noted that certain draft resolutions were rejected at the 4th Session of the Council, withdrawn by their authors or presented directly to the General Assembly.

Reports of the Special Rapporteurs on Lebanon

During the second session, four experts⁴ presented a joint mission report on Lebanon and Is-

rael⁵, following the war led by the latter against the former in July and August 2006. This report was heavily criticized by many Member States and in particular by the Lebanese delegation. Indeed, the report made no distinction between Israel and the Lebanese Hezbollah - which is a non-state actor - and condemned both for violations of international humanitarian law.

The Special Rapporteur on the Right to Food, Mr Jean Ziegler, also presented a report, exclusively on the consequences in Lebanon of the Israeli aggression, as Israel had refused him entry into its territory. In his report, Ziegler noted flagrant violations of the Lebanese people's right to food by Israeli bombardment (blocking of humanitarian aid, destruction of harvests and of infrastructure for agriculture, irrigation and water, thousands of unexploded bombs on agricultural land preventing farmers from working etc⁶, and requested that “all (Lebanese) victims receive adequate reparation and compensation for the losses suffered during the war as well as for ongoing losses due to the disruption of livelihoods” by the Israeli government, given that the latter “should be held responsible under international law”⁷.

Clarifications on certain adopted resolutions

The creation of a unified permanent treaty body

By a resolution adopted without a vote, the Council “encourages” the High Commissioner for Human Rights to conduct a study on the various options concerning her proposal to create a unified permanent treaty body⁸.

In one of its statements dealing - in part - with this question, the CETIM expressed its reservations. Each committee is responsible for the implementation of a specific convention, and its members must have particular qualifications in this area. Further, there are legal problems that would be created by such a merger and which would risk paralyzing the current treaty bodies for a long time.

Human rights and access to water

By a decision entitled “Human rights and access to water”, adopted without a vote, the Council requested the High Commissioner to conduct “a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation”⁹.

This study is, at best, of questionable value, since the Committee on Economic, Social and Cultural Rights already conducted one in the context of its General Comment N°15, dealing with the right to water.