

Think piece: strengthening the UN's human rights pillar

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This document has been produced by the United Nations Association – UK (UNA-UK) in preparation for its forthcoming event in London, The Human Rights Council: revitalising the UN's 'forgotten pillar', on 22 November 2016, hosted in partnership with the Universal Rights Group (URG)¹.

Introduction

Created in 2006 to replace the UN Commission on Human Rights, which had been widely criticised for its selectivity and politicisation, the Human Rights Council has achieved a significant amount during the first ten years of its existence – from normative progress on thematic issues such as sexual orientation and gender identity, to crucial interventions in country situations such as Sri Lanka and Côte d'Ivoire.

The past decade has also seen the Human Rights Council play a vital standard-setting role, having adopted two international human rights treaties, created new Special Procedures on issues including cultural rights, the rights of persons with disabilities, freedom of peaceful assembly and association, and contemporary forms of slavery, among others. It has also adopted resolutions on countries including North Korea, Somalia and Guinea, and on issues ranging from arbitrary detention to the right to health.²

Despite these achievements, some critics contend that it has failed to fulfil its original mandate to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”.³ For example, the body has been criticised for focusing too heavily on broader thematic issues, while failing to address specific examples of gross and systematic human rights violations.⁴ The Council has also not been able to shake the charges levelled against its predecessor in terms of membership, selectivity and politicisation.

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

As a permanent member of the Security Council and a voting member of the Human Rights Council, the UK is in a unique position to help develop and drive forward proposals for strengthening the Council, and for mainstreaming human rights across the wider UN system. In turn, the UK's expected departure from the European Union and the present uncertainty around the future of human rights protections in the UK have strengthened the case for the UK Government to reaffirm its leadership in international fora, as a means of preserving its soft power.^{5 6}

¹ More information about the United Nations Association – UK available at www.una.org.uk. More information about the Universal Rights Group available at www.universal-rights.org. This document has been authored by Isabelle Younane, Campaigns & Communications Officer, United Nations Association – UK

² Natalie Samarasinghe, UNA-UK, '2011 Review of the Human Rights Council', December 2010, available at: www.una.org.uk/sites/default/files/UNA-UK%20recommendations%20on%202011%20UN%20Human%20Rights%20Council%20review_0.pdf

³ Paragraph 159 of Resolution 60/1 and paragraph 3 of Resolution 60/251.

⁴ Glion Human Rights Dialogue “The Human Rights Council at 10: Improving Relevance, Strengthening Impact,” Universal Rights Group (September 2015): 3, available at www.universal-rights.org/wpcontent/uploads/2015/09/Glion_Outcome_Low_Res_page.pdf

⁵ Speech of the Home Secretary, Rt Hon Theresa May MP at the Institute of Mechanical Engineers on 25 April 2016, available at: www.gov.uk/government/speeches/home-secretarys-speech-on-the-uk-euand-our-place-in-the-world

⁶ Written evidence from the United Nations Association – UK (HUM0012) to the Foreign Affairs Committee, February 2016, available at:

Prospective areas for reform

Council membership

The Human Rights Council was given various criteria for its membership under General Assembly resolution 60/251, which states that when electing Council members, “states should take into account the contribution of candidates to the promotion and protection of human rights”. 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 and Sri Lanka have not won enough votes.⁷

However, there is still no mechanism for preventing egregious human rights abusers from attaining Council membership, and 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.

Mechanisms

The Universal Periodic Review (UPR) and Special Procedures, alongside the human rights treaty bodies, continue to be the Council’s essential tools for assessing states’ compliance with international human rights laws and norms, and for providing recommendations.

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 turnout than for other treaty body reviews.⁸ This process has enabled the Council to scrutinise the records of all the permanent members of the UN Security Council and produce scores of recommendations.

As there is no formal sanction on a state for rejecting a recommendation – or for accepting one and then failing to implement it – compliance rests on the ‘naming and shaming’ that results from the public and transparent UPR process. Compliance is not helped by the fact that the process is almost exclusively forward looking, with the second cycle consisting 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.⁹

Ensuring that UPR recommendations are grouped where appropriate, specific and action-oriented could provide better benchmarks for measuring compliance. Strengthening synergies between UPR, Special Procedures and Treaty Body recommendations could also enable each state under scrutiny to be presented with clearer instruction for improving human rights protections.

