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## Human Rights Council

### Fortieth session

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Agenda item 5

### Human rights bodies and mechanisms

## Written statement\* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2019]

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\* Issued as received, in the language(s) of submission only.



## Time to Enforce Compliance With UNHRC's Own Membership Criteria

United Nations Watch is concerned by the routine presence of gross and systematic abusers of human rights on the UN Human Rights Council. After thirteen years, we fear the Council may be headed for the same fate as its much-derided predecessor, the Commission on Human Rights.

More than half of the current members of the Council (24 out of 47 members) fail to meet the basic standards for democracy according to Freedom House.<sup>1</sup> These include some of the world's worst human rights abusers: China, Cuba, Egypt and Saudi Arabia, none of which has ever been condemned by the Council. These countries use their membership in the Council as a false badge of legitimacy in the international arena.

The presence of such abusers on the Council undermines the Council's legitimacy and contradicts its own charter. According to UNGA Resolution 60/251, which established the Council in 2006, General Assembly members are obliged to elect states to the Council by considering "the candidates' contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto." The resolution further provides that consideration ought to be given to whether the candidate can meet membership obligations (a) "to uphold the highest standards in the promotion and protection of human rights" and (b) to "fully cooperate with the Council."

Yet the above membership criteria are not enforced. Not only does the Council fail to impose any consequences on members who violate these basic standards, but each year new members are elected who fail to satisfy the membership criteria.

A case in point is Burundi, which served on the Human Rights Council from January 2016 through December 2018. During that time, Burundi was the object of annual resolutions condemning the government for human rights violations. Indeed, nine months into Burundi's term, during the September 2016 session, the Human Rights Council established a Commission of Inquiry (COI) on Burundi to investigate human rights violations there (see resolution 33/24). The COI published its first report in August 2017 (A/HRC/36/54), in which it noted Burundi's lack of cooperation with the COI. The report documented severe human rights violations by State agents, including extrajudicial killings, arbitrary arrests, enforced disappearances, torture and sexual violence. It further found "reasonable grounds to believe that crimes against humanity have been committed in Burundi since April 2015."

Following the publication of this report, at the September 2017 session, Burundi sought to replace the COI with a team of three experts to be appointed by the Office of the High Commissioner. This effort led to the adoption of two competing resolutions on Burundi in September 2017, an Item 10 resolution supported by Burundi which called for the team of experts (36/2), and an Item 4 resolution opposed by Burundi which extended the mandate of the COI (36/19). In its second report published in August 2018 (A/HRC/39/63), the COI again lamented Burundi's lack of cooperation with and threats against members of the COI. The COI also found that human rights violations were continuing and that the State was responsible for these violations.

In addition to failing to cooperate with the COI, Burundi also refused to cooperate with the High Commissioner's expert team, which it initially supported through Resolution 36/2. In April 2018, the Burundian government revoked the experts' visas approximately three weeks after their arrival in the country, thereby preventing Resolution 36/2 from being implemented (see A/HRC/39/40). In her statement to the Human Rights Council at its 39<sup>th</sup> session, Deputy High Commissioner Kate Gilmore criticized Burundi, stating "Burundi supported the adoption of Resolution 36/2, and as a member of this Council, it has a particular responsibility to cooperate with the Council's mechanisms. Thus, it is a matter of

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<sup>1</sup> *Freedom in the World 2018*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/freedom-world-2018>.

concern that through its lack of cooperation Burundi has prevented the implementation of this Council's resolution and the mandated work of the team of experts."<sup>2</sup>

Yet despite Burundi's severe human rights violations, as documented by the COI, and its brazen lack of cooperation with UN human rights mechanisms, there was no call for Burundi to be removed from the Council or any other consequence to Burundi. Resolution 39/14, adopted during the September 2018 session, merely "recalled" in OP17 that Council members "should uphold the highest standards in the promotion and protection of human rights and fundamental freedoms," and "deplored" Burundi's "lack of respect" for "international and regional human rights mechanisms."

Another example is the Bolivarian Republic of Venezuela, which just completed its second of two consecutive terms (2013-2018). Throughout this time, the human rights situation in the country drastically deteriorated and prominent opposition leaders such as Leopoldo Lopez and Antonio Ledezma were arrested. According to human rights groups, there are more than 300 political prisoners in Venezuela.<sup>3</sup> Between April and July 2017, over 100 people were killed in anti-government protests, mostly from gunfire by government forces,<sup>4</sup> and many others were subject to arbitrary arrests and torture. In a flawed and highly-criticized election in July 2017, a 545-seat Constituent Assembly was created to neutralize the opposition-led National Assembly. The new legislative body, which has no checks on its powers, quickly began moving against President Maduro's opponents.<sup>5</sup> In May 2018, Maduro was re-elected to a second six-year term amidst allegations of electoral fraud and vote buying.<sup>6</sup>

