

Section Two  
**Pity the People:**  
**Undermining the Role of the UN**  
**in facing the Crisis of Human Rights**



The Responses of the United Nations<sup>1</sup> have not reflected the extent of the human rights crisis in the Middle East and North Africa. The worst human rights violators such as Russia, Saudi Arabia, China, and Egypt have succeeded, through political and diplomatic manoeuvrings, in weakening certain UN mechanisms, and protecting themselves from being held accountable for their crimes. The UN lacks an effective and credible international position through which it can exert its influence, and does not have the alliances that might help strengthen it, and enable its support for victims of human rights abuses.

Sections one and two of this chapter provide a general analysis of the United Nations Human Rights Council (the Council) as it relates to the struggle for human rights in the Arab region. Section two provides a brief overview of specific MENA human rights situations that are scheduled to be considered by the Council. Section two is intended as a call to action to revitalize and strengthen the role of the Council in the ongoing struggle for human rights protection.

### **The UN Human Rights Council as a Toolbox:**

The United Nations Human Rights Council is often represented in three different ways: as an institution controlled by a small group of powerful states that use it to shield themselves from international scrutiny, as a crucial torchbearer of the global struggle for freedom and dignity, or simply as a useless exercise in political posturing with little relevance outside the room in which it takes place. In reality all three of these contrary aspects can be simultaneously observed on any given day the Council is in session. This paradox can be explained if one views the Council as a set of tools. While these tools were formed for the express purpose of promoting and protecting human rights and

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<sup>1</sup> UN Human Rights Council

are particularly suited to this task, they can also be used for other purposes or neglected all together. A carpenter's hammer can be used to drive a nail and build a house, but it can also be brandished as a weapon or left in a box to rust.

Whether or not the tools provided by the Council for the promotion and protection of human rights fulfil this purpose depends on the skill, level of commitment and intention with which they are used. Or, to put it another way, the Council is in large part what we make of it. This observation, banal in appearance, challenges the current approach to the MENA region by many UN member states at the Council. It also contains a hidden warning: absent strong, proactive action to address rights violations and uphold human rights norms, the Council has the potential to become a destructive tool that provides a shield of legitimacy for ongoing human rights violations and undermines universal rights standards.

### **Defeatism and Amnesia at the Human Rights Council:**

The UN Human Rights Council has demonstrated it can play a critical role to advance respect for human rights and humanitarian law throughout the MENA region. In 2011, shortly after mass protests began in several Arab countries, member states of the Council created a number of country specific initiatives for the MENA region.<sup>2</sup> The media attention and political mobilization generated around these initiatives have played a critical role in many important victories - the release of a political prisoner, the halting of a repressive law, preventing the closure of an NGO, etc. More generally, the Council's work on the MENA region has also helped to ensure that human rights issues are integrated into the policies of individual states and multilateral bodies towards regional situations, and provided an important depository of evidence and information for current and

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<sup>2</sup> Cairo Institute for Human Rights Studies, Annual Report: The "Arab Spring" at the United Nations: Between Hope and Despair, 2012, <http://www.cihrs.org/wp-content/uploads/2012/06/the-report-e.pdf>

future efforts to ensure accountability for grave violations of human rights.

However, over the last several years the reaction of the Council to the unprecedented escalation of repression and violence by state and non-state actors throughout the MENA region has been severely inadequate. Too often the desire for “consensus” or a “consensual” approach when it comes to country specific action has been used to justify a failure to act, and the pursuit of thematic resolutions have taken precedence over action required to protect *real* people in *real* situations.

As a result, almost all existing country specific initiatives dealing with the MENA region at the Council have failed to respond to the worsening rights situation with stronger action. Instead, the day-to-day struggle has shifted to ensuring that critical situations remain on or are added to the agenda of the Council. The threat of weaker action by the Council on situations as dire as Syria, Libya and Yemen, where the fates of tens of millions of innocent civilians hang in the balance, is an ever-present reality.