Special Procedures

Described by former Secretary-General Kofi Annan as the “jewel in the crown” of the UN Human Rights system, 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. Since the Human Rights Council inherited the Special Procedures in 2006, the number of country specific mandates has plateaued but thematic mandates have proliferated: there are currently 43 thematic and 14 country specific.

<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Foreign%20Affairs/The%20%20Foreign%20and%20Commonwealth%20Offices%20administration%20and%20funding%20of%20its%20%20human%20rights%20work%20over%20seas/written/28311.html>

⁷ See n.2

⁸ Ted Piccone and Naomi McMillen, ‘Country-specific scrutiny at the United Nations Human Rights Council: More than meets the eye’, Brookings Institution, May 2016, available at https://www.brookings.edu/wp-content/uploads/2016/07/UNHRC_Country_Specific_v1.pdf

⁹ UPR Info, ‘The Follow-up Programme’, available at www.upr-info.org/followup

Inadequate funding and non-compliance remain two major challenges for Special Procedures, with less than four per cent of the UN's overall budget allocated to OHCHR, of which seven per cent is dedicated to Special Procedures.¹⁰ While lack of remuneration for mandate holders has the benefit of increasing independence, it also requires them to acquire other, sometimes unreliable, sources of funding from trusts or academia. There is also no sanction on states for failing to accommodate a visit from a Special Rapporteur, or for not responding to or complying with communications from UN Special Procedures.

Treaty bodies

Comprised of independent experts, the human rights treaty bodies require states parties to report periodically on their compliance with human rights obligations, ensuring the enjoyment of rights by individuals at the national level.

The UPR and the treaty bodies are considered by OHCHR to be complementary; while the Review brings to the attention of states parties the need to submit regular reports to the committees and to implement their recommendations, the treaty bodies remind state parties of the need to implement the UPR recommendations.¹¹ However, the limited resources of smaller and developing countries to engage with and report on human rights mechanisms raises the question of whether treaty bodies may be deprioritised by certain states in favour of the all-encompassing Universal Periodic Review.

Treaty bodies suffer from the same challenge of compliance faced by Special Procedures and the UPR, with relatively little focus given over the years on how recommendations are translated from Geneva-based missions to national capitals,¹² and with far fewer periodic reports submitted by states than for the UPR. Further, elections to treaty bodies – as to the Human Rights Council itself – are often highly politicised, where inter-state and regional dynamics play a central role. States have been criticised by rights' groups for seeking support for their nominee from other states in exchange for reciprocal support related to other UN election processes.¹³

Response to pressing situations

The HRC has benefitted from meeting more frequently and has used its ability to consider pressing issues, including through holding 25 'Special Sessions' on gross violations of human rights, notably on Syria, Burundi, Iraq, Libya, CAR and Palestine over the past five years. It has also made creative use of these sessions to debate thematic challenges, such as human rights issues arising out of the global food and financial crises.

Nonetheless, the HRC's packed agenda is likely to limit its capacity to respond efficiently to urgent human rights situations, as it is still burdened with a backlog of work inherited from the Commission. Further, the old problems of selectivity and politicisation have also led to a disproportionate focus on the situation in certain countries, to the detriment of other urgent and serious human rights abuses. For example, seven of HRC's 25 Special Sessions have related to Israel, and there is a permanent standalone agenda item on 'Human rights situation in Palestine and other occupied Arab territories'.

However, recent research has found that the Human Rights Council has recently widened its focus on dire human rights situations in other countries and regions through special reviews, inquiries, and

¹⁰ Ted Piccone and Theodore J. Piccone, *Catalysts for Change: How the UN's Independent Experts Promote Human Rights*, page 47, Brookings Institution Press, 2012

¹¹ United Office of the High Commissioner for Human Rights, 'The United Nations Human Rights Treaty System', Factsheet No. 3/rev 1, 2012, available at www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf

¹² Universal Rights Group, *Glion Human Rights Dialogue 2015: the Human Rights Council at 10: improving relevance, strengthening impact*

¹³ See for example Child Rights Connect, 'Elections to the Committee on the Rights of the Child', September 2016, available at http://www.childrightsconnect.org/wp-content/uploads/2013/09/2016_CRCElections_FINAL.pdf

investigations.¹⁴ For example, the human rights situation in Syria has occupied six of the Council's 11 Special Sessions over the past five years.

