

CHRI 2018



# Easier Said Than Done

**38th Regular Session**

Pledges and Performance:  
Holding Commonwealth members to account at HRC



**CHRI**

Commonwealth Human Rights Initiative  
working for the *practical* realisation of human rights in  
the countries of the Commonwealth

Australia Kenya Nigeria Pakistan  
Rwanda South Africa United Kingdom

# Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation, working for the realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI, with the conviction that there was little focus on the issues of human rights within the Commonwealth although the latter provided member countries the basis of a shared set of values and legal principles.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's seek partnerships to act as a catalyst around priority issues.

CHRI is headquartered in New Delhi, India, and has offices in London, UK and Accra, Ghana.

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# **EASIER SAID THAN DONE**

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**38th Regular Session**

Researched and Written by:

**Yashasvi Nain and Sarthak Roy**

# List of Abbreviations

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AUD: Australian Dollar

CERD: Committee on the Elimination of Racial Discrimination

CRC: Convention on the Rights of the Child

CEDAW: Convention on the Elimination of Discrimination Against Women

CRPD: Convention on Rights of Persons with Disabilities

CCPR: Covenant on Civil and Political Rights

CCPR-OP2-DP2: Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty

CESCR: Covenant on Economic, Social and Cultural Rights

CAT: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

CAT-OP: Optional Protocol of the Convention against Torture

CRC-OP-CP: Optional Protocol to the Convention on the Rights of the Child on a communications procedure

CRC-OP-AC: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRC-OP-SC: Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

CED: Convention for the Protection of All Persons from Enforced Disappearance

CMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

DPRK: Democratic People's Republic of Korea

EU: European Union

HRC: Human Rights Council

ICCPR: International Covenant on Civil and Political Rights

ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICPPED: International Convention for the Protection of All Persons from Enforced Disappearance

ID: Interactive Dialogue

IDP: Internally Displaced Person

IE: Independent Expert

IPOA: Independent Policing Oversight Authority

IPOB: Indigenous People of Biafra

KNCHR: Kenyan National Commission on Human Rights

KANU: Kenya African National Union

LGBTI/Q: Lesbian, Gay, Bisexual, Transgender and Intersex/Queer

NGO: Non-Governmental Organization

NHRC: National Human Rights Commission

NAP: National Action Plan

OHCHR: Office of the High Commissioner for Human Rights  
OIC: Organization for Islamic Cooperation  
OPT: Occupied Palestinian Territory  
SDG: Sustainable Development Goals  
SR: Special Rapporteur  
UN: United Nations  
UK: The United Kingdom of Great Britain and Northern Ireland  
UPR: Universal Periodic Review  
UNGA: United Nations General Assembly  
UNICEF: United Nations International Children's Emergency Fund  
UNHCR: United Nations High Commissioner for Refugees  
UNDP: United Nations Development Programme  
WEOG: Western European and Others Group  
VDPA: Vienna Declaration and Programme of Action

# Acknowledgements

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The Easier Said Than Done (ESTD) series has been produced by the Commonwealth Human Rights Initiative (CHRI) to evaluate the performance of Commonwealth member states at the United Nations Human Rights Council (HRC), and to highlight the opportunity for the Commonwealth and its member states to reflect on and improve their human rights record. CHRI has consistently tracked the performance of Commonwealth countries at the HRC since the first ESTD report in 2007.

The concept has been redesigned and standardized by Yashasvi Nain, Programme Officer at CHRI's International Advocacy Programme (IAP) and lead author for this report. He compiled and analyzed the research and led a team of colleagues, volunteers and partner organizations to make this report possible amid pressing deadlines and parallel programme commitments. The report was further researched and analyzed by co-author Sarthak Roy, Research Officer in the Office of the International Director.

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# CHAPTER I

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## Introduction

### a. An Overview of the Report

This series of reports of the Easier Said Than Done (ESTD) report is the latest in the series which was started in 2007, to review the voting patterns of Commonwealth member states at the Human Rights Council (HRC) in Geneva. It provides a basis for evaluating their engagement with the Council and considers if their voting behaviour in support of resolutions is consistent with their voluntary pledges and commitments they made to the HRC. In 2017, at the end of first decade of the HRC, CHRI conducted a study, “The Commonwealth at the Human Rights Council: A Decade of Voting”, to understand the extent to which voting behaviour actualized the safeguarding of human rights by member states in conformity with their own voluntary pledges and their commitments at the HRC.

The latest ESTD report summarizes and presents an analysis of the performance of the following seven Commonwealth member states during the 38th session of the HRC: Australia, Kenya, Nigeria, Pakistan, Rwanda, South Africa and the United Kingdom. It highlights the disparities between human rights promises made by Council members and their implementation at the national levels. Overall, the ESTD series seeks to bridge gaps between international human rights systems and local landscapes at the country level.

The ESTD series seeks to present a clear picture of the activities of Commonwealth member states in the HRC and track thematic developments there, along with shifts in foreign policy approaches of member states on rights issues. The report aims to highlight institutional and human rights concerns in the HRC and explain discrepancies in the behaviour of the member state. It calls for greater accountability so that members act in accordance with their pledges and commitments.

The ESTD series contributes towards enabling and strengthening stakeholders’ access to the HRC. This report is an information-sharing tool which aims to reach a wider audience. The target groups include civil society, national human rights institutions as well as researchers, who are otherwise unable to access the HRC due to their remote locations. The report promotes the accountability of member states and furthers efforts for human rights protection in the Commonwealth through dialogue and data-driven advocacy.

### b. Methodology

The report was prepared using research based on primary as well as secondary sources.

For the purpose of this report, the following human rights treaties have been covered to assess the reporting obligation- CAT, CAT-OP, CCPR, CCPR-OP2-DP,CED, CEDAW, CERD, CESC, CMW, CRC, CRC-OP-AC, CRC-OP-SC, and CRPD. Research is conducted from following sources: monitoring live HRC sessions; HRC resolutions available at the HRC extranet; UPR extranet, the UPR Info website; statements made by the countries at the HRC; explanations of votes provided by the countries; reports submitted during the UPR; treaty body reports, NGO reports and news articles.

For analytical ease, resolutions were divided into two categories: thematic and country situation. Thematic categorically refers to topics focused on a theme, for example, civil society space or the death penalty. Country situations categorically refer to specific human rights situations in a country or capacity-building, such as the human rights situation in Sudan or technical assistance to, and capacity-building in, Ukraine.

### c. Limitations

The ESTD report aims to provide a balanced review and assessment but this report has found two key challenges:

- The first was to measure vague and unquantifiable pledges made by several Commonwealth member states on rights issues. In some instances, this led to “compliance indicators” which were far too general in nature. Elsewhere, the report assesses specific pledges, reviewing loopholes in the pledge-making process and looking at the lack of efficient governing standards.
- The second challenge was that most countries do not have publicly available robust documentation on their positions. There is a lack of standard process, and not all documented reasons are available on the HRC extranet or on the website of the respective UN missions. That is why it has not been possible to analyse the voting rationale for every issue. This has led to a variation in the quantity of information used in tallying compliances with pledges. The limited availability of reliable, objective and/or quantified information is in itself an indication of the lack of infrastructure in many Commonwealth member states to monitor human rights conditions. It is advisable to take these factors into consideration and avoid comparing the different countries’ situations and/or extent of compliances with their pledges when using this report.

#### **d. Structure**

The first chapter provides an overview of the 38th session. It further discusses the performance of seven Commonwealth member states during the session and covers major findings and observations concerning voting on resolutions, engagement with special procedures, compliance with treaty bodies, participation in formats of discussion and domestic human rights challenges. Since this happens to be a study on Commonwealth member states, country specific resolutions concerning countries not part of the Commonwealth have not been covered.

It is followed by the country profiles of Australia, Kenya, Nigeria, Pakistan, Rwanda, South Africa and the United Kingdom. Each profile presents information of the member state’s voluntary pledges, participation in panel discussions, general debates and interactive dialogues, and voting on thematic and country-specific resolutions. The profile ends with an analysis of the country’s compliance with pledges and international commitments, and the corresponding domestic human rights situation.

The report concludes with key recommendations for Commonwealth member states to enhance meaningful engagement with the HRC and draw in the 38th session and the analysis of specific human rights issues at the national level.

# CHAPTER II

## The Commonwealth at the 38th Session of the Human Rights Council

### a. An Overview of the 38th Session of the Human Rights Council

The 38th regular session of the Human Rights Council (HRC) addressed and passed resolutions on a range of human rights issues such as elimination of all forms of discrimination against women, civil society space, elimination of genital mutilation amongst several others. The Council passed 20 resolutions, comprising 16 thematic and four country-specific resolutions respectively. It adopted 14 resolutions by consensus (70%), and six by a recorded vote (30%). The following table covers the resolutions along with short descriptions:

**Table 2.1**

Resolution No.	Title of the Resolution	Description
38/1	Elimination of all forms of discrimination against women and girls	The Council called upon States to repeal all laws that exclusively or disproportionately criminalize the actions or behaviour of women and girls, as well as laws and policies that discriminate against them, based on any grounds contrary to the international obligation to eliminate all forms of discrimination against women and girls.
38/2	Human rights and international solidarity	The Council requested the Secretary-General and the United Nations High Commissioner for Human Rights to provide all human and financial resources necessary for the effective fulfilment of the mandate of the Independent Expert human rights and international solidarity.
38/3	Enhancement of international cooperation in the field of human rights	The Council requested States to further advance initiatives aimed at enhancing international cooperation in the field of human rights on issues of common interest and concern and invited States and relevant UN human rights mechanisms to continue to pay attention to the importance of mutual cooperation, understanding and dialogue in ensuring the promotion and protection of all human rights.
38/4	Human rights and climate change	The Council urged States to strengthen and implement policies aimed at increasing the participation of women in climate change responses at the local, national, regional and international levels, and further called upon the United Nations Entity for Gender Equality and the Empowerment of Women and other United Nations agencies to support upon request national programmes and projects in this regard.
38/5	Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts	The Council expressed its outrage at the persistence and pervasiveness of all forms of violence against women and girls worldwide and went on to condemn in the strongest possible terms all forms of violence against women and girls, including sexual and gender-based violence, perpetrated through the use of digital technologies.
38/6	Elimination of female genital mutilation	The Council called upon States to continue to increase technical and financial assistance for the effective implementation of policies, programmes and action plans to eliminate female genital mutilation at the national, regional and international levels.
38/7	The promotion, protection and enjoyment of human rights on the Internet	The Council called upon all States to address security concerns on the Internet in

38/8	Human rights in the context of HIV and AIDS	The Council requested the United Nations High Commissioner for Human Rights to organize a consultation, in the first half of 2019, in coordination with the Joint United Nations Programme on HIV/AIDS, lasting one and a half days, to discuss all relevant issues and challenges pertaining to respect for and the protection and fulfilment of human rights in the context of the response to HIV, with a focus on regional and sub regional strategies and best practices.
38/9	The right to education: follow-up to Human Rights Council resolution 8/4	The Council called upon States to take all necessary measures, including sufficient budgetary allocations, to ensure accessible, inclusive, equitable and non-discriminatory quality education, and to promote learning opportunities for one and all.
38/10	Human rights and the regulation of civilian acquisition, possession and use of firearms	The Council called upon States to ensure that regulations on the civilian acquisition, possession and use of firearms include appropriate measures to avoid illicit practices, including diversion of firearms and further requested the High Commissioner to prepare a report on the impact of the civilian acquisition, possession and use of firearms.
38/11	The promotion and protection of human rights in the context of peaceful protests	The Council recognized the importance of documenting human rights violations and abuses committed in the context of peaceful protests, and the role that can be played by national human rights institutions, civil society, including non-governmental organizations, journalists and other media workers, Internet users and human rights defenders, in this regard.
38/12	Civil society space: engagement with international and regional organizations	The Council requested the High Commissioner to prepare a report on progress made in improving civil society engagement with international and regional organizations and to present it to the Human Rights Council at its forty-fourth session.
38/13	Business and human rights: improving accountability and access to remedy	The Council encouraged business enterprises to share publicly and disseminate broadly information regarding their human rights policies and procedures to enhance engagement with stakeholders, including affected communities, with respect to business operations and the preventative measures that businesses can be undertaken.
38/14	Situation of human rights in Belarus	The Council decided to extend the mandate of the Special Rapporteur on the situation of human rights in Belarus for a period of one year, and requested the Special Rapporteur to submit a report on the situation of human rights in Belarus to the Human Rights Council at its forty-first session and to the General Assembly at its seventy-fourth session.
38/15	Situation of human rights in Eritrea	The Council decided to extend the mandate of the Special Rapporteur on the situation of human rights in Eritrea for a period of one year and subsequently requested the Special Rapporteur to submit and present a written report to the
38/16	The human rights situation in the Syrian Arab Republic	The Council deplored the fact that the conflict in the Syrian Arab Republic continues in its eighth year with its devastating impact on the civilian population, and therefore urged all parties to the conflict to abstain immediately from any actions that may contribute to the further deterioration of the human rights, security and humanitarian situations.
38/17	The Social Forum	The Council requested the Secretary-General to take appropriate measures to disseminate information about the Social Forum, to invite relevant individuals and organizations to the Forum, and to take all practical measures required for the success of this initiative.

38/18	The contribution of the Human Rights Council to the prevention of human rights violations	The Council requested the President of the Human Rights Council to appoint, as early as possible, a chair-rapporteur and two rapporteurs to chair and facilitate the two intersessional seminars in Geneva, and to consult and gather the views of relevant stakeholders in Geneva and New York, with a view to presenting proposals on how the Council could effectively contribute in the future to the prevention of human rights violations, in the form of a report for consideration by the Council at its forty-third session
38/19	The incompatibility between democracy and racism	The Council invited the relevant mechanisms of the Human Rights Council and the United Nations treaty bodies to continue to pay particular attention to violations of human rights stemming from racism and xenophobia in political circles and decided to convene, before its forty-first session, an intersessional high-level panel discussion on the incompatibility between democracy and racism, with a view to identifying challenges and good practices.
38/20	Technical assistance to the Democratic Republic of the Congo and accountability concerning the events in the Kasai region	The Council requested the Team of International Experts to finalize its work in accordance with paragraph 10 of resolution 35/33 and to submit its conclusions to the Council at its thirty-ninth session.

## b. The Commonwealth at the 38th Session of the Human Rights Council

During the session, seven Commonwealth countries participated as members of the Council. These were Australia, Kenya, Nigeria, Pakistan, Rwanda, South Africa and the United Kingdom<sup>1</sup>. Australia and Rwanda are serving their first term in the Council. Rwanda's membership will end in 2019 and Australia will remain a member till 2020, having begun its term in the 37th session. Kenya is serving its second term, which will end in 2018. South Africa's third term will end in 2019. Nigeria, Pakistan and the United Kingdom each are serving their fourth terms. While the United Kingdom will end their terms in 2019, Nigeria and Pakistan will remain members till 2020.

## c. Voting Patterns of the Commonwealth Member States on Resolutions

### i. Thematic Resolutions

#### Voting Key:

Favour: ✓

Against: ✗

Consensus: •

Abstention: –

Original Sponsor/Co-sponsor

Additional Co-sponsor

Table 2.2

TEXT	RESOLUTIONS	AUS	KEN	NIG	PAK	RWA	SA	UK
38/1	Elimination of all forms of discrimination against women and girls	•	•	•	•	•	•	•
38/2	Human rights and international solidarity	✗	✓	✓	✓	✓	✓	✗
38/3	Enhancement of international cooperation in the field of human rights	✗	✓	✓	✓	✓	✓	✗
38/4	Human rights and climate change	•	•	•	•	•	•	•
38/5	Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts	•	•	•	•	•	•	•
38/6	Elimination of female genital mutilation	•	•	•	•	•	•	•

1 United Nations Human Rights Council, Current Membership of the Human Rights Council, 1 January - 31 December 2018 by regional groups. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/MembersByGroup.aspx>

38/7	The promotion, protection and enjoyment of human rights on the Internet	•	•	•	•	•	•	•
38/8	Human rights in the context of HIV and AIDS	•	•	•	•	•	•	•
38/9	The right to education: follow-up to Human Rights Council resolution 8/4	•	•	•	•	•	•	•
38/10	Human rights and the regulation of civilian acquisition, possession and use of firearms	•	•	•	•	•	•	•
38/11	The promotion and protection of human rights in the context of peaceful protests	•	•	•	•	•	•	•
38/12	Civil society space: engagement with international and regional organizations	✓	✓	–	✓	✓	✓	✓
38/13	Business and human rights: improving accountability and access to remedy	•	•	•	•	•	•	•
38/17	The Social Forum	•	•	•	•	•	•	•
38/18	The contribution of the Human Rights Council to the prevention of human rights violations	✓	–	–	–	✓	✘	✓
38/19	The incompatibility between democracy and racism	•	•	•	•	•	•	•

## ii. Country-Situation Resolutions

### Voting Key:

Favour: ✓

Against: ✘

Consensus: •

Abstention: –

■ Original Sponsor/Co-sponsor

■ Additional Co-sponsor

**Table 2.3**

TEXT	RESOLUTIONS	AUS	KEN	NIG	PAK	RWA	SA	UK
38/14	Situation of human rights in Belarus	✓	–	–	–	–	–	✓
38/15	Situation of human rights in Eritrea	•	•	•	•	•	•	•
38/16	The human rights situation in the Syrian Arab Republic	✓	–	–	–	✓	–	✓
38/20	Technical assistance to the Democratic Republic of the Congo and accountability concerning the events in the Kasai regions	•	•	•	•	•	•	•

## d. Overview of the Performance of Commonwealth Member States

TEXT	RESOLUTIONS	AUS	KEN	NIG	PAK	RWA	SA	UK
1.	Clean slate election	✓	✓	✓	✘	✓	✓	✓
2.	Voluntary pledges and commitments submitted	✓	✓	✓	✓	✘	✓	✓
3.	Thematic Resolutions Sponsored (in resolutions adopted during the session)	✓	✘	✓	✓	✓	✓	✓
4.	Country situations resolutions sponsored (in resolutions adopted during the session)	✓	✘	✘	✘	✘	✘	✓
5.	Issued Standing invitation to Special Procedures	✓	✓	✓	✘	✓	✓	✓
6.	Treaty ratification (10 major treaties)	✘	✘	✘	✘	✘	✘	✘
7.	Treaty reporting (outstanding reports exceeding 5 years)	0	1	6	2	0	1	0
8.	Pending requests and reminders from Special Procedures for the last 5 years	1	14	8	11	4	18	1

### *i. Compliance with Reporting Obligations to Treaty Bodies*

When a country ratifies a treaty, in addition to its obligation to implement the substantive provisions of the treaty, it is also under an obligation to submit periodic reports to the relevant treaty body on how the rights are being implemented. Almost all Commonwealth member states in their pledges have committed to comply with treaty body reporting obligations under the major human rights treaties. Australia, Rwanda, South Africa and the United Kingdom complied with their reporting obligations and fulfilled their pledges. Pakistan has two treaty body reports pending for more than five years, namely CSR-OP-AC and CRPD. Nigeria has six treaty body reports pending for more than five years, namely CAT since 2002, CERD since 2008, CESCR since 2000, CRC-OP-SC as well as CRPD since 2012 and CED from 2013. Kenya and South Africa both have treaty body report pending for CRC-OP-AC. Nigeria therefore has the worst record in treaty body reporting.

