



Report

High Normative Standards in Political Lowlands - The Human Rights Council in 2017

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1. Introduction

In 2017 the Human Rights Council (HRC) held three Regular Sessions (34th Session 27 February to 24 March; 35th Session 6 to 23 June; 36th Session from 11 to 29 September 2017) and one Special Session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar (December 2017).

During that year, a couple of new mechanisms were established. A new mandate was established in June of a Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members (Resolution [\[A/HRC/RES/135/9\]](#)). In September, the HRC created a new *Open-Ended Intergovernmental Working Group on accountability of private military and security companies*. Over a period of initially three years the working group is tasked with elaborating a regulatory framework (resolution 36/11). To this end, the working group will meet for five working days each year and submit an annual progress report.

The year 2017 was overall a difficult year for human rights. In his remarks to the HRC in September 2017, the UN High Commissioner for Human Rights (HCHR), Zeid Ra'ad Al Hussein, observed that the world had grown darker and more dangerous in 2017. The High Commissioner expressed concern not only over an increase of violent extremism but also over the increasing number of governments peeling away human rights protections, and consequently setting course toward authoritarianism and oppression. In his opening statement to the 35th Session of the HRC, the HCHR further expressed concern over the brazen absence of shame by a growing number of politicians world-wide. He observed that a series of *thug-like* leaders recently rode to power, democratically or otherwise, and have proceeded to openly defy their national laws and constitutions as well as their obligations under international law. At the same time, the High Commissioner made a point of highlighting how encouraging it was to see people and social movements stand up in

many countries across the globe in defiance of those situations.

Some concerns over the functioning of the HRC remain. Firstly, criteria, or rather the lack thereof, for HRC membership remain a concern. Observers do not have high expectations when it comes to a courageous and authentic implementation of human rights of all HRC member states. Some member states, such as Burundi, China, Egypt, the Philippines and Venezuela, have demonstrably systematically oppressed, intimidated and attacked civil society actors in general and human rights defenders in particular – despite having pledged in their candidacy to the HRC to fulfil highest standards of human rights protection. In the same vein, a high number of member states – and not the institution HRC as such – has prevented the Council from taking action in particular on country situations of concern. This is painfully highlighted in the HRC's handling of the situation in China. For years, the High Commissioner as well as predominantly western countries have raised concern about the human rights situation in China. Due to the blockade of other like-minded member states, however, torture, enforced disappearances and violations of other freedom rights have been able to continue largely unchallenged from the HRC. Similarly, despite being confronted by the deteriorating human rights situation in Bahrain – including torture, ill-treatment by security forces, extrajudicial killings, and severe restrictions on the rights to free expression, assembly and association as well as arbitrary arrests of human rights defenders and the lack of independence of the judiciary – the majority of HRC member states has not taken any action on the human rights situation in Bahrain

since 2015. It was not possible to even establish a reporting system, not to mention a resolution or a Special Procedure mandate.

Secondly, as alluded to above, ways and means of obstructing the capacity to act of the Council remain. While the total number of written amendments to resolutions has slightly decreased compared to the years 2015 and 2016, there is still a remarkable recourse to that instrument as a means of obstructing the HRC voting procedure on resolutions. This severely impacts one of the main instruments to address severe human rights violations and thus the functionality of the Human Rights Council. During the 36th Session, for instance, the Russian Federation, though not currently a member state, presented seven amendments to the resolution on death penalty (36/17). The resolution requested the UN Secretary General to dedicate his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons. Together with Saudi Arabia's amendment, the amendments presented by Russia brought the total number of amendments to eight. In the end, one was withdrawn and the rest rejected but valuable time was lost due to this deliberate delay of proceedings.

During the same session, the resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (36/21) had to face 19 amendments (more details see below). In this case, not only the normative substance of the

resolution was challenged but also the claim that human rights are even an issue of international cooperation at all. Both cases illustrate that the notion of absolutism keeps gaining forces amongst member states, including European countries. Using the cover of state sovereignty, even under democratic procedures in cases inside the European Union, an authoritarian mode of governance can be moved towards.