Civil society participation

Non-governmental organisations have seen an increase in opportunities for advocacy and participation since the founding of the Human Rights Council. This has been achieved through formalised submissions of shadow stakeholder reports for UPR, webcasting of sessions and improved provision of information through the HRC website and extranet.

The UPR process is unique in the number of ways it allows civil society to interact with the process. Written submissions by civil society organisations (CSOs) often form the backbone of the evidence the UPR will consider, CSOs can also make video submissions, observe the interactive dialogues, and engage in a 20-minute debate with the state in question at the end of the UPR process.

However, there is scope for wider civil society engagement at the Council. Among civil society 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.

Interaction with the wider UN system

Given the UN Security Council's increased attention to human rights violations as threats to international peace and security – and with a human rights component to every peacekeeping mission – there is a strong case to be made for improved interactivity between the Security Council and the HRC. 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.

Clear channels of information-sharing between the Councils, with regular interaction between the High Commissioner for Human Rights and Special Procedures with the Security Council could improve coordination. It has also been proposed that the UN Secretary-General should perform an “intermediation role” by including a human rights analysis in his reports to the Security Council on country situations.¹⁵

There is also a lack of clarity around the relationship between the HRC and other UN bodies, notably the 3rd Committee of the General Assembly, which examines human rights questions including reports of Special Procedures. Improved communication between Geneva and New York – as well as with UN field offices – could be an important step towards preventing duplication of work and mainstreaming human rights across the UN system as proposed by the Secretary-General's Human Rights up Front Initiative.

As part a 2011 review of the Human Rights Council, the General Assembly (GA) considered whether the Council should be elevated from a subsidiary body of the GA to a principal organ of the United Nations. The GA eventually decided against this action, and “to consider again the question of whether to maintain this status [...] at a time no sooner than ten years and no later than 15 years.”¹⁶ Improving interaction between the wider UN system in the five-year lead up to this review could be an important step towards achieving eventual main-body status.

The UK's role

At present, the international human rights system has few mechanisms for enforcement. Instead, it relies on a combination of domestic laws to effect international ones; on naming and shaming; and – notably

¹⁴ Ted Piccone and Naomi McMillen, Brookings Institution, 'Country-specific scrutiny at the United Nations Human Rights Council: more than meets the eye', May 2016, available at: https://www.brookings.edu/wp-content/uploads/2016/07/UNHRC_Country_Specific_v1.pdf

¹⁵ Theodore Rathgeber, Friedrich Ebert Stiftung, 'UN Human Rights Council: Challenges for Its Next Presidency', December 2014, available at <http://library.fes.de/pdf-files/iez/global/11142.pdf>

¹⁶ United Nations General Assembly Resolution 65/281, 65th Session, 20 July 2011, available at: www.ipu.org/splz-e/montevideo14/65.281.pdf

through mechanisms such as the UPR – peer scrutiny. For this reason, positive actions taken by member states can have a beneficial knock-on effect.

Raising international standards

The UK plays an important standard-setting role within the Human Rights Council, having ratified seven core international human rights instruments. It has issued a standing invitation to UN Special Procedures and has completed 93 per cent of requested visits. More broadly, the UK has shown a strong record of engagement with the Council – having participated in 40 per cent of panels, 56 per cent of interactive dialogues and 54 per cent of general debates.

However, there is room for improvement. The UK has not ratified the International Convention for the Protections of All Persons from Enforced Disappearances (CED). Despite the UK's assurance in September 2012 that it was "keen to move towards signature and ratification" of the CED, no clear timetable has been set out.¹⁷ The Government has also yet to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as a number of optional protocols that allow for individual petitions to be made to the relevant UN treaty bodies.¹⁸

The UK's handling of visits by UN Special Rapporteurs has also raised concerns. In 2013, the report of the Special Rapporteur on adequate housing resulted in negative rhetoric, including personal attacks, from Government officials.¹⁹ In 2014, the Special Rapporteur on violence against women reported that she had been denied access to an immigration detention centre. Both these cases set negative examples to other UN member states on how to treat the work of the Special Rapporteurs.

