

Leading by example

Practical proposals for UK action to bolster the UN human rights pillar



UNIVERSAL RIGHTS GROUP

A report of the United Nations Association – UK and the Universal Rights Group



About UNA-UK

Founded in 1945, the United Nations Association – UK (UNA-UK) is the country's foremost advocate for UK action at the UN; the UK's leading source of analysis on the UN; and a vibrant grassroots movement of 20,000 people from all walks of life.

We are the only charity in the UK devoted to building support for the UN. We believe that a strong, credible and effective UN is essential if we are to build a safer, fairer and more sustainable world. We advocate strong government support for the UN – political and financial - and seek to demonstrate why the UN matters to people everywhere.

UNA-UK derives great strength from its nationwide network of members and supporters which forms a critical mass of support for the UN in the UK and beyond. We also provide policy expertise to the London diplomatic community and the media, and act as the Secretariat to the All-Party Parliamentary Group on the United Nations.

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About the URG

The Universal Rights Group (URG) is a small, independent think tank dedicated to analysing and strengthening global human rights policy. It is the only such institution in Geneva and the only think tank in the world focused exclusively on human rights.

The goal of the organisation is to support and strengthen policy-making and policy-implementation in the international human rights system by providing rigorous yet accessible, timely and policy-relevant research, analysis and recommendations. It provides a forum for discussion and debate on important human rights issues facing the international community and a window onto the work of the Human Rights Council and its mechanisms – a window designed to promote transparency, accountability, awareness and effectiveness.

About this report

This report was written by Isabelle Younane, Campaigns and Communications Officer, United Nations Association – UK. It highlights lessons learned from a high-level roundtable meeting hosted by the United Nations Association – UK in partnership with the Universal Rights Group on 22 November 2016 at King's College London.

The event brought together human rights experts from academia, the United Nations, UK Government and civil society to analyse the effectiveness of the UN Human Rights Council and the capacity of the United Kingdom, as a voting member of the Council, to exercise leadership on reform. The concluding session of the event produced over 30 different recommendations, many of which are included in this report.

UNA-UK and URG would like to thank all the participants who took part in the roundtable event and submitted recommendations for inclusion in this report. A list of all contributors to the discussion have been included at the end of this document.

Cover image: The 'Broken Chair' sculpture, which stands across the street from the Palais de Nations in Geneva, symbolises opposition to land mines and cluster bombs, and acts as a reminder to politicians and others visiting Geneva.
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Introduction

Created in 2006 to replace the United Nations Commission on Human Rights, the UN Human Rights Council (HRC) has achieved a significant amount during the first 10 years of its existence – from normative progress on thematic issues such as sexual orientation and gender identity, to the adoption of two new international human rights instruments.

Despite the HRC's achievements, critics contend that it has failed to fulfil one of the core parts of its original mandate: to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon".¹ The body has been criticised for focusing too heavily on broad thematic issues, while failing to address many country-specific human rights abuses, including gross and systematic violations.² Despite procedural and practical improvements, the Council is still grappling with many of the charges levelled against its predecessor in terms of membership, selectivity, implementation and politicisation.

Over recent months, we have witnessed the Council's fraught institutional relationship with the Third Committee of the General Assembly,³ reviving the question of whether the HRC should be elevated to 'principal organ' status within the UN. A review of the HRC's 'subsidiary' status is scheduled to take place in four to five years' time. While elevation is desirable – not least because it would bring the UN's three pillars, peace, development and human rights, closer in terms of status and enhance the HRC's ability to formally transmit reports to other UN organs – the requirement to amend the UN Charter is a major stumbling block. The focus in the lead-up to this review should therefore be on strengthening the Council in its current form so that human rights are better protected on the ground and afforded the prominence they deserve at the international level.

The scale of human rights violations currently facing the international community means that it is critical for the Human Rights Council to demonstrate its capacity to respond effectively – for the welfare of individuals around the world and for the future status of human rights within the overall UN institutional architecture.

“I’m impressed with the depth and breadth of the UK’s human rights work abroad. The major concern is the domestic focus, and the internal narrative on human rights”

Anonymous participant, UNA-UK/URG high-level roundtable event, 22 November 2016

1. General Assembly Resolution 60/1, para.159 and General Assembly Resolution 60/251, para.3

2. 'The Human Rights Council at 10: Improving Relevance, Strengthening Impact', Glion Human Rights Dialogue, Universal Rights Group, September 2015, available at: www.universal-rights.org/wp-content/uploads/2015/09/Glion_Outcome_Low_Res_spread.pdf

3. 'UN: Victory for LGBT Rights - General Assembly Rejects Effort to Stop Expert's Work', Human Rights Watch, 21 November 2016, available at: www.hrw.org/news/2016/11/21/un-victory-lgbt-rights

Benefits to the UK of advocating reform

From the Magna Carta in 1215 to the UN Universal Declaration of Human Rights in 1948, the UK has been at the forefront of developing international human rights laws and norms. More recently, it played a key role in both the negotiations on the HRC institution-building package in 2006-2007, and the five-year review of the Council in 2011. It is also an advocate for pressing human rights issues such as contemporary slavery and the situation in South Sudan.