Thirdly, concerns related to budgetary constraints remain. While not a new phenomenon, the year 2017 again highlighted the plight of the HRC as an underfunded institution. In 2017 the HRC was limited to maximally 135 regular meetings that means *grosso modo* 135 working days during the three regular sessions established by the rules given by the UN General Assembly (UNGA). For 2018, the limit has currently be reduced to 130 meetings. A request was made by the UNGA for 20 additional regular meetings in 2018.

2. Selected decision in 2017

During the 34th regular session the decision was made to dispatch an independent fact-finding mission to **Myanmar** ([34/22](#)) in order to investigate the alleged human rights violations by military and security forces, in particular in the Rakhine State. The same resolution extended the mandate of the Special Rapporteur on the situation of human rights in Myanmar for one year. Similarly, [resolution 34/23](#) extended the mandate of the Special Rapporteur on the situation of human rights in **Iran** for one more year. [Resolution 34/25](#) on the human rights situation in **South Sudan** extended the mandate of the

Commission on Human Rights in South Sudan for one year and called upon the government to investigate the human rights abuses and violations of international humanitarian law and to hold those responsible to account. On **North Korea**, another [resolution \(34/24\)](#) decided to extend the mandate of the Special Rapporteur but also to strengthen the field-based structure in Seoul of the Office of the United Nations High Commissioner for Human Rights (OHCHR). Finally, a Presidential Statement on **Haiti** ([PRST 34/1](#)) ended the international monitoring and encouraged the government to establish an effective national reporting and monitoring mechanism.

A rather bizarre voting procedure could be observed around the resolution on technical assistance for **Georgia** ([34/37](#)). The resolution was submitted by Georgia itself and adopted by 18 votes in favour, 5 against and 24 abstentions. Along similar lines, the instrument of a resolution on technical assistance for the Ukraine ([35/31](#)) was used in order to touch upon the human rights situation in the country. This technical manoeuvre made it possible to highlight the human rights situation in Georgia and its neighbouring areas Abkhazia, Tskhinvali and South Ossetia using a human rights language. Without the cover of technical assistance, a monitoring of the human rights situation in these areas would almost certainly have been rejected. Nevertheless, such attempts are part of instrumental schemes within the human rights procedures used by different actors which in the end might not necessarily increase the credibility of the procedure.

On thematic issues, [resolution 34/8](#) on **effects of terrorism on the enjoyment of all human rights** requested the HRC Advisory Committee to conduct a study and prepare a report on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms, and to present the report to the HRC at its 39th Session (September 2018). The delegation of South Africa presented an amendment (34/L.47) requesting to insert a new paragraph after operative paragraph (OP) 7 stating – among others – that national liberation movements engaged in legitimate struggles for self-determination and statehood should not be associated with terrorism. The amendment was rejected.¹ The Advisory Committee was further requested ([resolution 34/11](#)) to conduct a study on the possibility of utilizing **non-repatriated illicit funds** and to submit the requested study to the Council at its 39th Session.

The consequence of the Trump administration also became visible during the 2017 HRC sessions. During the Obama-Administration, the US frequently joined the resolution on the **right to food** while making it clear for the records that the vote was not to be taken for US recognition of the Covenant on Economic, Social and Cultural Rights (CESCR). During the 34th HRC Session, the altered approach by the Trump-Administration towards the HRC was illustrated, among other elements, by voting against the resolution on the right to food ([34/12](#)) as a matter of principle.

The issue of **climate change** was one of the crucial issues of the 35th Session. [Resolution](#)

[35/20](#) requests the OHCHR to organize an intersessional panel discussion prior to the commencement of phase II of the intergovernmental process leading to the global compact on safe, orderly and regular migration, with the theme “Human rights, climate change, migrants and persons displaced across international borders”. The resolution further requests that a summary report of the panel discussion be submitted to the appropriate mechanisms sufficiently in advance to ensure input into the following processes: the stocktaking meeting of the preparatory process leading to the adoption of the global compact on safe, orderly and regular migration, to the work of the Warsaw International Mechanism for Loss and Damage, and to the ongoing work of the Task Force on Displacement under the United Nations Framework Convention on Climate Change (UNFCCC).

