



**DEMOCRACY
WITHOUT
BORDERS**

A UNITED NATIONS SPECIAL RAPPORTEUR ON DEMOCRACY

On the possibility of a new mandate under
the United Nations Human Rights Council

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Democracy Without Borders is an international civil society organization with chapters around the world that promotes democracy from the local to the global level with a focus on strengthening democratic participation and representation of citizens in more effective global institutions.

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EXECUTIVE SUMMARY

A worrying global trend of democratic backsliding has been brought to the attention of the public by numerous civil society organizations, democracy watch dogs, activists and researchers. Democracy Without Borders (DWB) is convinced that democracy is the only known political system that is capable of ensuring the fulfillment of human rights and fundamental freedoms for all citizens in an effective way, from the local to the global scale. In light of this, and encouraged by support for a new mandate to be established by the Human Rights Council of a UN Special Rapporteur on Democracy (UNRoD) ahead of the Summit for Democracy in 2021, DWB performed extensive research on the possibility of such a rapporteur which is combined in this report.

This assessment first demonstrates the long standing relationship between the UN and democracy, and shows that the UN has been vocal in its support for democracy as a variety of official documents testify, in particular the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1993 Vienna Declaration and Programme of Action, the 1996 Agenda for Democratization, as well as numerous successive resolutions adopted by the UN General Assembly, the Human Rights Council and other bodies as recently as 2021. The democratic rights expressed in these documents are under threat in many countries and a UN Special Rapporteur on Democracy could help protect and strengthen democracy if the mandate is set up in the right way.

In order to envision this new mandate, the report first analyzes the Special Procedures system of the Human Rights Council (HRC) in general. Its advantages and opportunities include the independent authority of rapporteurs, the collection of evidence, easier access to rapporteurs due to technological advancements, and close collaboration with civil society networks. However, disadvantages such as the non-binding nature of recommendations, non-response from states, the presence of authoritarian states in the Council and the politicization of rapporteurs' appointments is obstructing their work. Keeping these in-built limitations in mind, DWB suggests a UNRoD mandate that works similar to the other Special Rapporteurs, as an ombudsperson and expert who provides an institutional and structural analysis of the state of democratic rights, makes recommendations for improvements, and identifies best practices with the help of an advisory board, in close collaboration with the other rapporteurs and based on broad input from citizens, civil society groups and other stakeholders. For the purpose of this mandate, a definition of democracy can be built upon language included in collectively agreed UN resolutions and take a rights-based approach.

This study also considers different ways in which protection for democracy could be achieved, if not in the form of a UNRoD. These options could be a working group under the HRC, a re-opening of the negotiations regarding the HRC mandate on Promotion of a Democratic and Equitable International Order to include also the state of democracy at the national level, and finally placing a rapporteurship under a different UN mechanism, in particular the Human Rights Committee of the International Covenant on Civil and Political Rights. We conclude, though, that a new UNRoD mandate under the HRC is the best of these options.

INTRODUCTORY REMARKS

In light of democratic backsliding that has been affecting numerous countries across the world, governments, civil society and experts are considering measures that can help counter this trend. In connection with the Summit for Democracy from 9-10 December 2021, organizations working on democracy released documents and statements indicating that the creation of a UN Special Rapporteur on Democracy (UNRoD) could be a useful step in this field.¹ This report is based on research that was done in the period of September to December 2022 which included, in particular, interviews with academics, NGO representatives and UN employees as well as a roundtable discussion of experts held on 17th of January 2023, co-hosted by Democracy Without Borders, Community of Democracies, Forum 2000, the Asia Democratic Network, and the Latin American and Caribbean Network for Democracy.^{2,3}

In order to be able to envision this new mandate, it is first important to study the relation between the United Nations (UN) and democracy, as well as the workings of the UN Human Rights Council's Special Procedures system that the new mandate would fall under. Subsequently, this report outlines how this new mandate may look like and what its responsibilities could entail, how it could operate, and examines possible advantages and disadvantages. This report tries to give an overview of the context in which the new mandate would be created as well as of the mandate itself. Recommendations are made on how to further pursue a campaign for the creation of a UNRoD mandate, and finally other options are considered to increase the protection of democracy within a UN framework. The purpose of this report is to provide a basis of information and recommendations for relevant stakeholders interested in this new mandate to fall back on, in particular for decision-making regarding a possible campaign for a UNRoD.

