POMED
PROJECT ON MIDDLE EAST DEMOCRACY

Policy Brief

1 February 17, 2011

# Promoting Human Rights in the Middle East: A Multilateral Approach

by **Ted Piccone and Emily Alinikoff**

## SUMMARY

The Obama administration joined the United Nations Human Rights Council in 2009 as a means to promote human rights through a multilateral mechanism as well as to strengthen the imperfect body from within.

A unique and effective mechanism of the Council is the UN's system of Special Procedures, which provide independent, periodic, and on-the-ground scrutiny of a country's human rights record.

Countries in the Middle East and North Africa have not cooperated well with the UN Special Procedures. Nonetheless, Special Procedures have had some success in changing states' behavior.

The United States should remain actively engaged in the Council in order to strengthen the Special Procedures and to work to address the body's flaws.

This includes challenging the candidacy of any country that has a poor record of cooperation with the Council's mechanisms for membership on the Human Rights Council.

As part of its efforts to embrace multilateralism and promote human rights, the Obama administration joined the United Nations Human Rights Council in 2009.[1] Much to the chagrin of conservative critics, the administration saw the value of engaging this admittedly imperfect body as a means to promote human rights and to strengthen the Council from within. Particularly in the Middle East and North Africa (MENA), where unilateral and inconsistent U.S. efforts at democracy promotion have been so controversial, this approach has allowed the United States to call attention to human rights abuses in partnership with other governments, complementing unilateral and bilateral efforts. By building cross-regional coalitions, the U.S. has shown some modest success in leveraging the Council to champion human rights in the Middle East and elsewhere. Moving forward, the U.S. should continue to cooperate with other governments to promote human rights through the Council while also working to address the Council's flaws and strengthen its ability to protect victims of human rights violations and respond to crises.

## EMBRACING MULTILATERALISM: U.S. ENGAGEMENT IN THE HUMAN RIGHTS COUNCIL

The Human Rights Council (HRC), the United Nations' main body for human rights promotion and protection, is currently undergoing its first five-year review by the UN General Assembly. The Obama administration seeks to harness this review to strengthen the body. Founded in 2006, the Council replaced the former Commission on Human Rights and features a new process that encourages competitive elections for seats on the Council as well as a new peer review mechanism called the Universal Periodic Review (UPR), which requires every UN member state to undergo scrutiny of its human rights record.

This body and its predecessor have been criticized for allowing human rights violators to participate as members, focusing excessively on Israel, and responding inadequately or not at all to country-specific crises. Indeed, these systemic weaknesses drove the Bush administration to withdraw from the Council after its creation in 2006. While the Obama administration admits the body is flawed, it also recognizes the unique role the HRC and its mechanisms can play in shedding light on violations and seeks to reform the system from within. Since rejoining in 2009, the U.S. has achieved important successes, including helping to secure the renewal of

1 The following policy brief is based on the recently released report, "Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights" (Ted Piccone, Brookings Institution, October 2010).

the Independent Expert on Human Rights in Sudan, cosponsoring a strong resolution on freedom of expression with Egypt, and establishing a new Special Rapporteur on Freedom of Assembly with support from Nigeria and Indonesia.

In addition, the U.S. has actively engaged the HRC's peer review mechanism, the UPR, to publicly review its own human rights record and critique the records of fellow governments. The UPR provides a forum in which states assess one another's human rights records and issue recommendations based on information presented by the state, the UN Office of the High Commissioner for Human Rights, and civil society. During Egypt's review, the United States, along with other governments, publicly expressed concern for the renewal of the Emergency Law and recommended it be replaced by a counterterrorism law that guarantees civil liberties. In the course of Iran's review, the U.S. raised issues of impunity, torture, and freedom of expression and assembly. By undergoing its own review in November 2010, the Obama administration showcased its commitment to multilateral engagement and set an example for civil society consultation.

*"In the face of increased pressure from a Republican Congress to disengage, it is essential to understand how the Council protects victims on the ground and how states cooperate with its mechanisms."*

Now, in the face of increased pressure from a Republican Congress to disengage, it is essential to understand how the Council protects victims on the ground and how states cooperate with its mechanisms. This last point is particularly salient as cooperation with the Council's mechanisms is an official criterion for election to the body that, if harnessed properly, could improve membership. Moving forward, policymakers should enhance the Council's ability to promote human rights by strengthening those tools proven to work.

## WHO ARE THE SPECIAL PROCEDURES?

The UN's system of Special Procedures (SP) is a unique and effective mechanism that allows independent, periodic, on the ground scrutiny of a country's human rights record. The experts appointed by the Council as Special Procedures are independent of governments, serve in their personal capacities, and carry out their mandates under the UN flag.[2] It is precisely this combination of independence and UN affiliation that differentiates these experts from other human rights actors and lends legitimacy to their recommendations.