The Council’s response to unparalleled levels of repression that have been unleashed by governments such as Egypt and Saudi Arabia has been a consistent and shameful silence. If the Council is viewed as a map of global political trends concerning human rights then its current approach to the MENA region should be read with great alarm. It should also serve as a call to action to those who believe that lasting stability and prosperity in the MENA region cannot be accomplished when the world averts its eyes from brutal repression or takes half-measures to address atrocities.

In a major speech<sup>3</sup> concerning mass protests in the MENA region delivered in May of 2011 President Barack Obama recognized:

The status quo is not sustainable. Societies held together by fear and repression may offer the illusion of stability for a time, but they

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<sup>3</sup><https://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-barack-obama-prepared-delivery-moment-opportunity>

are built upon fault lines that will eventually tear asunder...we cannot hesitate to stand squarely on the side of those who are reaching for their rights, knowing that their success will bring about a world that is more peaceful, more stable, and more just.

President Obama's recognition of the need to place human rights at the centre of foreign policy towards the MENA region was echoed by prominent politicians and policy makers around the world. Four years later the policies of the US and other countries at the Human Rights Council appear to have forgotten this important realization. The vast majority of governments that have presented themselves as leaders in the global struggle to protect human rights and promote democracy, such as EU member states and the US, have consistently refused to assume leadership at the Council to address country situations in the MENA region.

An increasingly frequent reaction by government representatives to explain this refusal and the Council's weakening response to grave abuses in the region has been to hide behind a fatalistic and defeatist narrative of geopolitics that denies the possibility of effective multilateral action by the international community to protect human rights in the MENA region. At the Council this often takes the form of referring to an "unfavourable" vote count, expressions of a general fear of failure if an action is attempted or simply as a preference for "behind the scenes" action over the exercise of multilateral leadership.

### **A Crisis of Leadership and the Lessons of History:**

Yet, if one examines recent instances when action has been attempted at the Council to address "difficult" country situations in the MENA region, often what is initially deemed as "impossible" due to the general political context quickly becomes a possibility when an individual government or diplomat demonstrates skilful and committed leadership. Moreover, the success or failure of a particular action, if measured by its contribution to the protection of human rights, is often not reliant on "winning a vote count" or ensuring

“consensus,” but on the political pressure and visibility generated by the endeavour.

On March 7, 2014 at the 25<sup>th</sup> regular Session of the Human Rights Council, twenty-three countries united in a joint declaration to condemn the severe crackdown on basic rights committed by the government of Egypt, including recent attacks against human rights organizations.<sup>4</sup> Those that joined included states with influential ties to Egypt. It was a statement that many at the time believed to be an impossibility due to Egypt’s vigorous efforts to ensure it did not occur. It was delivered despite the Egyptian government’s notorious tactics at the UN.<sup>5</sup>

This had not been a resolution. No voting had occurred. The amount of states that joined the declaration was low by UN standards. Nonetheless, its effect was both immediate and strong on the Egyptian government. Fearful of further action at the UN to address its repressive behaviour, the government launched a large scale diplomatic offensive that included summoning the Cairo-based ambassadors of all governments who joined the statement, and engaged in high-level outreach in capitals throughout the world. More importantly from a human rights perspective, the declaration played a key part in larger advocacy efforts to protect Egyptian human rights organizations from threats of imminent closure that had recently been made by the government. These rights organizations seized on the breathing space afforded by the heightened visibility and political pressure generated through the Council statement to regroup and redouble their efforts to survive. As a result, many are still in operation today, albeit still under daily threat of closure, and continue to play a critical role in the ongoing struggle for human rights reform in the country.

