

# The UN Human Rights Council Report Card: 2009-2010

Special Report

September 15, 2010



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### Overview

This report card assesses the progress of the United Nations Human Rights Council over a one-year period that begins with the 12th Session in September 2009 and extends through the end of the 14th Session in June 2010. The report assesses the performance of the Council on a number of key issues, including its ability to take timely action on some of the most egregious human rights abuses occurring in specific countries or regions of the world, and its capacity to address emerging global threats to fundamental human rights such as freedom of expression and freedom of association. The report also focuses on the ability of civil society stakeholders—human rights defenders and nongovernmental organizations (NGOs)—to engage with and positively affect the functioning of the Council. Finally, the report assesses the actions of the U.S. government and the broader community of the world’s democracies, both of which bear special responsibility for ensuring the Council’s effectiveness.

Key findings of the report include:

- **Failing Grades:** The Council receives a failing grade on 4 of the 12 criteria reviewed, with both improvements and declines on various criteria compared with last year. The report notes the Council’s failure to call special sessions or pass resolutions on pressing human rights issues, and to respond to the growing global threat against freedom of association. Democracies are faulted for failing to run for seats on the Human Rights Council and the Committee on Non-Governmental Organizations, as well as their willingness to elect countries with poor human rights records to both of these bodies.
- **Deeply Flawed Elections:** Elections to the Council have seen a decrease in the number of candidates with strong human rights records each year since the first ballot in 2006. A significant number of democracies continue to vote for repressive countries, including even those with the world’s worst human rights records, such as Libya. All five regional groups of states ran clean slates that eliminated any competition from the 2010 elections.
- **Improved U.S. Participation:** For the first time since the Council was established in 2006, the United States received a passing grade for its level of engagement with the body. U.S. engagement contributed to an improved score for the Council in its response to global threats to freedom of expression, as well as an improvement in the voting records of democracies on key resolutions.
- **Politicized NGO Accreditation:** The Committee on Non-governmental Organizations, which oversees the accreditation process for NGOs, has become increasingly politicized and

is dominated by some of the world's most aggressive opponents of universal standards on human rights. Latin America, the region with the second largest number of Free countries and electoral democracies according to *Freedom in the World*, has allowed three of its four seats to be occupied by some of its worst performers on human rights and civic participation. The committee should be replaced with a professional bureau that would evaluate organizations on a purely technical basis.

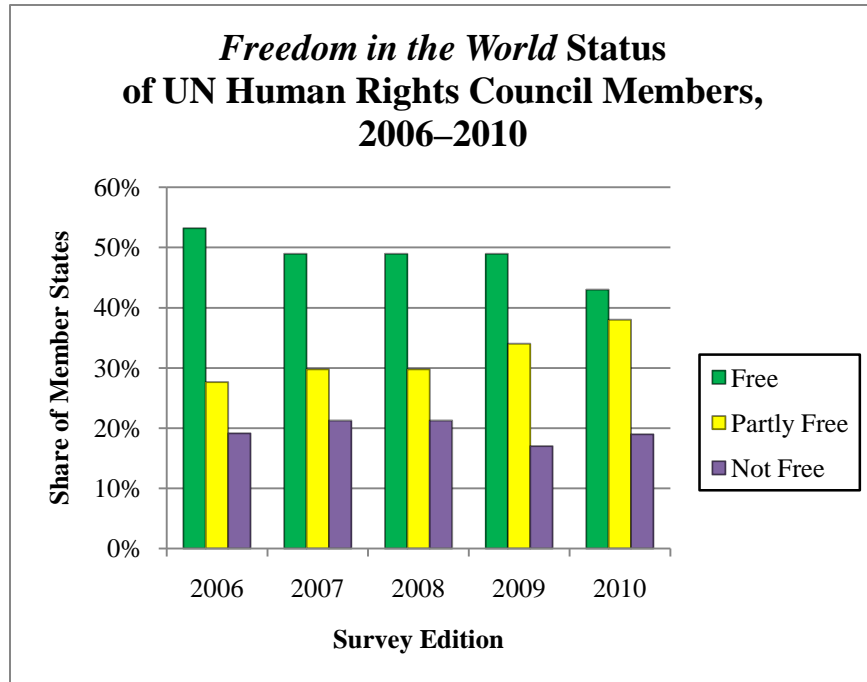
- **Pressure on Special Rapporteurs:** The system of special rapporteurs provides the Council with a passing grade for selecting strong mandate holders and producing quality reports despite limited staff and a lack of cooperation from the governments under review. However, pressure to eliminate country-specific rapporteurs and weaken other thematic mandates continues.
- **Skewed Focus for Resolutions and Special Sessions:** The Council has issued condemnatory resolutions on only a handful of countries, including a disproportionate number on Israel. The Council did not issue a resolution on Iran, despite evidence of massive human rights violations in that country throughout the year, and no resolutions were passed to address ongoing systematic abuses in countries such as Belarus, China, Cuba, Libya, Saudi Arabia, Sudan, and Syria.
- **Universal Periodic Review Often Undermined:** This consensus-based mechanism for monitoring the human rights records of all UN members has proven moderately useful, mainly for countries that Freedom House designates as Free and those ranked near the top of the Partly Free category. However, even those states fail to directly address their human rights deficiencies in their national reports and instead focus on positive initiatives being undertaken to address challenges. States such as Iran that are not interested in reform undermine the process by presenting preposterously positive reports about their records and lining up friendly countries to testify on their behalf.
- **Stronger Defense of Freedom of Expression:** Resolutions that urge countries to prohibit anti-Islamic or blasphemous speech continue to pass, but with less support than in the past due to improved voting by a number of democracies, particularly in Latin America. Efforts to create international law prohibiting “defamation of religions” have been stalled due to strong opposition.

As the world's only global body dedicated to the protection and promotion of human rights, the Council is unique in its potential to address human rights violations in every country. Although its predecessor, the UN Commission on Human Rights, was a largely discredited body by the time it was disbanded and replaced by the Council in 2006, its legacy in establishing universal norms for human rights remains highly significant. The Commission and its first major accomplishment, the 1948 adoption of the Universal Declaration of Human Rights (UDHR), paved the way for the subsequent development of charters, covenants, and mechanisms that require member states to commit to some level of respect for the human rights of their own citizens.

However, the Human Rights Council has thus far failed to fulfill hopes that it would restore legitimacy to the UN's main human rights body. The system of bloc voting, used by all five regional groups as well as thematic groupings such as the Organization for the Islamic Conference (OIC) and the Nonaligned Movement, continues to inhibit the Council's ability to address both new and ongoing threats to human rights. In addition, a relatively small group of

rights-abusing countries have exerted an inordinate level of influence within the Council through efforts to eliminate some country-specific special procedures, block or weaken the language of condemnatory resolutions, make a mockery of the Universal Periodic Review process, and threaten the independence of the Office of the High Commissioner for Human Rights (OHCHR).

The efforts of the United States not only to engage more, but also to find solutions in a manner that is more inclusive and sensitive to the concerns of other states, have yielded results in just one year. However, it is concerning that fewer highly qualified countries are running for seats on the Council. In the most recent Council elections in May 2010, only three countries that Freedom House ranks as Free ran and were elected. Seven Free states were elected



in 2009, and 10 won seats in 2008. As a result, the ratio of rights-respecting countries to rights-abusing countries has been slowly shifting in the wrong direction.

For the Council to attain greater legitimacy, democracies must step forward and demonstrate their commitment to human rights by making the body a higher foreign policy priority. In particular, governments that respect human rights must invest the resources and political capital necessary to staff missions in Geneva with experienced diplomats, support resolutions that highlight human rights abuses or that establish mechanisms to respond to them, and fully engage in honest and participatory Universal Periodic Review processes.