Venezuela is considered to be Latin America's worst-ever migration crisis with a steady stream of refugees fleeing mass hunger and violence to neighboring countries. A university study published in February 2018 found that Venezuelans had lost an average of 10 kilos in the previous year, with 60% of Venezuelans saying they wake up hungry, and 87% of the population living in poverty.<sup>7</sup> According to the UN High Commissioner for refugees, in November 2018 the number of refugees from Venezuela reached three million.<sup>8</sup>

Yet despite the government's widespread abuses, the Human Rights Council failed to pass a single resolution condemning Venezuela. In September 2018, three months before the end of Venezuela's term—due to term limits—the Council adopted its first-ever resolution on Venezuela (39/1). However, the weak text, adopted under Agenda Item 2, failed to detail the human rights violations, attribute them to the government or call on the government to cease violations. Thus, through its entire six years on the Council, the Maduro government remained free of censure.

Similarly, despite the political turmoil and serious human rights abuses in the Democratic Republic of Congo, that country was elected to the Human Rights Council in 2017.

<sup>2</sup> Kate Gilmore, *Statement on the implementation of Resolution 36/2*, OHCHR (Sep. 11, 2018), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23534&LangID=E>.

<sup>3</sup> *Venezuela releases dozens of anti-Maduro activists*, FRANCE24 (Feb. 26, 2018), <https://www.france24.com/en/20180602-venezuela-releases-dozens-anti-maduro-activists>.

<sup>4</sup> *Death toll in Venezuela unrest soars past 100, according to AP*, CBS NEWS (July 27, 2017), <https://www.cbsnews.com/news/venezuela-unrest-death-toll-soars-past-100-protesters-nicolas-maduro/>.

<sup>5</sup> *Venezuela's New Constitutional Assembly Ousts Anti-Maduro Prosecutor Luisa Ortega*, NBC NEWS (Aug. 5, 2017), <https://www.nbcnews.com/storyline/venezuela-crisis/venezuela-troops-guard-prosecutor-s-office-opponents-targeted-n789876>.

<sup>6</sup> Tom Phillips, *Venezuela elections: Maduro wins second term*, THE GUARDIAN (May 21, 2018), <https://www.theguardian.com/world/2018/may/21/venezuela-elections-nicolas-maduro-wins-second-term>.

<sup>7</sup> *Venezuelans are starving amid economic crisis, food shortages*, NEW YORK POST (Feb. 22, 2018), <https://nypost.com/2018/02/22/venezuelans-are-starving-amid-economic-crisis-food-shortages/>.

<sup>8</sup> *Number of refugees and migrants from Venezuela reaches 3 million*, UNHCR (Nov. 8, 2018), <https://www.unhcr.org/news/press/2018/11/5be4192b4/number-refugees-migrants-venezuela-reaches-3-million.html>

Outrageously, this year more abusers were voted on to the Council, including Bahrain, a country which jails and harasses its opposition leaders, and subjects detainees to torture and other ill-treatment; Eritrea, a country with no political opposition which is condemned annually by the Human Rights Council for “systematic, widespread and gross human rights violations” committed by the government in a climate of “generalized impunity;” and the Philippines, whose government placed the UN expert on indigenous people on a “suspected terrorist” hit list.<sup>9</sup>

Unfortunately, the election of these dictatorships is enabled by a faulty electoral process whereby backroom deals fixing an equal number of candidates for available seats leads to “closed slate” elections with no competition.

Acknowledging this problem, in June 2017 the Netherlands on behalf of 47 countries—including the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, Germany, Italy, Canada—issued a joint statement to further HRC membership requirements.<sup>10</sup> They pledged to “strive to ensure competitive HRC membership elections,” and to “engage in voting based on human rights considerations consistent with GA resolution 60/251.” The stated goal was to “help strengthen the Council’s effectiveness and credibility.”

Regrettably, this pledge did not result in any change to the HRC election process. In fact, in the election which took place in October 2018 to elect new members for 2019, for the first time in the Council’s 13-year history, there was no competition in any of the regional groups, and abusers were elected to the Council.

We urge the High Commissioner to show leadership and demand serious reform.

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<sup>9</sup> *UN to elect 6 more abusers to rights Council on Friday, NGOs protest*, UN WATCH (Oct. 8, 2018), <https://www.unwatch.org/hrcelections2018/>.

<sup>10</sup> See Joint Statement by the Netherlands on behalf of 47 countries, *Human Rights Council*, 35<sup>th</sup> Session, June 23, 2017, available at [www.unwatch.org/joint-statement-improving-unhrc-membership/](http://www.unwatch.org/joint-statement-improving-unhrc-membership/).