### *ii. Engagement with Special Procedures*

The special procedures of the Human Rights Council consist of independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Despite their commitment in the voluntary pledges, most of the current Commonwealth member states of the Council has poor engagement with special procedures. Countries from Western Europeans and Others Group showed positive result, Australia's performance is positive, except for its engagement with the Special Rapporteur on Torture, where it postponed and later cancelled the request for a country visit. The United Kingdom engaged positively with all Special Procedures. At the same time, countries from the Africa and Asia Group have not engaged much with special procedures, and have more than a dozen requests for country visits pending for each country: Kenya (15), Nigeria (14), Pakistan (16) and South Africa (20). However, Rwanda has a slightly better record with only four pending requests. Most of the requests for country visits in the Asian and African Commonwealth member states are from special procedures dealing with civil and political rights issues, such as torture, violence against women, freedom of assembly, extrajudicial killings, amongst others.

### *iii. Treaty Ratification*

Australia, Rwanda and Nigeria have a relatively better record of human rights treaty ratification than other Commonwealth countries. Rwanda and Nigeria has not ratified Convention for the Protection of All Persons from Enforced Disappearance and Second Optional Protocol to the International Covenant on Civil and Political Rights, respectively. Australia has not ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention for the Protection of All Persons from Enforced Disappearance. South Africa and the United Kingdom each have two major human rights treaties pending for ratification and Pakistan and Kenya both has for or more human rights treaty ratification pending.

### *iv. Thematic Resolutions*

Commonwealth member states did not unanimously vote upon one singular resolution. The Western Group, comprising Australia and the UK displayed a similar voting pattern. On resolutions concerning human rights and international solidarity, enhancement of international cooperation in the field of human rights, civil society space, the contribution of the Human Rights Council for the prevention of human rights violations, they either voted in favour or voted against. Australia and the UK voted in favour of resolutions concerning civil society space and on the contribution of the Human Rights Council for the prevention of human rights violations. The resolution on Civil Society space was the only thematic resolution which was not voted against by any Commonwealth member state. Amongst the African States Kenya, Rwanda and Nigeria did not vote against any thematic issues and all three States voted in favour of resolutions concerning human rights and international solidarity and enhancement of international cooperation in the field of human rights. South Africa was the only African country to vote against the resolution on the contribution of the Human Rights Council for the prevention of human rights violations. The United Kingdom sponsored the maximum number of thematic resolutions (3) and all of which were adopted by consensus; the United

Kingdom itself, however, voted in favour of only two resolutions, namely civil society space and the contribution of the Human Rights Council for the prevention of human rights violations. United Kingdom opposed the resolutions on Human rights and international solidarity and Enhancement of international cooperation in the field of human rights.

#### *v. Country Resolutions*

Commonwealth member states did not vote along similar lines on any resolution. However, for both the country situation resolutions that came up for voting, there were no votes against these two resolutions, namely the situation of human rights in Belarus and the human rights situation in the Syrian Arab Republic. The Western Group comprising of Australia and the UK displayed identical voting preferences and were the only two countries to vote in favour of the resolution on the situation of human rights in Belarus. Kenya, Nigeria, Pakistan and South Africa abstained from voting in both the country situation resolutions. Pakistan, in an explanation of the vote before the vote on human rights in Belarus, called for the non-politicization of the Human Rights Council.

### **e. Major Challenges**

#### *i. Pledges*

Only four Commonwealth member states: Australia, Pakistan, South Africa and the UK submitted a pledge enumerating their human rights promises and commitments. Rwanda did not submit a pledge. Nigeria last submitted its pledge in 2006. Kenya did not submit a new pledge while applying for its second term in 2015; the report considers its 2012 pledge.

Further, pledges are often vague and ambiguous, thereby making it difficult to measure outcomes and hold countries accountable. Pledges are a precondition for selection to the HRC. The UN General Assembly Resolution 60/251, which established the HRC, states that human rights pledges that countries make during HRC elections should be considered when selecting members of the HRC. Members without formal pledges and commitments are able to avoid scrutiny from national and international stakeholders.

#### *ii. Uncontested Elections*

The performance of the Council is directly influenced by its composition. There has been a trend of regional groupings running clean-slate elections – with the number of countries standing for election matching the number of open seats – to avoid embarrassment to members that lose out to other countries from the same region. This trend is visible across all five regional groups. In the first decade of the Council, the Asian-Pacific regional elections were uncontested six out of ten times; African regional elections were uncontested eight out of ten times; and Western European and other regional elections were uncontested six out of ten times. CHRI believes that competitive elections are critical to promote robust dialogue, geographical representation, diversity and accountability. The practice of clean-slate elections is a threat to the Council's credibility, for among other issues, it also prevents states from submitting pledges on sincere human rights commitments.

#### *ii. Lack of follow-up and Implementation*

It is observed that the member States on several occasions have failed to live up to the resolutions accepted during the Council sessions. For the purpose of universality of human rights, it is imperative for the Council to ensure that States follow up with the object and purposes prescribed under the resolutions.

During the term of member states, there should be particular attention to the adherence of resolutions by Council Member States, in order to ensure compliance with the membership obligation that they shall uphold the highest standards in the Council. An expectation of heightened scrutiny could itself ensure compliance with the resolutions. Such scrutiny could be applied through an annual report by the High Commissioner focused on cooperation by

Council members with resolutions and other UN mechanisms. All resolutions should be action oriented and should identify reforms and next steps that are as concrete and implementable as possible, to assist with follow up. Primary sponsors should consider incorporating processes for identifying benchmarks, and reporting on implementation, into resolutions. Each State or OHCHR should maintain a comprehensive monitoring database, bringing together relevant recommendations from Special Procedures, Treaty Bodies, the UPR and Council resolutions, and report on the implementation of these recommendations.

# CHAPTER III

## Country Profiles

### AUSTRALIA

#### I. Introduction

When Australia launched its bid for a seat at the Human Rights Council (HRC), the country went through a shift in domestic politics,<sup>2</sup> which was coupled with international criticism of human rights violations, particularly with respect to its refugee policy.<sup>3</sup> Australia officially launched its candidacy in October 2015 for the 2018-2020 term.<sup>4</sup>

This was the first time Australia had submitted its candidature for a seat on the HRC. Having been elected, Australia will serve on the Council for the 2018-2020 term, and will be eligible for re-election for a second term.<sup>5</sup>

#### II. Voluntary Pledges and Commitments

In its voluntary pledges, Australia firmly committed to fundamental human rights and freedoms.<sup>6</sup> Australia positioned itself as a “pragmatic and principled” candidate and a voice for the Pacific. Its Foreign Minister, Julie Bishop, led Australia’s campaign, which was based on “five pillars”:<sup>7</sup>

- Gender equality
- Good governance
- Freedom of expression
- The rights of Indigenous peoples
- Strong national human rights institutions and capacity building.

For analytical ease, resolutions were divided into two categories: thematic and country situation. Thematic categorically refers to topics focused on a theme, for example, civil society space or the death penalty. Country situations categorically refer to specific human rights situations in a country or capacity-building, such as the human rights situation in Sudan or technical assistance to, and capacity-building in, Ukraine.

#### III. Australia’s Participation at the 38th Session of the HRC

Australia participated very actively at the council. Selected participation of Australia in general debates and panel discussion are:

- 2 Georgie Bright, “Australia Is No Longer A Human Rights Leader”, Human Rights Watch, 24 February 2016.
- 3 Amnesty International, Election to the UN Human Rights Council means Australia must End Human Rights Hypocrisy, 17 October 2017. Available at: <https://www.amnesty.org.au/election-un-human-rights-council-means-australia-must-end-human-rights-hypocrisy/>.
- 4 Minister for Foreign Affairs, Address at launch of Australia’s UNHRC Candidacy, 2018-20, 19 October 2015. Available at: [https://foreignminister.gov.au/speeches/Pages/2015/jb\\_sp\\_151019.aspx?w=tb1CaGpkPX%2FISOK%2Bg9ZKEg%3D%3D](https://foreignminister.gov.au/speeches/Pages/2015/jb_sp_151019.aspx?w=tb1CaGpkPX%2FISOK%2Bg9ZKEg%3D%3D).
- 5 UN General Assembly, Human Rights Council: Resolution / adopted by the General Assembly, 3 April 2006, A/RES/60/251. Available at: <http://www.refworld.org/docid/4537814814.html>.
- 6 United Nations General Assembly, Note verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly, 24 July 2017. Available at: <http://undocs.org/en/A/72/212>.
- 7 Australian Government, Department of Foreign Affairs and Trade, Pillars and Priorities. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/pillars-and-priorities.aspx>.

S. No.	Interactive Dialogue	Australia's interventions
1	Clustered interactive dialogue with the Independent Expert on human rights and international solidarity and the Special Rapporteur on the right to education	Australia: <ul style="list-style-type: none"> <li>• Asserted that it is committed to the full realisation of the right to education and has recently made a range of commitments to ensure that the education needs of the almost 400,000 students from regional, rural and remote communities are addressed.<sup>8</sup></li> </ul>
2.	Clustered interactive dialogue with the Special Rapporteur on summary executions and the Special Rapporteur on the right to freedom of opinion and expression	Australia: <ul style="list-style-type: none"> <li>• Condemned all unlawful violence by armed non-state actors, which interferes with the enjoyment of human rights and stated that existing international humanitarian law framework is the appropriate means to address the problem of armed non-state actors in armed conflict.</li> <li>• Affirmed its belief that human rights, including the right to freedom of expression, should be protected equally online as they are offline.</li> <li>• Stated that it has developed a carefully balanced regulatory system to ensure that Australians' freedom of expression and opinion are respected, while also regulating the darker elements of the Internet.<sup>9</sup></li> </ul>
3.	Clustered interactive dialogue with the Working Group on discrimination against women and the Special Rapporteur on trafficking in persons, especially women and children	Australia: <ul style="list-style-type: none"> <li>• Stated that it is committed to ensuring trafficked people receive appropriate care and support and emphasised that its Trafficked People Program provides comprehensive support and assistance to trafficked people. This includes individually tailored case management, financial assistance, medical care, counselling, support accessing safe accommodation and referral for legal and migration advice. Since 2004, over 350 victims have received support.<sup>10</sup></li> </ul>
4.	Clustered interactive dialogue with the Special Rapporteur on extreme poverty and the Special Rapporteur on internally displaced persons (IDPs)	Australia: <ul style="list-style-type: none"> <li>• Welcomed the Special Rapporteur on IDPs' prioritisation of prevention by highlighting the need to address the root causes of internal displacement, including human rights violations. With the Indo-Pacific region hosting the largest number of disaster-induced IDPs globally, Australia encouraged the Special Rapporteur to continue to highlight the scale and needs resulting from disaster-induced internal displacement.</li> <li>• Recognised the significant achievement that is the normative framework founded 20 years ago in the Guiding Principles on Internal Displacement.<sup>11</sup></li> </ul>

8 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-to-the-id-with-sd-on-the-right-to-education.pdf>.

9 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-for-clustered-id-sr-summary-executions-sr-freedom-of-expression.pdf>.

10 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-cid-wg-daw-and-sr-trafficking.pdf>.

11 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-australian-statements-item-3-dialogue-with-the-special-rapporteur-human-rights-idps.pdf>.

5.	Clustered interactive dialogue with the Working Group on human rights and transnational corporations and the Special Rapporteur on the independence of judges and lawyers	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Stated its belief that the separation of powers doctrine (particularly the separation of judicial power from executive and legislative power) contained in the Australian Constitution is an essential feature of its system of government. Constitutional guarantees of tenure and remuneration also assist in securing judicial independence.</li> <li>• Affirmed its commitment to work in partnership with States across the region, including the governments of Papua New Guinea, Solomon Islands and Vanuatu, to strengthen the capacity of their core law and justice agencies to deliver better services in crime prevention, policing, prosecutions, legal aid, and legal policy development.<sup>12</sup></li> </ul>
6.	Interactive Dialogue with the Special Rapporteur on Myanmar (oral update)	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Raised its concern over the situation in Rakhine State and the clashes between the Myanmar military and ethnic armed groups. Australia called upon all parties to end the fighting, protect civilian populations, and allow humanitarian assistance to be delivered to affected communities.</li> <li>• Highlighted the pressures on media freedom, freedom of expression and rule of law in Myanmar, including in the case of the two arrested Reuters’ journalists.</li> <li>• Encouraged Myanmar to protect the rights of the LGBTI community by repealing legislation which effectively criminalises homosexual acts.<sup>13</sup></li> </ul>
7.	Clustered Interactive Dialogue with the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on the rights to freedom of peaceful assembly and of association	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Maintained that criminalisation of consensual same-sex sexual relations is unacceptable.</li> <li>• Requested States to decriminalise and positively promote inclusion and tolerance.</li> <li>• Reminded the Council that denying the existence of LGBTI people, or fostering stigmatisation and hatred that discourages self-identification, frustrates both human rights and economic development.<sup>14</sup></li> </ul>
8.	Clustered Interactive Dialogue with the Special Rapporteur on Violence Against Women, its causes and consequences and the Special Rapporteur on the human rights of migrants	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Affirmed its commitment to ensure that individuals, including women and girls, enjoy the same human rights protections online and offline.</li> <li>• Has taken the step to criminalise serious online harassment and bullying.<sup>15</sup></li> </ul>

12 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-clustered-interactive-dialogue-special-rapporteur-judges-and-lawyers.pdf>.

13 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-id-with-sr-myanmar.pdf>.

14 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

15 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-thematic-report-of-sr-vaw.pdf>.

9.	Interactive Dialogue with the High Commissioner for Human Rights on Rohingya	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Commended Bangladesh’s continued generosity in hosting large numbers of displaced people. Australia continues to support the humanitarian efforts there and welcomed the international assistance provided to support Bangladesh.</li> <li>• Lauded Myanmar, UNHCR and UNDP on concluding a Memorandum of Understanding on repatriation of the Rohingyas from Bangladesh. Australia is willing to work with Myanmar to create conditions conducive to safe, voluntary, dignified and sustainable returns and calls on all parties to allow unfettered humanitarian access to Rakhine State.<sup>16</sup></li> </ul>
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S. No.	General Debate	Australia’s Interventions
1	General Debate on Human rights situations that require the Council’s attention	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Raised concerns over continued human rights violations and abuses, the use of chemical weapons, and denial of humanitarian access to areas of need in Syria.</li> <li>• Stated that the human rights situation in the Democratic People’s Republic of Korea remains grave.</li> <li>• Was deeply troubled by the escalating crisis in Venezuela and the breakdown of democratic institutions.</li> <li>• Was concerned by the ongoing human rights crisis and political situation in the Democratic Republic of the Congo.</li> <li>• Noted the gross violations of human rights in South Sudan, including the targeting of civilians and perpetration of horrific sexual violence by armed groups and government forces.<sup>17</sup></li> </ul>
2.	Annual thematic panel discussion on technical cooperation in the promotion and protection of human rights – Human rights and the Sustainable Development Goals	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Agreed that realising the 2030 Agenda’s commitment to “leave no-one behind” is intrinsically linked to dismantling discrimination and reducing inequalities.</li> <li>• Stated that National Human Right Institutions (NHRIs) are an integral part of this equation.</li> <li>• Welcomed the Panel’s reflections on how States, or UN agencies, might engage with NHRIs to deepen technical cooperation and capacity-building that contribute to the implementation of the 2030 Agenda.<sup>18</sup></li> </ul>
3.	General Debate on the High Commissioner for Human Rights’ Oral Update	<p>Australia:</p> <ul style="list-style-type: none"> <li>• Affirmed that a free media is a fundamental part of any society.</li> <li>• Was concerned about the prosecution of journalists and intimidation of those seeking to exercise the right of free speech in Myanmar and Cambodia, and attempts to intimidate or prevent journalists from carrying out their role in Iran.</li> <li>• Was apprehensive about the increasing frequency of reprisals against human rights defenders.</li> <li>• Noted with concern, reports of detention, harassment and other restrictions on civil society, media and human rights defenders in Russia, Honduras and Nicaragua. Australia sought for the global abolition of the death penalty.<sup>19</sup></li> </ul>

16 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-interactive-dialogue-rohingya.pdf>.

17 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-general-debate-item-4.pdf>.

18 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-technical-cooperation.pdf>.

19 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-to-the-general-debate.pdf>.

4.	Annual full-day discussion on the human rights of women Panel 1: The impact of violence against women human rights defenders and women's organisations in digital spaces	Australia: <ul style="list-style-type: none"> <li>• Stated that it strongly supports women human rights defenders who consistently engage in human rights advocacy, despite the deeply rooted stereotypes, and systemic power imbalances, that make them more vulnerable to reprisals. The Special Rapporteur on the situation of human rights defenders, following a country visit to Australia in October 2016, drew specific attention to the online abuse and harassment faced by women human rights defenders. In this regard, Australia noted that they have implemented a number of mechanisms to counter the use of technology to control, coerce and harass women. These include establishing the e-Safety Commissioner, whose role is to promote online safety, identify and remove illegal content and provide complaints mechanisms for people affected by online abuse.<sup>20</sup></li> </ul>
5.	General Debate on Item 8	Australia: <ul style="list-style-type: none"> <li>• Was pleased with Afghanistan and Zimbabwe for building on their democratic momentum to facilitate free and fair elections this year.</li> <li>• Encouraged Thailand to return to democracy by holding free and fair elections.</li> <li>• Called on the government of Bangladesh and Pakistan to respect due democratic processes.</li> <li>• Joined others, including the Lima Group, in not recognising the legitimacy of the presidential election in Venezuela, a process marked by political exclusion, intimidation and voting irregularities.</li> <li>• Noted with deep concern the oppression of civil society and the opposition, ahead of Burundi's recent constitutional referendum.<sup>21</sup></li> </ul>

#### IV. Australia's Voting Pattern on Resolutions

##### *Thematic Resolutions*

Australia voted in favour of two thematic resolution concerning,<sup>22</sup> *Civil society space: Engagement with international and regional organisations*<sup>23</sup> and *Contribution of the Human Rights Council to the prevention of human rights violations*.<sup>24</sup> In its explanation to the vote concerning civil society space, Australia noted that all States have the obligation to respect fundamental human rights, including the rights of civil society actors, when developing their legal systems.<sup>25</sup>

Australia provided its explanations for four resolutions adopted by consensus.

- In the resolution concerning *Elimination of all forms of discrimination against women and girls*,<sup>26</sup> Australia was pleased to support a resolution that acknowledges the importance of equal pay for men and women, and the importance of mainstreaming gender equality in planning and policy development.<sup>27</sup>

20 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-afdm-panel-1-impact-vaw-on-whrds-digital-spaces.pdf>.

21 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-general-debate-item-8.pdf>.

22 Resolution 38/2 Human rights and international solidarity (2018).

23 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

24 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

25 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-resolution-civil-society-space.pdf>.

26 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

27 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-elimination-of-discrimination-against-women-general-comment.pdf>.