## Report Card

**For: The UN Human Rights Council**

**Period: September 2009 – June 2010**

Benchmark	Criteria	Grade
The ability of the Council to take timely action to address urgent human rights abuses around the world, including censuring governments as appropriate	Relevance and independence of special rapporteurs	Mixed
	Quality of special rapporteurs and reports	Pass
	Adoption of resolutions and use of special sessions and working groups	Fail
	Universal Periodic Review process	Mixed
The ability of the Council to raise and take appropriate action to address emerging global patterns of human rights abuses	The global threat against freedom of association	Fail ↓
	The global threat against freedom of expression	Mixed ↑
The ability of nongovernmental stakeholders to engage with the Council	Accreditation process for NGOs	Fail ↓
	Opportunities for NGO engagement at the Council	Mixed
Democracies <sup>1</sup> play a leadership role in ensuring that the Council lives up to its mandate	Voting records of democracies during Council elections	Fail
	Voting records of democracies on key resolutions	Mixed ↑
Efforts by the U.S. government to positively affect the Council's functioning	Level of U.S. engagement at the Human Rights Council	Pass ↑
	U.S. Participation in the Universal Periodic Review Process	Mixed (N)

↑ Score improved from 2007–2009 Report Card

↓ Score worsened from 2007–2009 Report Card

(N) New criterion

<sup>1</sup> For the purposes of this report, Freedom House will evaluate the role played by countries designated as “[electoral democracies](#)” in the 2010 edition of *Freedom in the World*. These 116 countries were found to have met certain human rights standards, including competitive multiparty political systems and regularly contested elections, but do not necessarily maintain the full array of civil liberties necessary to receive a status of Free. As such, the list of “electoral democracies” contains all countries Freedom House designates as Free and a number of countries Freedom House designates as Partly Free.

## BENCHMARK 1:

The ability of the Council to take timely action to address urgent human rights abuses around the world, including censuring governments as appropriate

### Criterion 1: Relevance and Independence of Special Rapporteurs

#### Freedom House Assessment: MIXED

The Council's system of special procedures, both country-specific and thematic, remains its most effective tool, but one that is under consistent attack. There are currently 31 thematic special procedures and only eight country-specific mandates. Most states with extremely poor human rights records, including the majority of the countries featured in Freedom House's annual *Worst of the Worst: The World's Most Repressive Societies* report (those that receive the lowest ratings for political rights and civil liberties in *Freedom in the World*), are not addressed by country-specific mandates. Several Council member states with poor human rights records continue to assert that country-specific mandates are no longer necessary since the creation of the Universal Periodic Review (UPR) process. While states are not as hostile toward the existence of thematic mandates, these mandate-holders nonetheless often find it difficult to complete their important work. During the 14th Session, the mandate of the special rapporteur (SR) on [freedom of religion or belief](#) was fiercely debated amid threats to add a provision requiring the SR to monitor instances of language leading to incitement to religious hatred, discrimination, intolerance, and violence, rather than exclusively focusing on impediments to freedom of religion or belief. Among the SRs whose mandates remained intact, several came under verbal attack during the presentations of their reports, and many states continued to deny them invitations to make in-country visits.

#### Country-Specific Mandates

There is continuing pressure to eliminate the remaining country-specific special procedures. The long-standing argument from rights-abusing countries that the Council should focus on constructive dialog rather than condemnation is now accompanied by a new claim that the consensus-based UPR process is sufficient for monitoring human rights situations in specific countries.

The mandate of a special procedure on the situation of human rights in [Sudan](#) has been renewed repeatedly since its establishment in 1993, despite attempts by the Sudanese government and government-organized "nongovernmental" organizations (GONGOs) to eliminate it. The mandate, which was strongly debated in 2009 and renewed only through a compromise that reduced it from an SR to an "independent expert," was up for renewal at the 14th Session (June 2010). The mandate-holder, Mohamed Chande Othman, was unable to prepare and present a report during this session for health reasons, and the mandate received a technical extension until the end of the 15th Session "to allow an interactive dialog to be held." The extension was granted by consensus, and the Council should be commended for not allowing the mandate to expire.

The North Korea ([Democratic People’s Republic of Korea](#)) mandate was established in 2004 and has been extended every year since. During the period covered by this report, the SR made country visits to Mongolia, South Korea (the Republic of Korea), and Japan, but was again refused entry into North Korea. Pyongyang “categorically rejected” both the SR and his report, and continued to argue—along with Angola, Burma (Myanmar), China, Cuba, and Sudan—that the human rights situation within individual countries should be assessed only by the UPR. However, Japan and Chile commented that the UPR was not a sufficient review mechanism for countries with such poor standards of human rights. The North Korea mandate was last renewed in April 2010 for a period of one year, with China, Cuba, Egypt, Indonesia, and Russia voting against its renewal.

At the initiative of the African group, the Council decided to hold a “stand-alone interactive dialog” on Somalia, to be convened during its 15th Session in September 2010, just after the period covered in this report. The dialog will include the [SR for the situation of human rights in Somalia](#), the high commissioner for human rights, and the special representative of the secretary general for Somalia. It will focus on capacity-building programs within the country and how to make UN efforts to protect and promote human rights in the country more effective. Many NGOs have long lobbied for a special briefing on the situation of human rights in Somalia, and this dialog may serve that purpose. The Council should be commended for exploring a new way in which to utilize the reports and efforts made by the SR.

### **Thematic Mandates**

There were heated negotiations surrounding the renewal of the [freedom of religion or belief](#) mandate. Pakistan threatened to leave negotiations unless “language condemning incidents of incitement to religious hatred, discrimination, intolerance, and violence” was incorporated into the new resolution. However, after strong contestation, in particular by the European Union, Pakistan compromised by withdrawing amendments that would require the SR to examine such incidents and to protect places of worship, allowing the [resolution](#) to be adopted by consensus. It was positive that new language introduced by Pakistan was placed in the preambulatory section rather than the operative section, and expressed concern about “incidents of religious hatred, discrimination, intolerance, and violence” directed against persons rather than against the religion itself. However, other preambulatory language inserted by Pakistan emphasized the “important role of media in the creation and promotion of an atmosphere of respect and tolerance for religious and cultural diversity,” a role that should be outside the duties of the media and would be better assigned to government, religious, and cultural leaders.

The mandate on [human rights defenders](#) was not up for renewal in 2010, since it was renewed in 2008 for a period of three years. However, several states, including Bangladesh, China, Egypt, Iran, Morocco, Pakistan (on behalf of the OIC), Russia, and Sri Lanka, had attempted to water down the mandate by changing the definition of human rights defenders, stating that many individuals misuse the term for their own advantage. The fact that 22 countries have not responded to the SR’s request for country visits, some of which date back to 2001, further demonstrates the disdain that many states, particularly repressive regimes, hold for the special procedures. (Notably, five of the states that attempted to weaken the mandate—China, Egypt, Pakistan, Russia, and Sri Lanka—are also among those that have not responded to a visit



request.) The SR's report, presented at the 13th Session (March 2010), noted several new worrying trends with regard to the operating environment for human rights defenders, including a "growing characterization of human rights defenders as 'terrorists,' 'enemies of the State' or 'political opponents' by State authorities and State-owned media." Ironically, this trend is evidenced by the response of the government of the Democratic Republic of Congo (DRC) to the mandate holder's report following her visit to that country, which asserted that no state should "let crimes committed 'under the guise of being a human rights defender' go unpunished."

The annual report presented by the SR on [extrajudicial, summary, or arbitrary executions](#) during the 14th Session of the Council drew strong reactions from several states, particularly Sri Lanka. In response to the SR's call for an international inquiry into the human rights violations committed during Sri Lanka's civil conflict, the country's representative criticized the SR for a "lack of professionalism and integrity in the execution of his mandate."

In his final report to the Council, the [SR on torture and other cruel, inhuman, or degrading treatment or punishment](#), Manfred Nowak, presented his [global study on torture, other forms of ill-treatment and conditions of detention](#), based on a compilation of findings during 16 official missions, three joint studies written with other special procedures, and extensive research on a variety of topics related to his mandate. He identified the systematic practice of torture as a "global phenomenon" and noted that only a handful of countries, including Denmark, had been able to eradicate torture in practice. He also expressed disappointment in the growing disrespect for special procedures by the states, citing an extreme focus by some states on the [code of conduct](#), questioning the findings of the SR, and frequent accusations that SRs have overstepped their mandates. He chided the Council for delaying consideration of a joint study on [secret detention in the context of countering terrorism](#) as a result of complaints by states that the three contributing special procedures had exceeded their mandates in issuing the report. The SR also called attention to China, Equatorial Guinea, Indonesia, Jordan, and Kazakhstan for putting him under intense surveillance and attempting to obstruct his independent fact-finding during his missions. He noted that Russia, the United States, and Zimbabwe had issued invitations but cancelled at the last minute; in the case of Zimbabwe, his team had already traveled to the country but was barred from entering.

