

Human Rights Council strengthening

Breakout group 3: Council membership and elections

Issues paper:

Promoting universality, legitimacy, diversity and inclusiveness

There is a growing recognition that as the Human Rights Council approaches its twelfth anniversary there is a need to undertake an inclusive, cross regional and structured dialogue to review how States might strengthen the fulfilment of the Council's mandate and purpose, as set down in GA resolution 60/251. This includes discussions around how the work and effectiveness of the Council might be further enhanced in the future.

That does not mean root and branch reform based on a premise that the Council is fundamentally failing. It is not. Rather, it means pursuing evidence-based improvements in a number of specific areas where the experience of the past twelve years suggests the Council could do better. Examples of such areas include: 1) working methods; 2) the agenda and the programme of work; 3) the effective delivery of capacity-building and technical support; 4) membership – in particular supporting inclusivity and accessibility for a more diverse membership, and improved compliance with the principles and criteria set down in GA resolution 60/251; 5) support for domestic implementation; 6) strengthening coordination and communication between 'Geneva' and 'New York'; and 7) securing a shift in how the Council considers and deals with situations of human rights violations – from reaction to prevention.

Calls for, and debates around, Council reforms have steadily increased over the past two years. There now appears to be broad agreement on the need for a process of reflection and review, with a view to strengthening the efficiency and effectiveness of the body. Today, the key difference between States does not appear to be over *whether* there is a need to bring improvements to the work of the Council, but rather *how and when* to proceed with that effort and *what* improvements are needed.



Council membership and elections

The human rights records of States elected to the Council have a considerable bearing on the body's authority and credibility - especially in the public eye. That is especially true where those States face credible allegations of having committed gross and systematic human rights violations. What is more, it often appears that these countries seek membership not in order to contribute to the promotion and protection of human rights around the world, and the fulfilment of the Council's mandate, but rather in order to control the Council's agenda and avoid international scrutiny and criticism. This has significant negative implications for the Council's performance, effectiveness and impact.

Indeed, it was these issues of membership, elections, credibility and performance that played a significant part in to the collapse of the Council's predecessor, the UN Commission on Human Rights. That, in turn, explains the presence, in GA resolution 60/251, which established the Council (in replacement of the Commission), of various criteria for both the election of Council members, and the performance of members once they take their seat.

On the former point, General Assembly resolution 60/251 stipulates that when electing members of the Council, 'States should take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.'

On the latter point, the General Assembly decided that 'members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council.' Where a sitting Council member commits gross and systematic human rights violations, it was agreed that the General Assembly could suspend its membership rights. But nearly 12 years after GA resolution 60/251 was adopted, those criteria are often ignored by UN member States.

Many elections see regional groups presenting 'clean slates' (i.e. containing the same number of candidates as there are seats), meaning there are often no genuine elections at all. All regional groups have, over the past 12 years, presented 'clean slates' - the African Group has done so in 9 out of 11 elections, the Western Group and the Asia-Pacific Group 7 times, and



GRULAC and the Eastern European Group 5 times. Indeed, for the most recent elections in 2017, only one of the five UN regional groups put forward a competitive slate.

'Clean slate' elections are especially damaging where countries that stand accused of committing serious human rights violations are able to secure a spot on that slate. No candidate country on a clean slate has ever failed to secure the simple majority of votes needed to win a Council seat.

Even where there are competitive slates, State decisions on which country to vote for are, in most cases, decided through reciprocal bilateral 'trades' rather than according to an objective assessment of the candidature against the human rights criteria set in GA resolution 60/251. It is true that some countries do take those criteria into account when deciding which countries to agree reciprocal deals with, but they are very much the exception rather than the rule. Most States strike deals based purely on bilateral relations with the country concerned, and/or based on their own desire to be elected to another UN body or position.

What is more, where States do include human rights considerations as part of their decision-making on which candidate to vote for, until recently, there was little or no information available about State compliance with the criteria set down in GA resolution 60/251. For example, there was no information available about the degree to which States – including candidate States – have a strong/weak record of cooperation with the Human Rights Council and its mechanisms. To fill that gap, in 2015 Norway and the Universal Rights Group launched yourHRC.org – a web portal that provides data on State compliance with all the criteria set out in GA resolution 60/251.