- In another resolution pertaining to *Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts*,<sup>28</sup> Australia reminded other countries that, as recognised in SDG 3.7 and 5.6, which underpins a global commitment to ensure everyone has access to quality, evidence-based, comprehensive sexuality education. Recognising that many countries are yet to meet this commitment, Australia was critical that explicit reference to comprehensive sexuality education remain in all relevant international outcomes documents, and that the international community continue to press to ensure that quality information is made universally accessible.<sup>29</sup>
- In the resolution concerning *Élimination des mutilations génitales féminines*,<sup>30</sup> Australia was pleased to emphasise on gender equality, stronger focus on legal protections, access to justice and prosecution, as well as the progress that has been made in strengthening this resolution as a whole.<sup>31</sup>
- In the resolution on *Promotion and protection of human rights in the context of peaceful protests*<sup>32</sup> Australia stated that peaceful protests should continue to play a constructive social and political role in the development of more just and accountable societies.<sup>33</sup>

Australia voted against the resolutions concerning *Human rights and international solidarity*,<sup>34</sup> and *Enhancement of international cooperation in the field of human rights*.<sup>35</sup> The latter resolution recognised that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue in all relevant forums.<sup>36</sup> In its explanation to the vote against this resolution, Australia was concerned that the resolution seeks to elevate certain rights over others which is incompatible with the principle that human rights are universal, indivisible and inalienable. Australia does not accept the inference in this resolution that autonomous sanctions are unjust or contrary to international law.<sup>37</sup>

### Country Situations

Australia voted in favour of the resolutions concerning *Situation of human rights in Belarus*<sup>38</sup> and *the Human rights situation in the Syrian Arab Republic*.<sup>39</sup> In a general comment concerning the resolution on Syria, Australia welcomed the strong language in this text, condemning the continued use of chemical weapons by Syrian authorities. Furthermore, Australia welcomed the decision to empower the Organisation for the Prohibition of Chemical Weapons to attribute responsibility to those who carry out chemical weapons attacks.<sup>40</sup>

## V. Analysis: Compliance with Pledges and Commitments

### a. Engagement with UN Special Procedures

- 28 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).
- 29 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-accelerating-efforts-to-eliminate-violence-against-women.pdf>.
- 30 Resolution 38/6 Élimination des mutilations génitales féminines (2018).
- 31 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-elimination-of-female-genital-mutilation-general-comment.pdf>.
- 32 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).
- 33 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-resolution-peaceful-protests.pdf>.
- 34 Resolution 38/2 Human rights and international solidarity (2018).
- 35 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).
- 36 Ibid.
- 37 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-international-cooperation-in-the-field-of-human-rights.pdf>.
- 38 Resolution 38/14 Situation of human rights in Belarus (2018).
- 39 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).
- 40 Australian Government, Department of Foreign Affairs and Trade, 38th Session of the Human Rights Council. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/38th-hrc-statement-human-rights-syria.pdf>.

Australia has been compliant with UN Special Procedures, as Australia has extended a standing invitation to all thematic special procedures since 2008.<sup>41</sup> The only exception has been on the issue of torture, when in 2016 Australia postponed and later cancelled the country visit of the Special Rapporteur on torture.<sup>42</sup>

b. *Compliance with Reporting Obligations to Treaty Monitoring Bodies*

Australia is up to date with its reporting obligations under CERD, CRC, CEDAW, CRPD, CCPR and CESC, <sup>43</sup> although some reports were submitted after a delay of two years. Australia did not ratify the *Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.<sup>44</sup>

c. *Compliance with Thematic Issues*

During the 38th Session, Australia's support was visible on a number of thematic issues concerning *Civil society space: Engagement with international and regional organisations; Contribution of the Human Rights Council to the prevention of human rights violations; Elimination of all forms of discrimination against women and girls; Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts; and the Promotion and protection of human rights in the context of peaceful protests, to name a few.*

In its voluntary pledge, Australia proclaimed *gender equality* as one of its five pillars. On the contrary, question marks remain over Australia's acceptance of people with different sexual orientation and gender identity. With the legalisation of same-sex marriages adopted on 7 December 2017, there is also a growing concern that it would entail "significant infringement on religious freedom."<sup>45</sup> This can lead the government to expand the exemptions that religious institutions enjoy from anti-discrimination laws, rather than limit them.<sup>46</sup> The UN Committee on the Convention on the Elimination of Discrimination Against Women (CEDAW) raised concerns about the rights of LGBTQ women and girls in Australia.<sup>47</sup> The Committee questioned the Australian government's inaction on coerced medical interventions on intersex people.<sup>48</sup> No changes in the existing arrangements on the involuntary and coerced sterilisation of intersex people have been proposed by the Australian government.<sup>49</sup> The Australian government however acknowledged the need to reform the currently onerous legal barriers to change legal gender, including laws requiring surgical sterilisation and laws which do not recognise categories of genders outside of male and female.<sup>50</sup> CEDAW, in its concluding observation in 2018, also noted that women with migration backgrounds, lesbian, bisexual, transgender women and intersex persons face discrimination by health service providers or insufficient access to health services.<sup>51</sup>

Australia supported by joining the consensus on the resolution on *Promotion and protection of human rights in the context of peaceful protest*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association. The Special Rapporteur in his latest report on the situation of human rights defenders in Australia based on his visit in

41 Office of the High Commissioner for Human Rights, Special Procedures. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/StandingInvitations.aspx](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx).

42 Office of the High Commissioner for Human Rights, Special Procedures. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

43 Office of the High Commissioner for Human Rights, Human Rights Bodies. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=AUS&Lang=en).

44 Office of the High Commissioner for Human Rights, Human Rights Bodies, Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN).

45 Ibid.

46 Ibid.

47 CEDAW Concluding observations on the eighth periodic report of Australia. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AUS/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AUS/CO/8&Lang=En).

48 Ibid.

49 Ibid.

50 Ibid.

51 CEDAW Concluding observations on the eighth periodic report of Australia. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AUS/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/AUS/CO/8&Lang=En).

2016 noted the trend of introducing constraints by the government on the freedom of peaceful assembly.<sup>52</sup> This is done through what is essentially an “anti-protest legislation.”<sup>53</sup> Laws aimed to prohibit and criminalise a wide range of activities by labelling them as disruptive of business operations can be used to characterise even peaceful civil disobedience and non-violent direct action as an unlawful disruption.<sup>54</sup>

Australia joined the consensus for the resolution on *Elimination of all forms of discrimination against women and girls*<sup>55</sup> and that of *Accelerating efforts to eliminate violence against women and girls*.<sup>56</sup> Both the resolutions called upon States to ensure access to justice and accountability mechanisms for the effective implementation and enforcement of laws aimed at preventing and eliminating all forms of discrimination and violence against women and girls.<sup>57</sup> However, the Special Rapporteur on violence against women, during her last mission to Australia in 2017, noted excessive incarceration, prison overcrowding, strip-searching, solitary confinement, and lack of alternatives to custodial sentences amongst several other shortcomings.<sup>58</sup> A report by the Human Rights Law Centre notes that criminal justice laws in Australia are discriminatory towards women, particularly against Aboriginal and Torres Strait Islander women, and also that damaging and degrading practices persist within prisons.<sup>59</sup> On the issue of gender equality and preventing violence against women, a report by the Australian Institute of Health and Welfare, paints a critical picture of the extent of physical and sexual violence in Australia.<sup>60</sup> According to the report, indigenous women were killed more often in family violence, and were 32 times more likely than non-indigenous women to be hospitalised.<sup>61</sup>

Australia, voted in favour of the resolution pertaining to *civil society space*.<sup>62</sup> This resolution recognised the important role of civil society at the local, national, regional and international levels. Australia’s Electoral Funding and Disclosure Reform Bill, requires organisations that engage in advocacy to register as “political campaigners” in Australia.<sup>63</sup> This has the potential to stigmatise apolitical organisations and will burden them with cumbersome reporting requirements which will stifle the legitimate advocacy work of NGOs.<sup>64</sup> By forcing advocacy organisations to recognise themselves as political campaigners, the bill effectively curtails freedom of speech, expression and association.<sup>65</sup>

## VI. Conclusions

Australia was an active participant during the 38th Session of the HRC. Australia:

- Has been compliant with UN Special Procedures, and has extended a standing invitation to all thematic Special Procedures since 2008.
- Is up to date with reporting requirements under CERD, CRC, CEDAW, CRPD, CCPR and CESC.
- In its voluntary pledge proclaimed gender equality as one of its five pillars. On the contrary, question marks remain over Australia’s acceptance of people with different sexual orientation and gender identity. Discrimination towards women, particularly against Aboriginal and Torres Strait Islander women is concerning.

52 Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia. Available at: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a97e2f824a6940809c6ab47/1519903484470/Report+of+the+Special+Rapporteur+on+the+situation+of+human+rights+defenders+on+his+mission+to+Australia.pdf>.

53 Ibid.

54 Ibid.

55 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

56 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

57 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts. Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/38/L.6](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.6).

58 Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia. Available at: <https://digitallibrary.un.org/record/1627464?ln=en>

59 Ibid.

60 Christopher Kanus, “One in six Australian women suffer physical or sexual abuse from partner”, The Guardian, 27 February 2018. Available at: <https://www.theguardian.com/australia-news/2018/feb/28/one-in-six-australian-women-suffer-physical-or-sexual-abuse-from-partner>.

61 Ibid.

62 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

63 Submission by Human Rights Watch to the Joint Standing Committee on Electoral Matters on the Electoral Legislation Amendment Bill 2017. Available at: <https://www.hrw.org/news/2018/02/15/submission-human-rights-watch-joint-standing-committee-electoral-matters-electoral>.

64 Ibid.

65 Ibid.

## I. Introduction

Kenya served on the Human Rights Council (HRC) from 2013-2015, and is currently serving its second term from 2016-2018. Kenya holds one of the seats reserved for the African Group.

During the 38th Session of the HRC, Kenya barely participated in interactive dialogues, panel discussions and general debates. Kenya voted in favour of three thematic resolutions and abstained from one. On country situations, Kenya abstained from voting on two resolutions. Kenya did not vote against any thematic or country situation resolutions during this Session.

## II. Voluntary Pledges and Commitments

In its voluntary pledge submitted in 2012, Kenya declared that it attached great importance to the promotion and protection of human rights as universally shared principles and norms enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and relevant international human rights instruments. Kenya further declared that its 2010 Constitution provides the basis for the direct application and invocation of treaties or conventions ratified by Kenya. Kenya has therefore assumed the highest international standards of human rights as set out in the international and regional instruments to which it is a party.

Kenya pledged to:<sup>66</sup>

### At the Regional and International Level

- Continue playing an active role in the mediation and resolution of regional conflicts with the objective of protecting and promoting human rights.
- Continue to pursue the promotion and protection of human rights in both the bilateral and multilateral frameworks within the United Nations system.
- Welcome, accommodate, and provide a safe haven for refugee seekers fleeing from neighbouring countries.
- Strengthen the working partnership with United Nations and other intergovernmental organisations.
- Continue to work with the Special Procedures Mechanisms and value engagement.
- Continue to honour its international treaty reporting obligations.
- Support the periodic review of Member States' human rights records.

### At the National Level

- Continue to domesticate its international legal obligations through the adoption of legislative measures, practical programmes and policies.
- Recognise the supremacy of law and the importance of ensuring that institutions of governance observe the tenets of the rule of law.
- Implementation of the Kenya Vision, 2030: A development blueprint for Kenya, anchored by “the three pillars of economic, social and political development”.
- Restructure the judiciary to ensure that all people can enjoy equal protection under the law.
- Work effectively to carry out its mandate in the Council.
- Remain firmly committed to the protection and promotion of human rights globally.

## III. Kenya's Participation at the 38th Session of the HRC

Kenya participated in interactive dialogues at the 38th Session of the HRC.

<sup>66</sup> The Permanent Mission of Kenya to the United Nations address to the President of the General Assembly, Voluntary pledges and commitments, 25 October 2012. Available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/546](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/546).

S. No.	Interactive Dialogue	Kenya's interventions
1	Clustered interactive dialogue with the Special Rapporteur on extreme poverty and the Special Rapporteur on internally displaced persons	Kenya: <ul style="list-style-type: none"> <li>• Stated that it adopted the Prevention, Protection and Assistance to Internally Displaced Persons (IDPs) and Affected Communities Act in 2012.</li> <li>• Noted that it had established the National IDPs Coordination Committee and an inter-agency team to resettle and compensate IDPs.</li> <li>• Used Ksh 17.5 billion to address the problem of IDPs since 2008. Resettlement and compensation was concluded in 2016 with the government spending Ksh 1 billion.<sup>67</sup></li> </ul>
2.	Clustered interactive dialogue with the Working Group on human rights and transnational corporations and the Special Rapporteur on the independence of judges and lawyers	Kenya: <ul style="list-style-type: none"> <li>• Pledged support to the Working Group on Business and Human Rights.</li> <li>• Agreed that it is a right for States to support exports, imports and investments by providing tax relief, credit, and procurement contracts but was critical that they should do so, while ensuring that there is stronger human rights fulfilment, protection and promotion.</li> <li>• Asserted that Article 171 of the Constitution of Kenya created the judicial service commission, the institution responsible to promote and facilitate the independence and accountability of the judiciary for the efficient, effective and transparent administration of justice.</li> <li>• Highlighted that Article 160 of the Constitution of Kenya and the Advocates Act guarantee the independence of judges and lawyers.<sup>68</sup></li> </ul>

#### IV. Kenya's Voting Pattern on Resolutions

##### *Thematic Resolutions*

Kenya voted in favour of three thematic resolutions that came up for voting which concerned, *Human rights and international solidarity*,<sup>69</sup> *Enhancement of international cooperation in the field of human rights*,<sup>70</sup> *Civil society space: Engagement with international and regional organisations*.<sup>71</sup>

Kenya abstained from voting on the resolution pertaining to *Contribution of the Human Rights Council to the prevention of human rights violations*.<sup>72</sup> This resolution urged States and other relevant stakeholders to cooperate fully with the chair-rapporteur and the other rapporteurs. It also called upon States to provide them with all the relevant information to enable them to fulfil their mandates.

##### *Country Situations*

Kenya abstained from both the country situation resolutions that came up for voting concerning the *Situation of human rights in Belarus*<sup>73</sup> and the *Human rights situation in the Syrian Arab Republic*.<sup>74</sup>

67 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=21/06/2018%2000:00:00>.

68 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=25/06/2018%2000:00:00>.

69 Resolution 38/2 Human rights and international solidarity (2018).

70 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).

71 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

72 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

73 Resolution 38/14 Situation of human rights in Belarus (2018).

74 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).

## V. Analysis: Compliance with Pledge and Commitments

### a. Engagement with UN Special Procedures

In its pledge, Kenya affirmed that it values engagement with the Special Procedures mechanism and is committed to work with them. Despite issuing a standing invitation to mandate holders, in last five years Kenya has eight requests and six reminders pending for visits from Special Procedures Mechanisms including: those of the Special Rapporteurs on torture, on human rights defenders and on extrajudicial, summary, or arbitrary executions; the Working Groups on mercenaries and on arbitrary detention and the Independent Expert on sexual orientation and gender identity.<sup>75</sup>

Furthermore, Kenya committed to pursue promotion and protection of human rights in both the bilateral and multilateral frameworks within the United Nations system. However, on two occasions, Kenya opposed the international scrutiny on human rights abuses by abstaining from voting on resolutions concerning the human rights situations in Iran and Myanmar, where the Council decided to extend the mandate of the respective Special Rapporteurs.

### b. Compliance with Reporting Obligations to Treaty Monitoring Bodies

Kenya's pledge to honour reporting obligations under CAT, CERD, CRC, CEDAW, CRPD and CESCRC were realised. While Kenya is up to date with its reporting requirements under CERD, CRC, CEDAW, CRPD and CESCRC, some of these reports were submitted after a delay of one year. At the end of the reporting period, two reports were outstanding against it with treaty body mechanisms: the reports have been overdue under CCPR for three years, and under CRC-OP-AC, for the last 14 years.<sup>76</sup>

### c. Compliance on Thematic Issues

Despite pledging its commitment to the protection and promotion of human rights globally, there are serious concerns regarding *sexual orientation and gender identity* in Kenya. Homosexuality is a criminal offence under Section 162 and 165 of the Kenyan Penal Code.<sup>77</sup> On 15 June 2018, organisers and attendees of a gay pride event organised at the Kakuma refugee camp in Kenya received anonymous messages threatening their lives.<sup>78</sup> Due to the homophobic violence that ensued two people from the community sustained serious injuries.<sup>79</sup> Consequently, it was reported that asylum seekers from the Kakuma Camp were being persecuted on the basis of their sexual orientation and were forced to flee to countries such as Uganda, owing to the persecution they faced because of their sexual orientation.<sup>80</sup> In Kenya, policy gaps exist in the areas of equality, and non-discrimination, documentation and legal status, as well as appropriate and affirming health care for transgender, intersex and gender non-conforming individuals.<sup>81</sup>

Kenya joined the consensus in regards to a resolution pertaining to *Promotion and protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>82</sup> On the issue of peaceful assembly and police brutality, the National Human Rights Commission of Kenya (NHRC), in its letter to the President of Kenya, criticised attack on students of the Department of Architecture, Design and Development (ADD) of the University of Nairobi by anti-riot police officers who indiscriminately unleashed teargas and terror on students in the guise of quelling the university protests on 28 September 2017. Many students were

75 Country visits of Special Procedures of the Human Rights Council since 1998. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

76 Reporting status for Kenya. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN).

77 Kenyan Penal Code. Available at: <http://kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>.

78 Mary Grey Lewis, "Kenya's First Pride Is Greeted With Death Threats", *Advocate*, 23 June 2018. Available at: <https://www.advocate.com/world/2018/6/23/kenyas-first-pride-greeted-death-threats>.

79 Brooke Sopelsa, "Following pride event, Kenya's gay refugees fear for their lives", *NBCNEWS*, 21 June 2018. Available at: <https://www.nbcnews.com/feature/nbc-out/following-pride-event-kenya-s-gay-refugees-fear-their-lives-n885136>.

80 *Ibid.*

81 The Human Rights Situation, Case Law, and Research on Protections on Grounds of Sexual Orientation, Gender Identity, and Expression in the Republic of Kenya. Available at: <https://www.khrc.or.ke/images/docs/KenyaSubmission.pdf>.

82 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

seriously hurt and injured.<sup>83</sup> It is pertinent to note, that the freedom of assembly, demonstration, picketing and petition is also guaranteed by the Constitution of Kenya.

The NHRC of Kenya further condemned the manner in which several demonstrations in the run-up to the 2017 general election and after were dealt with. There was excessive use of force by the law enforcement agents who indiscriminately used tear gas and water cannons to disperse crowds.<sup>84</sup>

Kenya has been witnessing declining levels of *freedom of speech and expression*. In Kenya, a proposed legislation called the Data Protection Bill threatens to curb press freedom as it sets out rules on data collection, processing and storage, and penalties for abuse of personal data.<sup>85</sup> It elevates data protection above media freedom, freedom of expression and the right to access information, yet all are fundamentally guaranteed rights.<sup>86</sup> Kenyan blogger, Cyprian Nyakundi was arrested on 14 May 2018, on allegations of publishing “alarming” content about senior civil servants but was later released on 17 May.<sup>87</sup> Similarly, on 27 March 2018, journalists covering the return of an opposition politician’s return were reportedly assaulted by police officers at the airport.<sup>88</sup>

Kenya voted in favour of the resolution on *Civil society space* which urged States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors.<sup>89</sup> However, in May 2018, Anastacia Nambo, a member of the Centre for Justice Governance and Environmental Action (CJGEA) was attacked and her eyes sprayed with a caustic substance.<sup>90</sup> Nambo and several other environmental human rights campaigners were targeted because of their ongoing court case against a local smelter accused of polluting the small urban community of Owino Uhuru, Mombasa with lead.<sup>91</sup> The Kenyan government’s failure to protect activists from being intimidated is telling as the State has been urged by the UN human rights experts to protect environmental activists three times in four years, without getting any response from Kenya on all those occasions.<sup>92</sup>

*Summary executions and extra judicial killings* remain a contentious issue in Kenya. The Independent Policing Oversight Authority (IPOA)<sup>93</sup> was set up in November 2011 to oversee the work of the police in the country. Some of its duties include investigating police misconduct, deaths and serious injuries caused by the police, and overseeing the internal affairs of the police. Earlier in 2018, the outgoing board of IPOA released a detailed six-year report, capturing areas they have covered in ensuring that members of the National Police Service strictly adhere to their code of conduct.<sup>94</sup> Of the 9,000 cases lodged with the Authority, only four have been successfully convicted.<sup>95</sup> During the tenure, IPOA concluded 752 investigations, inspected 885 police premises, monitored 151 police operations and submitted 164 recommendations.<sup>96</sup> Therefore, in Kenya, cases of extrajudicial killings and police harassment remain rampant across all parts of the country.