### **Freedom House Recommendations**

- The Council should establish or reestablish country-specific mandates where evidence exists of systemic and widespread abuse of human rights, specifically in countries that receive the lowest ratings for political rights and civil liberties in [Freedom in the World](#).
- Democracies must continue to defend the independence and integrity of the UN's system of special procedures and resist efforts to eliminate or otherwise handicap such mandates in light of the new UPR mechanism.
- All governments should issue a standing invitation to all mandate holders to visit their countries and encourage any reluctant states to do the same.

## Criterion 2: Quality of Special Rapporteurs and Reports

### Freedom House Assessment: PASS

The process for nominating and appointing individuals to serve as mandate holders, which was revised in 2007, relies heavily on the discretion of the president of the Council. The president nominates candidates on the basis of a short list prepared by the Consultative Group, which is composed of five individuals appointed by the respective regional groups. The short list is itself compiled from a public list of candidates nominated by governments, NGOs, regional groups, international organizations, and individuals. Essentially anyone can nominate a mandate holder if they take into account the following qualifications: expertise, experience in the field of the mandate, independence, impartiality, personal integrity, and objectivity. The president of the Council presents his or her nominations at the next regular session for what has so far proven to be pro forma approval by the Council members. Given the increasingly personal attacks on mandate holders, this process may become problematic in the future. Mandate holders are not financially compensated for their service, although they are provided with a limited staff and their travel expenses are reimbursed.

The efforts by some countries to eliminate certain special procedures or to limit their independence and effectiveness are in many ways a testament to the quality of their work. While all mandate holders remain understaffed and are constrained by the willingness of governments to extend invitations and respond to inquiries, most of the UN's 31 thematic and 8 country-specific mandates are held by professional and respected human rights experts who produce high-quality reports and issue relevant, urgent appeals to governments. While their time in Geneva is often limited to a short period when they are due to deliver reports, mandate holders are usually generous in accommodating requests to meet with NGO delegations and human rights defenders.

Several important new mandate holders were appointed during 2010 and are worth noting. Heiner Bielefeldt of Germany assumed the mandate of the [SR on freedom of religion or belief](#), replacing Asma Jahangir of Pakistan, who had ably and energetically executed the mandate since 2004. Bielefeldt, a professor of human rights at the University of Erlangen-Nürnberg and previously the director of Germany's National Human Rights Institution, appears to be highly qualified to hold this important mandate. Likewise, Christof Heyns of South Africa, a dean and professor of human rights law at the University of Pretoria, seems a strong choice to replace Philip Alston of Australia as the [SR on extrajudicial, summary, or arbitrary executions](#). Finally, Marzuki Darusman, who served for more than 20 years as a member of Indonesia's parliament and has worked in various capacities at the Indonesian National Human Rights Commission, replaced Vitit Muntarbhorn of Thailand as the [SR on the situation of human rights in the Democratic People's Republic of Korea](#).

The establishment of the Coordinating Committee of Special Procedures in 2005 has led to increased cooperation among mandate holders, including the convening of joint events around thematic topics, the conduct of joint missions, and the issuance of joint reports. This has helped

to strengthen the impact of the mandate holders' work in the face of the pushback by certain states.

### **Freedom House Recommendations**

- The OHCHR should be provided with additional funds to ensure sufficient and high-quality staffing for the mandates.
- The OHCHR should provide a modest honorarium for mandate holders.
- The appointment of mandate holders should be made by the president of the Council in accordance with specific criteria for qualifications. Member states should act only in an advisory capacity and should not be allowed to veto particular candidates.

### **Criterion 3: Adoption of Resolutions and Use of Special Sessions and Working Groups**

#### **Freedom House Assessment: FAIL**

The Council's ability to pass strong resolutions that address either country-specific human rights violations or global human rights issues continues to be disappointing. In the past year, the Council has managed to issue condemnatory resolutions on just a handful of countries: Afghanistan, Burma (Myanmar), Honduras, Israel, and Kyrgyzstan. A Council resolution regarding human rights abuses in Cambodia was extremely weak and actually praised the government for its cooperation and constructive dialog with the SR. No resolutions were passed condemning the governments of Belarus, Chad, China, Cuba, Equatorial Guinea, Eritrea, Guinea, Laos, Libya, Saudi Arabia, Somalia, Sudan, Syria, Turkmenistan, or Uzbekistan, which rank at the bottom of Freedom House's list of Not Free countries and systematically deny their citizens fundamental political rights and civil liberties. Moreover, no resolutions were passed in 2010 to condemn the serious human rights abuses taking place in Iran throughout the year.

The Council's performance with regard to special sessions over the past year was disappointing in its failure to address urgent human rights issues. There were only two special sessions held since September 2009, one on Israel and the other on developing a human rights-based approach to recovery in Haiti following the devastating earthquake of January 2010. The special session on Israel resulted in a strong resolution condemning the actions of the Israeli government. Nearly half of the special sessions that have been held by the Council, 6 of 13, have focused on Israel. The disproportionate attention Israel receives within the Council in comparison with the countries ranked at the bottom of Freedom House's rating system highlights the Council's failure to adequately and equally address human rights abuses worldwide.

#### **Positive Examples**

The Council's response to the ongoing violations of human rights in Burma (Myanmar) should be commended. During the 12th Session, the Council passed a [resolution](#) expressing grave concern over the conviction and sentencing of Daw Aung San Suu Kyi, the head of the main opposition party, the National League for Democracy, and called for her immediate release. Following the report of the SR, the Council adopted a [resolution](#) during the period under review (13th Session) that strongly condemned the "ongoing systemic violations of human rights and

fundamental freedoms of the people of Myanmar” and urged the government to implement the recommendations made by the SR.

The Council’s reaction to the situation in Kyrgyzstan following the April 2010 overthrow of its government was also positive. At the 14th Session, it adopted a [resolution](#) strongly condemning “the human rights violations committed during the protests surrounding the change of government, and also condemn[ing] the provocations and violence in Osh and Jalalabad.” The resolution called on the government of Kyrgyzstan to uphold its commitment to internationally recognized human rights and to carry out a “full and transparent investigation” of the ethnic violence that occurred after the change of government.

### **Negative Examples**

Israel remained the target of an inordinate number of condemnatory resolutions and special sessions. The country was the focus of three out of six condemnatory resolutions passed during the period of this report (and 22 out of 37 since the first session of the Council), the language of which was consistently one-sided, assigning sole responsibility to Israel for the violations of human rights in the occupied Palestinian territories. Israel was also the target of three of the four first special sessions called by the Council, and one of the two special sessions during this reporting period.

Particularly glaring was the Council’s inability to pass a resolution condemning the extensive human rights abuses that took place in Iran throughout the year. Despite the fact that a relatively strong resolution passed at the General Assembly in the fall of 2009, Council members were not willing to sponsor a resolution on Iran even at the 14th Session, which took place on the anniversary of the June 2009 crackdown on peaceful demonstrators following the Iranian presidential election. Instead, Norway read a [statement](#) on behalf of 56 UN countries that expressed concern about ongoing human rights abuses under Agenda Item 8 at the Council’s 14th Session. Of the Council’s 47 members, only 16 supported the statement.

The Council continued its practice of adopting annual resolutions put forward by Pakistan on behalf of the OIC to address “defamation of religions.” Such resolutions, which have been rightly criticized by the SR on freedom of opinion and expression and the SR on freedom of religion or belief, as well as by nongovernmental freedom of expression and religious freedom organizations, call on countries to enact legislation that prohibits anti-Islamic or blasphemous speech, terms that are vague and open to abuse. While the [resolution](#) passed again this year, it achieved a margin of only three votes (20 states in favor and 17 against), compared with last year’s margin of 12 votes (23 states in favor and 11 against). Notably, several states that had previously abstained from voting—Argentina, Mexico, South Korea, Uruguay, and Zambia—voted against the resolution this year.

In addition to the annual resolutions on defamation of religions, an obscure UN working group called the [Ad Hoc Committee on the Elaboration of Complementary Standards](#) (Ad Hoc Committee) has been established to examine gaps in international law on racism, and the OIC has been actively using this mechanism to insert the concept of defamation of religions into international law. At the most recent meeting of the Ad Hoc Committee in October 2009,

Pakistan submitted a proposal for an optional protocol to the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) that would call for the criminalization of defamation of religions. Nigeria, on behalf of the African group, submitted a similar proposal. A number of countries, including the United States, Canada, Denmark, and other EU states, resisted these moves, arguing that existing international law is sufficient to address expression that constitutes incitement to racial or religious hatred, and that better implementation of the ICERD, including promotion of tolerance and human rights education, should be the focus of efforts to eliminate discrimination based on religion. While it is unclear whether attempts to enshrine the defamation of religions concept in international law will ultimately succeed, it is positive that the 2009 meeting did not move this process forward.