THE UNITED NATIONS AND DEMOCRACY

NEUTRALITY OR NOT? THE CASE FOR DEMOCRACY AT THE UN

The word democracy is not present in the founding Charter of the United Nations. Yet, when one thinks of prominent UN values, those that come to mind are protecting and promoting human rights. Indeed, human rights form one of the three traditional pillars of the

¹ Forum 2000, "Statement on the Need to Strengthen the Alliance of Democracies" (2021); Club de Madrid, "Policy Dialogue 2021 Concluding Document: Our Commitment to Democracy" (2021); European Partnership for Democracy, "The Summit for Democracy: A Menu for Commitments" (2021).

² Democracy Without Borders, 24 January 2023, "Experts discuss new mandate of UN Special Rapporteur on Democracy", www.democracywithoutborders.org/26165/.

³ We wish to thank the speakers at the roundtable for sharing their valuable insights, in particular Jane Connors, François Crépeau, Thomas E. Garrett, Roukaya Kasenally, Staffan Lindberg, Niroshini Nugawela, George Papandreou, Jerzy Pomianowski, Gina Romero, Laura Thornton and Ichal Supriadi as well as those who participated in interviews and provided input otherwise, especially Rosa Freedman, Marc Limon, Livingstone Sewanyana, Gulnara Shahinian, Eric Tistounet as well as Melissa M. Verpile and the democratic renewal and human rights team of Parliamentarians for Global Action.

UN's work in addition to peace and security, and development. They play a role in underpinning UN peacekeeping missions, UN election support missions and the promotion of democratic practices, among other things. When the UN's Charter was drafted in 1945, many of the 51 founding members were not practicing democracy and many did not endorse the political system at all.⁴ Today, the United Nations are seen by many as defendants of democracy, evidenced by numerous General Assembly resolutions on the UN's commitment to democracy, UN agencies working on democratic governance, and election support in a wide array of countries. Or, as Jean-Philippe Thérien and Madeleine Bélanger Dumontier put it, "both through its discourse and deeds" the UN is seen as a meaningful actor in the field.⁵

Trying to assume a neutral political stance, in order to facilitate UN operations in every type of state, while simultaneously promoting democracy, is a fine line to walk. On their own website, the UN expresses its support for democracy, however not for democracy as a political system. Rather they state "democracy is a core value of the United Nations".⁶ Expanding upon this, they state they support the value of democracy by promoting human rights, development as well as peace and security. The specific choice of diction here, by using the value of democracy, rather than democracy on its own (which creates a connotation with the political system), allows the UN to seem officially neutral in its preference for political systems, while supporting elements that are associated with a democratic political system. This "support" is represented by missions to promote good governance, monitor elections, support civil societies, strengthen democratic institutions, sponsor self-determination efforts in (recently) decolonized countries and assist in drafting new constitutions in post-conflict nations.⁷

The argument is made by both the UN and several scholars that the wording of the Charter itself is specifically designed to imply the support for democracy as a political system as well.⁸ The opening words of the Charter "We the Peoples" are said to reflect the fundamental principle of democracy, namely that the legitimacy of the signatories of the Charter needs to be based on the will and support of the people of the respective states. By not including the word democracy in the Charter, they managed to circumvent the possibility of it being seen as a legal right, and in this regard, at least under the Charter, no claims could be brought against UN members for not practicing democratic governance.⁹

The Universal Declaration of Human Rights (UDHR), unanimously adopted in 1948 by the General Assembly (GA), early on proclaimed support for democracy in Article 21, stating that

⁴ "Democracy," United Nations, accessed September 23, 2022, www.un.org/en/global-issues/democracy.