On **Eritrea**, the HRC extended the mandate of the Special Rapporteur for a period of one year and decided to hold an enhanced interactive dialogue on the human rights situation in Eritrea at its 37th Session (March 2018). [Resolution 35/35](#) further requests the mandate holder to submit a written report to the 38th HRC session as well as to UN General Assembly at its 72nd Session. The dialogue during the 37th session should consider the participation of the Special Rapporteur, the OHCHR, civil society and other relevant stakeholders. The OHCHR was asked to present an oral update on that opportunity. In a Presidential Statement on **Côte d’Ivoire** ([PRST/1](#)) the HRC ended the mandate of the Independent Expert and requested the OHCHR to provide further technical assistance. This

¹ Details of the voting processes and texts of submitted written amendments can be checked via the [HRC Extranet](#).

illustrates that a country mandate of the Special Procedures can indeed be concluded once the major problems have been settled.

During the 36th HRC session, Belgium, Canada, Ireland, Luxembourg and the Netherlands presented the draft resolution A/HRC/36/L.4 on the situation of human rights in **Yemen** but later withdrew as Egypt on behalf of the Arab Group had later proposed an optional resolution on Yemen. Thereby, a recurrence of the situation in 2016 when two texts competed and the final resolution text ([33/16](#)) failed to create an international investigation could be avoided. This time, resolution [36/31](#) on *technical assistance and capacity-building for Yemen in the field of human rights* addresses the need of an international investigative body in addition to technical assistance. The resolution therefore requests the HCHR to establish a group of eminent international and regional experts to monitor and report on the situation of human rights, and in particular to carry out a comprehensive examination of all alleged violations and abuses of international human rights and other appropriate and applicable international law since September 2014. Where possible, the experts are asked to identify the responsibilities, to improve protection and fulfilment of human rights, and to provide guidance on access to justice, accountability, reconciliation and healing. The HCHR shall appoint the group of experts no later than by the end of 2017. The group shall present a comprehensive written report to the HCHR during the 39th HRC Session (September 2018) which is to be followed by an interactive dialogue in the HRC plenary.

3. Disputed issues

3.1 Thematic issues

Human Rights Defenders

For years, the contributions and involvement of civil society, in particular human rights defenders, has been a disputed area. As a result, the situation of the mandate holders within the UN architecture has become precarious too, making them a preferred target for harsh criticism and categorical questioning of the mandate as such. 2017 was no difference in this respect. During the 34th HRC Session Norway presented a resolution on extending the mandate of the Special Rapporteur for **human rights defenders** for further three years. At the eve of the decision making, almost 100 NGOs highlighted the need to renew this mandate while contesting the attempts by States such as the Russian Federation, China, Egypt or South Africa to limit the mandate by subjugating the work of human rights defenders to national regulation. While [resolution 34/5](#) in the end extended the mandate without a vote, the Russian Federation presented four, South Africa one (later withdrawn), and China one amendment to the resolution. Their objections predominantly addressed the concept and term of human rights defenders. Amendment 34/L.42 (Russian Federation) emphasized the domestic law as main framework for activities of human rights defenders. The amendments 34/L.44 and L.45 (Russian Federation) sought to omit the term human rights defenders completely, speaking instead of *those engaged in the promotion and protection of universally recognized human rights and fundamental*

freedoms. Although the withdrawn amendment L.46 by South Africa used the terminology of human rights defenders it nonetheless allocated a limited list of activities to the mandate and, thus, sought to narrow its scope. China's amendment L. 51 expressed political discontent by suggesting alternative language that simply 'takes note' of the work and report of the Special Rapporteur instead of 'welcoming' it. All amendments were rejected by rather comfortable majorities of 28 or 29 votes against the amendments.

Cooperation with the UN

The report by the UN Secretary-General (document A/HRC/36/31) and the subsequent [resolution 36/21](#) on **cooperation with the United Nations, its representatives and mechanisms in the field of human rights** faced similar opposition during the 36th Session. The Assistant Secretary-General for Human Rights, Andrew Gilmour, had presented the Secretary-General's report which expressed concerns about intimidation and reprisals against those seeking to cooperate or having cooperated with the UN on human rights. Such reprisals have included travel bans, harassment, threats, arbitrary arrests and detention, enforced disappearances, or economic measures such as frozen bank accounts. The report makes clear that addressing such reprisals and intimidation are a core responsibility, and should in fact be a priority, of the UN system as a whole.