### **Freedom House Recommendations**

- Democracies must put forward and build support for resolutions that condemn the actions of governments in countries where evidence exists of systemic and widespread abuse of human rights, especially those countries that receive the lowest ratings for political rights and civil liberties in [\*Freedom in the World\*](#).
- Democracies that strongly protect freedom of expression should continue to reach out to likely allies in Latin America, Africa, and Asia in support of resolutions that condemn abuses of freedom of expression, and to defeat future resolutions on so-called defamation of religions. Efforts to engage OIC member states on this issue and differentiate between freedom of expression and other legitimate human rights issues, such as discrimination and violence, should be continued.

### **Criterion 4: Universal Periodic Review Process**

#### **Freedom House Assessment: MIXED**

The concept of UPR, which subjects all UN member states to a human rights review every four years, has merit. In practice, however, the process has proven to be deeply uneven. Because it is conducted largely by the member states in conjunction with the state under review, its legitimacy and effectiveness depends too much on the goodwill and seriousness of the government in question.

The UPR has been a more effective mechanism for countries that Freedom House ranks as Free—which have deficiencies but strong overall human rights records—and for those ranked on the high end of the Partly Free range—meaning they have greater restrictions on political rights and civil liberties, but are not far from Free status. The UPR process has led these countries to take a hard look at their deficiencies, engage in a meaningful dialog with other countries on possible improvements, and consult with domestic civil society organizations. However, even these states fail to directly address their human rights shortcomings in their UPR reports and tend instead to focus on positive initiatives the current government or administration is undertaking to address challenges.

The UPR process has been far less meaningful for countries with poor human rights records and little or no political will to make improvements. Such countries, whose populations are in

greatest need of international protection, have largely perverted the process by presenting unduly positive reports and lining up friendly countries to dominate the interactive dialog portion of the review with undeserved flattery of their human rights performance.

Iran's UPR entailed the most notable abuses of the process during the period examined by this report. Several states, including Bangladesh, Lebanon, and Nicaragua, asserted that due to Iran's unique culture and history, different perspectives and approaches to human rights may be justified. The Iranian delegation responded to criticisms voiced primarily by the United States and European countries by stating that executions and arrests were only utilized when necessary, and that the human rights situation for women and their status within society was improving. The delegation went on to speak at length about the legal protections against religious discrimination. They went so far as to say that any measures taken against members of religious minorities were solely in response to criminal activity. The UPR session ended with organized applause.

Because the interactive dialog portion of the review process is restricted to governments, participation by independent experts—whether from the UN system of special procedures or from outside the UN—is limited to the submission of compilation reports and to oral presentations after the outcome document has been finalized. This limitation strongly impedes the seriousness of the UPR process, and is particularly worrisome because some states have openly called for the elimination of expert special procedures on the grounds that the UPR is a sufficient form of review.

The ability of independent stakeholders to submit five-page written reports, which are summarized by the OHCHR and compiled into a document that is considered part of the formal review process, does present a limited advocacy opportunity. The OHCHR website—which displays the full stakeholder report submissions and compilation documents, as well as the reports of the states under review, the compilation document of UN experts, and the final outcome documents—serves as an important library of human rights information on all countries for a potentially large audience.

### **Freedom House Recommendations**

- The UPR process should be changed to allow greater involvement of independent experts, including representatives of NGOs. Representatives of the OHCHR and independent NGOs should be allowed to engage in the interactive dialog process, and at least one independent expert should be included as a member of the “troika” selected to assist with the country reviews.
- The OHCHR should continue to post on its website all documentation submitted by states, independent stakeholders, and the OHCHR itself.
- Live webcasts of UPR sessions should be continued and prioritized despite opposition from certain member states. These webcasts allow millions of people in the countries concerned to view the proceedings and advocate for the recommended changes in their own countries.
- The Council should generate a random list of country interventions during the interactive dialog to prevent states from lining up allies to dominate the discussion.

## BENCHMARK 2:

The ability of the Council to raise and take appropriate action to address emerging global patterns of human rights abuses

### Criterion 1: Global Threat against Freedom of Association

#### Freedom House Assessment: FAIL

The right to peaceful assembly and association, enshrined in Article 20 of the UDHR and Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), has come under significant threat in the past decade. According to [Freedom in the World](#), 48 countries showed a decline in their freedom of association scores between 2005 and 2009, while countries that were already at the bottom of the scale—such as Eritrea, Libya, North Korea, Saudi Arabia, and Syria—remained highly repressive. In the last year, legislation restricting the activities of NGOs was adopted in Ethiopia, Gabon, and Jordan, and similar measures are being considered in Cambodia and Egypt. Recent political turmoil in countries like Guinea, Honduras, and Sudan also severely affected freedom of association.

The UN human rights system does not maintain a mandate specifically dedicated to the protection of freedom of association and assembly, and in 2010 the Council passed no resolutions addressing the global backlash against this critical freedom. However, the work of many of the special procedures relies heavily on information from nongovernmental human rights organizations, which are themselves targeted by authoritarian states. The current SR for human rights defenders, Margaret Sekaggya of Uganda, has done an admirable job of reporting on and advocating for the rights of human rights activists, including their right to engage in peaceful assembly. In her second annual report, the SR noted that there had been no change in violence against human rights defenders since the adoption of the [Declaration on Human Rights Defenders](#) in 1998. She called specific attention to the plight of female human rights defenders and those defending the rights of lesbian, gay, bisexual, and transgender persons, and also highlighted legal mechanisms that allow trade unionists and members of NGOs and social movements to be targeted for arrest.

#### Freedom House Recommendation

- The Council should adopt a resolution establishing a special rapporteur on freedom of association. Special attention should be paid to ensuring that the new mandate strengthens rather than places restrictions on the ability of individuals to associate and assemble.

## Criterion 2: Global Threat against Freedom of Expression

### Freedom House Assessment: MIXED

Over the past decade, the impressive gains for freedom of expression that accompanied the end of the Cold War have undergone a steady and worrying erosion. This pushback against freedom of expression takes several forms. There is growing pressure on the freedom of the news media, a phenomenon documented in Freedom House's annual [Freedom of the Press](#) reports, which have recorded eight straight years of declines. Attacks on traditional media have been matched by government attempts to gain control over content on the internet and other new technologies, as well as by broader campaigns to discourage journalists, scholars, NGOs, and others from speaking out or publishing material on so-called sensitive subjects, such as religion.

The Council has continued to renew the important mandate on [freedom of opinion and expression](#), and the current SR, Frank La Rue (Guatemala), has conducted numerous country visits, submitted strong, professional reports identifying threats to this fundamental freedom, and issued urgent appeals to governments on behalf of journalists and human rights defenders. A number of member states, including Canada, which previously served as the primary sponsor of the freedom of expression resolution, have energetically resisted attempts to place limitations on freedom of expression. However, they have continued to lose ground to opponents of free expression on the Council. In 2008, Pakistan successfully amended the resolution renewing the mandate on freedom of expression, extending a provision that requires the SR to report on supposedly abusive exercise of the freedom of expression "amounting to religious or racial intolerance," in addition to reporting on actual restrictions. In addition, at the 12th Council session in October 2009, a resolution put forward by the United States and Egypt and adopted by consensus included vague language regarding "the promotion of false images and negative stereotypes," which could be misused to protect religions, religious beliefs, and religious symbols rather than the rights of individuals.

Moreover, the SR himself has faced strong attacks, particularly in 2009, from Council members who accuse him of abusing his mandate by issuing statements that point out the incompatibility of the "defamation of religions" resolutions with freedom of expression, and by not paying enough attention to the new requirement that he report on instances of abusive speech. While the 2010 session during which the SR presented his report to the Council was less contentious than in previous years, there continue to be fundamental differences of opinion on issues such as the concept of defamation of religions.

