

2010

## United Nations and NGO Updates

Thomas Avery

*American University Washington College of Law*

Sikina S. Hasham

*American University Washington College of Law*

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Avery, Thomas, and Sikina S. Hasham. "United Nations and NGO Updates." Human Rights Brief 18, no. 1 (2010) 58-60.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kclay@wcl.american.edu](mailto:kclay@wcl.american.edu).

## UNITED NATIONS AND NGO UPDATES

### UNITED NATIONS

#### GENDER EQUALITY IN EDUCATION AND THE MILLENNIUM DEVELOPMENT GOALS IN UGANDA

On September 24 2010, Ugandan President Yoweri Museveni boldly proclaimed to the UN Generally Assembly that Uganda “will definitely” achieve the Millennium Development Goal 3 on gender equality and empowering women by promoting education at all levels no later than 2015. The Millennium Development Goals (MDGs) are a series of eight non-binding commitments to cut world poverty in half, agreed to unanimously by UN Member States in December 2000. To address the progress of these goals, the UN Development Programme (UNDP) prepared an assessment entitled “What Will it Take to Achieve the Millennium Development Goals?” in advance of this year’s UN summit in New York. The report revealed that countries that succeeded in achieving MDG 3 saw a multiplier effect in reaching the other seven MDGs. To that end, Uganda has taken steps towards codifying a national policy on gender equality and advancing human rights by drawing up a legal framework for their development. Yet, advancement of gender equality in education and empowering women remain unmet goals despite these legal laws and President Museveni’s optimism.

Currently, only one-third of girls who enroll in primary education in Uganda are still in school at the age of 18, compared to one-half of boys. Early pregnancies, sexual harassment, lack of sanitation facilities, and female genital mutilation cause many girls to drop out or miss school. The country’s failure to adequately address women’s issues has hindered economic development as well. According to Uganda’s development plan, ending gender inequality in education and formal sector employment would increase the GDP by 1.2 percent annually.

The actual conditions of female Ugandan students are in stark contrast to the words of the Ugandan Constitution, which accords men and women equal dignity

under the law. Because this language alone proved insufficient, Uganda took action in 2005, amending the Constitution to call for the creation of the Equal Opportunities Commission (EOC) to correct imbalances for women and historically underrepresented groups. The new Constitution presents the EOC with the daunting task of “[taking] affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.” The Constitution left it to Parliament to determine the specific powers and form of the EOC. Thus, when Parliament passed the Equal Opportunities Commission Act of 2007, it granted the EOC the power not just to issue recommendations, but also “to order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Commission will promote equal opportunities . . . .”

In Uganda, the government’s unwillingness to move beyond written words to achieve MDG 3 has perpetuated gender inequality. Uganda has failed to adequately address women’s education, but has in the EOC an incredibly powerful tool to implement change. The EOC is vested with the power to curtail the conditions that lead to a higher female dropout rate in schools. It can address sexual harassment in schools by imposing civil sanctions on the perpetrators and by requiring schools to end harassment or else face funding cuts. It could legally require that primary and secondary level curriculums change to include lessons on avoiding pregnancy at a young age and also that schools provide education to pregnant women and girls. The EOC also has the power to move female genital mutilation trials to the top of court dockets and mandate harsh sentences for those found guilty. Unfortunately, in spite of its potential to enact positive change, the EOC was not staffed until August 2009 and has not yet been able to make a significant impact in achieving its constitutional mandate or furthering Uganda’s MDG commitments.

If the EOC can fully employ its authority to mandate gender equality in education, Uganda may have the potential to reach MDG 3 and thus further the other poverty reduction goals. The Ugandan leadership has acknowledged the significance of achieving MDG 3 and invested in legal mechanisms to help advance gender equality. However, the EOC’s slow progress and the significant gaps in gender education in Uganda make achieving MDG 3 a daunting task. With such strong moral and economic incentives, Uganda will need to move beyond words and employ all of its available tools to ensure gender equality in education.