Originating in the 1970s, this mechanism has grown to become one of the UN system's most important instruments for promoting universal human rights norms. Currently, 33 thematic mandates investigate a variety of human rights topics, including prevention of torture, violence against women, adequate housing, freedom of expression, and access to sanitation and water. An additional eight country-specific mandates monitor

2 Experts mandated by the Human Rights Council as Special Procedures may go by several titles, including Special Rapporteur, Independent Expert, and Working Group. This paper uses these various titles interchangeably.

conditions in such difficult places as Myanmar, the Democratic People's Republic of (North) Korea, and Somalia. The only country-specific mandate in the MENA region is on Palestine and the Occupied Palestinian Territories (OPT).

Governments rely on the SPs to gather facts, identify problems, and make recommendations. To carry out their mandates, SPs conduct country visits, engage in direct communications with victims and their representatives regarding specific violations, send letters of allegation and urgent appeals to governments, submit thematic and country reports annually to the Council and – when mandated – to the General Assembly, and raise awareness through press statements and conferences. Of these, the country visits and communications are most relevant for evaluating the impact of Special Procedures and thus serve as the core focus of our analysis.

## EMPIRICAL FINDINGS: COOPERATION IN THE MIDDLE EAST

States in the MENA region have not cooperated well with SPs and, on the whole, have performed worse than states in other regions. They have a record of restricting SP country visits and responding poorly to their communications. Despite these challenges, SPs have managed to influence some state behavior in the region and to shine a spotlight on abuses that may have otherwise gone unnoticed.

Although there is not necessarily a direct correlation between a state's domestic human rights record and its cooperation with SPs, the record serves as an important indicator of a state's willingness to respond to allegations of violations and to allow outside scrutiny of its human rights performance. Moreover, cooperation with the Council is a criterion for membership on the body. Frequently disregarded, this criterion should be invoked and used by advocates and states alike during the elections process in an effort to improve membership and, ultimately, to make the Council a more effective body. Currently, Bahrain, Jordan, Qatar, and Saudi Arabia serve on the Council despite their poor records of cooperation.

*"Despite the challenges, SPs have managed to influence some state behavior in the region and to shine a spotlight on abuses that may have otherwise gone unnoticed."*

### Country Visits

Country visits allow for close examination of specific human rights situations and motivate key actors in and outside governments to establish facts, identify violations, and recommend remedies. The reports generated from these visits are publicly available on the Office of the High Commissioner for Human Rights (OHCHR) website and represent a comprehensive and underutilized resource of human rights documentation.[3]

Since 1998, countries in the Middle East have received a total of 68 visits by 25 SPs. The region also maintains a total of 63 pending visits, meaning that states/territories in the region have failed to accept or schedule visits requested by SPs.

3 For documentation, see http://www2.ohchr.org/english/bodies/chr/special/index.htm

*"The sheer volume of communications directed to governments in the region indicates that there is a problematic human rights situation and that victims are turning to this mechanism as one way to pressure their governments to respond."*

To facilitate timely access by SPs and demonstrate willingness to cooperate with the system, states are encouraged to issue standing invitations that theoretically grant all requests for country visits by the independent experts. In the Middle East, only four states – Turkey, Jordan, Qatar, and Iran – have issued standing invitations. When respected, standing invitations result in more country visits by independent experts and fewer pending visits. States that have issued standing invitations but have failed to respect them in practice should be removed from the list. Iran, for instance, has issued a standing invitation but has not allowed an SP visit since 2005 despite numerous requests to do so.

Despite difficulty gaining access to countries in the region, there have been several positive examples of SP visits:[4]

- **Jordan:** After the Special Rapporteur on Torture visited in 2006, the government took steps to address recommendations that called on high-level officials to declare torture punishable by a prison sentence and to establish an independent complaints system for victims of torture or mistreatment.[5]

- **Turkey:** The Special Representative of the Secretary General on Human Rights of Internally Displaced Persons (IDPs) helped shape and implement IDP policy after making a country visit in 2002 and a follow-up visit in 2005. Upon his recommendations, the government gathered data on IDPs that had been lacking, trained local governors on the Guiding Principles on Treatment of IDPs, and began addressing the issue of compensation for lost property.

## Communications

Communications by SPs generally take the form of allegation letters or urgent appeals that are transmitted to the state involved. Urgent appeals alert state authorities to time-sensitive and life-threatening violations, while allegation letters convey information of a past, less urgent incident. They serve an important role by providing a written record of victims' complaints to appropriate government channels.

From 2004 to 2008, 17 thematic SPs recorded 8,713 communications to 174 states and 10 non-state actors. Countries in the MENA region received a total of 1,835 communications, or close to 20 percent of the total volume over this period. The sheer volume of communications directed to governments in the region indicates that there is a problematic human rights situation and that victims are turning to this mechanism as

4 For more details and other examples of impact, please see full report.
5 Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Follow-up to recommendations, February 18, 2008, paras 238-295. UN Doc: A/HRC/7/3/Add.2.

one way to pressure their governments to respond. The top recipients of communications in the region were Iran (594), Syria (195), Tunisia (165), Saudi Arabia (144), and Egypt (118). Together, these five countries account for more than 60 percent of communications received in the region.

Countries in the MENA region performed similarly to overall trends, with notable exceptions. They failed to respond to allegations or provided immaterial responses 57 percent of the time, similar to the global rate. However, compared to the overall score breakdown, the Middle East has a higher rate of rejecting allegations without substantiation and a lower rate of taking steps to address the underlying allegation.