⁵ Jean-Philippe Thérien and Madeleine Belanger Dumontier, "The United Nations and Global Democracy: From Discourse to Deeds," *Cooperation and Conflict* 44, no. 4 (2009): 371.

⁶ "Democracy," United Nations, *ibid*.

⁷ *Ibid*.

⁸ Christopher Joyner, "The United Nations and Democracy," *Global Governance* 5, no. 3 (1999): 337.

⁹ Rosalyn Higgins, "Democracy and the United Nations," *Cambridge International Law Journal* 4, no. 2 (2017): 221.

“1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Moreover, the International Covenant on Civil and Political Rights (ICCPR), adopted by the GA in 1966 and entered into force as an international treaty in 1976, includes very similar language in Article 25:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”

For the purpose of this report, we shall summarize the rights to democracy expressed in Article 21 UDHR and Article 25 ICCPR as “democratic rights”. While these documents provide a strong normative foundation for support of democracy, the growing influence of the Cold War slowed down advancements that could possibly be made during this period. After the end of the Cold War, the pursuit of democracy restarted, with support from in- and outside the UN system.¹⁰

The cautious choice of diction is understandable regarding the time period and purpose in which the UN was created. Namely, only a few of the signatories of the Charter were actual democracies at the time of signing, moreover, the divide among the “East” and “West”, the “communists” and “democrats” in the Cold War made unanimity difficult to achieve. As an organization that had the purpose, among others, to sustain world peace across these ideological boundaries and among the great powers, it was essential the UN remained as neutral as possible, which included not expressing a preferred method of governance, and not seeming like it was an instrument of democratic states. The UDHR and ICCPR, nonetheless, are actually quite clear and express universal support of democracy from a rights-based perspective, an approach endorsed by participants of the roundtable discussion as well.

¹⁰ “Democracy,” Office of the United Nations High Commissioner for Human Rights, accessed September 23, 2022. <https://www2.ohchr.org/english/issues/democracy/index.htm>.

As the Cold War came to an end, according to scholars such as Carl Gershman a resurgence in democracy focused projects and strategies of the UN occurred, specifically in regards to the economic and social development that can be promoted with the broader goal of securing peace and security.¹¹ By making the argument that democracy is essential to achieve sustainable world peace, the UN allowed for a framework in which (the creation of) democratic institutions processes can be supported, for the goal of peace and security.

EXAMPLES OF DEMOCRACY SUPPORT AT THE UN

Throughout the decades, democracy has become a part of the DNA of the UN, and this paper posits that the UN has long embraced democracy, a fact that is often ignored or overlooked. In this section a list of UN support for democracy will be provided to substantiate this. First, a short overview of UN agencies directly supporting democracy will be provided, followed by a collection of UN resolutions that support democracy in addition to the UDHR and ICCPR.

The UN oversees a range of activities in support of democracy through the United Nations Development Programme, the United Nations Democracy Fund, the Department of Peace Operations, the Department of Political and Peacebuilding Affairs, the Office of the High Commissioner for Human Rights and the United Nations Entity for Gender Equality and the Empowerment of Women.¹² The United Nations Democracy Fund was called into life by Secretary-General Kofi Annan in July 2005 and welcomed by the General Assembly in the Outcome Document of the 2005 World Summit. Its main purpose is to promote democracy through building democratic institutions and facilitating democratic governance in new, emerging and consolidating democracies. Civil society groups can apply for funding of projects to promote democracy primarily at a local level.