The resolution was tabled by the core group Ghana, Hungary, Ireland, Fiji and Uruguay and sponsored altogether by 55 States² from all regions. The draft resolution sought to condemn all acts of intimidation or reprisal by States and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights. The resolution was subsequently met by a series of 19 amendments (36/L.43-L.61) led by China, Egypt, India, Russia and Venezuela. All these States demonstrably have their own records in using reprisals against civil society in recent years. According to the joint communication report by the Special Procedures ([document 36/25](#)) a total of 33 States have not communicated at all with the mandate holders of the Special Procedures. Among the States named, 11 are current members of the HRC: Bangladesh, Brazil, Republic of Congo, Egypt, Hungary, India, Iraq, Kenya, Nigeria, Qatar and Venezuela. This constitutes a clear violation of the criteria of 'highest standards' in accordance with [UNGA resolution 60/251](#) on the Human Rights Council, OP 9.

Similar to the previously mentioned amendments to the resolution on human rights defenders, a large number of the amendments to [resolution 36/21](#) raised objections with the overall concept and scope (for instance by attaching a list of specific and

² Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Denmark, Fiji, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom of Great Britain and Northern Ireland, USA, Uruguay.

exclusive activities of cooperation with the UN), the legal grounds for cooperating with the United Nations, or, conversely, aimed to reinforce the notion of States as the primary source of information. For instance, amendment 36/L.46 highlighted that *cooperation and genuine dialogue [...] shall be aimed at strengthening the capacity of Member States to comply with their human rights obligations*. Far from denying the need of strengthening States' capacities to comply with their human rights obligations, the issue here lies with a language that makes state capacity building the only legitimate outcome of cooperation with the UN at all. Unfortunately, L. 46 was among the three amendments which were accepted by a somewhat larger majority (24:18), while other amendments such as L.56 were accepted with a narrower majority (21:20). Amendment L.56 inserted a new OP 8 into the resolution with the aim to state that *information provided by all stakeholders, including civil society, to the United Nations and its representatives and mechanisms in the field of human rights should be credible and reliable, and must be thoroughly checked and corroborated*.

Why is such seemingly inconspicuous and self-evident requirement on information a problem? One of the concerns is that some of the States presenting the amendment used this argument to undermine the cases presented in the Secretary General's report on the basis of them allegedly being *fabricated* or *politically motivated* (literally repeated in L.53). Another concern is that this kind of argument opens the door for human rights hostile governments. This strategy could already be observed in reviews of the UN reports on Syria which questioned any information included in

the report that did not fit with arguments of defence brought forward by the Syrian government. Everybody is entitled to examine the substance and source of information but matters become ambiguous when such an examination becomes an instrument to prevent action. In the end, [resolution 36/21](#) was adopted with a vote of 28 in favour, none against and 19 abstained.

For a number of years, efforts could be observed amongst some Member States of the HRC to return to traditional understanding of gender roles in society and family. Wherever possible, a reluctance can be observed to debate equal rights under an explicit referral to gender terminology. While no Member States has so far dared to challenge women's rights and gender equality in an official and public statement there are other, more subtle, means to indicate that these rights are at stake. Some of those means became yet again evident during the 2017 sessions.

Elimination of discrimination against women and girls

During the 35th Session, [resolution 35/18](#) on the **elimination of discrimination against women and girls** called upon States to repeal all laws that exclusively or disproportionately criminalize actions or behaviours of women and girls, and laws that discriminate against them based on any grounds such as custom, tradition, culture or religion. Though the resolution was adopted without a vote, two amendments by Belarus, China, Egypt and Russian Federation sought to eliminate the term women human rights defenders (35/L.41) and to

turn the term equality into a – very – broad concept, arguing that in the end, all human rights tend to create an egalitarian community (35/L.42). While the amendments were ultimately rejected, the amendments did find the support of 14 and 17 Member States respectively.