#### MISSED OPPORTUNITIES IN HAITI: A PEACEKEEPING MISSION SPARKS PROTEST

Amidst considerable protest, the UN Security Council voted unanimously to extend the mandate of the UN peacekeeping force in Haiti, *Mission des Nations Unies pour la stabilisation en Haïti* (MINUSTAH), on October 14, 2010. Under UN Resolution 1944, the mission will remain active until October 15, 2011 to assist with security during the November 2010 elections and ensure post-election stability. Yet, Haitians have called for the UN to recall its troops in the wake of ongoing allegations of human rights abuses and lack of accountability. Displaced Haitians have also expressed anger at MINUSTAH troops for their failure to protect residents of temporary camps, alleging that soldiers have stood by while violence and gender-based abuse occurs. MINUSTAH has proven to be a problematic mission from the start, and these accusations are only the most recent in a long list of human rights abuses soldiers have been accused of committing or condoning. The UN should proactively address these accusations by providing transparency and accountability, or else it will risk further harming those it aims to protect.

On April 30, 2004, in response to a deteriorating political and humanitarian situation in Haiti, UN Resolution 1542 authorized MINUSTAH. MINUSTAH was to promote and protect human rights,

particularly those of women and children, and to assist NGOs and the Office of the High Commissioner for Human Rights with investigations into violations of human rights and humanitarian law. Yet complaints that MINUSTAH troops were themselves committing such abuses began almost immediately after the mission began, and Haitians have alleged that the troops are not held accountable for violations of fundamental rights. The UN's failure to prevent MINUSTAH troops from committing human rights violations and to hold perpetrators accountable has seriously undermined its credibility in Haiti.

Haitian students and rights organizations argue that it is time for the soldiers to leave. Despite Security Council approval, opponents of the UN mission claim that it undermines Haiti's sovereignty guaranteed in the UN Charter, and that the continued presence of over 8,000 peacekeepers amounts to an illegal occupation. Human Rights Watch and Harvard Law Student Advocates for Human Rights have also alleged specific human rights violations including unlawful arrests, denial of fair and public hearing, and failure to provide remedies.

Contributing to the frustration, Haitians have encountered many obstacles to holding UN peacekeepers legally accountable. In theory, they have three legal avenues: legal action in Haiti; legal action in Brazil, the largest provider of troops to MINUSTAH; or a petition to the Inter-American Commission for Human Rights (IACHR). It is extremely difficult to bring suit in Haiti, as the Status of Forces Agreement governing MINUSTAH and agreed upon by the UN and the Haitian government, only allows for a civil action to proceed in Haiti with the mission commander's approval, a prospect deemed by the UN Human Rights Council to be a virtual impossibility. Criminal trials are equally unlikely because the UN would be required to hand over Brazilian soldiers, an action Brazil is unlikely to accept. While the Brazilian civil code allows foreigners to sue in domestic courts for acts perpetrated by Brazilian citizens abroad, the costs and difficulty of bringing a case in a foreign jurisdiction are prohibitive. Brazil is also unlikely to bring criminal charges against its own soldiers on behalf of Haitian victims.

While the IACHR is ostensibly an option for those seeking redress, the

IACHR requires a petitioner to exhaust all domestic remedies before hearing a case. In *Jimmy Charles v. Haiti* before the IACHR, petitioners argued that a civil action in Haitian courts for damages against Brazil was futile because of the state of the Haitian justice system. The petitioners further argued that the Charles family could not be reasonably expected to file suit in Brazil due to the high costs and low probability of success. In spite of these arguments, the IACHR held that the plaintiffs had not exhausted all domestic remedies and refused to hear the case.

The lack of accountability for those within MINUSTAH is cause for great concern. So far, the UN has missed the opportunity to fulfill its human right mandate. Continuing to ignore allegations of abuse and impunity runs the risk of instigating further hostility against the mission. Among possible remedies, the commander of the mission could allow Haitians to bring civil claims against soldiers in their home countries in cases of human rights violations, or the IACHR could decide that the obstacles to effective domestic remedies are so great as to justify waiving this requirement as futile. However, inaction denies Haitians their fundamental right to a remedy as guaranteed by the UDHR and undermines the purpose of the UN mission.

