
MIDDLE EAST AND NORTH AFRICA

The response of human rights mechanisms to civil society demands for change



Photo: Lorenz Khazaleh

Protesters in Tahrir Square, Cairo, Egypt.

In the earliest days of the violent repression of demonstrations in the Middle East, North Africa and beyond, international and regional non-governmental organisations (NGOs) called on the Human Rights Council (the Council) to act, noting 'Silence is Not an Option'.¹ Over the succeeding weeks mechanisms and bodies charged with promoting and protecting human rights did indeed take action, albeit to differing degrees. While in some cases the response has been strong and relevant, in others it has remained inadequate or non-existent, a reminder that politics continues to be a decisive factor in informing the discussions and decisions of States. The interplay between civil society and international and regional mechanisms to effect and support change on the ground created precedents in the responses of the mechanisms. Through the changes on the ground, opportunities have emerged to strengthen the mechanisms, increase civil society access to them, and for civil society to use the human rights systems' recommendations and presence to safeguard and solidify human rights advances.

SIGNALING POLITICAL CHANGE THROUGH HUMAN RIGHTS SYSTEMS

With revolution at home, Egypt and Tunisia have used regional and international human rights fora to signal changes to their national human rights policies and to bolster their governments' legitimacy internationally and at home. Egypt, for example, announced it would review and consider ratifying several treaties to which it was not yet party, and that it was carrying out a review of its policies on special procedures visit requests and the recommendations of treaty bodies.² This stands in contrast to Egypt's previous rejection of recommendations that the State adhere to international standards.³ In Tunisia's case, similar commitments were made, including permitting the establishment of an Office of the High Commissioner for Human Rights (OHCHR) country office, the first in any of the five North African countries bordering the Mediterranean. This set the scene for a resolution relating to cooperation between Tunisia and OHCHR, at the first Council session following the revolution.⁴ At the African Commission on Human and Peoples' Rights (ACHPR) Tunisia had indicated ratification of human rights treaties was part of the Government's aim 'to rise above oppression' and do away with 'arbitrary methods'.⁵

With successes such as Tunisia's ratification of four international human rights treaties (including two ratified on one day), it still remains to be seen whether these commitments will translate into change on the ground. Human rights defenders who monitor and report on implementation have cautioned that a general sense of euphoria needs to be tempered, fearing the ratification of treaties may result in the international community being blinded to continuing violations, that accession to a treaty could be equated with implementation, or that promises to ratify might not eventuate. For example, recently a regional NGO highlighted Egypt's failure to take steps toward ratification as promised.⁶

1 'Silence is Not an Option! Petition for immediate action by the United Nations Human Rights Council! 23 February 2011. Signed by 19 international and regional NGOs. See <http://bit.ly/gZaWeP>.

2 Statement by Egypt, 49th Ordinary Session of the African Commission on Human and Peoples' Rights, May 2011, and then statement 17th Session of the Human Rights Council, June 2011.

3 For example, Egypt refused a recommendation to adhere to the *Optional Protocol to the Convention Against Torture*, made during the country's UPR in February 2010.

4 A/HRC/16/L.32/Rev.1.

5 Statement by Tunisia, 49th Ordinary Session of the ACHPR.

6 'Addressing the new Foreign Minister: CIHRS calls for respect of human rights and an end to supporting dictatorships and continued commitment to join the International Criminal Court', Cairo Institute for Human Rights Studies, 29 June 2011.

ACTIVATING ALL MEANS AVAILABLE WITHIN THE HUMAN RIGHTS FRAMEWORK

In the case of Libya international and regional mechanisms took swift action, in what the UN described as 'a watershed moment in the emerging doctrine of the responsibility to protect' and an unprecedented example of the international community acting with such 'decisiveness in common purpose'.⁷

Shortly after the start of the repression of peaceful protests in mid-February 2011, Libya became the first member of the Human Rights Council to be the subject of a special session. The resolution adopted at the session mandated an investigation and reporting on the human rights situation in Libya by both OHCHR and a Commission of Inquiry.⁸ During an emergency session the following day the Security Council took the decision, with the unprecedented support of all members, to refer the situation in Libya to the Prosecutor of the International Criminal Court (ICC).⁹ The authorisation by the Security Council for UN member States 'to take all necessary measures to protect civilians and civilian populated areas under threat of attack' came two weeks later.¹⁰ Throughout this period several special procedures and treaty bodies also drew attention to aspects of the conflict related to their mandates.¹¹

Along with taking steps to monitor, report on, and deter State action (ultimately through military means) the Human Rights Council also resolved to recommend the suspension of Libya as a member of the Council. The General Assembly acted on this recommendation and suspended Libya, again by consensus.¹²

Throughout this process, civil society pressed human rights mechanisms to take action. For example, in a bid to secure the suspension of Libya from the Human Rights Council almost 100 NGOs and networks from all regions of the world signed a petition. This action underscored the range of voices decrying the gravity of the human rights violations, the agreement across regional and international bodies, and the risk to the credibility of the UN human rights system if the Council failed to eject a member who so seriously breached the terms of membership.¹³

7 Ban Ki-moon address to the Sofia Platform, 6 May 2011.

8 A/HRC/RES/S-16/1.

9 Security Council Resolution 1970, 26 February 2011. Include terms including: sanctions, arms embargo, freezing assets of leaders.