The UK's approach to human rights forms part of its international reputation and soft power. Evidence taken by the House of Lords Select Committee on Soft Power and the UK's Influence suggested that the Government has "a key role in 'living up to' the UK's political values". These values included human rights, the rule of law, transparency and democracy – all deemed as important in generating a perception of the UK's foreign policy as legitimate, and of the UK as a responsible global actor with moral authority.⁴

“The UK’s welcome re-election to the Human Rights Council gives us a voice in the global debate on human rights, but it also gives us a duty to put that to good use”

Anonymous participant, UNA-UK and URG high-level roundtable event, 22 November 2016

The UK's 2015 National Security Strategy and Strategic Defence and Security Review identified strengthening the rules-based international order as a key priority for the UK. It states that this order is based on relationships between states and international institutions, and on shared rules and standards that need to be enforced.⁵ According to the Government, the erosion of the rules-based international order would make it more difficult to tackle global threats. As such, it should be expected that Britain's own behaviour would not put the health of this order at risk.

A recent assertion by US Secretary of State Rex Tillerson that the United States would withdraw from the Human Rights Council unless it undergoes "considerable reform" provides further incentive for the UK to lead on strengthening the HRC – in particular by reviewing Council membership procedures and the permanent agenda item on Israel and the Occupied Palestinian Territories.⁶

As threats to the international human rights regime grow, it is vital that the UK champions laws and mechanisms that are essential to protecting its own citizens as well as people around the world. At the same time, with the UK preparing to leave the EU, it is important for the UK to reaffirm its position on the world stage. Striving for an unimpeachable record on human rights and initiating reform of the Human Rights Council during its second term of membership would signal that the UK is willing to play a leading role in upholding the rules-based international order.

As a permanent member of the Security Council and a voting member of the Human Rights Council, the UK is in a strong position to help develop and drive forward proposals for strengthening the Council across four broad areas: (1) improving efficiency and tackling selectivity; (2) interacting with the wider UN system; (3) enhancing inclusivity and legitimacy; and (4) increasing the focus on implementation.

4. 'Report of Session 2013-14 Persuasion and Power in the Modern World', House of Lords Select Committee on Soft Power and the UK's Influence, 28 March 2014, available at www.publications.parliament.uk/pa/ld201314/ldselect/ldsoftpower/150/150.pdf

5. 'National Security Strategy and Strategic Defence and Security Review 2015: annual report 2016', UK Government, 7 December 2016, available at: www.gov.uk/government/publications/national-security-strategy-and-strategic-defence-and-security-review-2015-annual-report-2016

6. 'Sources: U.S. considers quitting U.N. Human Rights Council', Politico, 25 February 2017, available at: www.politico.com/story/2017/02/trump-administration-united-nations-human-rights-council-235399

1. Improving efficiency and tackling selectivity

The Human Rights Council has benefitted from meeting more often than its predecessor and has used its ability to consider pressing issues, including through holding 26 Special Sessions on gross violations of human rights over the past five years. However, the HRC's packed agenda limits its capacity to respond efficiently to urgent human rights situations. This is compounded by a backlog of work inherited from the Commission which, along with current Council business, it is required to fit into three scheduled sessions per year for a total of ten weeks.

Member states could take voluntary steps to increase the frequency of Human Rights Council meetings. This might be achieved by moving more thematic discussions to informal side events and, crucially, by making better use of the HRC's 'inter-sessional' work formats, such as roundtables, seminars and workshops.⁷ States should also support moves to 'break the Geneva bubble' and convene some of these inter-sessional meetings at regional or national level.

The 'Arria-formula' meetings of the UN Security Council provide a useful model for informal discussions, as they enable any Security Council member to convene a meeting and enable direct dialogue between both state and non-state parties. Over time, this model could produce a Human Rights Council which is effectively always in operation by phasing in informal sessions, panel discussions and side events, so that the HRC is able to respond more quickly to pressing situations.

'Special Sessions' have had mixed success in providing early warning of human rights violations, in part because they require the agreement of a third of the membership before they can be convened. They should also be able to be triggered through a referral by the High Commissioner for Human Rights or by a group of independent experts so that the Council is able to respond more quickly to emerging crises.

Despite the imperative in General Assembly Resolution 60/251 for the Council to contribute "towards the prevention of human rights violations", member states are yet to establish an explicit and coherent policy framework, with clear processes and tailored mechanisms, to fulfil this prevention mandate. Obstacles to achieving this include a lack of clarity around what prevention means, in practical terms, for the UN human rights system; what the Human Rights Council is actually expected (and mandated) to prevent; and ongoing political divisions within the Council about its response to country-specific threats.