*Thomas Avery, a J.D. Candidate at the American University Washington College of Law, covers the United Nations for the Human Rights Brief.*

#### **MILLENNIUM DEVELOPMENT GOALS AND THE ROLE OF NON-STATE ACTORS**

On February 5, 2010, the UN General Assembly (GA) proposed and implemented GA Resolution 64/184, inviting non-state actors to the UN summit process. The Resolution called for an informal hearing with non-state entities to develop recommendations for the 2010 UN Summit on the Millennium Development Goals (MDGs). The UN held the hearings on June 14-15, 2010. Non-state actors are rarely heard at such high-level meetings despite their significant influence on domestic implementation of international law. Thus, these unprecedented hearings reveal an emerging paradox: despite the increasing power of non-state entities on the formulation, implementation, and enforcement of international legal norms, these actors have no legal personality under international law.

A lack of formal engagement with non-state actors has often sidelined recognition of the contributions of non-state entities; however, the UN's inclusion of these parties may signal an emerging policy shift. The civil society organizations that attended the UN hearings stressed the need for a holistic approach to the MDGs and called for increased accountability for states as key to meeting these goals. Non-state actors also emphasized that the lack of legal standing for civil society fact-finders can make the call for accountability an arduous or impossible task. Amid considerable criticism, a final outcome document was released in early September. Pointedly, non-state participants expressed disappointment about the document's failure to fully integrate their suggestions. Despite the positive indications of a policy shift, the outcome of the UN hearings was not as powerful a change as GA Resolution 64/184 initially suggested. Thus, the reality remains that, although civil society is gradually allowed more influence over international legal norms, it still has no legal status or personality under international law.

Nonetheless, non-state actors play a critical role in international law-making, adjudication, and enforcement. Furthermore, they are essential to the process of establishing state violations of international obligations, both through fact finding and information dissemination. Lack of legal personality undermines these contributions, often limiting the ability of non-state actors to address violations of fundamental rights and obligations. The formal incorporation of non-state actors into UN hearings and summits may alter this framework by allowing them to influence the creation of customary law and coordinated state action. These hearings and the resulting document exemplify the challenges non-state actors pose to the current understanding of international law by encouraging increased accountability and transparency. Although non-state actors expressed disappointment in the outcome, these hearings represent a first step in the UN's difficult task of formally engaging NGOs, civil society, and business.

International law deals primarily with states, so engaging non-state actors in the creation of customary international norms can be problematic. Non-state actors with no legal standing also have no formal legal powers against states that fall short in

meeting international obligations. Article 38 of the International Court of Justice Statute lists customary international law as a primary source of international law, which “consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way.” This historical focus on states as the subject of international law is therefore enshrined in customary international law. As states are the sole parties that affect the creation of customary international law, they also control the legal instruments used to ensure compliance with international human rights law. Furthermore, international treaties are agreements between states, to which only states can be signatories, adding to the normative exclusion of non-state actors in the formulation of international law. Thus, non-state actors are severely limited in their ability to create mechanisms to hold states accountable for violations of international human rights law, not meeting treaty obligations, and non-compliance with universal goals.

The GA resolution inviting participation by non-state actors, the pre-summit hearings, and the roundtable presence at the summit all demonstrate a desire to increase non-state actor participation in formal international dialogue. When the UN recognized non-state actors in the planning phases of the MDG Summit, it was an initial step in creating a formal role for, and holding states accountable to, non-state actors in the international arena. This type of recognition may also alter the development of customary laws by allowing non-state actors to influence their evolution. Where lack of legal recognition has often led to the marginalization of non-state entities, the UN’s decision to engage them on a formal level may indicate a change in policy.