10 Security Council Resolution SC/101 87/Rev.1.

11 For example, Special Representative of the Secretary General on Sexual Violence in Conflict, Special Representative of the Secretary General for Children in Armed Conflict, Committee on Migrant Workers, and Committee on the Elimination of Racial Discrimination.

12 Human Rights Council members can be suspended when they commit 'gross and systematic violations of human rights', 'by a two thirds majority of the members present and voting'. OP8, General Assembly Resolution 60/251. According to the provisions of the resolution, members are expected to 'uphold the highest standards in the promotion and protection of human rights'.

13 'Civil society petition' signed by 94 NGOs. 24 February 2011, available at <http://bit.ly/e6Mahn>.

Whilst some States noted that suspension of membership should not be considered to set a precedent, nor be equated with a questioning of legitimate Statehood, civil society looked to build on the suspension to strengthen the accountability required by States. To this end, when Syria stood for election to the Human Rights Council in April 2011, civil society responded vigorously.¹⁴ A campaign opposing Syria's membership was launched across several regions, including targeting African States during meetings of regional human rights mechanisms.¹⁵ As a result, Syria withdrew its candidacy.

The significant contribution of civil society with regard to the situation in Libya, in bringing violations to public attention, providing information to the fact-finding commissions, and continuing to monitor the pace of human rights change on the ground, has been acknowledged by the United Nations High Commissioner for Human Rights and the Commission of Inquiry.¹⁶ Both these bodies have relied on civil society input and, in turn, have communicated civil society concerns to States.

THE AFRICAN HUMAN RIGHTS SYSTEM HOLDING LIBYA TO ACCOUNT

Libya was also the focus of a 'pioneering decision'¹⁷ and '...a key moment for the protection of human rights in Africa'¹⁸ when the African Court on Human and Peoples' Rights (African Court) ordered provisional measures against the State.¹⁹ This followed the unprecedented referral of the case to the Court by the ACHPR; a process initiated by a group of three NGOs that first referred the case to the ACHPR.²⁰

In May, Libya attended the 49th session of the ACHPR for its scheduled periodic review,²¹ with a report written prior to the outbreak of the civil war. Commissioners tried to ensure the relevance of the discussion, by grounding the conversation in responsibilities of the State as a signatory of the African

14 For example, Human Right Watch called the election, 'a referendum on Syria's violent suppression of protest', Human Rights Watch: <http://bit.ly/jJawll>.

15 'African States: Withhold Support from Syria for Rights Council. Syria committing the same violations for which Libya was suspended.' 28 April 2011.

16 'Statement by Mr. M. Cherif Bassiouni, Chair of the UN Commission of Inquiry to investigate all alleged violations of international law in the Libyan Arab Jamahiriya.' Human Rights Council 17th Session, 8 June 2011.

17 'Libya: African Rights Court Issues First Ruling Against a State. Libya Ordered Immediately to End Threats to Life, People's Security' Egyptian Initiative for Personal Rights, 31 March 2011.

18 Clive Baldwin, senior adviser at Human Rights Watch, quoted at <http://bit.ly/gzszXz>.

19 March 2011. These ordered Libya to 'immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party.'

20 These NGOs were Egyptian Initiative on Personal Rights (EIPR), Human Rights Watch and Interrights.

21 This is a process where member states of the African Union periodically report upon their implementation of the articles of the African Charter.

Charter. Where the Libyan delegation noted its ‘many sacrifices to ensure the liberty of Africa’, the ACHPR refused to lose sight of the standards to which Libya should be held accountable, noting that precisely because of Libya’s key position in the African Union – including holding the Chairmanship in 2009 – the State must be held to the highest human rights standards. However, Commissioner Bechir Khafallah’s decision to not ask any questions of the Libyan delegate, ‘out of respect for victims of all the bombings’, attracted criticism from many NGOs. These NGOs held that limited opportunities to hold States accountable should be safeguarded and used judiciously by those mandated to do so.