Resolutions on combating defamation of religions, which call on countries to enact legislation prohibiting anti-Islamic or blasphemous speech so as to combat a perceived rise in intolerance and discrimination against Muslims, continue to be introduced by Pakistan on behalf of the OIC, as they have every year since 1999. Despite the findings of both independent freedom of expression experts and UN mandate holders that the resolutions are incompatible with international human rights law, since they attempt to bestow rights on ideas rather than individuals or groups of individuals, the resolutions have all passed at the Council. In fact, they passed with disturbing ease until 2010, when the margin narrowed due to growing attention and opposition from freedom of expression advocates and a number of states, including the United



States. It remains to be seen whether the resolution can be defeated in 2011, and whether more insidious efforts to incorporate the concept of defamation of religions into international law, likely through an optional protocol to the ICERD, will likewise be turned back.

As the use of the internet and other digital technologies increases, so does the targeting of NGOs, human rights defenders, and journalists who take advantage of these platforms. China's highly publicized battle with the U.S.-based internet company Google over censorship of content, and ongoing negotiations between Research in Motion—the Canadian maker of the BlackBerry mobile device—and various governments over user data encryption have brought into stark relief the changing landscape for freedom of expression in the 21st century. In his [report](#) on the right to privacy at the 13th Council session, the [SR on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#), Martin Scheinin, highlighted the chilling effect that the erosion of the right to privacy in the name of security has on the fundamental freedoms of expression and association. He notes that since the September 11, 2001, terrorist attacks, states without constitutional safeguards have stepped up surveillance efforts, and those with safeguards have failed to extend them to third countries or private actors with which they share intelligence. Governments have expanded their powers to stop and search individuals, directly affecting the right to peaceful assembly. In addition, according to the SR, surveillance in the form of spyware, wiretaps, and tracing technologies have broken down the privacy necessary to “create zones to allow individuals and groups to be able to think and develop ideas and relationships.” He noted that surveillance has often lead to wrongful arrests and failures of due process, and encouraged the Council to adopt a declaration on data protection and data privacy.

### **Freedom House Recommendations**

- Democracies that strongly protect freedom of expression should engage in a well-resourced campaign to reach out to likely allies in Latin America, Africa, and Asia to support the work of the SR and turn back the tide on freedom of expression votes in the Council.
- Particular efforts should be made to engage OIC member states on freedom of expression and to differentiate between freedom of expression and other legitimate human rights issues, such as discrimination and violence.
- Democracies must take a leadership role in placing restrictions on powers to engage in search and surveillance activities, including the creation of independent oversight mechanisms, to ensure that such powers do not impede fundamental rights to free expression, peaceful assembly, and privacy.

## BENCHMARK 3: The ability of nongovernmental stakeholders to engage with the Council

### Criterion 1: Accreditation Process for NGOs

#### Freedom House Assessment: FAIL

The rules according to which NGOs engage with the UN Human Rights Council and other human rights mechanisms at the UN are spelled out in [UN Economic and Social Council \(ECOSOC\) Resolution 1996/31](#). The main requirement for NGOs to receive UN accreditation is that their work is of direct relevance to the aims and purposes of the United Nations. The resolution further states that consultative relationships should be guided by the principle of “securing expert information or advice,” and should “enable organizations that represent important elements of public opinion to express their views.”

A Committee on Non-Governmental Organizations (hereafter referred to as the NGO Committee) is tasked with overseeing the accreditation process by reviewing applications and making recommendations to the full ECOSOC, a body comprising 54 UN member states, which then votes to approve or reject the applications. The composition of the NGO Committee, which consists of 19 UN member states, indicates the degree to which repressive countries are outpacing democracies when it comes to influencing the Council. In 2010, countries that are designated Not Free by *Freedom in the World* occupied the same number of seats (eight) on the Committee as Free countries, with the remaining three seats occupied by Partly Free countries. Moreover, the roster of Not Free and Partly Free countries included some of the world’s most aggressive opponents of universal standards on human rights: China, Cuba, Egypt, Pakistan, Russia, and Sudan.

2010 Composition of Committee on Non-Governmental Organizations			
	Free	Partly Free	Not Free
W. Europe and Others (4 Seats)	Israel, United Kingdom, United States	Turkey	-----
Eastern Europe (2 Seats)	Romania	-----	Russia
Africa (4 Seats)	-----	Burundi	Angola, Sudan, Guinea
Asia (5 Seats)	India	Pakistan	China, Egypt, Qatar
Latin America (4 Seats)	Colombia, Dominica, Peru	-----	Cuba
Total (19 seats)	8 <b>Free</b> countries (42%)	3 <b>Partly Free</b> countries (16%)	8 <b>Not Free</b> countries (42%)

These countries increasingly attempt to influence the ability of NGOs to engage with the Council by denying accreditation to organizations that they view as too critical of their human rights records or that advocate on behalf of changes to which they are opposed. They subject targeted candidate groups to a lengthy, repetitive, and intrusive inquiry process designed not to determine

whether the candidates' work fits the aims and purposes of the United Nations, but rather to reveal so-called bias or "politicization" on the part of the NGOs in question. Organizations likely to face such scrutiny include those that criticize certain countries more than others or operate without the endorsement of the government in their home country. Such targeting of NGOs contradicts the purpose of civil society engagement in UN human rights mechanisms, which is to provide information that is independent of governments and that should logically reflect each organization's thematic or country priorities. Moreover, repressive governments put tremendous pressure on other members of the NGO Committee to vote with them.

At the most recent session in July 2010, the NGO Committee attempted a new tactic meant to stall the accreditation of a U.S.-based NGO, the International Gay and Lesbian Human Rights Commission (IGLHRC), by putting forward a "no action" motion. If this had succeeded, the accreditation of the IGLHRC would have been put on hold indefinitely, preventing it from bringing its status to a vote before the full ECOSOC. The organization thwarted the move with an intensive advocacy campaign, supported by the United States, other democracies, and a number of NGOs. The ECOSOC voted to reject the "no action" motion of the NGO Committee, granting accreditation to the IGLHRC and preventing a potentially dangerous precedent from being set.

In many cases, however, repressive members of the NGO Committee succeed in sanctioning NGOs, often through multiyear suspensions of accreditation, even if they do not succeed in fully rejecting their accreditation or permanently withdrawing their status. (Once an organization has lost its accreditation, it faces a burdensome reapplication process, and success is not guaranteed.) This occurred in the case of a Swiss NGO, Centre Europe-Tiers Monde (CETIM), which was accused by Turkey of promoting terrorist activities and serving as a front organization for the Kurdistan Workers' Party (PKK) militant group. The United States, Britain, and Romania argued that further evidence against the organization was needed, but the NGO Committee settled on a two-year suspension for the organization and instructed it to provide proof that it meets the Committee's requirements. There was not enough support in the ECOSOC to overturn this decision.

Other negative trends include the use of [UN ECOSOC Resolution 2008/4](#), which mandates suspension of consultative status for NGOs that fail to submit quadrennial reports by a certain deadline. This puts valuable, long-standing NGOs in danger of suspension for what may often be an administrative error. In addition, a proposed resolution by Egypt to withdraw accreditation from NGOs that credential individuals or organizations to attend UN proceedings under their names is likely to come up for consideration in the next session. This is particularly worrisome because it will prevent accredited NGOs from bringing important human rights defenders or witnesses to Human Rights Council sessions and important UN meetings, which is an important function of their work. Moreover, it will further limit the ability of smaller NGOs, which are unable or cannot afford to acquire ECOSOC accreditation on their own, to participate in the work of the United Nations.

The composition of the NGO Committee for 2011 casts doubt on the future of NGO participation following the election for members in 2010. Particularly shameful was the unwillingness of strong democracies in Latin America to contest the election of Nicaragua and Venezuela to

replace Colombia and Dominica and join Peru and Cuba on the panel. Latin America, a region with the second-largest number of Free countries and electoral democracies, has allowed three of its four seats to be occupied by some of its worst representatives with respect to human rights and civic participation. In the Asia group, Kyrgyzstan and Morocco will replace Qatar and Egypt, which is unlikely to produce more positive voting results. Mozambique and Senegal will take over seats previously held by Angola and Guinea in the Africa group. In the Western Europe and Others group (WEOG), Belgium took the seat vacated by the United Kingdom, and in Eastern Europe, Bulgaria took the seat left by Romania. Eight countries—China, Cuba, India, Israel, Peru, Russia, Sudan, Turkey, and the United States—maintained their seats on the NGO Committee.