83 2018 State of Human Rights and Fundamental Freedoms In The Republic Of Kenya: Statement By The Kenya National Commission On Human Rights. Available at: <http://www.knchr.org/Portals/0/Statements/2018%20KNCHR%20STATEMENT%20ON%20THE%20STATE%20OF%20HUMAN%20RIGHTS%20AND%20FUNDAMENTAL%20FREEDOMS%20STATEMENT.pdf?ver=2018-05-15-123616-490>.

84 Ibid.

85 David Herbling, “Kenya Data-Protection Law May Curb Press Freedom”, Bloomberg, 5 July 2018. Available at: <https://www.bloomberg.com/news/articles/2018-07-05/kenya-s-data-protection-law-may-limit-press-freedom-group-says>.

86 Ibid.

87 “Kenyan authorities arrest blogger after posts on alleged official corruption”, Committee to Protect Journalists, 30 May 2018. Available at: <https://cpj.org/2018/05/kenyan-authorities-arrest-blogger-after-posts-on-a.php>.

88 “Kenyan journalists assaulted by police at Nairobi airport”, Committee to Protect Journalists, 27 March 2018. Available at: <https://cpj.org/2018/03/kenyan-journalists-assaulted-by-police-at-nairobi-.php>.

89 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

90 Office of the High Commissioner for Human Rights, Display news, 6 June 2018. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/KenyaEnvironmentalRightsDefender.aspx>.

91 Ibid.

92 Kevin J Kelley, “UN experts call for end to activists’ harassment”, Daily Nation, 31 May 2018. Available at: <https://www.nation.co.ke/news/UN-experts-call-for-end--to-activists--harassment-/1056-4587874-95a0g1/index.html>.

93 Independent Policing Oversight Authority. Available at: <http://www.ipoa.go.ke/ipoa-profile/>.

94 Joseph Muraya, “IPOA says did well in six years despite only four convictions”, Capital News, 21 May 2018. Available at: <https://www.capitalfm.co.ke/news/2018/05/ipoa-says-well-six-years-despite-4-convictions/>.

95 Ibid.

96 Ibid.

Kenya joined the consensus for the resolution on *Accelerating efforts to eliminate violence against women and girls*. This resolution called upon States to enact legislations which allow for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts. However, violence against women has been a critical and endemic problem in Kenya. CEDAW, in its concluding observations on the eighth periodic report of Kenya in 2017, raised concerns about the high level of gender-based violence against women and girls and the widespread incidence of sexual violence, including rape, in the private and public spheres.<sup>97</sup> In its report, CEDAW was also concerned about reports of election-related, gender-based violence, including of a sexual nature, such as gang rapes against women during the elections in 2017. Between January and March 2018, five cases of violence against women were reported in Kenya.<sup>98</sup>

Kenya joined the consensus for the resolution on *Elimination of all forms of discrimination against women and girls*. Amongst other aspects, the resolution calls upon States to ensure that international obligations on gender equality and non-discrimination are incorporated at all levels of legal frameworks, including in relation to women's and girls' access to justice, redress and effective remedies.<sup>99</sup> Discrimination against women was an issue in Kenya throughout the reporting period. CEDAW, in its concluding observations on the eighth periodic report of Kenya in 2017, brought to light the high poverty rate amongst women and discrimination against rural women in relation to property rights and their limited access to high-quality health care.<sup>100</sup>

Furthermore, Kenya also displayed a mixed record when voting in favour of country resolutions. While it did join the consensus for some country situations, it abstained from voting on the human rights situations in Belarus and the Syrian Arab Republic. These were the only two country resolutions that had come up for voting at the 38th Session of the UNHRC. In any event, the decisions to abstain from these respective resolutions came without any explanation. This is despite the country voting in favour of the thematic resolution which promoted cooperation in the field of human rights, and pledging to promote and protect human rights in both the bilateral and multilateral frameworks within the United Nations system.

## VI. Conclusions

- Despite its voluntary pledges Kenya has 14 requests pending for visits from Special Procedures Mechanisms in the last five years.
- Kenya committed itself to the protection and promotion of human rights globally, but has had serious concerns regarding sexual orientation and gender identity in its domain. Kenya has been witnessing declining levels of freedom regarding speech and expression. A proposed legislation called the Data Protection Bill threatens to curb press freedom.
- Summary executions and extrajudicial killings remain a contentious issue in Kenya.

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97 CEDAW's concluding Observations on the Eighth Periodic Report of Kenya, 2017.

98 Derrick Oluoch, "Five horrific cases of domestic violence against women in Kenya in the past three months", 5 March 2018. Available at: <https://www.standardmedia.co.ke/evewoman/article/2001272080/five-horrific-cases-of-domestic-violence-against-women-in-kenya-in-the-past-three-months>.

99 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

100 Ibid.

## I. Introduction

Nigeria was elected for a third term on the Human Rights Council (HRC) in 2015, and is currently serving its fourth term, which ends in 2020,<sup>101</sup> after the conclusion of a clean-slate election. During the 38th Session, Nigeria was a co-sponsor of the thematic resolution on the *Promotion, protection and enjoyment of human rights on the Internet*.

## II. Voluntary Pledges and Commitments

Nigeria made a voluntary pledge<sup>102</sup> in 2006 and has not submitted an updated pledge since. Nigeria pledged to:

- Uphold the purposes and objectives of the Human Rights Council.
- Cooperate fully with the Council, through active participation. Cooperate with members of the Council, non-members, regional organisations and civil society to create a strong, credible, fair and effective human rights body.
- Submit itself to the Universal Periodic Review mechanism.
- Cooperate with treaty monitoring bodies, including through submission of reports and the implementation UN activities, as well as with those of regional organisations, such as the African Union and the Economic Community of West African States.
- Promote and protect human rights, and support the work of the National Human Rights Commission (NHRC).
- Continue to play a responsible, leading role, regionally and internationally, in the protection and promotion of peace, stability and democracy.
- Promote and protect all human rights, particularly civil and political rights, and economic, social and cultural rights, including the right to development.
- Work towards strengthening the OHCHR.
- Maintain an open-door policy on human rights issues and to this end, reaffirmed its preparedness for officials such as human rights inspectors, Special Rapporteurs and representatives to visit the country and carry out their respective mandates without hindrance.
- Cooperate fully with other Special Procedures of the Council, work towards upholding the rule of law and encourage constructive dialogue and international cooperation in the field of human rights.
- Uphold the principles of non-discrimination and the protection and promotion of the human rights of all citizens. Accelerate the process for the domestication of relevant human rights instruments, such as the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).
- Commit to the international human rights instruments which it ratified including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Sign, ratify and accede to other conventions that the country is not a part of, such as the Convention on the Prevention and Punishment of the Crime of Genocide.
- Continue to uphold the provisions of the conventions, protocols and covenants which it has ratified, and regularly report on their implementation to treaty monitoring bodies of the Human Rights Council on observations and recommendations.

101 Premium Times, "UN General Assembly elects Nigeria, 14 others to Human Rights Council", 17 October 2017. Available at: <https://www.premiumtimesng.com/news/top-news/246350-un-general-assembly-elects-nigeria-14-others-human-rights-council.html>.

102 The Permanent Mission of the Federal Republic of Nigeria to the United Nations, Human Rights Council: "Nigeria's Voluntary Pledges and Commitment", 24 April 2006. Available at: <https://www.un.org/ga/60/elect/hrc/nigeria.pdf>.

### III. Nigeria's Participation at the 38th Session of the HRC

Nigeria participated actively in general debates, panel discussions and interactive dialogues and made several statements.

S. No.	Interactive Dialogue	Australia's interventions
1	On the rights of peaceful assembly and association	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>Supported the statement of the Africa Group and agreed that the right of peaceful assembly and association is a critical component of democracy, good governance and rule of law. It also pressed upon the need to provide an enabling environment to civil society for the promotion and protection of human rights and fundamental freedoms.<sup>103</sup></li> </ul>
2.	On human rights and international solidarity and on the right to education	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>Welcomed the choice of thematic areas, particularly on the topic of migration, refugees, global citizenship and international solidarity.</li> <li>Urged the Independent Expert on human rights and international solidarity to identify best practices and challenges with regards to these thematic areas that could serve as guidelines for Member States.</li> <li>On the right to education, stated that it is investing heavily in the education sector.<sup>104</sup></li> </ul>
3.	On violence against women and on the human rights of migrants	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>Condemned all forms of violence against women.</li> <li>Remained concerned with the emerging trend of online violence against women.</li> <li>Highlighted the rise of populism and State policies on migration as posing serious challenges to vulnerable migrants, especially women and children.</li> <li>Called upon stronger international cooperation and collective efforts to ensure dignified and humane treatment of all migrants regardless of the immigration status.<sup>105</sup></li> </ul>
4.	Clustered interactive dialogue with the Special Rapporteur on summary executions and the Special Rapporteur on the right to freedom of opinion and expression	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>Concurred with the statement made by the Africa Group and noted that it shared the view that the right to freedom of opinion and expression should be enjoyed both offline and online. It added that the freedom of expression should be qualified so as to prevent it from negating the rights of others and also to ensure peaceful co-existence and respect for the rule of law.</li> <li>Reiterated that with regards to summary executions, it unequivocally condemned of all forms of extrajudicial and summary execution. Nigeria also stated that while undertaking its counter-terrorism efforts, it upholds its international human rights obligations.<sup>106</sup></li> </ul>

103 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

104 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

105 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=20/06/2018%2000:00:00>.

106 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

5.	Clustered interactive dialogue with the Working Group on discrimination against women and the Special Rapporteur on trafficking in persons, especially women and children	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Stressed that women enjoy equal opportunities as men in the country in the realm of social, political and economic space.</li> <li>• Highlighted that it is committed to ensuring an egalitarian society where all individuals are provided an enabling environment for the attainment of their potentials without discrimination.</li> <li>• Stated that with regards to the trafficking in persons, it is committed to combatting the menace through advocacy and creating awareness. It spotlighted the work of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and other related matters noting that it continued to arrest, investigate and prosecute traffickers.<sup>107</sup></li> </ul>
6.	Clustered interactive dialogue with the Special Rapporteur on extreme poverty and the Special Rapporteur on internally displaced persons (IDPs)	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Stated that it has been investing massively in the area of poverty alleviation through economic diversification and revitalisation, as well as social intervention programmes. It also said that it is fighting the menace of corruption.</li> <li>• Noted that on the rights of IDPs, the imperatives of international collaboration, in alleviating the sufferings of IDPs, as well as the protection of their human rights and fundamental freedoms.<sup>108</sup></li> </ul>
7.	Clustered interactive dialogue with the Working Group on human rights and transnational corporations and the Special Rapporteur on the independence of judges and lawyers	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Took note of the report of the Working Group on transnational corporations and human rights.</li> <li>• Acknowledged that with regards to the independence of judges and lawyers, the judiciary is an essential component of the right to fair trial and the rule of law, as well as a guarantee for the protection and promotion of human rights.</li> <li>• Stated that the country's National Judicial Council is constitutionally mandated to select, appoint, transfer and discipline judges.</li> <li>• Stressed on the fact that lawyers and prosecutors in Nigeria do not face any obstacle or interference in practicing their profession.<sup>109</sup></li> </ul>
8.	Interactive dialogue with the Special Rapporteur on racism	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Shared the concerns in the Africa Group's report and condemned all forms of racial discrimination, racism, stereotyping and racial profiling of the people of African descent in all parts of the world,</li> <li>• Shared the view that the rise of populist nationalism and right-wing extremism is having a negative impact on the notion of racial equality.</li> <li>• Agreed with the Special Rapporteur that every effort should be made to ensure that both the Global Compact on Migration and the Global Compact on Refugees place equality and non-discrimination at the centre stage.</li> <li>• Called for a strong global synergy and collaboration among states to end all forms of racism, racial discrimination, xenophobia and other related intolerance.<sup>110</sup></li> </ul>

107 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=20/06/2018%2000:00:00>.

108 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=21/06/2018%2000:00:00>.

109 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=25/06/2018%2000:00:00>.

110 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

S. No.	General Debate	Nigeria's Interventions
1	General Debate on Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Aligned with the statements of the Africa Group, NAM and OIC. It said that the continued occupation of Palestine and other Arab territories by the State of Israel is concerning and reiterated its call to the State of Israel to implement the numerous resolutions adopted by the United Nations in order to resolve the conflict.</li> <li>• Urged the State of Israel to avoid the excessive use of force against Palestinian protestors.</li> <li>• Reaffirmed its solidarity and support for the struggle of the Palestinian people for the realisation of their human rights and fundamental freedoms, specifically that of the right to self-determination.<sup>111</sup></li> </ul>
2.	General Debate on the High Commissioner for Human Rights' Oral Update	<p>Nigeria:</p> <ul style="list-style-type: none"> <li>• Reaffirmed its continued cooperation with the Office of the High Commissioner for Human Rights and other UN human rights mechanisms. Nigeria was deeply concerned about the rise of populism, and the introduction of policies on migration by some States, which tend to negate the human rights of migrants, as well as exacerbate the already dire conditions of vulnerable migrants, particularly women and children;</li> <li>• Reiterated its call for the non-politicisation of human rights issues, as well as the imperatives of avoiding double standards in addressing human rights situations across the world.<sup>112</sup></li> </ul>

#### IV. Nigeria's Voting Pattern on Resolutions

##### *Thematic Resolutions*

Nigeria voted in favour of two thematic resolutions concerning *Human rights and international solidarity*<sup>113</sup> and *Enhancement of international cooperation in the field of human rights*.<sup>114</sup>

Nigeria abstained from voting on two thematic resolutions pertaining to the *Contribution of the Human Rights Council to the prevention of human rights violations*<sup>115</sup> and *Civil society space: Engagement with international and regional organisations*.<sup>116</sup>

##### *Country Situations*

Nigeria abstained from both the country situation resolutions concerning the *Situation of human rights in Belarus*<sup>117</sup> and *the Human rights situation in the Syrian Arab Republic*.<sup>118</sup>

#### IV. Nigeria's Voting Pattern on Resolutions

##### *a. Engagement with UN Special Procedures*

In its voluntary pledge, Nigeria undertook to “maintain of an open-door policy on human rights issues” and to this end,

111 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

112 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

113 Resolution 38/2 Human rights and international solidarity (2018).

114 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).

115 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

116 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

117 Resolution 38/14 Situation of human rights in Belarus (2018).

118 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).

reaffirmed its “preparedness for officials, such as human rights inspectors, Special Rapporteurs and representatives to visit the country and carry out their respective mandates without hindrance.” Nigeria further committed to “cooperate fully with other Special Procedures of the Council and to work towards upholding the rule of law and to encourage constructive dialogue and international cooperation in the field of human rights”.

Despite this pledge, Nigeria has failed to accept five requests and three reminders from Special Procedure Mechanisms. These include the Special Rapporteurs on freedom of expression, on toxic waste, on independence of judges, on trafficking, on human rights and counter-terrorism, on racism, on the sale of children, on violence against women and on freedom of assembly. They also include the Working Group on mercenaries.<sup>119</sup>

*b. Compliance with Reporting Obligations to Treaty Monitoring Bodies*

In its voluntary pledge, Nigeria committed to cooperate with treaty monitoring bodies, including through submission of reports and the implementation of observations and recommendations. Nigeria however failed to adhere to its pledge. As of May 2018, Nigeria had nine outstanding reports against it with treaty monitoring bodies, with four reports pending for more than last five years.<sup>120</sup> These are CRC, CRC-OP-AC, CMW and CED. Reports to CAT and CESC are pending for more than last 15 years.

As per its voluntary pledge, Nigeria did ratify the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 2009.

*c. Compliance with Thematic Issues*

Nigeria’s domestic situation on the ground appears contrasting from its pledges and commitments at the Council. Nigeria joined the consensus for the resolution on accelerating efforts to *Eliminate violence against women and girls*. This resolution called upon States to enact legislations which allows for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts.<sup>121</sup> However, due to ongoing conflict in its northeast, there are widespread attacks and abductions of civilians, particularly of women and children.<sup>122</sup> Reportedly, in the displacement camps, many women and girls, who after surviving the brutal rule of Boko Haram were being raped by Nigerian security forces in exchange for food.<sup>123</sup> CEDAW, in its concluding observations in 2017, stated that gender-based violence against women and girls, including domestic violence, remains prevalent.<sup>124</sup>

Even though Nigeria reaffirmed its commitment to human rights instruments in its pledge, closed-door military trials and *extrajudicial killings* have been underway, where human rights groups accuse the government of picking up Boko Haram suspects at random, particularly women and children.<sup>125</sup> Despite committing itself to follow international human rights instruments which it ratified, including the International Covenant on Civil and Political Rights, this has given way to concerns about fair trials and due processes being followed. In September 2017, 10 members of the Indigenous People of Biafra (IPOB) were killed and 12 others wounded by soldiers in Umuahia, Abia State.<sup>126</sup>

119 Office of the High Commissioner for Human Rights, Special Procedures. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

120 Office of the High Commissioner for Human Rights, Human Rights Bodies. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx).

121 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

122 United Nations Children’s Fund “More than 1,000 children in northeast Nigeria abducted by Boko Haram since 2013”. Available at: <https://news.un.org/en/story/2018/04/1007201>.

123 Lauren Aarons, “Boko Haram survivors starved and raped by Nigeria’s military”, Al Jazeera, 24 May 2018. Available at: <https://www.aljazeera.com/indepth/opinion/boko-haram-survivors-starved-raped-nigeria-military-180523144207062.html>.

124 Concluding observations on the combined seventh and eighth periodic reports of Nigeria. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NGA/CO/7-8&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NGA/CO/7-8&Lang=En).

125 The Guardian, “Dozens of Boko Haram Members convicted in mass secret trial in Nigeria”, 14 October 2017. Available at: <https://www.theguardian.com/world/2017/oct/14/dozens-of-boko-haram-members-convicted-in-mass-secret-trial-in-nigeria>.

126 Amnesty International, World Report 2017/2018. Available at: <https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/>.

Additionally, Nigeria imposed the highest number of death sentences in Sub-Saharan Africa in 2017, with 621 people put to death.<sup>127</sup>

In its voluntary pledge, Nigeria committed to the International Covenant on Civil and Political Rights (ICCPR). However, Nigeria is witnessing declining levels of freedom regarding speech and expression. According to the Press Freedom Index (2018), Nigeria restricts its media's ability to report on issues such as conflict, violence, terrorism and corruption.<sup>128</sup> Since Nigeria's cybercrime act was voted into law in May 2015, authorities have used charges of cyber stalking to muzzle freedom of expression online.<sup>129</sup> Cyber stalking stipulated under Section 24 of the Act, carries a fine of up to 7 million naira (USD \$22,000) and a maximum sentence of three years.