During the review, the provisional measures²² ordered by the African Court were acknowledged by Libya, with the delegation stating it wished to work ‘transparently and objectively with a mechanism we respect’. However, NGOs noted the failure of Libya to comply with the measures to date.²³ At the time of writing there was no update on the African Court website in regard to Libya’s compliance.²⁴

Aside from illustrating fruitful interplay between civil society and the mechanisms, the case of Libya also shows regional and international mechanisms citing each other’s decisions to validate their own conclusions. For example, as a part of its justification, the African Court decision to order provisional measures notes that ‘international organisations, both universal and regional, to which Libya is a member’ have considered the situation and denounced the gravity and degree of violations.²⁵

In addition, there is evidence that developments in one international body have altered the scope of the work of another. With referral by the Security Council of the events in Libya to the ICC, the UN Commission of Inquiry extended its focus beyond violations of international human rights and humanitarian law, to include international criminal law. Furthermore, the Prosecutor of the ICC noted that his office had cooperated with the Commission of Inquiry and was awaiting its report to assess whether further cases would need to be presented to the Court.²⁶

22 The African Court adopts provisional measures in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to people. In this case they ordered the State to take immediate action.

23 See Human Rights Watch: <http://bit.ly/ehywp7>.

24 It should be noted that Libya issued an official invitation to the Commission to urgently send a field mission to Libya and the ACHPR responded asking when this might happen. To date no update is available on the ACHPR website.

25 In the matter of African Commission on Human and Peoples’ Rights v Great Socialist People’s Libyan Arab Jamahiriya. Application No. 004/2011. Order for Provisional Measures. The ruling cites the opinion of the Peace and Security Council, the Secretary General of the Arab League, and the UN Security Council Resolution 1970.

26 UN Department of Public Information: Press Conference by Prosecutor of International Criminal Court Concerning Libya. 4 May 2011. <http://bit.ly/qyCXTq>.

CRIES OF ‘DOUBLE STANDARDS’

At the end of the 16th Session of the Human Rights Council, NGOs indicated the model of the Council’s response in the case of Libya was one that offered important lessons for addressing ‘the violent repression of demonstrations in Syria, Bahrain and Yemen.’²⁷ In the cases of Syria and Yemen, disagreements and delays characterised State responses. However, following consistent NGO engagement and a joint statement by special procedures,²⁸ a special session on Syria together with a resolution, and cross-regional statements at the 17th session of the Council on both Syria and Yemen, were finally forthcoming. In regard to Bahrain however, the credibility of the Council is being seriously questioned, as it continues to fail to respond appropriately to the ongoing violations.²⁹

Although the desired outcome has not been achieved for Bahrain, in other cases, the importance of relevant civil society voices reaching key advocacy spaces to influence outcomes has been clear. The need to access advocacy opportunities has resulted in considerable NGO backing for the re-application of the Syrian Center for Media and Freedom of Expression for UN Economic and Social Council (ECOSOC) consultative status. This follows several deferrals of the application by the NGO Committee; subsequently overturned by ECOSOC.³⁰

At the ACHPR 49th session, some NGOs highlighted the repression in sub-Saharan Africa of protests reportedly inspired by events in Egypt and Tunisia. The arrest of an Ethiopian journalist after he published an article referring favourably to the protests in Egypt, and a crackdown on demonstrations in Sudan were two examples cited.³¹ Despite the ACHPR noting that the opportunities arising from these events ‘could serve as a beacon for Africa to emulate’,³² the events and their consequences received relatively little focus during the session and the NGO Forum.³³

POTENTIAL FOR CHANGE IN THE HUMAN RIGHTS SYSTEMS

Where once Egypt and Tunisia were known to take positions that could impede the promotion of human rights, with shifts in the political landscape in both countries, intriguing potential for mechanism reform has emerged.

27 Ibid.

28 ‘UN experts call on Syria to urgently end crackdown and implement reforms’, 15 April 2011. <http://bit.ly/euLOKj>.

29 See Cairo Institute for Human Rights Studies, ‘UN Human Rights Council: Double-standards tarnish positive initiatives at international rights body’, 26 June 2011. <http://bit.ly/n7Y2L1>.

30 The NGO was granted consultative status by ECOSOC; adopted without a vote on 25 July 2011.

31 East and Horn of Africa HRD Network statement at 49th Ordinary Session of ACHPR, 28 April 2011.

32 ACHPR ‘Press statement on the Situation in North Africa’, 25 February 2011.

33 The NGO Forum did pass a resolution (CRES /005/04/2011) and made a declaration related to the situation of human rights in Africa (DEC/001/04/2011).