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<sup>4</sup> See “Iceland (on behalf of a group of cross-regional group of 23 countries)” at <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/Pages/OralStatement.aspx?MeetingNumber=13&MeetingDate=Friday,%207%20March%202014>

<sup>5</sup> [https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/OralStatements/Egypt\\_RR\\_13\\_ENG.pdf](https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/OralStatements/Egypt_RR_13_ENG.pdf)

During government negotiations of the joint statement, country after country had refused to take ownership of the process or demonstrate visible leadership. Threats by the Egyptian government of negative economic and diplomatic consequences for any country that demonstrated such leadership had intimidated many diplomats and policy makers. Just as the statement was about to be abandoned, a single, small country made a decision to ensure its survival. Switzerland decided to preserve the statement, and a single diplomat kept the negotiations in Geneva going until a country willing to deliver the statement could be found. Another small country, Iceland, agreed to read the statement the evening before it was scheduled to be delivered. In response, Egypt attempted to undermine several Swiss initiatives at the Council, but eventually failed to do so. The strong economic and diplomatic repercussions promised by Egypt against Switzerland and other countries that had joined the statement also never emerged.

Egypt's bluff had been called and its bully tactics had failed. But not for long. Despite moments of leadership demonstrated by a small amount of countries and diplomats, a single committed government that was willing to take ownership over the issue of Egypt at the Council had not been found. As a result the joint statement has never been followed up on, and the strong role that the Council had begun to play in protecting human rights in Egypt has greatly diminished. Meanwhile, the human rights situation in the country has witnessed a severe deterioration over the last two years.

In September of 2015, at the Council's 30<sup>th</sup> Session, another "impossible" scenario was ushered into the realm of possibility by a single country. In response to the rapidly escalating number of civilians being killed in the war in Yemen and the critical humanitarian situation being fuelled by violations of international law by all parties of the conflict, the government of the Netherlands submitted a resolution to the Council to establish an international investigation into violations occurring in the country. The most extraordinary part of this act was that Saudi Arabia, usually viewed as "too powerful" to be held accountable by the UN, is the primary

government responsible for alleged war crimes being committed in Yemen.<sup>6</sup>

More surprising to some might be the fact that the resolution put forward by the Dutch had a real chance of being adopted by the forty-seven member states of the Council. According to informal vote mapping conducted by several civil society organizations involved in negotiations on the resolution, there were approximately nineteen affirmative votes, eleven votes against and seventeen votes that could have gone either way depending on advocacy efforts by concerned countries. In other words, “geopolitics” did not automatically rule out the possibility that even an oil-fuelled regional super power like Saudi Arabia could come under international investigations for war crimes by an action of the Council. In negotiations of the Dutch resolution countries as diverse as Brazil and Norway had spoken in favour of such an investigation.

Saudi Arabia, sensing at the time that they could not guarantee a victory in a vote on the Dutch resolution, began to carry out, according to a diplomat at the Council, “unprecedented” lobby efforts at the “highest levels” of key governments, such as the United States, UK and France, in a frantic attempt to have the resolution withdrawn. These governments responded by privately stating they would vote in favour of the Dutch resolution if presented, while simultaneously withholding any commitment to support efforts to ensure the Dutch resolution received the required number of votes to pass. Even this may not have defeated the resolution.

Unfortunately, while the Dutch had shown courage in proposing the resolution their commitment to ensuring its adoption wavered. It soon became clear that the Dutch government had only committed itself to maintaining the resolution if a “consensus” of all voting members of the Council could be reached. An almost impossible threshold considering that Saudi Arabia and other Gulf countries

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<sup>6</sup> See for instance:

<https://www.hrw.org/news/2016/02/14/yemen-cluster-munitions-wounding-civilians>

directly involved in the commission of alleged war crimes in Yemen were voting members at the Council. A lack of sufficient commitment by the Dutch to call a vote on the resolution if it was opposed by any country, and the refusal of governments like the US, UK and France to actively support efforts to ensure the resolutions adoption eventually led the Dutch to withdraw the resolution before it was voted on. But that is not the end of the story.