Nigeria voted against the resolution on *Civil society space* which urged States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors.<sup>130</sup> In December 2017, the Nigerian parliament debated a bill to regulate and restrict the work of civil society organisations.<sup>131</sup> The bill under consideration would establish an NGO regulatory commission to keep a register of all NGOs, coordinate their activities, and monitor their budgets and funding.<sup>132</sup> The commission would also have discretion over which organisations can register and it require re-register within two years.<sup>133</sup> Regulating foreign funding to ensure national security is said to be the purported aim of the draft bill but it is open to broad interpretations, giving the government ample opportunity to misuse state power with impunity.<sup>134</sup> Civil society within the country has called the bill "extremely dangerous" and a threat to the cause of government accountability, advocacy, and the promotion of democracy.<sup>135</sup>

Nigeria joined the consensus on a resolution pertaining to *Promotion and protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>136</sup> At the interactive dialogue on the freedom of peaceful assembly and association during the 38th Session of the Human Rights Council, Nigeria stated that freedom of assembly and association is a critical component of democracy, good governance and rule of law.<sup>137</sup> It also acknowledged the need to provide an "enabling environment" to civil society to ensure the promotion and protection of human rights. However, on 10 July 2018, heavily armed police officials ordered a group of Peace Corps members to disperse, as they peacefully marched to the Corps' national headquarters in Jabi, Abuja to commemorate their 20th anniversary.<sup>138</sup> The police shot and teargassed the group leading to two people sustaining various injuries.<sup>139</sup>

On the issue of *sexual orientation and gender equality*, Nigeria has some of the toughest anti-homosexuality laws in

127 Marcel Mbamalu and Anayo Umeh, "Nigeria's death sentence highest in Sub-Saharan Africa", *The Guardian*, 13 April 2018. Available at: <https://guardian.ng/news/nigerias-death-sentences-highest-in-sub-saharan-africa/>; Amnesty International, "The Death Penalty in 2017: Facts and Figures", 12 April 2018. Available at: <https://www.amnesty.org/en/press-releases/2018/04/death-penalty-facts-and-figures-2017/>.

128 Reporters Without Borders, "Climate of permanent violence". Available at: <https://rsf.org/en/nigeria>.

129

130 *Supra* note 24.

131 Paul Carsten, "Nigeria NGOs slam civil society bill as grave threat to freedoms", *Reuters*, 13 December 2017. Available at: <https://www.reuters.com/article/us-nigeria-rights/nigeria-ngos-slam-civil-society-bill-as-grave-threat-to-freedoms-idUSKBN1E72CO>; <http://www.icnl.org/research/monitor/nigeria.html>.

132 Adewale Kupoluyi, "On the NGO regulation bill", *Vanguard*, 9 October 2017. Available at: <https://www.vanguardngr.com/2017/10/ngo-regulation-bill/>.

133 Paul Carsten, "Nigeria NGOs slam civil society bill as grave threat to freedoms", *Reuters*, December 13 2017. Available at: <https://www.reuters.com/article/us-nigeria-rights/nigeria-ngos-slam-civil-society-bill-as-grave-threat-to-freedoms-idUSKBN1E72CO>

134 *Ibid*.

135 Paul Carsten, "Nigeria's NGO slam civil society bill as grave threat to freedoms", *Reuters*, 13 December, 2017. Available at: <https://www.reuters.com/article/us-nigeria-rights/nigeria-ngos-slam-civil-society-bill-as-grave-threat-to-freedoms-idUSKBN1E72CO>; Civic Freedom Monitor: Nigeria. Available at: <http://www.icnl.org/research/monitor/nigeria.html>.

136 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

137 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

138 Goodness Adaoyiche, "2 Shot as Police disrupt Peace Corps 20th anniversary in Abuja", *Pulse*, 11 July 2018. Available at: <https://www.pulse.ng/news/local/2-shot-as-police-disrupt-peace-corps-20th-anniversary-in-abuja-id8601513.html>.

139 *Vanguard*, "Peace Corps marks 20th anniversary, appeals to I-G to unseal office", 10 July 2018. Available at: <https://www.vanguardngr.com/2018/07/peace-corps-marks-20th-anniversary-appeals-to-i-g-to-unseal-office/>.

Africa. According to Nigeria's Criminal Code, "carnal knowledge of any person against the order of nature...is guilty of a felony, and is liable to imprisonment for 14 years."<sup>140</sup> Nigeria's Same-Sex Marriage (Prohibition) Act, 2013, has led to an increase in extortion and violence against LGBT people and had imposed restrictions on non-governmental organisations providing assistance to the community.<sup>141</sup> The law imposes a 10-year imprisonment solely for a person's actual or imputed sexual orientation and anyone who "registers, operates or participates in gay clubs" including supporters of those groups.<sup>142</sup> The law is used by police officers and members of the public to legitimise abuses against LGBT people including mob violence, arbitrary arrest, torture in detention, and physical and sexual violence.<sup>143</sup> In April 2018, two men in Imo State were stripped naked, beaten and paraded on the streets after being accused of having gay sex and were then arrested by the police.<sup>144</sup> Similarly, a pastor from Aguata local government area in Nigeria's Anambra State was abused and assaulted for being gay.<sup>145</sup> These incidents are illustrative of the entrenched homophobia in Nigerian society, with perpetrators acting with impunity as they believe that they have the tacit approval of the State in the form of laws such as the Same-Sex Marriage Act. Nigerian police arrested over 100 men and women at a hotel in Asaba, Delta State, for allegedly being gay and lesbian, in June 2018.<sup>146</sup> They were later charged with homosexual offences.<sup>147</sup>

## VI. Conclusions

- Nigeria has failed to adhere to its pledge to cooperate with treaty monitoring bodies, as it has nine reports outstanding against it. It has three reports outstanding against it for more than ten years and four reports pending for the last five years.
- Despite its commitment through voluntary pledge, Nigeria has failed to accept requests from 14 Special Procedure Mechanisms.
- Even though Nigeria reaffirmed its commitment to human rights instruments in its pledge, closed-door military trials and extrajudicial killings have been underway. Observation of violence against women as well as declining levels of freedom of speech and expressions are reported. In terms of sexual orientation and gender equality, Nigeria has some of the toughest anti-homosexuality laws in Africa.

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140 Section 352 of the Criminal Code Act of Nigeria. Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=218191](http://www.wipo.int/wipolex/en/text.jsp?file_id=218191).

141 Human Rights Watch, "Nigeria: Anti LGBT Law Threatens Basic Rights", 14 January 2014. Available at: <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic-rights>.

142 Same Sex Marriage (Prohibition) Act 2014. Available at: <http://www.lawnigeria.com/LawsOfTheFederation/Same-Sex-Marriage-Prohibition-Act,-2014.html>.

143 Human Rights Watch, "Tell Me Where I Can Be Safe," October 20 2016. Available at: <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>.

144 Erasing 76 Crimes, "Nigeria: 2 men stripped, paraded for alleged sex", 26 April 2018. Available at: <https://76crimes.com/2018/04/26/nigeria-2-men-stripped-paraded-for-alleged-sex/>.

145 Mike Daemon, "Gay pastor in Nigeria stripped naked by homophobes", Erasing 76 Crimes, 17 April 2018. Available at: <https://76crimes.com/2018/04/17/gay-pastor-in-nigeria-stripped-naked-by-homophobes/>.

146 Nostringsng, "Nigeria: Police arrest over 100 alleged gay and lesbians", 11 June 2018. Available at: <https://nostringsng.com/police-arrest-alleged-gay-lesbians/>.

147 Nosrtingsng, "Asaba Arrest: Youths stand trial in court on grounds of homosexuality", 27 June 2018. Available at: <https://nosrtingsng.com/youths-trial-court-homosexuality-asaba/>.

## I. Introduction

Pakistan's candidature to the Human rights council (HRC) was supported by 151 countries in the elections for membership to the Council.<sup>148</sup> It is currently the Coordinator of the Organisation for Islamic Cooperation (OIC) Group on Human Rights and Humanitarian Affairs in Geneva.<sup>149</sup>

## II. Voluntary Pledges and Commitments

Pakistan pledged in 2017 to promote and protect human rights at the national and international levels through cooperation and engagement. It further committed to proactively engage with the Council, its machinery, processes and initiatives, as well as with the international community, UN Agencies and civil society.<sup>150</sup>

Pakistan pledged to:

### At the National Level

- Undertake effective enforcement of its existing human rights legislation and policy. It further pledged to prioritise future interventions on women, children, minorities, persons with disabilities and other vulnerable segments of society.
- Implement the National Action Plan for human rights.
- Formulate a mechanism for reviewing existing legislation and proposing new legislation in consultation with provincial governments and civil society.
- Enhance the operational effectiveness of national human rights institutions.
- Improve capacity-building of government officials, including treaty implementation cells.
- Ensure speedy justice for victims of human rights violations and create human rights awareness.
- Establish and strengthen safety infrastructure for women.
- Establish a national commission for the rights of children and strengthen the National Council for the Persons with Disabilities.
- Protect the rights of minorities and promote interfaith harmony.
- Effectively utilise funds for free legal aid.
- Expand the scope of toll-free helplines in all provinces.
- Mainstream human rights into development planning.

### At the International Level

Pakistan committed to strengthening its contribution towards the global promotion of human rights and positively engage with the Human Rights Council on the following lines:

- Make the Council a forum for genuine dialogue and cooperation through non-discrimination and impartiality as per the Institution Building Package (HRC Res. 5/1).
- Contribute to the effectiveness of the Council's Mechanisms and its review process.
- Strengthen the Council to promote dialogue, cooperation, capacity-building and technical assistance for the protection and promotion of human rights.

148 APP, "Pakistan elected to UN Human Rights Council, polling 151 votes", The Nation, 17 October 2017. Available at: <https://nation.com.pk/17-Oct-2017/pakistan-elected-to-un-human-rights-council-polling-151-votes>.

149 United Nations General Assembly, Note verbale dated 11 May 2017 from the Permanent Mission of Pakistan to the United Nations, addressed to the President of the General Assembly, 18 May 2017. Available at: <http://undocs.org/A/72/88>.

150 United Nations General Assembly, Note verbale dated 11 May 2017 from the Permanent Mission of Pakistan to the United Nations, addressed to the President of the General Assembly, 18 May 2017. Available at: <http://undocs.org/A/72/88>.

- Promote constructive engagement, dialogue and cooperation with the concerned States in addressing “situations of concern” at the Council.
- Strengthen participation in the UPR and make useful recommendation to other States.
- As Coordinator of the OIC Group on Human Rights and Humanitarian Affairs in Geneva, work on maintaining solidarity between the Islamic world and the West.
- Continue to support the UN Alliance of Civilizations to promote a culture of dialogue, tolerance and cooperation among the nations of the world.
- Support the OHCHR in carrying out its mandate through coordination and liaison.
- Comply with treaty obligations, ensure periodic submission of reports and engage constructively during the reviews.
- Strengthen cooperation and engagement with the High Commissioner for Human Rights and Special Procedures.

### III. Pakistan’s Participation in the 38th Session of the HRC

On 19 June 2018 the Permanent Representative of Pakistan delivered a statement welcoming the OHCHR Report on Kashmir.<sup>151</sup> Pakistan welcomed the Report’s proposal to establish a Commission of Inquiry for international investigation into human rights violations in Indian Occupied Kashmir (IOK). The Permanent Representative stated that the Report documents excessive use of force, arbitrary arrests, detentions and disappearances, cases of mass graves and continued sexual violence, as part of the overall impunity enjoyed by Indian security forces in Kashmir.

Pakistan participated in several interactive dialogues and general debates during the 38th Session.

S. No.	Interactive Dialogue	Pakistan’s Interventions
1	Clustered interactive dialogue with the Special Rapporteur on the right to health and the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>• Acknowledged cognizance of its obligations to realise the rights to health of all its citizens including those imprisoned.</li> <li>• Emphasised that the prison departments in Pakistan are ensuring compliance of the Pakistan Prison Rules, 1978 that mandate the authorities to facilitate and provide medical cover to all inmates.<sup>152</sup></li> <li>• Stated that Pakistan’s independent judiciary plays a key role in ensuring that these rights are adequate and quality health facilities are provided to those in the prison.<sup>153</sup></li> </ul>
2.	Clustered interactive dialogue with the Independent Expert on human rights and international solidarity and the Special Rapporteur on the right to education	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>• Stated that their education budget has been increasing incrementally and has gone up by an average of 17.5% every year since 2010. The provinces have allocated around 24% of their budgets for education.</li> <li>• Asserted that they are working arduously on standardising curricula and equipping schools with necessary infrastructure.<sup>154</sup></li> </ul>

151 Office of the United Nations High Commissioner for Human Rights “Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan”. Available at: <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

Indrani Bagchi, “India slams UN report on Kashmir, calls it ‘selective compilation of largely unverified information’”, Times of India, 14 June 2018. Available at: <https://timesofindia.indiatimes.com/india/india-slams-un-report-on-kashmir-calls-it-selective-compilation-of-largely-unverified-information/articleshow/64588993.cms>.

152 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

153 Human Rights Case number 2760/2006. Available at: [http://www.supremecourt.gov.pk/HR\\_Cases/4rth%20final/2760of2006.pdf](http://www.supremecourt.gov.pk/HR_Cases/4rth%20final/2760of2006.pdf).

154 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

3.	Clustered interactive dialogue with the Special Rapporteur on summary executions and the Special Rapporteur on the right to freedom of opinion and expression	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Highlighted that free media has played an important role in mainstreaming human rights in Pakistan’s political discourse.</li> <li>Commented that freedom of expression, like all rights, must be exercised with responsibility.</li> <li>Maintained that xenophobic, hate content, extremism, obscenity and sexual violence openly available on the Internet affect not just human rights, but the safety and security of every citizen, particularly minorities, women and children.<sup>155</sup></li> </ul>
4.	Clustered interactive dialogue with the Working Group on discrimination against women and the Special Rapporteur on trafficking in persons, especially women and children	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Affirmed its commitment to uphold and safeguard the rights of women. Pakistan informed the HRC that cross-sectorial policies aimed at reducing gender inequalities, removing barriers to women’s participation, such as harassment at the workplace, making laws against gender-based violence, and ensuring women’s education have been adopted and are being implemented. In order to achieve women’s empowerment, the government has made education for children up to 16 years of age, free and compulsory.<sup>156</sup></li> </ul>
5.	Clustered interactive dialogue with the Special Rapporteur on extreme poverty and the Special Rapporteur on internally displaced persons	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Highlighted that they have been actively pursuing policies aimed at lifting its people from poverty. Several steps have been taken to ensure empowerment of women, who are the change-bearers, at the grass-root level. The Benazir Income Support Programme (BISP) is the flagship safety-net programme with a particular emphasis on women. The Prime Minister’s Youth Business Loan, also empowers the youth to become young entrepreneurs by providing them with opportunities for economic self-sufficiency.<sup>157</sup></li> </ul>
6.	Clustered interactive dialogue with the Working Group on human rights and transnational corporations and the Special Rapporteur on the independence of judges and lawyers	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Fully supported the independence of the judiciary and lawyers and considers it important for a functioning democracy.</li> <li>Maintained that it’s Constitution and legal framework fully ensures the separation of powers of the executive, judiciary and legislature. The “Basic Principles on the Independence of the Judiciary” indicated in the report are embedded in Pakistan’s governance system.<sup>158</sup></li> </ul>
7.	Interactive dialogue with the Special Rapporteur on racism	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Maintained that it has actively supported global efforts in combating racial discrimination and has played an important role in the implementation of resolutions combating intolerance and xenophobia.</li> <li>Stated that it has taken a number of steps domestically to enhance religious and cultural harmony. It claimed that at the governmental and societal level in general, there is no discrimination on the basis of religion or belief in official undertakings. Pakistan claimed that the National Plan of Action for Human Rights covers a wide range of issues for the promotion and protection of all human rights and enhances harmony among all people.<sup>159</sup></li> </ul>

155 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

156 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=20/06/2018%2000:00:00>.

157 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=21/06/2018%2000:00:00>.

158 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=25/06/2018%2000:00:00>.

159 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

8.	Interactive dialogue with the High Commissioner on the situation of human rights of Rohingya Muslims and other minorities in Myanmar	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Expressed concerns on the lack of progress to end the grave human rights violations against the Rohingya Muslims and called upon the government of Myanmar to take firm steps to immediately end the violence.</li> <li>Urged Myanmar to bring the perpetrators of violence to justice, take concrete steps to address the root causes of discrimination against the Rohingyas and ensure their wellbeing including their legitimate right to citizenship and return in conditions of safety with dignity to their ancestral homes in Myanmar.<sup>160</sup></li> </ul>
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S. No.	General Debate	Pakistan's Interventions
1	Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (including thematic reports of the High Commissioner for Human Rights and the Secretary-General)	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Stated that it views all human rights as equal and indivisible, to be treated with similar attention and emphasis. Pakistan believes that the OHCHR Report on Kashmir highlights violations of civil, political, economic and cultural rights in Indian Occupied Jammu and Kashmir (IoK).</li> <li>Raised the issue that the right to self-determination for Kashmiris has not yet been granted by India, despite promises made by its first prime minister.<sup>161</sup></li> </ul>
2.	General Debate on Human rights situations that require the Council's attention	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Raised its concern about the growing scale of xenophobia, racial discrimination and anti-Muslim sentiments created by extremist political parties leading to rising chauvinistic nationalism around the world. Pakistan believes the EU and its Member States should address this problem and adopt an even-handed approach on global human rights.</li> <li>Requested the Council to urge India to implement the recommendations of the OHCHR Report and agree to establish a commission of inquiry.<sup>162</sup></li> </ul>
3.	General Debate on Human rights bodies and mechanisms	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Maintained that inclusive and sustained growth can happen by improving conditions for workers at the bottom of the supply chain, with special attention to the situation of women, temporary workers and migrants.</li> <li>Stated that it is in the best interests of transnational corporations to abide by the UN Guiding Principles to enhance their credibility and image in the eyes of the people, especially the consumers.<sup>163</sup></li> </ul>
4.	General Debate on Universal Periodic Review	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>On behalf of OIC, asserted that the UPR mechanism aims at promoting universality, interdependence, indivisibility and inter-relatedness of all human rights. It ensures universal coverage and equal treatment of all States and the OIC Member States strongly support it.</li> <li>Further stated that OIC Member States appreciate the valuable role of civil society and national human rights institutions in supporting the Member States.<sup>164</sup></li> </ul>

160 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=04/07/2018%2000:00:00>.

161 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=25/06/2018%2000:00:00>.

162 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=27/06/2018%2000:00:00>.

163 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=27/06/2018%2000:00:00>.

164 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=29/06/2018%2000:00:00>.

5.	General Debate on the Human rights situation in Palestine and other occupied Arab territories	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Maintained that it is concerned by three aspects of human rights violations on the people of Palestine: <ul style="list-style-type: none"> <li>The blockade of Gaza and the separation wall in the West Bank are causing untold sufferings on the lives and livelihood of Palestinian people;</li> <li>The military check posts, arbitrary arrests, detentions and harassment of ordinary citizens have become instruments of collective punishment for the Palestinian people;</li> <li>The expanding Israeli settlements and violence provoked by the settlers vex a volatile situation and will complicate the settlement of the crisis.<sup>165</sup></li> </ul> </li> </ul>
6.	General Debate on Follow-up and implementation of the Vienna Declaration and Programme of Action	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Stated that there was an urgent need for the international community to work together for a global culture of stronger respect for diversity of culture, greater tolerance and more compassion for values of each other's beliefs as well as social and political systems.</li> <li>Affirmed that it believes that the principles enshrined in landmark instruments such as the Vienna Declaration and Programme of Action guide countries through the dynamic realities of today's age of globalisation in which the need for cohesion and harmony in approach is essential to make sustained progress in the field of human rights.<sup>166</sup></li> </ul>
7.	General Debate on Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Reiterated its concerns on the upsurge of new and contemporary forms of racism, racial discrimination, xenophobia and related intolerances.</li> <li>Highlighted that they have been at the forefront of global efforts in combating colonialism and racial discrimination and played a lead role in the elaboration of ICERD.<sup>167</sup></li> </ul>
8.	Annual thematic panel discussion on technical cooperation in the promotion and protection of human rights – Human rights and the Sustainable Development Goals	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Believes it is important to ensure human rights technical cooperation and capacity-building for States to contribute to the effective, coherent and inclusive realisation of the 2030 Agenda. Such cooperation would support development of a coherent policy approach to sustainable development, and contribute to the implementation of the SDGs and realisation of human rights.<sup>168</sup></li> </ul>
9.	Technical assistance and capacity-building (including oral update on Georgia) and oral update on Burundi	<p>Pakistan:</p> <ul style="list-style-type: none"> <li>Asserted that strong cross linkages exist between the 2030 Agenda and the technical cooperation and capacity building arm of the Human Rights Council. To effectively yield results from these linkages, countries must follow transparent and credible programmes for technical cooperation can yield tangible benefits.</li> <li>Urged the international community to cooperate and constructively support each other's efforts to promote and protect all human rights.<sup>169</sup></li> </ul>

165 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

166 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

167 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

168 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=04/07/2018%2000:00:00>.