Moreover, with the notable exception of the important 'candidate pledging meetings' organised by Amnesty International and the International Service for Human Rights (ISHR), there are no regular platforms, in Geneva or New York, for candidate States to engage in a dialogue with voting States, to present their pledges and commitments, and have their candidatures scrutinised based on the criteria set down in GA resolution 60/251.

Once elected, there is little evidence to suggest that States do indeed 'uphold the highest standards in the promotion and protection of human rights,' or 'fully cooperate with the Council [and its mechanisms].' Analyses of member State 'performance' once elected, carried out under the



yourHRC.org project, reveals little evidence that member States are cooperating more with Council mechanisms (or Treaty Bodies), are voting in a manner that prioritises the human rights of individuals over political considerations, or are using membership to consolidate or improve their own human rights record.

Finally, only once in the Council's history have the membership rights of a State been suspended by the General Assembly (based on a proposal by the Council) – Libya in 2011. At the time it was thought that this set an important precedent – meaning member States would be held accountable where they flout the standards of membership set down in GA resolution 60/251. However, this has not proven to be the case.

Inclusivity and diversity

Resolution 60/251 makes clear that 'membership in the Council shall be open to all States Members of the United Nations.' This is important, as the universality of human rights demands the active involvement and engagement of *all States*. As part of that ideal, all States should have an equal opportunity to be able to access, engage with, stand for election to, and be elected to, the Human Rights Council.

Notwithstanding, as of today, around 95 UN Member States (48% of African States, 62% of Asia-Pacific States, 30% of Eastern European States, 55% of Latin American States, and 48% of Western States) have never held a seat on the Council. The vast majority of those have never even stood for election. Some do not even have a permanent mission in Geneva. It is particularly noteworthy the few SIDS and LDCs have ever been members of the Council.

Indeed, in the case of SIDS, only five (out of 55 SIDS UN member States) have ever stood for election to the Council (so around 9%), and of those only three (5% of all SIDS) have ever been elected. In the case of LDCs, 20 out of 50 countries have stood for election (so, around 40% of all LDCs), and of those 17 (one third of all LDCs) have been elected and have held a seat on the Council. (As an important aside, it is interesting to note that where SIDS and LDCs do stand, both groups of countries have high election success rates – 60% in the case of SIDS and 85% in the case of LDCs).

The principal reason that these States do not stand or, where they do stand, are sometimes not elected, is a (real or perceived) lack of capacity. Small



States are concerned that they do not have the resources to run a successful election campaign and, should they be elected, would not in any case have the capacity to cover all the issues, debates, negotiations and votes. In fact where Small States have stood, they have tended to win and be highly effective Council members. However perceptions matter, and thus need to be proactively confronted.

The *de facto* exclusion of these Small States from the Council represents a missed opportunity for those States, who have much to gain from engaging more closely with the Council and its mechanisms, and leveraging that engagement to strengthen human rights at home; but also a serious loss for the Council – Small States bring different perspectives and concerns to the table and often take principled (not politicised or ‘group-think’) positions during negotiations and voting.

The net result of this situation is a Council membership that, for 12 years, has been dominated by larger, more powerful States, and the interplay of their geopolitical interests. Indeed, some of these countries have, *de facto*, become permanent members of the Human Rights Council.



Questions

1. Has the UN membership, over the past 12 years, respected the standards set down in GA resolution 60/251, in word and in spirit?
2. Do 'clean slate' elections undermine the credibility and performance of the Council, or are they a positive example of regional solidarity? Is it possible to reduce the number of 'clean slate' elections, and if so how?
3. Are the voting decisions of UN member States informed by the candidate States' human rights record and its level of cooperation with the UN human rights system? If not, what can be done to improve the situation in line with the principles set down in GA resolution 60/251?
4. How to create a more formal space or platform for all candidates to present their candidatures, including their pledges and commitments, and to have that candidacy scrutinised by peers – including regarding their level of cooperation with the international human rights system. In creating such a transparent system, can the Human Rights Council learn from the experience of the new UN Secretary-General appointment process?
5. What steps would help the Council to make better use of the provisions in GA resolution 60/251 regarding suspension of membership?