Not only are response rates more disappointing in the Middle East than in other regions, but the volume of communications that indicate a life-threatening situation is alarming. Globally, 59 percent of all communications examined indicated an urgent situation, while in the MENA region, urgent appeals represented 69 percent of the volume.

Despite disappointing response rates, some communications have made a difference for victims on the ground:

- **Bahrain:** In November 2004, three weeks after receiving an urgent appeal from the Special Representative of the Secretary General (SRSG) on behalf of two human rights defenders, the King of Bahrain issued a directive ordering the release of more than a dozen people who had been detained for participating in a peaceful protest.[6]

- **Egypt:** In April 2004, the Department of Public Prosecutions charged a police officer and sergeant with torture causing death after the government received a letter from the Special Rapporteurs on Torture and on Extrajudicial, Summary or Arbitrary Executions. The letter was sent on behalf of a detainee who had died from torture while in custody for suspected membership in an illegal organization.[7]

- **Saudi Arabia:** In January 2009, in response to a May 2008 urgent appeal from the Working Group on Arbitrary Detention and from the Special Rapporteurs on Freedom of Opinion and Expression, the Situation of Human Rights Defenders, the Independence of Judges and Lawyers, and Torture, the Kingdom of Saudi Arabia released a prominent human rights defender who had spent 235 days in solitary confinement in prison.[8]

*“Not only are response rates more disappointing in the Middle East than in other regions, but the volume of communications that indicate a life-threatening situation is alarming.”*

6 Report of the Special Representative of the Secretary-General on human rights defenders, Summary of cases transmitted to Governments and replies received, March 16, 2005, pp. 16-17. UN Doc: E/CN.4/2005/101/Add/1.

7 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary of Information, including cases transmitted to Governments and replies received, March 30, 2005, pp 123-124. UN Doc: E/CN.4/2005/62/Add.1.

8 Special Procedures Bulletin No. 12, January-March 2009.

## ABOUT THE AUTHORS

Ted Piccone is Senior Fellow and Deputy Director for Foreign Policy at the Brookings Institution in Washington, D.C. Emily Alinikoff is a Senior Research Assistant in Foreign Policy at Brookings.

## ABOUT POMED

The Project on Middle East Democracy is a nonpartisan, nonprofit organization dedicated to examining how genuine democracies can develop in the Middle East and how the U.S. can best support that process. Through dialogue, research, and advocacy, we work to strengthen the constituency for U.S. policies that peacefully support democratic reform in the Middle East.

## ABOUT THE POLICY BRIEF SERIES

POMED Policy Briefs are short analysis pieces for U.S. policymakers on issues of core relevance to democratic development in the Middle East and North Africa. The briefs feature leading American, European, and regional authors from academia, think tanks, practitioner organizations, and human rights groups. The views expressed in these articles are those of the authors, and do not necessarily represent the views of the Project on Middle East Democracy. For more information, please contact the series editor, Daphne McCurdy.

## POLICY RECOMMENDATIONS

To strengthen the work of the Council and enhance the body's ability to promote and protect human rights in the MENA region, the United States should:

- ***Remain actively engaged at the Council and continue to build cross regional alliances.***

- ***Lead through example by cooperating fully with SPs and other HRC mechanisms.***

- ***Encourage countries with good human rights records to run for seats in their respective regions.*** The elections process has succeeded in defeating or forcing withdrawal of human rights abusers like Belarus, Azerbaijan, Iran, and Sri Lanka in their pursuit to join the Council. This process can only work if regions engage in competitive elections and avoid clean slates.

- ***Encourage governments in the Middle East to cooperate fully with SPs*** by issuing standing invitations for country visits, responding promptly (within three months) to requests for such visits, agreeing to the dates of a visit within one year of a request, and cooperating fully during the visits.

- ***Challenge the candidacy of any country that has a poor record of cooperation with the Council's mechanisms,*** including its responsiveness to requests for country visits and to SP communications, for membership on the Human Rights Council. For example, Saudi Arabia, a current member of the Council, has one of the highest no response rates. This record should be publicized to challenge its candidacy if it chooses to run in a future election.

- ***Encourage the HRC Secretariat to regularly publish data on each state's record of responding to SP communications and reports, the quality of the state's response, and more details on the status of requests to visit.***

- ***Support efforts by MENA NGOs to effectively use the UN human rights mechanisms, particularly by helping them engage SPs.*** NGOs should collaborate with and appeal to SPs to inform the UN and the broader international community about their countries' human rights records.

## CONCLUSION

As people throughout the Middle East rise up in protest against repressive authoritarian governments, the need to address human rights violations has become all the more acute. In a region where the agendas of external actors are often suspect, the SPs have a unique role to play thanks to their status as independent experts operating under the UN flag. By shedding light on abuses that many regimes would like to hide, the SPs give a voice to countless victims, raise international awareness, and increase pressure for remedies. The United States, a proactive and constructive player at the Council, should remain engaged and support these lifesaving tools to enhance their effectiveness.