Often, democracy promotion is also directly related to UN peacemaking, peacekeeping and peace-building activities. By having a significant role in consolidating peace arrangements, Christopher Joyner writes the “UN becomes an essential player in promoting a democratic culture”.¹³ The UN is also heavily involved in election support. Edward Newman and Roland Rich argue that UN election missions force the states to make critical political choices. They write: “Elections influence to what extent the internal politics of fragile new states become stabilized, whether the new political dispensation comes to be viewed as legitimate, and how the rhythm of peaceful democratic politics can evolve and become sustainable”.¹⁴ It is critical that the elections happen at the time when the country is actually ready for it, otherwise ill-timed, badly designed and poorly run elections may in fact undermine rather

¹¹ Carl Gershman, “International Organizations & Democracy: The United Nations and the New World Order,” *Journal of Democracy* 4, no. 3 (1993): 6; Joyner, “The United Nations and Democracy,” 335; Edward Newman, and Roland Rich, *The UN Role in Promoting Democracy Between Ideals and Reality* (New York ; Tokyo: United Nations University Press, 2004), 193.

¹² “Democracy,” United Nations, *ibid.*

¹³ Joyner, “The United Nations and Democracy,” 341.

¹⁴ Newman and Rich, *The UN Role in Promoting Democracy*, 113.

than support the broader process of democratization.¹⁵ States can request electoral assistance, or the Security Council must give a referral.¹⁶ From 1991 to 1999, the UN received a total of 89 requests from states for electoral assistance, 40 from Africa, 13 from Latin America and the Caribbean, 8 from Asia and 5 from Europe and the Commonwealth and 2 from Arab states.¹⁷ States in which this election support has had significant consequences are most notably Namibia, Eritrea, Cambodia, Mozambique, and East Timor.

In support of the agencies who work on promoting democracy, since 1988, the GA has on a yearly basis adopted at least one resolution dealing with some aspect of democracy.¹⁸ Many are state-specific, in regards to condemning a coup that overthrew a democratically elected government for example, such as resolution 46/7 and subsequent ones concerning the situation in Haiti in the 1990s, or 47/144 regarding the coup in Myanmar, and 48/L/16 condemning the coup in Burundi. Whereas the first few decades of the UN only saw resolutions regarding self-determination and the installment of democratic governments in ex-colonies, or condemning coups that overthrew democratically elected governments, since the fall of the USSR, the UN has become notably more outspoken about its support for democracy. A notable example regarding its clear support for democracy includes the Vienna Declaration and Programme of Action that was adopted by the World Conference on Human Rights in 1993 which stated in its eight paragraph:

“Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.”

Especially crucial to indicating the road that the UN took in the 1990s was the 1996 *Agenda for Democratization* report from Secretary-General Boutros Boutros-Ghali which discussed four main points: “an emerging consensus on democracy and its practical importance; the foundation for United Nations concern with democratization and the role envisaged for it; the new momentum for, and the resultant expansion in, United Nations support for democratization; and a new dimension of this support — democratization at the international level.”¹⁹ This document is crucial to understand how the UN’s stance on democracy developed at this time. It helped establish the UN as an important actor in the field with the overall approval of member states. The document was based on a request of the GA in the year prior to it for a report on how to support new and restoring democracies

¹⁵ Ibid., 115.

¹⁶ Joyner, “The United Nations and Democracy,” 340.

¹⁷ Newman and Rich, *The UN Role in Promoting Democracy*, 213.

¹⁸ “Democracy,” Office of the United Nations High Commissioner for Human Rights, *ibid.*

¹⁹ Boutros Boutros-Ghali, “Agenda for Democracy,” *United Nations Department of Public Information* (New York: United Nations, 1996), 3.

(resolution 49/30), which not only resulted in many more documents, such as the resolutions on New and Restored Democracies, but six international conferences from 1988 to 2006.