<b>2011 Composition of Committee on Non-Governmental Organizations</b>			
	<b>Free</b>	<b>Partly Free</b>	<b>Not Free</b>
W. Europe and Others (4 Seats)	Belgium Israel, United States	Turkey	-----
Eastern Europe (2 Seats)	Bulgaria	-----	Russia
Africa (4 Seats)	-----	Burundi, Mozambique Senegal	Sudan
Asia (5 Seats)	India	Pakistan, Morocco	China, Kyrgyzstan
Latin America (4 Seats)	Peru	Nicaragua, Venezuela	Cuba
Total (19 seats)	<b>6 Free</b> countries (32%)	<b>8 Partly Free</b> countries (42%)	<b>5 Not Free</b> countries (26%)

### **Freedom House Recommendations**

- Democracies must run for seats on the NGO Committee and invest diplomatic resources to combat the efforts of repressive states.
- Ultimately, the United Nations should replace the NGO Committee as a political body with a professional bureau that would evaluate the applications of NGOs on a purely technical basis.

### **Criterion 2: Opportunities for NGO Engagement at the Council**

#### **Freedom House Assessment: MIXED**

There are significant opportunities for NGOs to engage with and seek to influence the Council, particularly for organizations that have managed to obtain ECOSOC status. These organizations can attend sessions of the Council in Geneva, submit written statements pertaining to the items on the agenda, present oral statements during the interactive dialog segments of regular Council sessions, conduct press conferences and side-panel events on the premises of the Council, meet with country missions and UN special procedures, and bring human rights defenders from anywhere in the world under their own accreditation to attend Council sessions. In addition, all NGOs, regardless of whether they maintain ECOSOC status, can submit reports on the human rights situation in individual countries as part of the UPR process. These reports are posted in full on the website of the OHCHR, and sections of their reports may be cited in the stakeholder

compilation document assembled by OHCHR staff. Overall, official NGO participation at the Council is higher than at its predecessor, the UN Commission on Human Rights.

Nonetheless, there remain several obstacles to NGO participation at the Council. The primary barrier is simply a lack of resources for NGOs to either maintain offices in Geneva or send delegations to Council sessions. Geneva is an extremely expensive city (it ranked as the fifth most expensive city in the world according to the Mercer's 2010 Cost of Living survey), and very few organizations can afford a permanent presence or even annual visits. Groups that are not based in Geneva are at a distinct disadvantage to Geneva-based groups in terms of tackling the bureaucratic hurdles entailed in getting badges, reserving rooms for panel events, signing up for oral interventions, and arranging meetings with SRs, who are typically in Geneva only for a few days each year when they are scheduled to deliver reports. Because the Council is now practically in permanent session—with regular, special, and UPR sessions—NGOs outside Geneva have difficulty determining when to send a delegation. Once in the city, they struggle to ensure that they can stay long enough to address a particular agenda item, because the Council almost always falls behind schedule. However, it must be noted that several technical improvements were made in 2010, including the creation of an online registration process for oral interventions and room reservations.

Another obstacle comes in the form of anti-NGO behavior on the part of certain member states. Not surprisingly, states with poor human rights records generally do not support the right of NGOs to report on their bad behavior. They impede this reporting by repeatedly interrupting the oral interventions of NGOs with points of order, creating their own government-organized “nongovernmental” organizations (GONGOs) to monopolize the speaking time allotted for NGOs, and accusing NGOs of procedural misconduct. As noted above, these states also make it a high priority to win seats on the NGO Committee, which oversees the NGO accreditation process.

Finally, despite the opportunity to submit stakeholder reports, the ability of NGOs to engage throughout the UPR process is quite limited. As noted above, NGOs do not have the ability to present questions or make statements during the interactive dialog portion of the review.

### **Freedom House Recommendations**

- The president of the Council must limit the ability of states to interrupt and harass NGOs during oral interventions. States should be repeatedly reminded of the importance of civil society participation in the functioning of the Council.
- UN member states, and particularly Switzerland as the host country of the Council, should create a fund to enable more NGOs to access the Council. Such a fund could offer travel grants for NGOs to attend sessions, and subsidize hotels in Geneva to provide discounted rates for NGOs during Council sessions.
- The Council should follow the example of ECOSOC and hold some of its regular and special sessions in New York, where all UN states maintain missions, thereby decreasing travel costs for NGOs in the Western Hemisphere.
- The UPR process should be changed to allow greater involvement of independent experts. Representatives of the OHCHR and independent NGOs should be allowed to

engage in the UPR's interactive dialog segment, and at least one independent expert should be included as a member of the "troika" selected to assist with the country reviews.

**BENCHMARK 4:**  
**Democracies play a leadership role in ensuring that the Council lives up to its mandate**

**Criterion 1: Voting Records of Democracies during Council Elections**

**Freedom House Assessment: FAIL**

One way that the Human Rights Council was to represent an improvement over the Commission on Human Rights was through a better system of elections, which would help ensure that countries genuinely dedicated to the promotion of human rights populated the Council, or at the very least, that some of the world's worst human rights abusers did not. Under the current system, Council members are elected by the General Assembly through a secret ballot, with the 47 available seats divided among the five regional groups of states on a proportional basis as follows: Africa, 13 seats; Asia, 13 seats; Eastern Europe, 6 seats; Latin America and Caribbean, 8 seats; and WEOG,<sup>2</sup> 7 seats.

To obtain a seat on the Council, candidates must receive an absolute majority, or 97 of 192 votes. Resolution 60/251, which created the Council, does not provide specific criteria for membership, but rather instructs General Assembly members to "take into account the candidates' contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto" when electing Council members. The resolution also states that consideration ought to be given to whether the candidate can meet the obligations of Council membership, including whether they can (a) "uphold the highest standards in the promotion and protection of human rights" and (b) "fully cooperate with the Council."

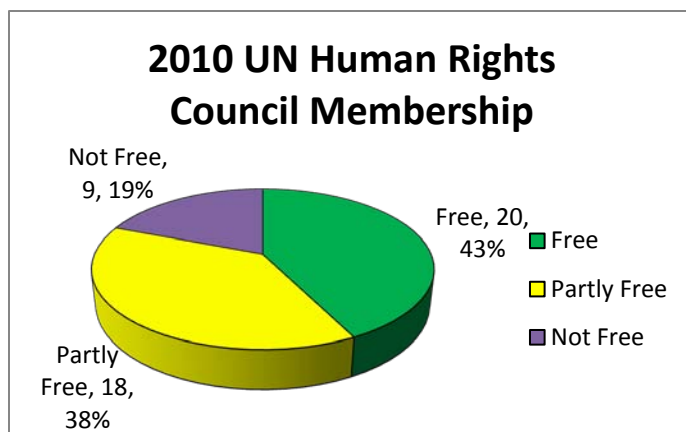
Unfortunately, elections to the Council have grown progressively worse, both in their lack of competition and in the quality of candidate countries. The annual election in May 2010 saw a continuation of the practice by which each of the five regional groups decide in advance on their representatives, with little regard for their human rights records, and then put forward "clean slates" (the same number of candidates as seats available). In fact, the 2010 election was the first in which not a single regional group put forward a competitive slate. WEOG, as the regional group with the largest percentage of electoral democracies and countries ranked by Freedom House as Free, has notably failed to lead by example, running clean slates in both 2009 and 2010.

The General Assembly disappointingly endorsed the uncompetitive May 2010 election roster by providing each of the 14 candidates with the needed votes to fill the 14 vacant seats, despite the

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<sup>2</sup> The Western Europe and Others group consists of all the countries of Western Europe plus Australia, Canada, New Zealand, and the United States.

fact that several of the candidates have dismal human rights credentials. Only five received ratings of “qualified” in a [joint report](#) on the candidates by Freedom House and UN Watch. Four candidates—Ecuador, Moldova, Thailand, and Uganda—were identified as having “questionable” records, while five—Angola, Libya, Malaysia, Mauritania, and Qatar—were deemed “not qualified” due to extremely poor human rights records at home and poor



voting records in UN venues on serious human rights violations. Libya is one of only nine countries in the world that received Freedom House’s lowest possible rankings for political rights and civil liberties in 2010. In fact, it has been included in Freedom House’s list of the [world’s most repressive societies](#) for the past 20 years.