#### **THE UN PEACEKEEPING MISSION IN THE DRC MAKES UNSUCCESSFUL ATTEMPT AT FURTHERING THE RESPONSIBILITY TO PROTECT**

Between July 30 and August 2, 2010, at least 303 women, men, and children were raped in the North Kivu Province of the Democratic Republic of Congo (DRC). The rapes occurred less than thirty kilometers east of the UN peacekeeping mission’s operating base. After the rapes were publicized, the UN issued a statement admitting its own failure to prevent mass rapes and

urging the DRC to do more to protect citizens. The UN mission’s failure in the DRC may be the result of inadequate resources and constraints imposed by its limited mandate. This incident demonstrates that the UN needs to reform traditional peacekeeping approaches in order to better meet its international responsibilities.

Civilian protection has become especially important to the UN in the past five years as the responsibility to protect (R2P) has emerged as an articulated consideration of states. R2P places pressure on states to protect their citizens and accept the aid of other states when they are unable to do so themselves, as well as to recognize the possibility of international intervention when state action is not sufficient to protect a population from mass atrocities. Specifically, R2P is directed at protecting against genocide, crimes against humanity, war crimes, and ethnic cleansing. The responsibility extends to protecting the population against mass rape, categorized as a crime against humanity in international law. The UN has been instrumental in helping to promote R2P under the auspices of the UN Charter obligation to promote international peace and security through peacekeeping missions and asserting pressure on states; sadly, its own performance on R2P has been imperfect.

The recent failure of both the UN and the DRC to prevent mass rapes in North Kivu illustrates the need for R2P to be jointly assumed and more effectively enforced. In June 2010, the Security Council approved a new peacekeeping mission, United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). MONUSCO was deployed with the consent of the DRC government and charged to help ensure effective protection of civilians. The DRC’s willingness to allow MONUSCO to engage within its borders demonstrated compliance with the R2P principle “to seek assistance to protect the population.” Unfortunately, the atrocities in North Kivu exemplify a disconnection between the positive intentions of the UN and the DRC government and the reality on the ground. Lack of funding has exacerbated communication difficulties and cultural differences, which in turn has forestalled effective and timely intervention to prevent attacks on civilian populations. Furthermore, MONUSCO’s is constrained from ensuring appropriate

protection of civilians by the limited number of troops.

The rise of R2P demonstrates a growing trend in the international community to challenge state sovereignty in the face of potential crimes against humanity. Traditionally, international law emphasizes state sovereignty, but R2P allows external powers to inquire into human rights violations and “assist” states on behalf of vulnerable populations within their borders. The basis for this extraterritorial obligation to protect arises out of increased accountability in international law and progressive theories of universal jurisdiction. The UN Charter calls for the promotion and respect for human rights and fundamental freedoms, and the human rights and fundamental freedoms memorialized in the Universal Declaration of Human Rights are recognized as customary international law. Yet, these texts are vague and difficult to enforce, making it rare for states to be held accountable for all but the worst transgressions. Therefore, even though the DRC allows UN peacekeepers to assist, MONUSCO is limited by the government in the actions it is permitted to take to protect the population.

In light of the limitations of existing human rights mechanisms, there are numerous legal challenges to overcome in asserting the R2P. State sovereignty continues to pose a significant obstacle to the R2P because of its status as a pillar of international law. Even in circumstances where a state is willing to accept help from the international community, the assistance can be ineffective and untimely, as was the case of the peacekeeping mission in the DRC. Nonetheless, recent customary international law is permissive of international actions against large-scale and continuous violations of human rights. This movement to protect people from mass atrocities is just beginning and much still needs to be done to ensure that any proffered assistance has the effect of adequately protecting a state’s population. A first step would be to strengthen the mandate and funding of UN peacekeeping missions to ensure that peacekeepers can help to fulfill the responsibility to protect.

*Sikina S. Hasham, an LL.M. Candidate at the American University Washington College of Law also covers the United Nations for the Human Rights Brief.* **HRB**