Another resolution ([35/10](#)) dealing with **accelerating efforts to eliminate violence against women: engaging men and boys in preventing and responding to violence against all women and girls** requested the HCHR to prepare a report before the 38th Session in order to review promising practices and lessons learned on the subject. The resolution also asks to review efforts which challenge gender stereotypes and the negative social norms, attitudes and behaviours that underlie and perpetuate violence against women and girls. Again Belarus, China, Egypt and Russian Federation submitted two amendments with the intention to prevent the term women human rights defenders (35/L.39) from being used and to establish a framework that keeps the responsibility to improve the situation exactly with those actors who have been perpetuated the stereotypes in question for centuries (35/L.40): *[...] with appropriate direction and guidance from parents and legal guardians [...]*. Both amendments were rejected but found the support of 13 and 16 Member States respectively.

With regards to gender roles and family structures, the intention of a roll-back is currently most obviously revealed by resolution such as [resolution 35/13](#) on the **protection of the family: role of the family in supporting the protection and promotion**

of human rights of older persons. This resolution perpetuating the stereotype of family as a nuclear family composed of child, woman and man found support from approximately 30 Member States in favour while approximately 12 to 14 Member States abstained or voted against. The hope remains that with the help of expert workshops organised by the OHCHR the role of the family and its composition can be adapted to reality, and the protection of the family as well as each of its members subsequently extended, too.

This attempted roll-back of gender roles and women's rights is not lacking engaged opposition. Throughout the HRC sessions of 2017 various projects have been upheld to articulate the scope of women's rights as human rights as precise as possible. Examples from the June session include [resolution 35/22](#) on **realizing the equal enjoyment of the right to education by every girl**, adopted without a vote, and resolution 35/16 on **child, early and forced marriage in humanitarian settings**, again adopted without a vote and any amendment. Another example is [resolution 36/8](#) from September 2017 on the **full enjoyment of human rights by all women and girls and the systematic mainstreaming of a gender perspective into the implementation of the 2030 Agenda for Sustainable Development**. The resolution requests the HCHR to organize a two-day intersessional expert meeting to consider gaps in, challenges to and best practices aimed at the full enjoyment of human rights by all women and girls and the systematic mainstreaming of a gender perspective in the implementation of the 2030 Agenda.

3.2 Country issues

Syria

In relation to **Syria**, the HRC dealt with the violations against human rights and international humanitarian law during all three regular sessions in 2017.

In March, the HRC extended the mandate of the independent international Commission of Inquiry (CoI) on the Syrian Arab Republic, and decided to transmit all their reports and oral updates to all relevant bodies of the United Nations ([resolution 34/26](#)).

In June, the HRC addressed the situation of four and a half million people living in areas that are besieged or can barely be reached. [Resolution 35/26](#) expressed profound concern about the findings of the CoI. Those findings conclude that the offensive against Aleppo involved serious violations and abuses of international human rights law and humanitarian law (which may even amount to war crimes), in particular by the Syrian authorities and their allies. The resolution further invites States to actively support the international, impartial and independent mechanism ([UNGA resolution 71/248](#)) to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law.

In September, the HRC decided ([resolution 36/20](#)) to convene at its 37th Session a high-level panel discussion on human rights violations of children in Syria, with a specific focus on attacks on schools and hospitals and

the denial of humanitarian access. The HRC further requested the OHCHR to present a summary report on this high-level panel discussion to the 38th HRC Session. While today perpetrators and crimes can be clearly identified thanks to remarkable efforts of documentation, it remained impossible to include in [resolution 36/20](#) a referral of the matter to the UN Security Council. Though the latter has proven to be far from perfect in adequately addressing the violations in Syria, such a referral would have been of great symbolic importance as it is the ultimate step the HRC can take. While there was always a comfortable majority with 27 votes in favour of the resolution, it is certainly irritating that about seven member States of the HRC do not see the need to even address the atrocities in Syria from a human rights perspective. Observers may have gotten used to such voting patterns from Burundi, China, Cuba and Venezuela but not necessarily from Bolivia, Iraq and Philippines as was the case on this occasion.