There can be no doubt that the erosion of political support for the Dutch resolution among countries like the UK and US in response to Saudi lobbying and its eventual withdrawal by the Dutch represents a tragic failure of the Council to take the steps required to deter the killing of innocent civilians and ease the humanitarian situation in Yemen. Nonetheless, even the wavering leadership demonstrated by the Dutch government by submitting the resolution was able to create unprecedented international scrutiny of how Saudi Arabia and other combatants are conducting military operations in Yemen, and the human suffering wrought by the targeting of civilians during the ongoing conflict. Once these issues began to be debated at the Council global media outlets dramatically increased coverage of war crimes being committed in Yemen, as well as efforts to ensure international accountability for these crimes. This coverage has continued to this day. This has helped to revitalize debates in the capitals of countries like the UK and US, both in popular media and in official government proceedings, on how these countries should react to accusations of international crimes being committed in Yemen, when an allied country commits the types of atrocities they condemn in other situations.

Moreover, Saudi Arabia and Yemen, facing the possibility of an international investigation, were forced to agree to strengthening national investigations into violations in Yemen, and to an extension of a UN human rights monitoring presence in Yemen that has the mandate to report on violations in the country and update the Council on the progress of national investigations. While these developments are certainly not sufficient to replace the deterrent power of an official UN investigation they do provide a critical means to pursue further

international accountability measures if the situation in Yemen remains the same or worsens.

The two examples above provide insight into both how the Council can become an effective tool to protect human rights and why it often fails to do so. The Council has proven in the past that it has the potential to play a critical role in providing protection for victims of human rights abuses in the MENA region. Arguments by countries concerning general political factors that make it impossible to ensure that the Council plays this role ring hollow when confronted with the specific details of how the impossible becomes possible when leadership is demonstrated on critical issues. Both initiatives described above suffered from a lack of sustained and determined leadership. Yet even the wavering and momentary leadership that was demonstrated had a strong impact on wider human rights protection efforts. Imagine then what impact sustained and committed leadership may be capable of accomplishing at the Council if motivated by a desire to protect the human rights of real people in real places.

### **Global Implications of Weak Leadership at the Human Rights Council:**

This shortage of ambitious leadership to protect human rights at the United Nations could have long term and large-scale implications for the international human rights system as a whole. Over the past two years, Saudi Arabia, Egypt and other countries that have been given a “free pass” by the international community to carry out unprecedented human rights violations have become emboldened in their efforts to use the Council and other UN bodies to weaken the international human rights system.

These governments do so by (a) attempting to undermine the independence and capacities of the UN Office of the High Commissioner for Human Rights and other UN human rights experts, (b) leading relativist initiatives that challenge the universality of human rights standards, such as equality, women’s rights, and

freedom of expression, and (c) imposing a paradigm of international order in which “sovereignty” and the “fight against terrorism”, as they define these terms, renders almost any effort by the UN system to ensure a particular countries adherence to human rights and humanitarian law as an “illegitimate interference into internal affairs” and a “threat to national security.”

In short, the vacuum created by a lack of leadership to protect the human rights of *real* people in *real* places, is increasingly filled by governments emboldened by their own international impunity and whose primary ambition is to undermine the international normative rights framework and do away with the independence of UN human rights experts. If this pattern continues the strength of the international human rights system will become significantly weaker.

## **Upcoming Opportunities to Demonstrate Leadership at the Human Rights Council:**

### **Libya:**

Pursuant to resolution 28/30 adopted by the Council in March 2015, the Office of the High Commissioner for Human Rights (OHCHR) dispatched a fact-finding mission to investigate violations of international human rights law committed in Libya since 2014 “with a view to ensuring full accountability and avoiding impunity.” This mission submitted its final report to the 31<sup>st</sup> Session of the Council in March 2016.

The International Criminal Court (ICC) currently has an open mandate to investigate alleged international crimes committed in Libya. However, according to the court’s prosecutor, its ability to pursue further investigations is limited by a lack of adequate

resources.<sup>7</sup> Additionally, as highlighted by the OHCHR mission's report, the national justice system in Libya has largely collapsed, creating de facto impunity for those committing grave violations and abuses of human rights and humanitarian law in the country.