Selectivity

Two guiding principles of the UN Human Rights Council are "non-selectiveness" and "impartiality", leading to widespread criticism against the Council for its disproportionate focus on the human rights situation in Israel and the Occupied Palestinian Territories. It remains the only regional human rights issue to have a standalone item on the Council's agenda and has been the subject of six Special Sessions – more than any other. However, there has only been one Special Session on this issue since 2009, whilst five have been convened on the situation in Syria since 2011, suggesting a shift in focus.

The Council's focus on Israel is part of a broader issue. While there is a case to be made for prioritising countries where there are systemic human rights abuses, the Council's response to 'persistent offenders' should be reviewed. As country-specific issues have occupied a third of Council resolutions, states who hold the pen on these issues should consider whether the situation is likely to be influenced by political pressure exercised by the HRC alone, or whether it requires action from other parts of the UN system.

In instances where human rights violations may constitute a threat to international peace and security, for example, Human Rights Council members could be more proactive in

7. For example, the inter-sessional full-day open-ended seminar on implementation of universal norms on torture prevention, to be convened in 2017 under General Assembly Resolution 31/31, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/061/76/PDF/G1606176.pdf?OpenElement>

recommending that the General Assembly (or, indeed, the Secretary-General) should submit HRC reports to the Security Council for its consideration and appropriate action. This relies on increased interaction between the Human Rights Council and the General Assembly, potentially through regular meetings between the Presidents of both bodies (see section 2).

Where the Council has been more strategic in its approach to country-specific issues, results have been achieved. For example, the Commission of Inquiry on North Korea delivered a report in 2014, documenting crimes against humanity, which resulted in the Security Council turning its attention to North Korea – as a separate agenda item from non-proliferation – for the first time in December 2014.⁸ Similarly, on Sri Lanka, it could be argued that the international pressure arising from the Council's demand for an independent investigation of abuses after the termination of the conflict in 2009 had an influence on elections in that country.⁹

Naming and praising

The Human Rights Council serves an important function in 'naming and shaming' states responsible for egregious violations of human rights – notably through resolutions under agenda item four (human rights situations that require the Council's attention), Special Sessions, Special Procedures and Commissions of Inquiry. However, it has been suggested that this focus on the 'negative' often comes at the expense of any focus on achievements at the national level, on progress with implementation, and on HRC impact. This has in turn led to the suggestion that the HRC should do better at 'naming and praising' or, more correctly, at highlighting good practice and therefore generating positive competition between states.¹⁰

This could be achieved by states acknowledging progress made by those under review during the third cycle of the Universal Periodic Review (UPR) – serving the added function of strengthening the focus on implementation. States could also jointly host side events outside official Council sessions, focused on praising countries for demonstrating clear progress on recommendations made by the UPR, treaty bodies or Special Procedures.

Measuring progress – rather than simply decline – would be a valuable way of both developing good practice on human rights and increasing the incentives for states to cooperate with human rights mechanisms.

Advisory Committee

Criticisms have also been raised against the effectiveness of certain elements of the Human Rights Council, such as the Advisory Committee. Allocated just three per cent or so of the UN's regular budget, the Council cannot afford duplications of work. The mandate of the Advisory Committee – which is designed to act as a 'think tank', with responsibility for the complaints process via its two Working Groups – should therefore be reviewed to ensure that it is not duplicating research being undertaken elsewhere.¹¹ Instead, it should provide much-needed guidance and early warning on future threats, such as the potential human rights implications of artificial intelligence and lethal autonomous weapons.

Additionally, concerns have been raised about the politicisation of the Committee, whose members are elected by the Council following nomination by member states. It is the responsibility of states to ensure that expert members of the Committee are chosen on the basis of merit, and are not nominated based on – and therefore potentially driven by – political motives.

8. Ted Piccone, 'Ten Years Later: The Status of the UN Human Rights Council', statement, The Brookings Institution, 17 May 2016, available at: www.brookings.edu/wp-content/uploads/2016/07/Ted-Piccone-Lantos-Commission-Timony-May-2016.pdf

9. Ibid

10. Julian Braithwaite, 'We Need More Naming And Praising In The Human Rights Council', Foreign Office Human Rights blog, 6 September 2016, available at: <https://blogs.fco.gov.uk/julianbraithwaite/2016/09/06/we-need-more-naming-and-praising-in-the-human-rights-council/>

11. HRC Resolution 5/1, para. 65, available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

“The vast majority of human rights discussion in Parliament is focused on criticising human rights abroad, while praising human rights at home. We need to rectify this imbalance if we are to legitimise our leadership on human rights.”

Anonymous participant, UNA-UK and URG high-level roundtable event, 22 November 2016

UK performance

The “race to the top” initiative organised by Colombia and the UK, on behalf of over 40 states, in September 2016 acknowledged that it is “increasingly difficult to find time to take stock of the positive impact that our work has had on the ground”.¹² It suggested that HRC’s 10th anniversary should be used as an opportunity to recognise and encourage best practice on human rights. This was a valuable first step towards measuring real-world impact by Council members and encouraging good practice and cooperation.