Democratic Republic of Congo

In 2017, the human rights situation in the **Democratic Republic of the Congo (DRC)**, in particular in the Kasai region, prompted the HRC to act. During the 35th Session in June, a resolution was adopted which dispatched a team of experts to the Kasai region. The mandate of the resolution on *technical assistance and accountability concerning the events in the Kasai regions* ([35/36](#)) was in fact not limited to technical assistance alone. The resolution also explicitly expressed grave concern about reports of *a wave of violence, serious and gross human rights violations and*

abuses, and violations of international humanitarian law in the Kasai regions. The resolution further mentioned reports of the *recruitment and use of child soldiers, sexual and gender-based violence, destruction of houses, schools, places of worship, and State infrastructure by local militias, as well as of mass graves.* The team of experts, including international and regional experts, have been requested to present an oral update for an enhanced interactive dialogue at the 37th HRC Session (March 2018). The HCHR was asked to present a comprehensive report with the expert team's findings for an interactive dialogue at the 38th HRC session (June 2018). Malta had on behalf of the European Union submitted a different draft stressing impunity and accountability but withdrew when Tunisia on behalf of the African States' Group included the reference to the international experts and the international humanitarian law as well as an overall stronger wording.

One session later, in September 2017, Estonia submitted a next resolution on behalf of the EU, in part due to the failed agreement on national elections and a spike in human rights violations throughout the year 2017. Again, Tunisia on behalf of the African States' Group presented an optional version on *technical assistance and capacity-building in the field of human rights in the Democratic Republic of the Congo.* The resulting [resolution 36/30](#) requests the OHCHR to orally update the Council on the situation of human rights at both its 37th and 38th Session, and to present a comprehensive report at the 39th HRC Session including an examination of the electoral process.

On the face of it, it appears that the human rights situation in the DRC had come under continuous scrutiny by the HRC. Nonetheless, the US delegation criticized the insufficient efforts to investigate and hold accountable those responsible for the violations and abuses, the congratulatory language in the latest resolution and the continued restrictions on political space in the DRC. The US voted against [resolution 36/30](#) and further appealed to the DRC to postpone its candidacy to the HRC for the period 2018-2020. The resolution was nonetheless adopted. At the General Assembly in October 2017 a rather large majority of 151 States voted in favour of the DRC becoming a Member State of the HRC for the period 2018-2020.

Burundi

The case of **Burundi** has served as the counterexample of dealings with HRC Member States with a questionable human rights record. Burundi was elected in 2015 by a UNGA majority to become a member of the HRC for the period 2016-2018. From the very beginning, the human rights situation in Burundi was constantly and critically assessed. In December 2015, Burundi was the subject of the HRC Special Session 24 during which a number of HRC Member States unsuccessfully sought to suspend Burundi's membership in the HRC before it even started. At least, the resulting [resolution 24/S-1](#) of the Special Session requested a thorough assessment by the HCHR of the human rights situation in Burundi. On the basis of evidence of a series of severe human rights violations, subsequent [resolution 33/24](#) established a Commission of Inquiry (Col). Since Col members

were appointed in November 2016, the Col has issued a number of press releases and public statements in which it has called on the Burundian government to end the serious human rights violations and to investigate possible crimes against humanity.³

The assessments culminated in the Col's report to the 36th HRC session which documents a remarkable level and variety of human rights violations across the country ([document A/HRC/36/54](#)). The report finds that there are *reasonable grounds to believe that crimes against humanity have been committed and continue to be committed in Burundi since April 2015*. Listed human rights violations include extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture, cruel treatment and sexual violence as well as restrictions of the right to freedom of association and the work of human rights NGOs suspended. The fact that the government of Burundi has also denied to co-operate any further with OHCHR and did not cooperate with the UN Committee against Torture during its last review, should have led to a resolution which would have recommended to the UN General Assembly (UNGA) to suspend Burundi's membership in the HRC.

And indeed, the draft resolution 36/L.9 submitted by Estonia on behalf of the European Union called for UNGA to take up the case as well as for the International Criminal Court to open an investigation. And as it happened previously in the case of Sri Lanka in 2009 or the DRC as outlined above, the

Burundi delegation at that point stepped out of the drafting process and returned to the room with an optional draft resolution which was officially tabled by Tunisia on behalf of the African States Group (36/L.33). Unlike the draft resolution tabled by Estonia on behalf of the EU, this second resolution did not contain any call for investigation on suspected crimes against humanity or for actions by the UN General Assembly or Security Council for that matter.