As such, it is imperative the Council create a dedicated investigative mechanism as an important tool of deterrence and future accountability. As highlighted in a joint civil society letter to state delegations in Geneva:

It is critical that all parties to the conflict are put on notice that their actions are being monitored and that accountability for serious crimes is a real prospect rather than an empty threat. Failure to do so will likely embolden those committing violations of international human rights and humanitarian law and will reinforce the endless cycle of impunity.<sup>8</sup>

A resolution at the 31<sup>st</sup> Session of the Council failed to establish such an investigation. However, the High Commissioner for Human Rights was asked to update the Council at its 33<sup>rd</sup> Session (September 2016) on the human rights situation in Libya including efforts to ensure accountability. If at this time no progress has been made the nascent government of Libya and other governments, especially those who have or continue to participate in military actions in Libya, should take all required steps to ensure the important deterrent role of UN investigations is revived.

### **Palestine:**

In March 2016, the Council discussed a report by the OHCHR on the implementation of recommendations made by three missions created by the Council over the last 7 years to investigate and ensure accountability for war crimes, crimes against humanity and human

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<sup>7</sup>Tenth report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1970 (2011),

<https://www.icc-cpi.int/iccdocs/otp/otp-rep-unsc-05-11-2016-Eng.pdf>.

<sup>8</sup> Available at [www.cihrs.org](http://www.cihrs.org)

rights violations carried out in the Occupied Palestinian Territory. This included a Fact Finding Mission on Gaza in 2009, a Fact Finding Mission on settlements in 2012, and a Commission of Inquiry on Gaza in 2015. The report revealed that almost none of the recommendations of these investigations have been implemented by Israel to ensure accountability for these violations.

A new UN Special Rapporteur on the OPT was also chosen at the beginning of 2016 after the last Rapporteur prematurely resigned out of frustration at the total lack of cooperation by Israel with his mandate.

Israel's long standing refusal to cooperate with UN rights mechanisms, and its hostile rejection of almost all recommendations by the UN human rights system should no longer be tolerated by UN member and observer states. In 2016, UN member states should carry out actions designed to ensure cooperation by Israel and the implementation of UN recommendations in the area of human rights and humanitarian law.

UN member states could pursue these goals in 2016-17 through the following suggested action:

First, the Council should investigate Israel's refusal to abide by and integrate international humanitarian legal standards into the Rules of Engagement of its military forces.

Second, the Council should investigate the failure of the Israeli justice system to hold those responsible for international crimes accountable, and take steps to end this impunity.

Third, the Council should perform a comprehensive review of Israeli's refusal to cooperate with the Council's mechanisms and its lack of implementation of previous recommendations, and seek means to address this failure.<sup>9</sup>

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<sup>9</sup> For further information see CIHRS, "The UN Human Rights Council and the Occupied Palestinian Territory: A Toolkit to Operationalize Recommendations and Ensure Implementation," Mar. 21, 2016, <http://www.cihrs.org/?p=18337&lang=en>

Fourth, states should act on the long standing request put forward by two UN Special Rapporteurs on the OPT for the UN to begin to perform an inquiry into the legal status of Israel's "prolonged occupation." In particular, the UN should determine if Israel's policies towards the Palestinian people and within the OPT should be classified as a form of apartheid and colonialism.

Finally, bold leadership was demonstrated by the Palestinian delegation at the 31<sup>st</sup> Session of the HRC to draft and ensure passage of a resolution which requests a list of businesses, including international corporations, which continue to operate and profit from settlement activities in the Occupied Palestinian Territory in contradiction with international law. The resolution was strongly opposed by the UK, US, and others. Once a list of businesses has been compiled it is critical that states take strong follow up action to deter this illegal practice, both at the national and UN level.

### **Yemen:**

The case of Yemen at the Council has been highlighted earlier in this chapter. The primary challenge faced by the international community to ensuring appropriate action to address grave violations of human rights and humanitarian law in the country is the involvement of Saudi Arabia in alleged war crimes being carried out, and its subsequent attempts to ensure weak action at the Council on this issue.