To take one example, access to the African Court for NGOs and individual victims of human rights violations is currently dependent on States signing a 'special declaration'. Only four States have signed to date, resulting in no direct access for the majority of the continent's NGOs.³⁴ It is reported that Egypt and Tunisia played a key role in the original establishment of this procedure, which was supported by a large number of other African States.³⁵ Whilst moving to overturn this procedure is not currently a priority for the two States or NGOs, it does provide interesting future lobbying objectives, given the apparent desire of both Egypt and Tunisia to portray themselves in a pro-human rights light.

SAFEGUARDING HUMAN RIGHTS ADVANCES

The dangers of governments gaining human rights legitimacy without genuine commitment to long term change at the national level is a concern that has been voiced by NGOs throughout this period. For example, State responsibilities in ensuring the participation of women in political life – such as those outlined in the *Convention on the Elimination of Discrimination against Women* (CEDAW) – have been repeatedly noted following the revolutionary protests in Egypt. However, a delegate of the Moroccan national human rights institution expressed fear that, instead of the change in government resulting in greater recognition for the rights for women, they may now be 'put back in boxes' in Egypt.³⁶ Egypt's recent reference to 'adhering to our most cherished traditional values' in their transition³⁷ puts a question mark over whether it will withdraw its much decried reservations to CEDAW.

Recommendations and decisions from human rights mechanisms are more likely to be implemented and human rights guaranteed with the strengthening of the overall human rights system. For example, the new OHCHR presence in Tunisia and proposed regional office in Egypt³⁸ should be a valuable source of support and expertise during the periods of political transition and consolidation. OHCHR advice on strengthening the Tunisian national human rights institution has already been noted by the High Commissioner, Ms Navi Pillay.³⁹

At the regional level, failure by the African Union to ensure Libya's compliance with the order for provisional measures could seriously undermine the credibility of the body and the system overall. At the international level, NGOs continue to

demand that criteria for election to the Human Rights Council and pledges made by States during candidacies⁴⁰ are upheld as a means of enabling Council credibility.

Human rights recommendations, such as those from the Universal Periodic Review (UPR), provide States with a guide for developing policy that is grounded in upholding human rights. They also provide civil society actors with a basis to determine and highlight desirable policy priorities. Tunisia's second review under the UPR will be in June 2012, a valuable opportunity to assess implementation of its prior UPR recommendations, including in regard to the protection of human rights defenders. Egypt will be examined for its second time in 2014.

In regard to ongoing measures, during the debate on the Commission of Inquiry on Libya, Slovakia asked how the international community will continue its engagement after the, now extended, period of monitoring and reporting of the mandate.⁴¹ NGO suggestions included a call for the creation of a country mandate on Libya to monitor implementation of recommendations and define the needs for technical assistance and capacity building.⁴²

Ongoing attention to respect for the freedoms of peaceful assembly and association will be provided by the newly created Special Rapporteur on this issue. In addition, a 'Panel on the promotion and protection of human rights in the context of peaceful protests' will take place in September 2011.⁴³ Whilst it has been suggested that this is an attempt to quieten ongoing critics of UN action where protestors continue to be abused, it will at least provide a focus of attention for these issues.

CONCLUSION

Over recent months the level of grassroots civil society protesting, engagement with human rights mechanisms, and in some cases the measures taken by those mechanisms to secure positive change and protect human rights defenders, have been striking. It is too early to judge to what degree these actions will contribute to long term human rights guarantees. Nevertheless human rights defenders have an ongoing role, in particular in ensuring that the government, however strongly it might associate itself with 'the revolution' or 'the people',⁴⁴ is held accountable including through established human rights mechanisms. ■

34 Burkina Faso, Malawi, Mali, and Tanzania.

35 'Africa's New Human Rights Court: Whistling in the Wind', Sonya Seats, Chatham House, International Law. March 2009.

36 Moroccan delegate at the meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Geneva, May 2011.

37 Egypt statement during the 49th Session of the ACHPR.

38 Press Conference by United Nations High Commissioner for Human Rights, Navi Pillay. 30 June 2011. <http://bit.ly/pa9C82>.

39 Statement by UN High Commissioner for Human Rights Navi Pillay to mark the opening of the UN Human Rights Office in Tunisia, 14 July 2011. <http://bit.ly/ovvmcL>.

40 Joint Statement by Asian Forum for Human Rights and Development, Cairo Institute for Human Rights Studies, and ISHR. HRC 16th Session, End of session statement, 25 March 2011.

41 The mandate of the Commission of Inquiry on Libya was extended through a resolution approved by consensus: 10 June 2011 A/HRC/17/L.3.

42 Recommendation of Cairo Institute during interactive dialogue with commission of inquiry, 9 June 2011. <http://bit.ly/rtaGnP>.

43 See HRC resolution A/HRC/17/L.4/Rev.1.

44 Statement from the delegation of Egypt during 49th Ordinary Session of ACHPR.