Performance on the Council

Elected in October 2016 for a second term as a voting member, the UK has played a central role at the Council since its establishment. It has voted in favour of (or joined consensus on) the vast majority of Council resolutions. Specifically, the UK only voted against 14 out of 95 resolutions in 2015, and 12 out of 113 resolutions in 2014. It has also been the lead or principal sponsor of resolutions pertaining to the human rights situation in countries including Syria, South Sudan, Sri Lanka, as well as on the issues of child, early and forced marriage; contemporary forms of slavery; and the role of prevention.²⁰

However, there have also been occasions where the UK's performance at the Human Rights Council has been less than exemplary. Notably, the UK has missed opportunities to advance international regulation of the use of armed unmanned aerial vehicles. For instance, in 2014, the UK voted against a modest resolution at the Human Rights Council (HRC) on ensuring remotely piloted aircraft used in counter terrorism were operated in accordance with international law. The UK contended that this topic was beyond the scope of the Council's mandate, setting a concerning precedent for other states to vote against resolutions based on procedural objections.

Domestic developments

Aside from its leadership at Geneva, the UK also does excellent work to promote human rights internationally. For example, the Department for International Development (DFID) continues to contribute £2.5 million to the Office of the High Commissioner for Human Rights.

The UK's National Security Strategy and Strategic Defence and Security Review (NSS/SDSR) also explicitly acknowledges the Human Rights Council as a mechanism for driving global change,²¹ while the

¹⁷ UN Universal Periodic Review, Mid Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and Crown Dependencies (2014), available at: lib.ohchr.org/HRBodies/UPR/Documents/Session13/GB/UKMidTermReport_Aug2014.doc

¹⁸ It has ratified only two such protocols, to CEDAW and CRPD

¹⁹ Ameila Gentleman and Patrick Butler, "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

²⁰ Human Rights Council record of the United Kingdom, YourHRC.org, available at yourhrc.org/country-detail/?country=United_Kingdom

²¹ UK Government, National Security Strategy and Strategic Defence and Security Review 2015, November 2015, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf

Foreign and Commonwealth Office has identified one of UK's five motives for seeking Council re-election as "strengthening the protection of human rights in the UN's work".²²

Nevertheless, current uncertainty over the future of the 1998 Human Rights Act has raised concerns among rights' groups across the UK.²³ Previous calls by senior ministers, including Theresa May, who has since become Prime Minister, for the UK to withdraw from the European Convention on Human Rights (ECHR) have amplified these concerns.²⁴ This is part of a broader – and increasingly negative – debate on human rights, with rhetoric at the recent Conservative Party conference as a recent example.²⁵ Such language risks undermining the UK's positive engagement on human rights at the Council, and setting a negative precedent for other states.

Benefits to the UK of advocating reform

The UK has had an historic role as a key architect of many international human rights laws and standards. From the Magna Carta in 1215 to the creation of the UN Universal Declaration of Human Rights in 1948, the UK has been at the forefront of developing human rights laws and norms.

The UK's principled approach to the protection of human rights therefore 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."²⁶ These 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.

The NSS/SDSR identifies 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.²⁷ According to the Government, the erosion of the rules-based international order would make it more difficult to build consensus and tackle global threats. As such, it should be expected that Britain's own behaviour would not put the health of this order at risk.

As the UK prepares to leave the EU, it is more important than ever 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 help reinstate the UK's position of leadership in upholding the rules-based international order.

²² Foreign and Commonwealth Office, 'Human Rights & Democracy', April 2016, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518658/FCO755_Human_Rights_Report_2015_-_WEB.pdf

²³ See for example 'Human rights or citizens' privileges? Liberty's response to the Commission on a Bill of Rights Discussion Paper: Do we need a UK Bill of Rights?', Liberty, December 2011, pg 61, available at <https://www.liberty-human-rights.org.uk/sites/default/files/Human%20Rights%20or%20Citizens'%20Privileges.%20Nov%202011.pdf>

²⁴ Speech of the Home Secretary, Rt Hon Theresa May MP at the Institute of Mechanical Engineers on 25 April 2016, available at: www.gov.uk/government/speeches/home-secretarys-speech-on-the-uk-euand-our-place-in-the-world

²⁵ Samuel Osbourne, The Independent, 'Theresa May speech: Tory conference erupts in applause as PM attacks 'activist left wing human rights lawyers'', 5 October 2016, available at <http://www.independent.co.uk/news/uk/politics/theresa-may-tory-conference-speech-applause-attacks-activist-left-wing-human-rights-lawyers-a7346216.html>

²⁶ House of Lords, Select Committee on Soft Power and the UK's Influence, Report of Session 2013-14 Persuasion and Power in the Modern World, pp. 59-60, available at <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldsoftpower/150/150.pdf>

²⁷ See n.21