The UK has also been proactive in tabling Special Sessions of the Human Rights Council in response to pressing human rights issues. The most recent Session, held on 14 December, was focused on the situation in South Sudan and was jointly proposed by the UK and the US.

However, there have also been occasions where the UK’s performance at the Human Rights Council has been less than exemplary, and has served to weaken rather than strengthen Council effectiveness. For instance, in 2014, the UK voted against a modest resolution at the Human Rights Council on ensuring remotely piloted aircraft used in counter terrorism were operated in accordance with international law.¹³ The UK contended that this topic was beyond the scope of the Council’s mandate – a view not shared by Special Procedures mandate-holders – setting a concerning precedent for other states to vote against resolutions based on procedural objections.

Proposals for UK action:

- The UK should praise best practice during Universal Periodic Review sessions and should name-check countries which have taken steps towards implementing Human Rights Council resolutions or UPR recommendations
- The UK should follow up on its ‘race to the top’ statement by co-organising, with civil society stakeholders and other member states, a side-event on ‘who are the best engagers?’, designed to name and praise states who are the most positive contributors to the Human Rights Council
- During its term as a voting member of the Human Rights Council, the UK should collaborate with other HRC members to convene ‘Arria-formula’-type informal sessions on human rights issues
- The UK should refrain from blocking Council resolutions on the basis of procedural objections

12. ‘Human Rights Council 33, joint statement entitled A Race to the Top’, UK Mission to the UN in Geneva, 29 September 2016, available at: www.gov.uk/government/world-location-news/human-rights-council-33-joint-statement-entitled-a-race-to-the-top-29-september-2016

13. Hayley Richardson, The UK’s role on the UN Human Rights Council: Priorities for the UK’s 2014-2016 term, United Nations Association – UK, December 2014, available at: <https://www.una.org.uk/uk-role-human-rights-council>

2. Interacting with the wider UN system

In practice, human rights issues are incorporated into the work of multiple UN programmes and agencies, for example, the UN Development Programme is mandated to support the creation of national human rights action plans, and the Office for the Coordination of Humanitarian Affairs seeks to ensure that the human rights of civilians are protected in conflict.¹⁴ Meanwhile, the Secretary-General's 'Human Rights up Front' initiative has sought to further strengthen ties between the human rights pillar and other UN entities, such as UN Women, have stressed the need for a rights-based approach to development and economic policy.¹⁵

Increased recognition of the importance of mainstreaming human rights across the UN system is a welcome development, but there is no formal mechanism for assessing the extent to which UN bodies incorporate human rights principles into their work. This makes it harder to strengthen links between the HRC and the operational aspect of the human rights system, which could, in turn, improve the implementation of Council resolutions.

Relationship with the General Assembly

The Human Rights Council's problematic relationship with the Third Committee of the General Assembly came into the spotlight in November 2016 when the African Group proposed to suspend the HRC-approved mandate of the Independent Expert on Sexual Orientation and Gender Identity until the UN could debate the "legal basis" of its authority. While the proposal was ultimately defeated by the Committee, this is not the first time that the HRC's authority has been undermined. In 2011, the initial draft resolution to approve the HRC's annual report, tabled by the African Group in the Third Committee, "noted with concern" the recommendations of Resolution 17/19 on human rights, sexual orientation and gender identity. While the resolution was eventually amended to remove this reference, it was adopted by vote rather than by consensus.

Such incidents raise question marks over the added value of the HRC, which must submit its annual reports for validation by the Third Committee. There is also duplication of workload, with significant overlap between Third Committee and Council resolutions on both thematic and country-specific issues. Given the Committee's dominant status and unwieldy nature in light of this overlap, the HRC risks future redundancy if this relationship is not revised.

Actions can be taken to preserve the authority of the HRC and to minimise overlap with the Third Committee, for example, by member states proactively ensuring that Third Committee resolutions are not covering the same substantive issues as the HRC, and through the facilitation of increased briefings by UN Special Procedures mandate-holders at the General Assembly, particularly before the Council's annual report is submitted to the Third Committee for validation.

Security Council interaction

Given the UN Security Council's increased attention on human rights violations as threats to international peace and security – and with a human rights component to every UN peacekeeping mission – there is a strong case to be made for improved interaction between the Security Council and the Human Rights Council. This is further demonstrated by the significant overlap in country-specific issues discussed by both Councils, a recent example being the human rights situation in Syria. The Security Council also systematically considers human rights standards when evaluating use of sanctions under Chapter VII of the UN Charter, such as arms embargoes and travel bans.