Consequently, the HRC dealt with two resolutions on Burundi (which in its own way serves to underline the gravity of the human rights situation in the country). The EU drastically revised its original draft L.9 while preserving at least the Col and its investigative mandate. The new text simply renewed the mandate ([resolution 36/19](#)). This EU tabled resolution was also no longer officially considered a country resolution under HRC Agenda Item 4 but was adopted by a vote under HRC Agenda Item 2 as a procedural resolution which neatly avoided a regulatory conflict. This decision subsequently paved the way for Tunisia and the African States Group to present their draft L.33 as [resolution 36/2](#) under Agenda Item 10 (technical assistance). In addition to the original text of L.33, resolution 36/2 requested the OHCHR to nominate a team of three experts to be dispatched to Burundi (OP 16). Furthermore, the HCHR is asked to present an oral briefing to the HRC at its 37th and 38th Session. As a result, there are now six experts nominated by the UN to follow the human rights situation in Burundi closely. While this at first glance again appears as good news, there are less than

³ Accessible via <http://www.ohchr.org/EN/HRBodies/HRC/ColBurundi/Pages/ColBurundi.aspx>

favourable circumstances for the work of those experts. The experts to be nominated by OHCHR are explicitly required to forward all information they will collect to the judicial authorities of Burundi. In the face of the many risks associated with criticising the government in Burundi, this detail may severely jeopardize the willingness of witnesses of human rights violations in the country to cooperate with the experts.

4. Conclusion

Judged against normative standards, the gravity of a series of human rights violations was not met by the appropriate political response by the HRC in 2017. This conclusion can be reached nearly every year, accompanied regularly by severe shortcomings of enforcement mechanisms in terms of legislation, internalization and socialization. Given the nature of the HRC as a human rights body composed of both normative standards and political decision making, such a performance is somewhat inherent, and to some extent inevitable. The reasons are manifold and discussed in other papers at length.⁴ Despite the HRC's ambiguity it is nevertheless subject to change.

Irrespective of the number of cases in which the HRC failed to address a situation adequately, its reporting and monitoring system has, by collecting and compiling relevant information, proved its potential in ensuring accountability for violations that may constitute war crimes or crimes against

humanity. In cases such as South Sudan, evidence of violations has been collected and preserved and may be made available to already existing regional courts or those soon to be established. Furthermore, while the gravity and extent of human rights violations may not always be reflected in their entirety in resulting resolutions some of the compromises achieved ensure that a given situation will at the very least remain on the HRC agenda and thus be monitored. The HRC has in addition shown its potential to call on the UN Security Council to refer the situation to the International Criminal Court, such as in the case of Syria.

Beyond Geneva circles, it is also worth observing that the arduous struggle for the protection of human rights defenders encouraged governments such as in Burkina Faso to adopt pertinent national laws. The adoption of the HRC resolution on human rights defenders in June 2017 was followed by a civil society campaign across West Africa encouraging States to engage more in the protection through national laws and policies. Other West African states like Côte d'Ivoire and Mali have also developed national laws protecting human rights defenders. By the way: It is further worth mentioning that the Economic Community of West African States (ECOWAS) has for years successfully operationalized elements of the Responsibility to Protect (R2P) approach and has proven the applicability of the rule of law and human rights criteria in concordance with regional law frameworks.

⁴ See papers published by FES such as "[The UN Human Rights Council – Challenges for its next presidency](https://www.fes.de/en/library-of-the-friedrich-ebert-stiftung/)" and others available at <https://www.fes.de/en/library-of-the-friedrich-ebert-stiftung/>

Those practices and experiences, in addition to the continuous engagement of civil society, provide the substance to stay hopeful for the future work of the Human Rights Council. This might be particularly be true in view of the 70th anniversary of the Universal Declaration of Human Rights and the 25th anniversary of the Vienna Declaration and Programme of Action to be commemorated in 2018.

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