Libya received the lowest number of votes, 155, indicating that a mere 33 out of 188 UN member states who voted deemed the country unfit to serve on the Council. Angola, Malaysia, Mauritania, and Qatar were likewise easily elected. While votes are conducted by secret ballot, the process of elimination indicates that the majority of democracies voted in favor of even the worst rights-abusing countries.

The only noteworthy achievement in terms of Council elections in 2010 was that Iran was not on the ballot. Iran initially mounted a bid for a place on the Council but withdrew its candidacy after reportedly energetic behind-the-scenes campaigning by WEOG states. The withdrawal was an embarrassment for Iran and a small and all-too-rare victory for those countries that wish to see the Council become a credible protector of human rights.

### Freedom House Recommendations

- Democracies must invest the resources necessary to run for seats on the Council.
- WEOG, as the region with the largest percentage of Free countries and electoral democracies, must start demonstrating leadership by presenting competitive slates for the Council’s annual elections.
- Democracies must commit themselves to upholding the spirit of the elections by voting only for those countries that seek to uphold human rights at home and at the United Nations.
- The Community of Democracies should create a fund that provides financial resources to help poor democracies with strong human rights records maintain a diplomatic presence in Geneva and run for seats on the Council.

## Criterion 2: Voting Records of Democracies on Key Resolutions or Decisions

### Freedom House Assessment: MIXED

A Freedom House analysis of selected resolutions or decisions that clearly advance or reverse fundamental human rights indicates that many countries with respectable domestic human rights records are nonetheless willing to ignore the cause of human rights when it comes to voting at the Human Rights Council. In essence, too many of the world's democracies—particularly in Africa, Asia, and Latin America—continue to follow the lead of highly repressive countries like Egypt, China, and Cuba. These authoritarian states invest tremendous energy and resources in the Council and exert strong political pressure on other countries in their regions or spheres of influence.

Democracies have been willing to follow their lead for a variety of reasons, including a false sense of solidarity with other countries considered to be in the developing “Global South” or “non-Western” sphere. They have also voted in this way due to pragmatic considerations, such as a fear of negative political or economic consequences for breaking ranks, or a simple lack of resources to fully focus on the issues brought before the Council. The result is that Free countries like India, Indonesia, and South Africa consistently vote in a manner suggesting that they do not believe the Council should hold other countries to account for their human rights records. Free countries including Japan, South Korea, and Brazil have abstained on important votes in which a “yes” or “no” vote should have been the obvious choice. Other electoral democracies in these regions have mixed records, occasionally going against the leadership of regional blocs either on principle or as a result of strong advocacy from fellow democracies or NGOs.

The latest [resolution](#) calling on countries to enact legislation prohibiting defamation of religions, put forward by Pakistan on behalf of the OIC, was adopted at the Council's 13th Session by a vote of 20 to 17, with 8 abstentions. The United States and 16 other countries opposed the resolution because of its clear contradiction with fundamental freedoms of expression and religion. While the vote was a dramatic improvement over those for similar resolutions in past years (the 2009 resolution passed by a vote of 23 to 11, with 13 abstentions), six electoral democracies—Bangladesh, Bolivia, Indonesia, Nicaragua, Senegal, and South Africa—voted for the resolution, with an additional six—Bosnia and Herzegovina, Brazil, Ghana, India, Japan, and Mauritius—abstaining. Notably, Burkina Faso voted in favor of the measure, making it the only country to switch its vote to “yes.” On the positive side, Cameroon, which had previously voted in favor, chose to abstain.

The [resolution](#) expressing deep concern about the human rights situation in North Korea (Democratic People's Republic of Korea) was easily adopted by the Council with a vote of 28 to 5, but 13 countries chose to abstain, including Bangladesh, Bolivia, India, Nicaragua, Senegal, and South Africa, all electoral democracies according to *Freedom in the World*. Especially perplexing was the vote against the resolution by Indonesia, which made it the sole democracy in the company of authoritarian regimes such as Egypt, Cuba, Russia, and China.

Encouragingly, resolutions expressing concern about human rights abuses in the Democratic Republic of Congo (DRC), Afghanistan, and Kyrgyzstan all passed by consensus. However,



once again the Council did not pass any resolutions highlighting human rights abuses by China, Cuba, or Venezuela, all countries with considerable political influence at the United Nations.

Particularly glaring was the inability of the Council to pass a resolution condemning the extensive human rights abuses that took place in Iran during the previous year. Despite the fact that a relatively strong resolution passed at the General Assembly in the fall of 2009, Council members were not willing to sponsor a resolution on Iran, even at the 14th Session, which took place on the anniversary of the June 2009 crackdown on peaceful demonstrators following the Iranian presidential election. Instead, Norway read a statement on behalf of 56 UN countries that expressed concern about ongoing human rights abuses under Agenda Item 8 at the Council's 14th Session. Of the Council's 47 members, only 16 supported the statement. These included seven countries from the WEOG, five from Eastern Europe, three from Latin America and the Caribbean, and one from Asia. Not a single country representing the African group signed on. Notably absent among democracies were Bolivia, Brazil, Ghana, India, Indonesia, Mauritius, South Africa, South Korea, Uruguay, and Zambia.

Rather than focusing on egregious human rights abusers, a faction of authoritarian countries led by Russia introduced a resolution affirming the role of "[traditional values](#)" in human rights enforcement. The resolution neglected to mention the fact that so-called traditional values are often utilized by governments as excuses for repression, discrimination, violence against women, and other violations of human rights. Disappointingly, this resolution passed by a vote of 26 to 15, with 6 abstentions. Its supporters included a number of democracies: Bangladesh, Bolivia, India, Indonesia, Nicaragua, Senegal, South Africa, and Zambia.

### **Freedom House Recommendations**

- Democracies must demonstrate their commitment to human rights by voting for resolutions that hold governments to account when there is evidence of systemic and widespread abuses.
- Democracies must work across regional groups to break the system of bloc voting and to convince countries to vote according to human rights concerns.

## **BENCHMARK 5: Efforts by the U.S. government to positively affect the Council's functioning**

### **Criterion 1: Level of U.S Government Engagement at the Council**

### **Freedom House Assessment: PASS**

In May 2009, the administration of U.S. president Barack Obama reversed the previous administration's policy by running for and winning a seat on the UN Human Rights Council. Freedom House applauded this decision, as well as the subsequent decision to appoint an ambassador exclusively for the Council, in addition to the existing U.S. ambassador based in Geneva. The administration nominated Eileen Chamberlain Donahoe, a lawyer and scholar who

wrote her doctoral dissertation on UN reform, but who lacked previous diplomatic experience and strong human rights credentials.

Due to the membership structure of the Council, the United States essentially replaced Canada, a country with a very strong voting record, as one of the seven WEOG states.<sup>3</sup> Thus, the presence of the United States on the Council is less important for its vote than for the significant political resources the country can bring to bear in tabling important resolutions, introducing key amendments, calling for recorded votes, and securing the support of non-WEOG countries. Moreover, the seat provides the United States with an important opportunity to push for changes that could positively affect the Council's functioning during a five-year review scheduled for 2011. The United States stands a much greater chance of exerting a positive influence on this review if it is seen as an active player and has done the diplomatic heavy lifting to secure alliances among other UN states.

The United States took its seat at the 12th Session of the Council in September 2009. It faced tremendous pressure to demonstrate positive changes at the Council, from both human rights advocates and skeptics in the U.S. policymaking community who consider the UN system—and particularly the Council—to be hopelessly broken and a waste of American resources. While Ambassador Donahoe was not confirmed by Congress and able to take her post in Geneva until midway through the 13th Session (March 2010), Washington sent Esther Brimmer, the U.S. assistant secretary of state for international organizations affairs, to head the delegation at the start of the session. Brimmer set the tone for U.S. participation in the Council over the coming year by delivering a strong opening statement that highlighted American commitment to the universality of human rights, as well as an approach that would emphasize constructive dialog with other Council members to address human rights issues. The statement was notable for affirming U.S. intentions to focus on egregious human rights violations, including through country-specific resolutions, and U.S. support for the independence of the special procedures.

While it would be highly unrealistic to expect the U.S. presence on the Council to elicit major changes in its functioning or focus in the first year, the United States has been able to positively affect the language and tone of resolutions and statements, and has successfully adopted a more inclusive and diplomatic approach in attempting to reach agreement on highly divisive questions while maintaining firm positions on fundamental rights issues. This constructive stance, as well as the high quality and tireless work of the U.S. mission, received praise from a range of Council member states with regard to several of the U.S. priority issues during the year.