The OHCHR is scheduled to deliver an update on the human rights situation in Yemen and progress on national investigations at the 33<sup>rd</sup> Session of the Council in September 2016. If at that time national investigations remain incapable, through a lack of capacity or political will, to deliver on accountability for international crimes committed in

the country then, as argued in a joint letter by civil society to the Council at the beginning of 2016.<sup>10</sup>

The Human Rights Council should act to fulfil its mandate to promote accountability and establish an international mechanism to investigate alleged serious violations of international humanitarian law and violations and abuses of international human rights law committed by all parties to the conflict in Yemen.

The inquiry should establish the facts, collect and conserve information related to violations and abuses with a view to ensuring that those responsible are brought to justice in fair trials.

### **Syria:**

The Council continues to play an important role in the documentation and gathering of evidence of war crimes and crimes against humanity in Syria through a Commission of Inquiry (COI) established in 2011<sup>11</sup>, including the gathering of specific names of individuals and establishing a chain of command to determine criminal responsibility for these violations. Activation of the International Criminal Court on this matter remains blocked by Russia and China at the Security Council. As such, this COI on Syria remains the only international body fulfilling this role.

Nevertheless, political negotiations on Syria at the Council have increasingly lacked urgency. There is a strong need for more courageous and creative diplomacy around this issue.

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<sup>10</sup> CIHRS, Joint NGO Letter, “Human Rights Council: Create an International Investigating Mechanism for Yemen,” Feb. 23, 2016, <http://www.cihrs.org/?p=18161&lang=en>

<sup>11</sup> For more information visit: <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>

*Countries can and should do more at the Council to:*

1. Follow up on the COI's recommendations to pursue accountability through the use of universal jurisdiction, and the establishment of an ad hoc international tribunal through specific resolutions that urge action and suggest steps to be taken by relevant parties to pursue accountability through these means;
2. Create initiatives at the Council that seek to place victims at the centre of the debate and give visibility to the human suffering inflicted by violations of international law. Such action could include the creation of a high level panel at the Council that would feature Syrian victims or eyewitnesses to crimes committed in Syria, including the crime of enforced disappearances, indiscriminate attacks on civilians and/or torture.

### **Other MENA Country Situations where Leadership is Needed:**

Over the last year, despite unprecedented crackdowns on basic rights and violations of international human rights and humanitarian standards by Egypt and Saudi Arabia, the Council and UN member states have failed to address these situations in a meaningful manner. This hesitancy has only encouraged these countries to pursue repressive policies and violations of international humanitarian law that have enflamed violence, contributed to destabilization and fuelled violent radicalization and terrorism.

This failure can only be remedied if a country or group of countries decide to demonstrate determined and principled leadership. While the passing of a formal resolution at the Council on these country situations may only be realistic in the long-term, other actions can and should be urgently pursued. The creation and delivery of joint declarations by states before the Council, the consistent inclusion of these country situations in state interventions at the Council, or the

convening of urgent debates on these situations are only a few of the possible actions that states could take that do not require the adoption of a formal resolution before the Council. These and other options should be pursued.

There is a structural problem within the Human Rights Council that institutional reforms have not so far been able to remedy. The council is a theatre of state relations, yet the decisions taken are directed against governments whose role is to promote the interests of their states. Human rights considerations in foreign policy vary amongst states, with zero consideration amongst some Arab states to high-level significance for some Scandinavian countries. Yet those countries with high-level human rights considerations do not play a significant role in international relations, nor have a desire to increase their role in the Human Rights Council. While emerging democratic states in the 'South,' dominated by polarizing North-South policies, only benefit authoritarian regimes, states from the global North that do have ambitions at the Council play a selective role according to their ever-changing interests, which at times may lead them to undermine global human rights values, or conversely play an active part in promoting a particular cause.