169 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=04/07/2018%2000:00:00>.

## IV. Pakistan's Voting Pattern on Resolutions

### *Thematic Resolutions*

Pakistan voted in favour of three resolutions concerning *Human rights and international solidarity*,<sup>170</sup> *Enhancement of international cooperation in the field of human rights*,<sup>171</sup> and *Civil society space: Engagement with international and regional organisations*.<sup>172</sup> In its explanation to the vote concerning civil society space, Pakistan stated that an open and inclusive civil society space is protected by its Constitution and its legal framework ensures active civil society engagement at different levels of governance and sectors.<sup>173</sup>

Pakistan spoke on three resolutions adopted by consensus:

- On the resolution concerning *Elimination of all forms of discrimination against women and girls*,<sup>174</sup> Pakistan sought to promote women's rights to participate in all spheres of life, free of discrimination and remains committed to upholding and safeguarding the rights of women.<sup>175</sup>
- On the resolution pertaining to *Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts*<sup>176</sup> Pakistan reiterated that they are committed to upholding and safeguarding the rights of women, including elimination of all forms of violence against them.<sup>177</sup>
- On the resolution concerning *Promotion and protection of human rights in the context of peaceful protests*<sup>178</sup> Pakistan asserted that being a functioning parliamentary democracy, with an independent judiciary, a free media and a vibrant civil society, it deeply values fundamental freedoms including freedom of opinion and expression, and assembly. It criticised the Indian government for perpetrating violence upon protestors in Kashmir as was highlighted in the OHCHR Report.<sup>179</sup>

Pakistan abstained from the resolution concerning *the contribution of the Human Rights Council to the prevention of human rights violations*.<sup>180</sup> This resolution urged States and other relevant stakeholders to cooperate fully with the chair-rapporteur and other rapporteurs. It also called upon States to provide them with all the relevant information to enable them to fulfil their mandate.

### *Country Situations*

Pakistan abstained from voting on two resolutions concerning *Situation of human rights in Belarus*,<sup>181</sup> and *the Human rights situation in the Syrian Arab Republic*.<sup>182</sup>

## V. Analysis: Compliance with Pledges and Commitments

### *a. Engagement with UN Special Procedures*

170 Resolution 38/2 Human rights and international solidarity (2018).

171 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).

172 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

173 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=05/07/2018%2000:00:00>.

174 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

175 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=05/07/2018%2000:00:00>.

176 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

177 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=05/07/2018%2000:00:00>.

178 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

179 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=05/07/2018%2000:00:00>.

180 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

181 Resolution 38/14 Situation of human rights in Belarus (2018).

182 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).

In its voluntary pledge, Pakistan committed to “strengthen cooperation and engagement with the High Commissioner for Human Rights and Special Procedures”. However, there is no standing invitation from Pakistan to Special Procedures, and the country has four requests and seven reminders pending in the last five years. They are from the Special Rapporteurs on freedom of assembly, on internally displaced persons, on housing, on racism, on human right defenders, on extrajudicial, summary or arbitrary executions, on human rights and counter-terrorism, on extreme poverty, on slavery, on freedom of religion, on minority issues, on cultural rights and on torture. Also pending are requests from the Working Group on discrimination against women and the Independent Expert on minorities.<sup>183</sup>

#### b. *Compliance with Reporting Obligations to Treaty Monitoring Bodies*

Pakistan committed to comply with treaty obligations, to ensure periodic submission of reports and constructive engagement during the reviews. Pakistan has three treaty body reports outstanding against it:

- for CEDAW since 2017
- for CRPD and CRC-OP-SC since 2013.<sup>184</sup>

On reporting on other treaties, Pakistan has a good record though some reports were submitted after four to five years of delay.

Furthermore, Pakistan has refrained from accepting individual complaints procedures under CAT, CCPR-OP1, CEDAW-OP, CESCR-OP, CRC-OP-IC and CRPD-OP, which makes treaty compliance less effective.<sup>185</sup>

#### c. *Compliance with Thematic Issues*

In its election pledge, Pakistan stated that it “firmly resolved to uphold, promote and safeguard universal human rights and fundamental freedoms for all.” However, domestic human rights violations have been regularly noted and discussed by national and international actors. These issues range from right of peaceful assembly and association, blasphemy laws and freedom of expression, discrimination based on sexual orientation and gender identity, violence against women, independence of the judiciary and lawyers and summary executions.

Pakistan voted in favour of the resolution concerning *Protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>186</sup> However, in the run up to the July 2018 elections in Pakistan, the government severely curtailed the freedoms of expression and peaceful assembly.<sup>187</sup> The government clampdown on dissent is total whether it takes place on the streets, in print and electronic mediums of dissemination or on social media.<sup>188</sup> This is in stark contrast to the assertion made by Pakistan during the clustered interactive dialogue with the Special Rapporteur on summary executions and the Special Rapporteur on the right to freedom of opinion and expression, that it views a free and independent media as an important pillar of the country.<sup>189</sup> As per the Amnesty International report of 14 June 2018, 37 activists were detained in the overcrowded Adiala Jail in Rawalpindi for participating in the Pashtun Tahaffuz Movement’s (PTM) peaceful protests which demanded an end to extrajudicial executions, enforced disappearances and other human rights violations.<sup>190</sup> These activists were charged with sedition and their bail requests were rejected following which their cases were transferred to an anti-terrorism

183 Office of the High Commissioner for Human Rights, Special Procedures. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=PAK](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=PAK).

184 Office of the High Commissioner for Human Rights, Human Rights Bodies. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx).

185 Office of the High Commissioner for Human Rights, Human Rights Bodies. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN).

186 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

187 Madeeha Anwar, “Freedom of Expression in Pakistan Continues to Face Challenges”, VoaNews, 3 May 2018. Available at: <https://www.voanews.com/a/freedom-expression-pakistan-continues-face-challenges/4376718.html>.

188 Amnesty International, “Pakistan: Alarming crackdown ahead of elections”. Available at: <https://www.amnesty.org/en/latest/news/2018/06/pakistan-alarming-crackdown-ahead-of-elections>.

189 Pakistan’s Mission to the United Nations. Available at: <http://pakistanmission-un.org/?p=2506>.

190 Amnesty International, “Pakistan: Alarming crackdown ahead of elections”. Available at: <https://www.amnesty.org/en/latest/news/2018/06/pakistan-alarming-crackdown-ahead-of-elections>.

court.<sup>191</sup> In a similar incident, in June 2018, Gul Bukahri, a British Pakistani columnist was arbitrarily detained for being critical of the Pakistani military and supporting PTM's movement for constitutional rights.<sup>192</sup> Another example of the ongoing attack on the freedom of expression in Pakistan happens to be the disruption of newspapers such as Dawn allegedly for having an independent editorial policy.<sup>193</sup> News agents and vendors have been warned of dire consequences if they sell the newspaper.<sup>194</sup>

On the issue of *sexual orientation and gender identity*, there has been systemic discrimination against members of the LGBTQ community in Pakistan, as the government has failed to provide adequate safeguards for the protection of their rights.<sup>195</sup> The country's transgender community was counted for the first time in the national census as late as in 2017, which recorded 10,418 transgender people in a population of around 207 million.<sup>196</sup> However, this figure was said to be a significant underestimate according to Trans Action Pakistan.<sup>197</sup> A positive change in this regard, however, was the adoption of the Transgender Persons (Protection of Rights) Act, 2018 which bans discrimination against and outlaws harassment of transgender people.<sup>198</sup> Despite this historic advance for LGBTQ rights, there were incidents of violent attacks and harassment. A transgender woman was shot dead in Karachi last year.<sup>199</sup> In another incident on 4 May 2018, another transgender woman was fatally shot in Khyber Pakhtunkhwa (K-P).<sup>200</sup> These incidents are illustrative of the government's failure to ensure assistance to victims and hold those responsible accountable.<sup>201</sup>

Pakistan joined the consensus for the resolution concerning *Elimination of all forms of discrimination against women and girls*.<sup>202</sup> Amongst other aspects, this resolution called upon States to ensure that international obligations on gender equality and non-discrimination are incorporated at all levels of legal frameworks, including in relation to women's and girls' access to justice, redress and effective remedies. The Summary of Stakeholders' submissions on Pakistan prepared by OHCHR for the Universal Periodic Review, noted that minority women were doubly subject to discrimination for being a woman and a minority.<sup>203</sup> In the submissions, it was also observed that access to justice remained difficult for women, with police officers and lawyers often encouraging survivors of violence to reach "out-of-court" settlements.<sup>204</sup>

Pakistan joined the consensus for the resolution pertaining to the *Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts*.<sup>205</sup> This resolution calls upon States to enact legislations which allow for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts. The Human Rights Committee in its concluding observations in 2017 noted that the practice of "honour killings" continues to be prevalent in Pakistan and is illustrative of the brutalisation and abuse of women.<sup>206</sup> In Faisalabad district, a total of 53 women were murdered in the name of

191 Ibid.

192 Ibid.

193 Ibid.

194 Ibid.

195 Human Rights Watch 2018 World Report. Available at: <https://www.hrw.org/video-photos/interactive/2018/04/16/sexual-orientation-gender-identity-country-profiles#pakistan>.

196 Arsalan Altaf, "Census results: Just over 10,000, transgender people only 0.005% of Pakistan's population", The Express Tribune, 25 August 2017. Available at: <https://tribune.com.pk/story/1490963/census-results-just-10000-transgender-people-0-005-pakistan-population/>.

197 Samuel Osborne, "Pakistan passes law guaranteeing transgender rights", Independent, 9 May 2018. Available at: <https://www.independent.co.uk/news/world/asia/pakistan-transgender-rights-lgbt-national-assembly-law-drivers-license-passport-a8343321.html>.

198 Transgender Persons (Protection of Rights) Act, 2018. Available at: [http://www.na.gov.pk/uploads/documents/1526547582\\_234.pdf](http://www.na.gov.pk/uploads/documents/1526547582_234.pdf).

199 The Amnesty International Report 2017/18. Available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan>.

200 Saroop Ijaz, "Another Transgender Woman Killed in Pakistan", Human Rights Watch, 8 May 2018. Available at: <https://www.hrw.org/news/2018/05/08/another-transgender-woman-killed-pakistan>.

201 Ibid.

202 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

203 Summary of Stakeholders' submissions on Pakistan. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/245/64/PDF/G1724564.pdf?OpenElement>.

204 Ibid.

205 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

206 Human Rights Committee, Concluding observations on the initial report of Pakistan, 23 August 2017. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/PAK/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/PAK/CO/1&Lang=En).

honour between February and June 2018.<sup>207</sup>

Until recent conviction of Rao Anwar, a former Karachi police chief, for the murder of Naqeebullah Mehsud, he had not faced any inquiry, despite reportedly killing 444 people in police encounters between 2011 and 2018.<sup>208</sup> Furthermore, the Human Rights Watch in its 2017 report titled “This Crooked System” brought to light the continued use of extrajudicial killings in the country. According to the annual report of Human Rights Commission of Pakistan (HRCP) for 2017, a total of 47 cases of violence and torture occurred in Pakistani jails, in which 32 men lost their lives, and one woman and 21 men were tortured.<sup>209</sup> The HRCP received 868 fresh cases of enforced disappearances during 2017, higher than the previous two years (649 in 2015 and 728 in 2016).<sup>210</sup>

## VI. Conclusions

Pakistan was an active participant during the 38th Session of the HRC. Apart from statements during interactive dialogues and general debates, Pakistan provided explanations for its votes on several resolutions voted upon and adopted by consensus.

- Pakistan’s engagement with the Special Procedures was poor as the country has 11 pending requests from Special Procedures.
- Pakistan has refrained from accepting individual complaints procedures under CAT, CCPR-OP1, CEDAW-OP, CESCR-OP, CRC-OP-IC and CRPD-OP, which makes treaty compliance less effective. In its election pledge, Pakistan stated that it “firmly resolved to uphold, promote and safeguard universal human rights and fundamental freedoms for all.”
- Concerns were observed regarding domestic human rights violations on the issues of freedoms of expression and peaceful assembly. On the issue of sexual orientation and gender equality, there has been systemic discrimination against members of the LGBTQ community in Pakistan, as the government has failed to provide adequate safeguards for the protection of their rights. There have also been widespread instances of “honour killings” and extrajudicial killings in Pakistan.

207 Highest number of “honour killing” cases surface in Faisalabad, 6 July 2018. Available at: <https://www.pakistantoday.com.pk/2018/07/06/highest-number-of-honour-killing-cases-surface-in-faisalabad>.

208 Highest number of “honour killing” cases surface in Faisalabad, 6 July 2018. Available at: <https://www.pakistantoday.com.pk/2018/07/06/highest-number-of-honour-killing-cases-surface-in-faisalabad>.

209 Human Rights Commission of Pakistan, “State of Human Rights in 2017”. Available at: <http://hrcp-web.org/publication/wp-content/uploads/2018/04/State-of-Human-Rights-in-2017.pdf>

210 Ibid, Page 66.

## I. Introduction

Rwanda's term at the Human Rights Council (HRC) ends in 2019. It was elected in 2016 and began its term in 2017. This was the first time that Rwanda stood for election at the Council. The country also currently holds a vice-presidency of the Council.<sup>211</sup>

## II. Voluntary Pledges and Commitments

Rwanda did not submit a voluntary pledge.

## III. Rwanda's Participation at the 38th Session of the HRC

Rwanda's level of participation at the Council was low. The country only made one statement during a general debate on the High Commissioner for Human Rights Oral Update.<sup>212</sup> During his global oral updates, the High Commissioner for Human Rights criticised Rwanda for suspending the visit of the Sub-Committee on the Prevention of Torture (SPT) in October 2017, by means of a series of obstructions imposed by authorities, such as accessing some places of detention, confidentiality of certain interviews and over concerns that some interviewees could face reprisals.<sup>213</sup>

In its response, Rwanda stated that they acceded to, and fully facilitated, the visit of the SPT, including granting full and unimpeded access to places of detention and to detainees. Rwanda rejected outright, allegations of reprisals and intimidation as being without basis in reason or fact. Rwanda further stated that it has taken the issue of reprisals extremely seriously and has put in place prevention and investigatory mechanisms to address and respond to allegations of reprisals. Rwanda concluded its statement by asserting that the SPT's Mission to Rwanda was concluded and that in accordance with the OPCAT, its findings should have been shared with Rwanda.<sup>214</sup>

## IV. Rwanda's Voting Pattern on Resolutions

### *Thematic Resolutions*

Rwanda voted in favour of all four thematic resolutions during the Session concerning *Human rights and international solidarity*,<sup>215</sup> *Enhancement of international cooperation in the field of human rights*,<sup>216</sup> *Civil society space: Engagement with international and regional organisations*,<sup>217</sup> and the resolution on Contribution of the Human Rights Council to the prevention of human rights violations.<sup>218</sup>

### *Country Situations*

Rwanda voted in favour of the resolution on *Human rights situation in the Syrian Arab Republic*<sup>219</sup> and abstained from the resolution concerning the *Situation of human rights in Belarus*.<sup>220</sup>

211 Office of the High Commissioner for Human Rights, Display news. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/MembersByGroup.aspx>.

212 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

213 Ibid.

214 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

215 Resolution 38/2 Human rights and international solidarity (2018).

216 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).

217 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018)

218 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

219 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).

220 Resolution 38/14 Situation of human rights in Belarus (2018).

Rwanda provided no explanations for its voting preferences.

## V. Analysis: Compliance with Pledges and Commitments

### a. Engagement with UN Special Procedures

In last five years, Rwanda has four requests pending for visits from the Special Procedures Mechanisms. These include that of the Working Group on Discrimination against Women, the Special Rapporteur on Truth, the Working Group on Arbitrary Detention and the Special Rapporteur on Rights to Water and Sanitation.<sup>221</sup>

### b. Compliance with Reporting Obligations to Treaty Monitoring Bodies

Rwanda has a good record on compliance with treaty body reporting mechanisms. Rwanda has submitted reports on time to CERD, CEDAW, and CAT. Other reports such as CRPD, CRC, CCPR, CRC-OP-AC and CRC-OP-SC were submitted with a delay of three to six years.<sup>222</sup> Though Rwanda has accepted inquiry procedures under CAT, CEDAW-OP and CRPD-OP, it has not accepted individual complaint procedures under CCPR-OP1, CRC-OP-IC and CESCR-OP.

### a. Compliance with Thematic Issues

The problems of *extrajudicial killings, torture and summary executions*, continue unabated in Rwanda. Rwanda ratified the Convention against Torture (CAT) in 2008, but allegations of non-compliance remain, as its military has frequently detained and tortured people, beating them, asphyxiating them, using electric shocks and staging mock executions.<sup>223</sup> The Committee against Torture, in its concluding observations on the second periodic report of Rwanda in 2017, raised concerns over the government's complicity in extrajudicial killings, enforced disappearances, intimidation of journalists and human rights defenders.<sup>224</sup> The Committee's concerns are in line with findings reported by Human Rights Watch in its 2017 report.<sup>225</sup> Detainees in military camps around Kigali are held incommunicado, without contact with family or access to a legal counsel.<sup>226</sup> Moreover, Human Rights Watch reported last year that the military routinely tortured detainees with beatings, asphyxiations, mock executions and electric shocks.<sup>227</sup>

Rwanda joined the consensus to support a resolution pertaining to *Promotion and protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>228</sup> Despite the Rwandan Constitution (Articles 35 and 36) guarantying freedoms of assembly and association, these rights are limited in practice.<sup>229</sup> Fear of arrest often leads individuals and organisations to refrain from exercising their right to peaceful assembly.<sup>230</sup> On 22 February, the excessive use of force by police against refugees who were protesting over a cut in food rations between refugees and police, led to the tragic death of 11 refugees with many others injured, including policemen.<sup>231</sup>

221 Country visits of Special Procedures of the Human Rights Council since 1998. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

222 2018 Deadlines for the submission of documentation. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx).

223 Bénédicte Jeannerod, "Rwanda's Torture Problem", Human Rights Watch, 23 November 2017. Available at <https://www.hrw.org/news/2017/11/23/rwandas-torture-problem>.

224 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the second periodic report of Rwanda, 21 December 2017. Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/RWA/CO/2&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/RWA/CO/2&Lang=En).

225 Torture and Unlawful Military Detention in Rwanda. Available at <https://www.hrw.org/node/309923/>

226 Human Rights Watch, "We Will Force You to Confess": Torture and Unlawful Military Detention in Rwanda, 10 October 2017. Available at <https://www.hrw.org/report/2017/10/10/we-will-force-you-confess/torture-and-unlawful-military-detention-rwanda>.