One of the endeavors the United States pursued immediately was defending freedom of expression against the “defamation of religions” concept. The mission's first step in this area was to cosponsor a resolution on [freedom of expression](#) with Egypt, a country that has long been a proponent of broad interpretations of the conditions under which freedom of expression can be legally restricted. The joint resolution, which was adopted by consensus, received mixed reviews from Freedom House and other freedom of expression organizations. While it contained some language reinforcing protections for freedom of expression, one problem was the resolution's

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<sup>3</sup> As previously noted, seats on the 47-member Council are distributed as follows: African states, 13 seats; Asian states, 13 seats; Eastern European states, 6 seats; Latin American and Caribbean states, 8 seats; and Western European and Other states, 7 seats.

repetition of vague language from past defamation of religion resolutions that decried “the promotion of false images and negative stereotypes” and has been misused to extend protections to religions, religious beliefs, and religious symbols rather than the rights of human beings.

Nevertheless, the U.S. policy of firmly opposing any limitations on freedom of expression that are billed as a means of combating religious discrimination, combined with its action plan to strengthen implementation of existing international law, achieved important results and should be commended. First, the United States played an important role in resisting the creation of an optional protocol to the ICERD that would, among other things, incorporate the concept of defamation of religions into international law. While this battle is by no means over, the energetic work of both the U.S. mission and State Department officials in Washington contributed to what can best be described as a stalemate, helping to break momentum that would otherwise have been extremely damaging to international human rights law. Secondly, the U.S. approach contributed to a substantial shift in votes on the 2010 [Combating Defamation of Religions](#) resolution, which passed by the slimmest margin to date: 20 to 17, with 8 abstentions. (The 2009 resolution passed by a vote of 23 to 11, with 13 abstentions.)

The United States was also active both in preventing the election of Iran to a seat on the Council and in paving the way for a joint statement expressing concern about Iran’s continued human rights abuses at the 14th Session. High-level attention and behind-the-scenes campaigning by the United States unquestionably contributed to Iran’s decision to withdraw its candidacy and avoid an embarrassing defeat. In addition, while the United States was unwilling to put its full weight behind a resolution condemning Iran, apparently fearing its own high-profile defeat, it did contribute to the issuance of a joint statement, read by Norway and signed by 56 countries, that called on Iran to respect fundamental human rights. The language of that statement was somewhat muted, but Iran had vociferously lobbied against any type of statement being read to commemorate the anniversary of the June 2009 elections and subsequent protests.

The importance of the United States’ presence on the Council was underlined in the aftermath of the May 31 Israeli raid on a convoy of Turkish civilian ships attempting to break the blockade on the Gaza Strip, during which nine people were killed. The United States was able to work with other Council members to craft a more tempered and even-handed resolution than would have been produced otherwise. In the end the United States still opposed the resolution, but supported its call for an independent, international panel to investigate the incident. Both Israel and Turkey have accepted the mandate for the panel.

#### **Freedom House Recommendations:**

- The United States should continue its work on defending freedom of expression and should expand efforts to defend freedom of association and assembly.
- The United States should take a leadership role in generating support for resolutions and special sessions that address egregious human rights abuses.
- The United States should continue to devote the necessary resources for its representatives to travel and visit capitals, where many of the important decisions at the Council are made.

## **Criterion 2: U.S. Participation in the Universal Periodic Review (UPR) Process**

### **Freedom House Assessment: MIXED**

The UPR was established by the UN General Assembly in 2006 as a process by which the human rights records of all UN member states will be reviewed and assessed. The review is based on the human rights priorities laid out in the UN Charter and the UDHR, as well as other human rights mechanisms to which states are party. The state under review must submit a report detailing its own human rights record after required consultations with local civil society organizations. Civil society and other relevant groups may submit their own assessments to the OHCHR, which then submits a condensed report of its own.

The United States is scheduled for its first UPR in fall 2011. It began the review process with a series of 11 civil society consultation sessions across the country, which included academics, human rights organizations, tribal groups, labor federations, and others. The consultation sessions offered participants the opportunity to comment on, raise questions about, and discuss the human rights situation in the United States with policymakers. The State Department also set up a website where individuals and organizations could submit comments and ideas on human rights issues in the United States.

On August 20, 2010, the United States submitted its comprehensive report for the UPR process to the OHCHR. The 23-page document largely adhered to the approach adopted by most countries that fall into Freedom House's Free category, providing a rosy snapshot of the current administration's initiatives to address human rights challenges, rather than a hard-hitting description of the current human rights situation in the United States. For instance, the report did not describe in detail the country's most pressing human rights problems, such as racial and other disparities in the criminal justice system, lack of competition in the political process due to the flawed system of campaign financing and the prevalence of gerrymandering, or the poor conditions in American prisons.

Nonetheless, the U.S. report and consultation processes were very much in keeping with the standards that have been set by other democracies, in that they provided a useful opportunity for various stakeholders both in and outside government to examine the human rights situation. The apparent inability of any states, including democracies, to provide a sharp-eyed assessment of their own human rights failings is perhaps not surprising and does not necessarily negate the utility of the UPR, given the inclusion of both stakeholder and OHCHR compilation reports and the potential of other states to raise the critical issues. The limitations of the UPR, however, do reinforce the importance of the Council's other mechanisms, including country-specific and thematic special procedures and the use of resolutions and special sessions.

### **Freedom House Recommendation:**

- The United States should set a positive example during its upcoming UPR review, thoroughly addressing its human rights shortcomings in its oral report to the Council and demonstrating a willingness to act upon the recommendations that emerge from it.

# 2010 UN Human Rights Council Membership

## *Freedom in the World Ratings*

### Free (20 Countries, 43%)

#### Term Expires 2013

Poland (1,1) CD-CG  
Spain (1,1) CD  
Switzerland (1,1) CD

#### Term Expires 2012

Belgium (1,1) CD  
Hungary (1,1) CD  
Mauritius (1,2) CD  
Mexico (2,3) CD-CG  
Norway (1,1) CD  
United States (1,1) CD-CG  
Uruguay (1,1) CD

#### Term Expires 2011

Argentina (2,2) CD  
Brazil (2,2) CD  
Chile (1,1) CD-CG  
France (1,1) CD  
Ghana (1,2) CD  
Japan (1,2) CD  
Slovakia (1,1) CD  
South Korea (1,2) CD-CG  
Ukraine (3,2) CD  
United Kingdom (1,1) CD

### Partly Free (18 Countries, 38%)

#### Term Expires 2013

Ecuador (3,3) CD, NAM  
Guatemala (4,4) CD, NAM  
Malaysia (4,4) CD, NAM, OIC  
Maldives (3,4) NAM, OIC  
Republic of Moldova (3,4) CD  
Thailand (5,4) CD, NAM  
Uganda (5,4) NAM, OIC

#### Term Expires 2012

Bangladesh (4,4) CD, NAM, OIC  
Djibouti (5,5) NAM, OIC  
Jordan (5,5) CD, NAM, OIC  
Kyrgyzstan (5,4) OIC  
Nigeria (5,4) NAM, OIC  
Senegal (3,3) CD, NAM, OIC

#### Term Expires 2011

Bahrain (5,5) CD, NAM, OIC  
Burkina Faso (5,3) NAM, OIC  
Gabon (6,4) NAM, OIC  
Pakistan (4,5) NAM, OIC  
Zambia (3,3) NAM

### Not Free (9 Countries, 19%)

#### Term Expires 2013

Angola (6,5) CD, NAM  
Libya (7,7) NAM, OIC  
Qatar (6,5) NAM, OIC  
Mauritania (6,5) NAM, OIC

#### Term Expires 2012

Cameroon (6,6) NAM, OIC  
China (7,6)  
Cuba (7,6) NAM  
Russian Federation (6,5)  
Saudi Arabia (7,6) NAM, OIC

#### Term Expires 2011

None

#### Key

(Political Rights Score, Civil Liberties Score) according to *Freedom in the World 2010* 1=Most Free, 7=Least Free  
CD Community of Democracies (invited as a full Participant to the Lisbon Ministerial Meeting in July 2009)  
CD-CG Community of Democracies Convening Group Member  
NAM Non-aligned Movement Member  
OIC Organization of the Islamic Conference Member

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