Given the predominantly closed-door nature of the Security Council and the limited access available to non-state actors, the Security Council could further benefit from the Human

14. 'Human Rights in UNDP - Practice Note', United Nations, April 2005, available at: www.un.org/ruleoflaw/files/HR_PN_English.pdf

15. 'Progress of the world's women 2015-2016: Transforming Economies, Realizing Rights', UN Women, 25 August 2015, available at: progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf

Rights Council's capacity to gather evidence on the human situation in certain countries – from on-the-ground actors ranging from Special Rapporteurs and Independent Experts to National Human Rights Institutions. The HRC has untapped potential to provide early warning about potential threats to peace and security, strengthening the Security Council's capacity for effective and rapid response.

Clearer channels of information-sharing between the two Councils, with regular interaction between HRC representatives and the Security Council could improve coordination. This could be initially facilitated by Security Council members – particularly permanent members – requesting regular briefings of the Security Council by the High Commissioner for Human Rights and closed-door meetings with Special Procedures mandate-holders. The removal of procedural barriers to enable referral of a pressing human rights situation by the HRC to the Security Council should also be pursued.

Currently, briefings by the High Commissioner operate on an ad hoc basis, with the most recent one taking place in December 2015 on the situation in the Democratic People's Republic of Korea (DPRK). The meeting was granted by the Security Council President in response to a joint request from nine members, including France, the UK and the US. While these meetings have become more frequent, they still operate on an irregular basis. Council members could request a series of briefings to take place more regularly, to ensure that they are kept informed of developments in Geneva and made aware of pressing human rights situations that could constitute threats to international peace and security.

Members could also request a Special Procedures mandate-holder to participate in the Security Council's thematic debates. While a number of the Special Procedures mandate-holders have had the opportunity to informally brief the Council under the Arria-formula, there is often limited attendance by members and no official record or official outcome of the meetings.¹⁶

Aside from requesting briefings from the Office of the High Commissioner for Human Rights (OHCHR), there is also a potential role to be played by Security Council members in including references to Human Rights Council resolutions in Security Council resolutions. While there have been a number of recent occasions where the Security Council has referred to either HRC resolutions or the activities of its Special Procedures and Commissions of Inquiries,¹⁷ states that hold the pen on situations such as Syria and Yemen could be more proactive and systematic in referring back to HRC resolutions during the drafting process.

UK performance

As a country with a highly-developed diplomatic service, permanent membership of the UN Security Council and the ability to project its influence internationally, the UK should be more active in having parts of the UN other than the human rights mechanisms take human rights into account in their work.

Proposals for UK action

- Issue a joint request with other members of the UN Security Council for the High Commissioner for Human Rights to give regular briefings at the UN Security Council on human rights issues that have implications for international peace and security
- Urge the UN Secretary-General to improve links between the Human Rights Council and the wider UN by including human rights analysis in his reports to Security Council and by taking measures to improve coordination between different UN bodies and agencies
- Include references to relevant Human Rights Council resolutions in Security Council resolutions where the UK is the penholder, for example on the situation in Darfur; Somalia; Yemen; women, peace and security; and protection of civilians
- Capitalise on its position as a permanent member of the Security Council to call for improved channels of communication and referral with the Human Rights Council

16. 'Arria-formula meetings', Security Council Report, 7 March 2017, available at: www.securitycouncilreport.org/un-security-council-working-methods/arria-formula-meetings.php

17. For example, Security Council resolutions: 2162 on Côte d'Ivoire, which refers to the Independent Expert established under the Human Rights Council; 2040 on Libya, which takes note of the report of the COI on Libya established by the Council; and 2099 on the Western Sahara, which refers to discussions between Morocco and certain Special Procedures of the Council

3. Enhancing inclusivity and legitimacy

Human Rights Council membership is assigned with various criteria under General Assembly Resolution 60/251, which stipulates that when electing Council members, “states should take into account the contribution of candidates to the promotion and protection of human rights”.¹⁸ Where contests have taken place for the allotted regional places, states with the better human rights records have generally been successful, while countries such as Belarus, Russia and Sri Lanka have not won enough votes. However, systemic human rights violators, such as Burundi, Cuba, and Saudi Arabia, were still elected to the Council in 2016, damaging the HRC’s credibility.

A Council consisting only of states with generally good human rights records would have a small membership indeed, lessening its legitimacy and impact. However, the presence of egregious abusers is more damaging, and there is no mechanism to classify states as such and ensure they are not elected. Elections often see regional groups presenting ‘clean slates’, indicating that political deal-making has trumped human rights considerations. Obligating candidate states to abide by the format for pledges set out by OHCHR’s current voluntary guidelines, as well as discouraging the fielding of ‘clean slates’, are two measures which could improve the legitimacy of Council membership.

Council members should also take voluntary steps to report on the progress of their HRC election pledges mid-term, to both the UN General Assembly and the HRC. This would ensure increased accountability for pledges, and a more meaningful Council election process that might deter the nomination of states with appalling human rights records.