227 Ibid.

228 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

229 The Constitution of The Republic of Rwanda. Available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64236/90478/F238686952/RWA64236.pdf>.

230 Freedom in the World 2017. Available at <https://freedomhouse.org/report/freedom-world/2017/rwanda>.

231 United Nations High Commissioner for Refugees, "UNHCR shocked over refugee deaths in Rwanda", 26 February 2018. Available at <http://www.unhcr.org/rw/13150-unhcr-shocked-refugee-deaths-rwanda.html>.

Rwanda voted in favour of the resolution relating to *Civil society space*. This resolution urged States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors.<sup>232</sup> However, civil society in Rwanda is weak, due to many years of state intimidation and interference, leaving Rwandan human rights organisations largely unable to publicly document violations by state agents.<sup>233</sup> Registration and reporting requirements for both domestic and foreign NGOs are onerous.<sup>234</sup> Additionally, issues of reprisals and intimidations by Rwanda towards civil society members was brought to light by the UN Secretary General's report "Cooperation with the United Nations: Its Representatives and Mechanisms in the Field of Human Rights".<sup>235</sup> The report details intricately, the various instances of reprisals in Rwanda. Amongst other instances the report states that, on 18 January 2017, mandate holders raised concerns regarding acts of intimidation and reprisals, including an attempted kidnapping and intense daily interrogation, allegedly committed against Mr Robert Mugabe, a journalist and human rights defender, following his cooperation with United Nations human rights mechanisms.<sup>236</sup>

Rwanda voted in favour of the resolution pertaining to elimination of *Violence against women and girls*. This resolution called upon States to enact legislations which allows for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts.<sup>237</sup> In 2008, Rwanda legislated the Prevention and Punishment of Gender-Based Violence Act.<sup>238</sup> Despite the existence of a law, Gender-based violence (GBV) is still a widespread problem in Rwanda, with women remaining the primary people affected.<sup>239</sup> With regards to laws preventing violence against women in Rwanda, certain discriminatory legal provisions still remain. For example, while rape convictions ordinarily carry a prison sentence of at least five years, the punishment for marital rape is only two to six months' imprisonment and a fine.<sup>240</sup>

Rwanda voted in favour of the resolution on *Elimination of all forms of discrimination against women*. Amongst other aspects, this resolution called upon States to ensure that international obligations on gender equality and non-discrimination are incorporated at all levels of legal frameworks, including in relation to women's and girls' access to justice, redress and effective remedies.<sup>241</sup> However, the Concluding Observations on the combined seventh to ninth periodic reports of Rwanda in 2017, by the Committee on the Elimination of Discrimination against Women brought to the forefront a contrary aspect altogether.<sup>242</sup> The Committee was concerned about intersecting forms of discrimination and marginalisation experienced by Batwa women, who are exposed to extreme poverty, limited access to basic services, illiteracy, unemployment and gender-based violence. Further, the Committee recommended that Rwanda repeal all remaining legal provisions that are discriminatory towards women and that it adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds.<sup>243</sup>

## VI. Conclusions

- Rwanda did not submit its voluntary pledge and was elected in a clean-slate election.
- Contrary to Rwanda's assurances, on the 4 July 2018, the UN Subcommittee on Prevention of Torture (SPT) stated

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232 Ibid.

233 Human Rights Watch World Report 2018. Available at: <https://www.hrw.org/world-report/2018/country-chapters/rwanda>.

234 Ibid.

235 Office of the High Commissioner for Human Rights, Statements. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session36/Pages/ListReports.aspx>.

236 Ibid.

237 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

238 Law No. 59/2008 of 2008 on Prevention and Punishment of Gender-Based Violence. Available at: <http://www.refworld.org/docid/4a3f88812.html>.

239 Rudasingwa Messi Therese, "Gender-based violence in Rwanda: Getting everyone on board", The World Bank, April 23, 2018. Available at: <http://blogs.worldbank.org/nasikiliza/gender-based-violence-in-rwanda-getting-everyone-on-board>.

240 The Amnesty International Report 2017/18. Available at: <https://www.amnesty.org/en/countries/africa/rwanda/report-rwanda>.

241 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

242 Committee on the Elimination of Discrimination against Women. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybody-external/Download.aspx?symbolno=CEDAW/C/RWA/CO/7-9&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybody-external/Download.aspx?symbolno=CEDAW/C/RWA/CO/7-9&Lang=En).

243 Ibid.

that it had to suspend its visit yet again owing to the lack of cooperation by the government in Kigali.<sup>244</sup>

- Concerns were observed on thematic issues pertaining to peaceful protests, civil society space, violence against women and the existence of discrimination against women.
- On a positive note, Rwanda has a good record on compliance with reporting mechanisms of treaty monitoring bodies.

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<sup>244</sup> Ivan R. Mugisha, "UN anti-torture team cancels Rwanda visit, again", The East African, 16 July 2018. Available at: <http://www.theeastafrican.co.ke/news/ea/UN-anti-torture-team-cancels-Rwanda-visit/4552908-4666202-s7vny4z/index.html>.

## SOUTH AFRICA

### I. Introduction

South Africa served at the Human Rights Council (HRC) from June 2006 to June 2010 and then from January 2014 to December 2016.<sup>245</sup> South Africa was re-elected to serve a second consecutive three-year term starting 1 January 2017.<sup>246</sup>

### II. Voluntary Pledges and Commitments

In its voluntary pledge,<sup>247</sup> South Africa pledged to:

- Continue to receive visits of the Special Procedures and Mechanisms of the HRC in keeping with their various mandates, consistent with the standing invitation to all thematic Special Procedures.
- Respect the integrity and dignity of the Office of the High Commissioner for Human Rights (OHCHR).
- Continue contributing financially to the OHCHR.
- Continue to support important funds and programmes of the OHCHR and other entities aimed at advancing the cause of human rights globally, such as the United Nations Voluntary Fund for Victims of Torture, the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, the recently established United Nations Democracy Fund and the United Nations Development Fund for Women.
- Continue with its unwavering position to advocate for a balanced Sustainable Development Programme within the human rights framework.
- Ensure that the future sessions of the HRC will focus on the imperative need to update the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights through an amendment protocol which will seek to place the right to development at par with all other rights enumerated in those core instruments.
- Continue to submit country reports to human rights treaty monitoring bodies.
- Undertake to submit in the near future a National Action Plan (NAP) exclusively covering the area of racism and racial discrimination as required by the Durban Declaration and Programme of Action (DDPA).

### III. South Africa's Participation at the 38th Session of the HRC

South Africa participated in interactive dialogues and general debates:

S. No.	Interactive Dialogue	South Africa's Interventions
1	Clustered interactive dialogue with the Independent Expert on sexual orientation and gender identity and the Special Rapporteur on the rights to freedom of peaceful assembly and of association	<p>South Africa:</p> <ul style="list-style-type: none"> <li>• Acknowledged the Special Rapporteur's reports pertaining to armed non-state actors which reveal the complexity of the challenge faced in ensuring accountability for victims, and highlighted the importance of addressing the root causes and drivers of instability before conflict breaks out.</li> <li>• Highlighted that acceptable and exceptional limitations to freedom of expression may be necessary to safeguard sensitive processes of transitional justice and post-conflict democratisation.<sup>248</sup></li> </ul>

245 The Commonwealth at The Human Rights Council: A Decade of Voting (2006-2016). Available at: <http://www.humanrightsinitiative.org/download/1497945875THE%20COMMONWEALTH%20AT%20THE%20HUMAN%20RIGHTS%20COUNCIL.pdf>.

246 The Permanent Mission of South Africa to the United Nations, Address to the President of the General Assembly, 26 April 2007. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/327/13/PDF/N0732713.pdf?OpenElement>.

247 The Permanent Mission of South Africa to the United Nations, Address to the Secretariat, 9 September 2013. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/68/391](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/391).

248 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

S. No.	General Debate	South Africa's Interventions
1	Annual full-day discussion on the human rights of women Panel 1: The impact of violence against women human rights defenders and women's organisations in digital spaces	South Africa: <ul style="list-style-type: none"> <li>Aligned itself with the statement delivered by the Africa Group. South Africa maintained that rights to freedom of expression, as evidenced by the violence against women online, is not absolute and carries with it duties and responsibilities. In this regard, South Africa stated that permissible limitations and prohibitions of hate speech under international human rights law must be upheld.</li> <li>Asserted that increased education of women on the dynamics of the Internet through school curriculums could increase awareness and knowledge on both the dangers and the importance of technology to further their own social justice struggles, including those of combating violence and overthrowing patriarchy.<sup>249</sup></li> </ul>

#### IV. South Africa's Voting Pattern on Resolutions

##### *Thematic Resolutions*

South Africa voted in favour of three thematic resolutions concerning *Human rights and international solidarity*,<sup>250</sup> *Enhancement of international cooperation in the field of human rights*,<sup>251</sup> and *Civil society space: Engagement with international and regional organisations*,<sup>252</sup> that came up for voting.

South Africa voted against the resolution pertaining to Contribution of the *Human Rights Council to the prevention of human rights violations*.<sup>253</sup>

##### *Country Situations*

South Africa abstained from both the country situation resolutions concerning *Situation of human rights in Belarus*<sup>254</sup> and the *Human rights situation in the Syrian Arab Republic*.<sup>255</sup>

#### V. Analysis: Compliance with Pledges and Commitments

##### *a. Engagement with UN Special Procedures*

In its voluntary pledge in 2013, South Africa committed to receive the visits of the Special Procedures and Mechanisms of the Human Rights Council. However, it has 13 requests and five reminders pending from Special Rapporteurs. These include requests from the Special Rapporteurs on torture, on freedom of assembly, on racism, on extrajudicial, summary and arbitrary executions and on arbitrary detentions. It also has a pending request by the Working Group on disappearances.<sup>256</sup>

##### *b. Compliance with Reporting Obligations to Treaty Monitoring Bodies*

South Africa's pledge to submit country reports to human rights treaty monitoring bodies was mostly realised, with only two reports pending: one to CEDAW since 2015 and another to CRC-OP-AC since 2011. South Africa has fulfilled its reporting requirements under CAT, CCPR, CERD, CRC, CRPD and CESC, though many of these reports were

249 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=21/06/2018%2000:00:00>.

250 Resolution 38/2 Human rights and international solidarity (2018).

251 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018).

252 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

253 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

254 Resolution 38/14 Situation of human rights in Belarus (2018).

255 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018).

256 United Nations Human Rights Office of The High Commissioner: Country visits of Special Procedures of the Human Rights Council since 1998. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

submitted after a delay of four to fourteen years.<sup>257</sup> Additionally, South Africa has not accepted individual complaint procedures for CESCR-OP and CRC-OP-IC.

### c. Compliance on Thematic Issues

South Africa's Constitution outlaws discrimination based on sexual orientation vide Section 9(3) and it is the first country in Africa that legalised same-sex marriage in 2006. In June 2017, South Africa became the first country in the world to launch an HIV framework specifically for LGBT people as part of its national strategic plan.<sup>258</sup> However, in reality, stark differences exist, with instances of high levels of discrimination, exclusion and hate-crime attacks, which impact the daily lives of LGBT people in South Africa. According to a report by the Hate Crimes Working Group, LGBT are the most discriminated group in South Africa with 35% of hate crimes being reported by LGBT people.<sup>259</sup>

South Africa joined the consensus in the resolution relating to *Promotion and protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>260</sup> In a landmark judgement by the Western Cape High Court on 24 January 2018, Section 12(1)(a) of the Regulation of Gatherings Act was deemed to be unconstitutional because it limited and criminalised peaceful protest.<sup>261</sup> However, there are instances of excessive force on protesters. In 2017, South African police used stun grenades, rubber bullets and water cannon to disperse anti-immigration agitators in the capital of Pretoria.<sup>262</sup>

South Africa joined the consensus for the resolution on accelerating efforts to *Eliminate violence against women and girls*. This resolution called upon States to enact legislations which allow for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts.<sup>263</sup> According to estimates released in June 2018 by the National Statistical Service of South Africa, 138 women per 100,000 women in the country were raped in 2016 and 2017.<sup>264</sup>

## VI. Conclusions

- South Africa did not fulfil its voluntary pledges regarding engagement with Special Rapporteurs as it has 13 requests and 5 reminders pending in the last five years.
- South Africa's pledge to submit country reports to human rights treaty monitoring bodies was mostly realised, with only two reports pending.
- Despite being the first African country to have legalised same-sex marriage, hate crimes against LGBTQ are on the rise.

257 United Nations Human Rights Office of the High Commissioner: 2018 Deadlines for the submission of documentation. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/MasterCalendar.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx).

258 Human Rights Watch "Country Profiles: Sexual Orientation and Gender Identity". Available at: <https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity>; Draft South African National LGBTI HIV Framework. Available at: [http://sanac.org.za/wp-content/uploads/2016/07/J6917\\_LGBTI\\_Booklet\\_LR.pdf](http://sanac.org.za/wp-content/uploads/2016/07/J6917_LGBTI_Booklet_LR.pdf).

259 The Hate and Bias Crimes Monitoring Form Project. Available at: <http://hwcwg.org.za/wp-content/uploads/2018/02/Report-Hate-Bias-Crimes-Monitoring-Form-Project-SCREEN.pdf>.

260 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

261 Business Tech, "Landmark case to have major repercussions for protests in South Africa", 25 January 2018. Available at: <https://businesstech.co.za/news/government/221031/landmark-case-to-have-major-repercussions-for-protests-in-south-africa/>.

262 "South African police use force to disperse anti-immigration protesters", The Guardian, 24 February 2017. Available at: <https://www.theguardian.com/world/2017/feb/24/south-african-police-use-force-anti-immigration-protest-pretoria>.

263 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

264 Crime against Women in South Africa. Available at: <http://www.statssa.gov.za/publications/Report-03-40-05/Report-03-40-05June2018.pdf>.

### I. Introduction

The United Kingdom (UK) was re-elected to serve a second consecutive three-year term effective 1 January 2017 at the Human Rights Council (HRC).<sup>265</sup> During the HRC's 38th Session, the UK was an active member of the Council. It was a co-sponsor of thematic resolutions on *Female Genital Mutilation, Violence against Women and Girls, and Discrimination against Women*. Additionally, it co-sponsored a country resolution concerning the *Human rights situation in the Syrian Arab Republic*.

### II. Voluntary Pledges and Commitments

The UK's voluntary pledges submitted in 2016, focused on the UK's efforts to promote human rights internationally, uphold them domestically, and support UN bodies. They also contained priority issues – equality and non-discrimination, gender equality, violence against women, religious freedom, and modern slavery – which the UK considered important enough to include in its pledge.

The UK pledged to:<sup>266</sup>

- Strengthen the role of human rights in the work of the United Nations by:
  - a) Encouraging a rapid international response to severe human rights violations and abuses, including in support of conflict prevention.
  - b) Helping States through transition, by supporting stability and reform efforts on the ground.
  - c) Support a strong and independent United Nations human rights system.
- Translate the 2030 Agenda for Sustainable Development into action that leaves no one behind by:
  - a) Helping women and girls to achieve a voice, choice, and control in development (SDG Target 5).
  - b) Tackling the scourge of modern slavery across borders (SDG Target 8.7).
  - c) Supporting work on justice, the rule of law and open societies (Sustainable Development Goal 16).
- Stand up for freedom of religion or belief by:
  - a) Defending the freedom of people of all religions and beliefs to live without discrimination and violence.
  - b) Supporting persecuted minorities in the Middle East.
  - c) Advocating in favour of equality and non-discrimination, including on the grounds that freedom of religion or belief can help to counter violent extremism.
- Work towards ending violence against women and girls and promote women's full participation and leadership in political and economic life by:
  - a) Tackling violence against women and girls, including sexual violence in conflicts, all forms of domestic violence and harmful practices, including during humanitarian crises.
  - b) Promoting women's economic empowerment and the representation of women in political and public life, especially in leadership positions.
  - c) Challenging discriminatory laws and practices.
- Work towards promoting open societies and challenge threats to civil society.

### III. The United Kingdom's Participation at the 38th Session

The UK's Secretary of State for Foreign and Commonwealth Affairs, Boris Johnson, delivered a statement on the

<sup>265</sup> The Permanent Mission of the United Kingdom to the United Nations, Human Rights Council: United Kingdom's voluntary pledges and commitment, 9 December 2015. Available at: <https://www.gov.uk/government/publications/un-human-rights-council-united-kingdom-2017-2019-candidate/un-human-rights-council-united-kingdom-2017-2019-candidate>.

<sup>266</sup> The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations: Candidature of the United Kingdom to the Human Rights Council. Available at: <http://undocs.org/en/A/71/572>.

opening day of the Session. He affirmed the UK's steadfast support for the Council, calling it the best forum the international community has to tackle the most serious human rights violations and abuses. The Foreign Secretary committed the UK to working with partners to ensure that by 2030 all girls and boys receive completely free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.<sup>267</sup>

Selected discussions in which the UK participated were:

S. No.	Interactive Dialogue	The United Kingdom's Interventions
1	Interactive dialogue with the Independent Expert on sexual orientation and gender identity and Special Rapporteur on the rights to freedom of peaceful assembly and association	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Underlined its support for the work of the Independent Expert on sexual orientation and gender identity.</li> <li>• Remained deeply concerned by the ongoing persecution of LGBT persons in Chechnya.</li> <li>• Did not accept Russian Minister of Justice's statements implying that investigations had been unable to find any LGBT individuals whose rights had been violated.</li> <li>• Was particularly concerned by the use of preventative measures during election periods, stifling the democratic process.<sup>268</sup></li> </ul>
2.	Clustered interactive dialogue with the Independent Expert on human rights and international solidarity and the Special Rapporteur on the right to education	<p>Stressed that the right to education, in particular for girls, was one of the top policy priorities for the British Foreign Secretary.</p> <p>The UK:</p> <ul style="list-style-type: none"> <li>• Stressed the fact that urgent action is needed to ensure that a generation of girls get quality education leading to improved learning outcomes and the skills they need to lead and succeed. For that, the UK sought to improve teacher quality, further reform education systems to drive up quality and ensure education reaches the most marginalised in societies.<sup>269</sup></li> </ul>
3.	Clustered interactive dialogue with the Special Rapporteur on summary executions and the Special Rapporteur on the right to freedom of opinion and expression	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Emphasised that States have the responsibility to meet human rights obligations for all, including the right to life.</li> <li>• Took its aim at Russia, wherein restrictive laws and website blockings have increased the pressure on independent media since 2012. TV channels are state-run propaganda machines, journalists have been detained, more and more bloggers have been arrested for their views and physical attacks on journalists go unpunished.<sup>270</sup></li> </ul>
4.	Clustered interactive dialogue with the Working Group on discrimination against women and the Special Rapporteur on trafficking in persons, especially women and children	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Stressed that all forms of gender-based violence including the most hidden are unacceptable and must be addressed.</li> <li>• Welcomed the efforts of the Special Rapporteur on trafficking in persons to raise awareness of the particular experiences faced by some of the most vulnerable groups in the world today, such as women and girls, as well as the need to tackle the exploitative working conditions faced by millions in today's global economy.<sup>271</sup></li> </ul>

267 Speech by the Foreign Secretary to the UN Human Rights Council. Available at: <https://www.gov.uk/government/speeches/speech-by-the-foreign-secretary-to-the-un-human-rights-council>.

268 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

269 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=18/06/2018%2000:00:00>.

270 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

271 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=20/06/2018%2000:00:00>.