With small-island developing states (SIDS) becoming increasingly active at the Human Rights Council, there is potential to widen out Council membership and encourage new candidates. Currently, many smaller states lack the financial capacity to support a diplomatic representation in Geneva, opting instead to devote diplomatic resources to international organs in New York.¹⁹ Launched in 2012, the Voluntary Technical Assistance Trust Fund to Support the Participation of Least Developed Countries (LDCs) and SIDS in the work of the Human Rights Council provides funding for training, participation in HRC sessions, and fellowships. Existing Human Rights Council members could capitalise on this resource by sponsoring increased participation of smaller states in HRC sessions, and encourage their candidacies for Council membership.

Engaging civil society

The Human Rights Council is a leader among UN entities in terms of civil society participation. Since 2006, non-governmental organisations have enjoyed an increase in opportunities for advocacy and participation through formalised submissions of shadow stakeholder reports for the UPR, webcasting of sessions and improved provision of information through the HRC website and extranet.

However, there is scope for wider engagement. Among proposals are open and transparent national consultations with civil society and the public on the overall aspirations of a state running for HRC membership, as well as the facilitation of remote participation in Council sessions for NGOs not based in Geneva, and witness protection.

UK performance

Elected in October 2016 for a second term as a voting member, the UK has shown leadership in developing a more inclusive, merit-based Council membership, notably by engaging constructively in recent Human Rights Council elections. It produced an election pamphlet with clear campaign pledges, and took part in all the hustings debates, including a ‘pledging event’ organised by civil society partners in July 2016.

18. UN General Assembly Resolution 60/251, available at: www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

19. See n.9

However, in both the 2013 and 2017 elections, the Western European and Others Group of states (WEOG) was the only state grouping to field a 'clean slate' with just the UK and the US running for the two available seats. Fielding clean slates is damaging to the credibility and legitimacy of the candidates and the Council as a whole.

The UK has been proactive in encouraging civil society participation in the Human Rights Council by holding regular pre-Council consultations with civil society stakeholders in the UK. Ahead of its Universal Periodic Review in May 2017, its Ministry of Justice also took the voluntary step of consulting with NGOs across the country in preparation for its State Report.

However, as an influential member of the Council, the UK risks weakening the membership's legitimacy by its poor handling of visits by UN Special Rapporteurs. In 2013, the report of the Special Rapporteur on adequate housing resulted in negative rhetoric, including personal attacks, from Government officials, with the Minister for Housing describing the Rapporteur's report as "misleading Marxist diatribe".²⁰ In 2014, the Special Rapporteur on violence against women reported that she had been denied access to an immigration detention centre.²¹ Both these cases set negative examples to other UN member states on how to treat the work of the Special Rapporteurs, and undermine the authority of Council members to set the mandates of Special Procedures.

The UK's inconsistent handling of Special Procedures is part of a broader concern about the current domestic debate on human rights in the UK, exemplified by recent calls by senior ministers for the UK to withdraw from the European Convention on Human Rights and damaging rhetoric about the value of human rights protections.²² Such language is inconsistent with UK's position of influence on human rights internationally, and risks undermining both its leadership on the Council, and the credibility of the Council as a whole.

“Winter is coming. Countries are withdrawing and building walls. We need the UK now more than ever to help fortify the UN’s human rights system”

Anonymous participant, UNA-UK and URG high-level roundtable event, 22 November 2016

Proposals for UK action

- Sponsor and build capacity of small-island and least-developed states to observe Human Rights Council sessions, in accordance with the SIDS and LDCs Voluntary Trust Fund
- Encourage smaller states and other democracies to stand for membership at the UN Human Rights Council
- Call for funds to support NGO travel to Geneva, witness protection, video conferencing and training on how to engage with the Human Rights Council
- Discourage the fielding of 'clean slates' by regional groups at Council elections
- Continue to provide a voluntary mid-term account of its progress on HRC election pledges to the HRC and UN General Assembly, following increased consultation with civil society organisations and Parliament

20. 'Ministers Savage UN report call for the abolition of UK's bedroom tax', The Guardian, 3 February 2014, available at: www.theguardian.com/society/2014/feb/03/ministers-savage-un-report-abolition-bedroom-tax

21. 'Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland', OHCHR, 15 April 2014, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&

22. Speech of the Home Secretary, Rt Hon Theresa May MP at the Institute of Mechanical Engineers, 25 April 2016, available at: www.gov.uk/government/speeches/home-secretarys-speech-on-the-uk-euand-our-place-in-the-world

4. Focusing on implementation

The international human rights system has few mechanisms for enforcement. It relies on a combination of domestic laws to effect international ones; on naming and shaming; and – notably through mechanisms such as the Universal Periodic Review (UPR) – peer scrutiny. For this reason, positive actions taken by member states are important in terms of raising standards and encouraging others to comply.

Universal Periodic Review

The Council's peer-review process, the UPR, has so far had 100 per cent participation by states under scrutiny – a significantly better compliance rates than for treaty body reviews.²³ This process has empowered the Council to scrutinise the records of all UN member states, including the permanent members of the Security Council, and produce thousands of recommendations.

However, as there is no formal sanction on a state for rejecting a recommendation – or for accepting one yet failing to implement it – compliance rests on the 'naming and shaming' that results from the public and transparent UPR process. Implementation is not helped by the fact that the process is almost exclusively forward looking. The second cycle of reviews consisted almost entirely of states scrutinising the current situation with a view to making recommendations for the future, as opposed to appraising the implementation of recommendations accepted in the first cycle.

UPR recommendations would benefit from being more focused and action-oriented, with proposals for specific actions by the state under review. Approximately 8,000 recommendations were given by states during the second cycle, and this figure is expected to rise in the third cycle. Improving the structure of the UPR process should be considered, for example, by grouping recommendations thematically. This could be achieved either by states working together on recommendations before a state's review, or through the 'clustering' of recommendations by the troika or secretariat.

“If there is no change in the third cycle of the UPR, there is a chance that it may go down in history as something that was nice, but that was never really implemented, and that is very serious”

Anonymous participant, UNA-UK and URG high-level roundtable event, 22 November 2016

Voluntary good practices by states during the Universal Periodic Review are critical to ensure a focus on implementation. For example, states should start their review by reporting on how they have implemented the recommendations from the previous cycle, and by ensuring that their State Report starts with a write-up of the implementation of the recommendations adopted in the previous cycle. The OHCHR could play a supporting role by providing a package of technical assistance to states ahead of their UPR, which actively encourages states to report back on the implementation of previous recommendations.

The UPR process also has untapped potential as a method of monitoring and evaluating the progress made by Council members on their election pledges. Again, this requires the voluntary decision of member states to raise these pledges in the form of UPR recommendations or advance questions.

23. 'UN Human Rights Council: Ten Years On', Seventh Annual Student Human Rights Conference, University of Nottingham, 2016, available at: <https://www.nottingham.ac.uk/hrlc/documents/studentconference2016/plenary-session-2.pdf>

Special Procedures

Described by former Secretary-General Kofi Annan as the “crown jewel” of the UN human rights system,²⁴ Special Procedures consist of Special Rapporteurs, Working Groups and Independent Experts. What distinguishes them is their independence from the UN system and their freedom to investigate any matter that falls within their mandate.

While many states have issued a standing invitation to UN Special Procedures, there is no sanction on states for failing to accommodate a visit from a Special Rapporteur, or for not responding to or complying with communications from Special Procedures. As Special Rapporteurs generally do not have sufficient resources to carry out follow-up visits, there is little pressure on the host state to demonstrate implementation of the recommendations received.

Ensuring continuity between Special Procedures mandate-holders – and ensuring that appointments are based on merit rather than political factors – would be two valuable steps towards enhancing the legitimacy of these actors, and increasing the likelihood of implementation. Outgoing Special Procedures mandate-holders could draft the criteria and terms of reference for their replacements, for example. A wider range of candidates should also be encouraged to apply for positions.

There have also been wide divergences in how visits and recommendations are handled by member states. The UK and Iran are among a number of states which have openly dismissed the recommendations of a Special Procedures mandate-holder and, on some occasions, blocked access to Special Rapporteurs.²⁵ Such reactions could set a damaging precedent, undermining the authority of Special Procedures to hold states accountable for their human rights obligations.

A joined-up approach

Voluntary moves by states to set up a National Mechanism for Reporting and Follow-up (NMRF), as recommended by the Human Rights Council,²⁶ would increase the pressure on other states to not only implement human rights recommendations at the national level, but to report back to the Council on its progress. It would also prevent the duplication of work across government departments and the potential waste of national resources that may result from failing to coordinate implementation of recommendations from various mechanisms.

There has been some progress in this area, including moves by OHCHR and the Universal Rights Group in helping to set up a new ‘Group of Friends on national implementation and reporting mechanisms’, coordinated by Portugal. A rapidly increasing number of states have also taken steps towards establishing NMRFs, the majority of which are developing countries and SIDS – reflecting the benefits of NMRFs for countries with capacity challenges. This evolving ‘implementation agenda’ offers an important opportunity to bridge the human rights enforcement gap.

24. ‘Annan calls on Human Rights Council to strive for unity, avoid familiar fault lines’, UN News Centre, 29 November 2006, available at: <http://www.un.org/apps/news/story.asp?NewsID=20770#.WNUfBDuLSUK>

25. See, for example, Xinhua, ‘Iran rejects UN rights report as “politically motivated”’, 10 March 2017, available at: http://news.xinhuanet.com/english/2017-03/10/c_136116677.htm, and ‘Ministers Savage UN report call for the abolition of UK’s bedroom tax’, The Guardian, 3 February 2014, available at: www.theguardian.com/society/2014/feb/03/ministers-savage-un-report-abolition-bedroom-tax

26. ‘National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms’, United Nations in New York and Geneva, 2016, available at: www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf

UK performance

The UK should be praised for the tone it set at the outset of the UPR process in 2012. It gave assurances that it would consider all of the recommendations and revert back to the Council. It has also been proactive in limiting itself to two recommendations per state, and took the voluntary step of conducting a mid-term review of its progress on second cycle recommendations in 2014 – which included consultation with civil society. Such actions set a valuable example for other UN member states to follow.