5.	Interactive Dialogue with the Special Rapporteur on Myanmar (oral update)	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Shared the concerns of the Special Rapporteur over the escalation of violence in Kachin, Shan, Karen/Kayin and other conflict affected States.</li> <li>• Strongly supported the Special Rapporteur’s calls for a thorough, impartial and credible investigation to take place regarding what has happened in Rakhine state.</li> <li>• Took note of her proposals for a mechanism on accountability and urged the government to accelerate its domestic efforts on accountability with international support.<sup>272</sup></li> </ul>
6.	Clustered Interactive Dialogue with the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the human rights of migrants	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Maintained that violence against women and girls is one of the greatest barriers to women’s and girls’ education and empowerment and the achievement of gender equality worldwide.</li> <li>• Showcased that its support has reached over 750,000 girls since 2015, with schooling initiatives, skills training and girls’ clubs to prevent and respond to child marriage.</li> <li>• Stated that since 2013, support to the Africa-led movement to end FGM has helped over 24 million people commit to abandon the practice.<sup>273</sup></li> </ul>
7.	Interactive Dialogue with High Commissioner for Human Rights on Rohingya	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Has contributed £129 million to the crisis since 25 August 2017. In respect to the delivery of aid and advocating for the safe, voluntary and dignified return of the Rohingya Muslims.</li> <li>• Continues to strongly support efforts to hold to account those responsible. However, the UK did acknowledge that it would be a lengthy process</li> <li>• Welcomed the recent announcement of a commission of inquiry with an international component. The UK asserted that the commission must be independent and transparent if it has to have credibility. It called for more information on the purpose of the commission and details of how its impartiality would be secured.<sup>274</sup></li> </ul>

S. No.	General Debate	The United Kingdom’s Interventions
1	General Debate on human rights situations that require the Council’s attention	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Remained concerned by the Russian government’s decision to categorise Jehovah’s Witnesses as “extremists”.</li> <li>• Called on Russia to release Ukrainian political prisoners and to grant international human rights monitors’ access to illegally annexed Crimea.</li> <li>• Urged China to release those detained for peacefully exercising their constitutional rights and to remove restrictions on Liu Xia.</li> <li>• Raised concerns over the human rights situation in the DPRK.</li> <li>• Highlighted challenges regarding constraints on democratic space in Egypt, including arrests and convictions of political leaders, activists and journalists.</li> <li>• Pointed out the situation in Iran, particularly the continued frequent use of the death penalty.<sup>275</sup></li> </ul>

272 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=27/06/2018%2000:00:00>.

273 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=20/06/2018%2000:00:00>.

274 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=04/07/2018%2000:00:00>.

275 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=27/06/2018%2000:00:00>.

2.	General Debate on the High Commissioner for Human Rights' Oral Update	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Condemned the human rights abuses including violence against peaceful protesters during ongoing protests in Nicaragua.</li> <li>• Commented that the Venezuelan presidential elections in May were neither free nor fair.</li> <li>• Noted with dismay the continued democratic deterioration in Cambodia.</li> <li>• Called out Vietnam which has imprisoned a number of bloggers and activists.</li> <li>• Urged the Philippines to ensure thorough investigations into all killings associated with the war on illegal drugs.</li> <li>• Remained concerned by human rights violations in Bangladesh, including alleged extrajudicial killings and declining democratic freedoms.</li> <li>• Expressed concerns about the detention of members of the judiciary and opposition leaders, the sustained misuse of parliamentary process, and continued restrictions on basic freedoms.<sup>276</sup></li> </ul>
3.	Annual full-day discussion on the human rights of women Panel 1: The impact of violence against women human rights defenders and women's organisations in digital spaces	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Asserted that that to achieve gender equality it is essential to eradicate sexual and gender-based violence, including online violence. The online abuse of women and girls reproduces and perpetuates gender inequality, and intersects with other forms of discrimination. The UK is concerned with the spectrum of online harms currently faced by women and girls. This includes the use of technologies to extend existing physical, sexual and psychological abuse, as well as new forms of digital abuse. To tackle violence against women and girls in all digital and online spaces, the UK, through its Internet Safety Strategy Programme of Work, addresses the range of online harms faced by children and adults.<sup>277</sup></li> </ul>
4.	Annual full-day discussion on the human rights of women Panel 2: Advancing women's rights in the economic sphere through access and participation in information and communication technologies (ICTs)	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Welcomed the discussion on advancing women's rights through access and participation in information and communication technologies (ICTs). Despite Women having actively shaped the modern world, inventing and laying the foundations for some of the most important advances in technology, the UK highlighted that there is a global gender gap in terms of women and girl's access to technology and Internet use, and their participation in the tech industries.</li> <li>• Believed that gender inclusion in ICTs can play an important role in their ability to pursue quality education and fulfil their potential in political, economic and social life.<sup>278</sup></li> </ul>

276 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=19/06/2018%2000:00:00>.

277 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=21/06/2018%2000:00:00>.

278 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=22/06/2018%2000:00:00>.

5.	Panel discussion on the human rights of internally displaced persons	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Reminded the Council that at the end of 2017, over 40 million internally displaced persons had been driven from their homes by armed conflict, generalised violence or human rights violations. The vast majority are in situations of protracted displacement and many are likely to be displaced again. In Syria, the IDP population is over 6 million. In the DRC, IDP numbers almost doubled in a year to 4.4 million at the end of 2017. In Iraq, there are over 2.6 million internally displaced people, and in South Sudan, almost 2 million.</li> <li>• Stressed that it is crucial that governments, with international support, take action to provide safe and durable solutions for IDPs.</li> <li>• Committed to work on improving outcomes for internally displaced people.<sup>279</sup></li> </ul>
6.	General debate on racism	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Reaffirmed its commitment to the total elimination of all forms of racism. Since 2011, the UK has provided £9.5 million for Near Neighbours, a programme that brings different faith and ethnic groups together. It has reached over 940,000 people. In October 2017, the UK government published the “Race Disparity Audit” to identify racial disparities in a range of areas including health, education and employment. This has helped the public to understand how people from different ethnic backgrounds are treated in society.<sup>280</sup></li> </ul>
7.	Technical assistance and capacity-building (including an oral update on Georgia) and an oral update on Burundi	<p>The UK:</p> <ul style="list-style-type: none"> <li>• Commended Colombia for its constructive approach to engagement with OHCHR mechanisms and for its open acknowledgment of specific human rights challenges.</li> <li>• Was dismayed by the continued democratic deterioration in Cambodia, including the dissolution of the main opposition party, detention of Kem Sokha and the lack of constructive engagement with the OHCHR country office.</li> <li>• Noted that the human rights situation in Georgia’s breakaway regions of Abkhazia and South Ossetia continues to be of great concern.</li> <li>• Appreciated further recent land returns in Sri Lanka, the Cabinet’s approval of a Bill to establish an Office of Reparations and steps taken to hold perpetrators of hate speech to account.<sup>281</sup></li> </ul>

#### IV. The United Kingdom’s Voting Pattern on Resolutions

##### *Thematic Resolutions*

The UK voted in favour of two out of four thematic resolutions concerning, *Civil society space: Engagement with international and regional organisations*,<sup>282</sup> and *Contribution of the Human Rights Council to the prevention of human rights violations*.<sup>283</sup> In an explanation of the vote before the vote on civil society, the UK reminded the Council that civil society worked on a range of issues vital for all. Thus, the UK stated, the resolution deserved unanimous support.<sup>284</sup>

279 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=26/06/2018%2000:00:00>.

280 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=02/07/2018%2000:00:00>.

281 Office of the High Commissioner for Human Rights, Statements. Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/38thSession/Pages/Statements.aspx?SessionId=22&MeetingDate=04/07/2018%2000:00:00>.

282 Resolution 38/12 Civil society space: Engagement with international and regional organizations (2018).

283 Resolution 38/18 The contribution of the Human Rights Council to the prevention of human rights violations (2018).

284 Office of the High Commissioner for Human Rights, Display News, 6 July 2018. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23340&LangID=E>,

The UK voted against two thematic resolutions on *Human rights and international solidarity*,<sup>285</sup> and *Enhancement of international cooperation in the field of human rights*.<sup>286</sup>

### *Country Situations*

The UK voted in favour of both the resolutions on country situations that came up for voting, concerning the *Situation of human rights in Belarus*,<sup>287</sup> and the *Human rights situation in the Syrian Arab Republic*.<sup>288</sup>

## **V. Analysis: Compliance with Pledges and Commitments**

### *a. Ratification of Human Rights Treaties*

The UK, in its pledges, committed to “support a strong and independent United Nations human rights system”. However, the UK failed to ratify several treaties which were recommended during its third cycle of its UPR.<sup>289</sup> Some of these treaties include: the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; and the International Convention for the Protection of All Persons from Enforced Disappearance.

Furthermore, in 2016, the Committee on the Elimination of Racial Discrimination encouraged the UK to consider ratifying: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169); and the Domestic Workers Convention, 2011 (No. 189). The UK has not yet ratified any of these treaties that the UN mechanisms recommended to it.

### *b. Engagement with UN Special Procedures*

The UK maintains a standing invitation and cooperation with the Special Rapporteurs who wish to visit, and it had accepted all requests of Special Rapporteurs except from the one on the Working Group on mercenaries which was requested for in May 2015.<sup>290</sup>

### *c. Compliance with Reporting Obligations to Treaty Monitoring Bodies*

The UK’s obligations to treaty monitoring bodies were fulfilled. It is up to date with its reporting requirements under CERD, CRC, CEDAW, CRPD and CESC, though some of these reports were submitted after a delay of one year.<sup>291</sup> However, the UK has not accepted individual complaint procedures pertaining to: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and Optional protocol to the Convention on the Rights of Persons with Disabilities.<sup>292</sup>

### *d. Compliance on Thematic Issues*

285 Resolution 38/2 Human rights and international solidarity (2018),

286 Resolution 38/3 Enhancement of international cooperation in the field of human rights (2018),

287 Resolution 38/14 Situation of human rights in Belarus (2018),

288 Resolution 38/16 The human rights situation in the Syrian Arab Republic (2018),

289 Office of the High Commissioner for Human Rights, Display news. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBindex.aspx>.

290 United Nations Human Rights Office of The High Commissioner: Country visits of Special Procedures of the Human Rights Council since 1998. Available at: [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en).

291 Reporting status for the United Kingdom of Great Britain and Northern Ireland. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=GBR&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=GBR&Lang=EN).

292 Ratification Status for the United Kingdom of Great Britain and Northern Ireland. Available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=185](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=185).

The UK joined the consensus for the resolution on *elimination of all forms of discrimination against women and girls*. Amongst other aspects, this resolution called upon States to ensure that international obligations on gender equality and non-discrimination are incorporated at all levels of legal frameworks, including in relation to women's and girls' access to justice, redress and effective remedies.<sup>293</sup> However the OHCHR Report (compilation of UN information) submitted to the Working Group on UK's third Periodic Review in 2017, observed that women from black and minority ethnic communities in the UK were often subjected to entrenched discriminatory practices in the political, social and economic spheres.<sup>294</sup> The report further observed that legal and policy responses regarding violence against black and minority ethnic women and girls were limited to some harmful practices, ignoring the harm emanating from other sexist practices that were prevalent in the United Kingdom.<sup>295</sup>

The UK joined the consensus for the resolution on accelerating *efforts to eliminate violence against women and girls*. This resolution called upon States to enact legislations which allows for the timely and effective investigation, prosecution, sanction and redress of violence against women and girls in digital contexts.<sup>296</sup> However:

- Women in the UK are much more likely than men to experience particular forms of violence, such as sexual offences (an estimated 95% of all rape victims are female), domestic violence and so called "honour-based" violence.<sup>297</sup>
- In 2017, there was a 25% increase in sexual offences in England and Wales.<sup>298</sup> Under-reporting and under-recording, low referral rates to support services and low prosecution and conviction rates are other problems.<sup>299</sup>
- The OHCHR report submitted to the Working Group on UK's third Periodic Review in 2017, recommended that the United Kingdom introduce domestic violence protection orders in Northern Ireland and ensure that all cases of domestic violence are thoroughly investigated and perpetrators prosecuted.<sup>300</sup> The report stated that the justice system as a whole was not equipped for or responsive to addressing the specific needs of women and girl survivors of violence. It mentioned cuts to legal aid, inadequate police responses, lack of coordination among the various State agencies and low levels of prosecution.<sup>301</sup>
- Women continue to be targeted in hate crimes, as it was found that more than half of those who reported such incidents were female and two-thirds of those could be described as "visibly Muslim" at the time of the incidents.<sup>302</sup>

The UK joined the consensus in regards to a resolution pertaining to *Promotion and protection of human rights in the context of peaceful protests*. The resolution called upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association.<sup>303</sup> However, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, reported in 2017 that Britain's counter-terrorism "Prevent" strategy was implemented in a manner that translated simply into crude racial, ideological, cultural and religious profiling, with concomitant effects on the right to freedom of association of some groups.<sup>304</sup> Criticism was also levied towards the Investigatory Powers Act. The Special Rapporteur stated that the Act contained procedures without adequate oversight, coupled with overly broad definitions, which could result

293 Resolution 38/1 Elimination of all forms of discrimination against women and girls (2018).

294 Universal Periodic Review for the United Kingdom of Great Britain and Northern Ireland. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/039/89/PDF/G1703989.pdf?OpenElement>.

295 Ibid.

296 Resolution 38/5 Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts (2018).

297 Pressing for progress: women's rights and gender equality in 2018. Available at: [https://www.equalityhumanrights.com/sites/default/files/pressing-for-progress-womens-rights-and-gender-equality-in-2018-executive\\_summary\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/pressing-for-progress-womens-rights-and-gender-equality-in-2018-executive_summary_0.pdf).

298 Ibid.

299 Ibid.

300 Universal Periodic Review for the United Kingdom of Great Britain and Northern Ireland. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/039/89/PDF/G1703989.pdf?OpenElement>.

301 Ibid.

302 Pressing for progress: women's rights and gender equality in 2018. Available at: [https://www.equalityhumanrights.com/sites/default/files/pressing-for-progress-womens-rights-and-gender-equality-in-2018-executive\\_summary\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/pressing-for-progress-womens-rights-and-gender-equality-in-2018-executive_summary_0.pdf).

303 Resolution 38/11 The promotion and protection of human rights in the context of peaceful protests (2018).

304 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/158/29/PDF/G1715829.pdf?OpenElement>.

in unduly interfering with the right to privacy, the right to freedom of opinion and expression and the right to freedom of association, both within and outside the United Kingdom.<sup>305</sup>

The UK emphasised its support for the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions. The UK made it clear that States have the responsibility to meet human rights obligations for all, including the right to life. However, the UK strongly condemned extrajudicial and summary executions, and welcomed the Special Rapporteur's report.<sup>306</sup> Despite, the UK government officially opposing the death penalty and regarding the right to a fair trial as fundamental, serious concerns have been raised about comments made by the Secretary of State for Defence, Gavin Williamson, suggesting that British troops should break the law by carrying out targeted extrajudicial killings of British jihadists.<sup>307</sup> Commenting on this statement, Professor Philippe Sands, said such a policy would be "inconsistent with English, European and international law, as well as with United Kingdom foreign and domestic policy for nearly a century since the end of the Second World War."<sup>308</sup>

## VI. Conclusions

The United Kingdom of Great Britain and Northern Ireland happened to be one of the most active participants, not only during the various sessions, but also when it came to sponsoring resolutions.

- The UK maintains standing invitations and cooperation with the Special Rapporteurs who wish to visit, and it accepted all requests of Special Rapporteurs except from the one on the Working Group on mercenaries, which was requested for in May 2015.
- Women from black and minority ethnic communities in the UK were often subjected to entrenched discriminatory practices in the political, social and economic spheres and remains an issue of concern. In 2017 there was a 25% increase in sexual offences in England and Wales.<sup>309</sup> Under-reporting and under-recording, low referral rates to support services and low prosecution and conviction rates are other problems.
- The UK along with South Africa and Australia were the only Commonwealth Nations to vote in favour of both the Country Resolutions.

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305 Ibid.

306 Human Rights Council 38: Freedom of Expression and Summary Executions. Available at: <https://www.gov.uk/government/news/human-rights-council-38-freedom-of-expression-and-summary-executions>.

307 Jessica Elgot and Holly Watt, "Call for troops to kill UK Isis fighters is illegal and immoral", The Guardian, 7 December 2017. Available at: <https://www.theguardian.com/politics/2017/dec/07/defence-secretarys-kill-uk-jihadists-call-causes-widespread-outrage>.

308 Ibid.

309 Ibid.

# Concluding Remarks

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The assessment of the performance of the Commonwealth member states in the 38th session of the HRC underlines yet again the need for acceptable mechanisms to monitor the progress of human rights compliance by members as a means of indicating their commitment to the Council. The limited availability of reliable, objective and quantified information is in itself an indication of the lack of infrastructure to monitor human rights situations in many Commonwealth member states. This heightens the necessity for an urgent need for both technical assistance and reinforced commitments to human rights on the part of the Commonwealth governments.

CHRI reminds all Commonwealth member states of their commitments to the United Nations to make the Human Rights Council a strong and effective body. CHRI urges all Commonwealth member states to strengthen the special procedure mechanisms of the HRC, provide access on requests, and guarantee their independence and impartiality. CHRI further encourages Commonwealth member states to comply with their reporting obligations to treaty bodies and submit pending reports on time.

CHRI recommend that Commonwealth member states shall:

- Submit voluntary pledges in clear and measurable terms and indicate specific steps taken to uphold their voluntary pledges.
- Bring their participation and voting in line with their voluntary pledges submitted at the time of election.
- Accept pending requests from special procedure mechanisms and ensure their independence.
- Comply with their reporting obligations to treaty bodies, submit pending reports to the various human rights treaties and foster constructive engagement during the reviews.
- Adopt, or strengthen and implement national legislation that promote human rights and public participation, in particular, access to information, freedom of speech and expression and association laws that enables citizens to effectively participate in human rights policymaking processes associated with the Council.
- Implement the resolutions they member states sponsored or supported at the national level, inform the Council on the steps they have undertaken to implement the resolutions and the challenges they have faced.
- Organize public consultations before voting on an issue and providing publicly-accessible explanation or rationale for all votes.

# CHRI Programmes

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential if human rights, genuine democracy and development are to become a reality in people's lives. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does so through research, publications, workshops, information dissemination and advocacy. It has three principal programmes:

## 1. Access to Justice

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

## 2. Access to Information

CHRI is acknowledged as one of the main organisations working to promote Access to Information across the Commonwealth. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh and Ghana. In the later CHRI's is the Secretariat for the RTI civil society coalition. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. Its experience of working in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance it has been promoting knowledge about the value of Access to Information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law.

## 3. International Advocacy and Programming

CHRI monitors commonwealth member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council, the Universal Periodic Review; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

Since the inception of the Human Rights Council (HRC), the Easier Said Than Done (ESTD) series has reviewed Commonwealth member states' performance at the HRC. The series provides a basis for evaluating Commonwealth countries' engagement with the Council and considers if their voting behaviour in support of resolutions is consistent with their voluntary pledges and commitments to the HRC.

This edition of the ESTD report presents an analysis of the performance of seven Commonwealth member states during the 38th regular session of the HRC: Australia, Kenya, Nigeria, Pakistan, Rwanda, South Africa and the United Kingdom. It addresses institutional and human rights concerns in the HRC and explains discrepancies in the behaviour these countries. The report highlights the disparities between human rights promises made by Commonwealth members and the extent fulfilment at the national level.

The report seeks to present a clear picture of the activities of Commonwealth member states in the HRC and track thematic developments there, along with shifts in foreign policy approaches of member states on rights issues. It calls for greater accountability and resolve on part of Commonwealth countries to act in accordance with their pledges and commitments.



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