The UK's Standing Invitation to UN Special Procedures is also commendable, and it has completed 93 per cent of requested visits. However, the UK's inconsistent handling of visits by UN Special Rapporteurs and of reports by treaty bodies has raised concerns.²⁷

The UK has also been largely absent from the evolving 'implementation agenda' in terms of its failure to take steps towards establishing a National Mechanism for Reporting and Follow-up. Its engagement in this initiative would show important international leadership in terms of closing the gap in implementation of human rights law.

Proposals for UK action

- Work with other states to help facilitate the 'clustering' of UPR recommendations at the Universal Periodic Review
- Develop a National Mechanism for Reporting and Follow-up, as recommended by the Human Rights Council, which sets out a clear, cross-departmental agenda for implementing the recommendations received (and accepted) from UN Special Procedures, the Universal Periodic Review and treaty bodies.
- Make a statement at the HRC to explain the steps they have taken to follow up on UPR and treaty body recommendations
- Develop a cross-departmental policy of responding to reports by UN Special Procedures
- Ensure parliamentary scrutiny of Universal Periodic Review recommendations and steps taken towards their implementation

27. 'Damian Green dismisses "offensive" UN report on UK disability rights', The Guardian, 8 November 2016, available at: www.theguardian.com/society/2016/nov/08/damian-green-dismisses-offensive-un-report-on-uk-disability-rights

Complete list of recommendations

1. Improving efficiency and tackling selectivity

- The UK should praise best practice during Universal Periodic Review sessions and should name check countries which have taken steps towards implementing Human Rights Council resolutions or UPR recommendations
- The UK should follow up on its “race to the top” statement by co-organising, with civil society stakeholders and other member states, a side-event on ‘who are the best engagers?’, designed to ‘name and praise’ states who are the most positive contributors to the Human Rights Council
- During its term as a voting member of the Human Rights Council, the UK should collaborate with other HRC members to convene ‘Arria-formula’-type informal sessions on human rights issues outside of official Council sessions.
- The UK should refrain from blocking Council resolutions on the basis of procedural objections

2. Interacting with the wider UN system

- Issue a joint request with other members of the UN Security Council for the High Commissioner for Human Rights to give regular briefings at the UN Security Council on a human rights issue that has implications for international peace and security
- Urge the UN Secretary-General to improve links between the Human Rights Council and the wider UN by including human rights analysis in his reports to Security Council and by taking measures to improve coordination between different UN bodies and agencies
- Include references to relevant Human Rights Council resolutions in draft Security Council resolutions where the UK is the penholder, for example on the situation in Darfur; Somalia; women, peace and security; and protection of civilians.
- Capitalise on its position as a permanent member of the Security Council to call for improved channels of communication and referral with the Human Rights Council

3. Enhancing inclusivity and legitimacy

- Sponsor and build capacity of small-island and least-developed states to observe Human Rights Council sessions, in accordance with the SIDS and LDCs Voluntary Trust Fund
- Encourage smaller states and other democracies to stand for membership at the UN Human Rights Council
- Call for funds to support NGO travel to Geneva, witness protection, video conferencing and training on how to engage with the Human Rights Council
- Discourage the fielding of ‘clean slates’ by regional groups at Council elections
- Continue to provide a voluntary mid-term account of its progress on HRC election pledges to the HRC and UNGA, following increased consultation with civil society organisations and Parliament

4. Focusing on implementation

- Work with other states to help facilitate the ‘clustering’ of UPR recommendations at the Universal Periodic Review
- Develop a National Mechanism for Reporting and Follow-up, as recommended by the Human Rights Council, which sets out a clear, cross-departmental agenda for implementing the recommendations received (and accepted) from UN Special Procedures, the Universal Periodic Review and treaty bodies.
- Make a statement at the HRC to explain the steps they have taken to follow up on UPR and treaty body recommendations
- Develop a cross-departmental policy of responding to reports by UN Special Procedures
- Ensure parliamentary scrutiny of Universal Periodic Review recommendations and steps taken towards their implementation

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Many of the recommendations contained in this document have been drawn from a high-level roundtable discussion on 22 November 2016. UNA-UK would like to thank the following participants for their contributions:

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**It is with a deep sense of loss that UNA-UK mourns the passing of Professor Sir Nigel Rodley KBE LLB, which occurred shortly after the high-level roundtable event took place, on 25 January 2017. Sir Nigel was a lawyer and academic who championed the cause of human rights, and who was a long-time advisor and supporter of the United Nations Association – UK. We are both humbled and grateful to be able to include his recommendations within this report.*

*“Human rights are not really
a pillar of the Organisation.
They are a branch; or maybe
a tiny piece of wood”*

Anonymous participant, UNA-UK and URG high-level
roundtable event, 22 November 2016





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