The GA's Millenium Declaration of heads of state and government in 2000 stated: "We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development." The United Nations Commission on Human Rights (UNCHR) two years later identified specific elements of democracy in its important 2002/46 resolution, adopted with a vote of 43 to none with several abstentions, which stated:

*"that the essential elements of democracy include respect for human rights and fundamental freedoms, freedom of association, freedom of expression and opinion, access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media."*²⁰

This statement together with the rights-based perspective in the UDHR and ICCPR virtually provide a collectively agreed definition of democracy. The GA in 2005 and in another later resolution nonetheless noted that while "democracy and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing," democracy is versatile, and "no single mode of democracy exists".^{21 22} Alongside language of the 1993 Vienna conference, this formula was also used when the GA in 2007 declared that 15 September of each year shall be observed as the International Day of Democracy.²³ While this formula may be true, there obviously is a continuing universal agreement on essential elements of democracy and democratic rights as all resolutions and instruments adopted over time need to be read and acknowledged as a whole. Most recently, in 2020, the high level-meeting of the GA in commemoration of the 75th anniversary of the UN, passed a resolution on behalf of heads of state and government stating "we will continue to promote respect for democracy and human rights and enhance democratic governance".²⁴

The UN Human Rights Council (HRC) in 2021 reiterated its support for democracy, and the relevant provisions of the UDHR and ICCPR in particular, in a resolution on "Equal Participation in Political and Public Affairs" which was adopted unanimously without a vote, a fact that underlines universal approval once more. The resolution emphasized "the

²⁰ United Nations Office of the High Commissioner for Human Rights, "Further Measures to Promote and Consolidate Democracy," RES/2002/46 (adopted 23 April 2002).

²¹ United Nations General Assembly, "World Summit Outcome," (adopted 24 October 2005) RES/60/1 para. 135.

²² Id., "Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization," (adopted 18 December 2019) RES/74/158.

²³ Id., "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies." (adopted 13 December 2007) RES/62/7.

²⁴ Id., "Declaration on the Commemoration of the Seventy-Fifth Anniversary of the United Nations," (adopted 16 September 2020) A/75/L.1.

critical importance of full and effective participation in political and public affairs for democracy, the rule of law, social inclusion, economic growth, sustainable development and the advancement of gender equality, as well as for the realization of all human rights and fundamental freedoms.”²⁵ While the HRC thus continues to recognize and support the importance of democracy in order to realize basic human rights and fundamental freedoms, the body lacks a mechanism to promote democratic rights as such.

A UN SPECIAL RAPPORTEUR ON DEMOCRACY

THE ADVANTAGES OF THE SPECIAL PROCEDURES SYSTEM

Since its creation, the HRC, building on the work of the preceding United Nations Commission on Human Rights and alongside its mandates and mandate holders has made several strides in the protection and promotion of human rights. The Special Procedures of the HRC system is the overarching name for the Special Rapporteurs, Working Groups and Independent Experts that work on thematic issues or country-specific research regarding human rights abuses. Currently, there are 59 mandates, 14 country mandates and 45 thematic mandates. Special Procedure mandate holders perform research on their specific mandates and publish reports with recommendations regarding their research subjects on a regular basis throughout their mandate period. None of the recommendations that are made are legally binding and the system therefore works more as a normative system.²⁶ Within the Special Procedures system, several advantages can be identified that aid the mandate holders in fulfilling their mandates. These advantages will also aid the Special Rapporteur on Democracy in pursuing their mandate, and help in overcoming some in-built disadvantages of the Special Procedures, which will also be outlined below.

First, the work done by the Special Procedures mechanisms, the evidence collected during country visits and contact with victims and civil society, the communications with states, the empirical research et cetera all come together into a large database of evidence that is expanded every year as new reports are published. This large database of evidence and information on human rights abuses and system violations by state or non-state actors could in the future help victims seek justice, and keep a close eye on the human rights records of states. Several interviewees have pointed out the importance of this database for both legal action as well as a general point of information to look back on and use to keep states responsible when they deny certain actions. In combination with the work of civil society and academics, the Special Procedures database creates a robust ground base for possible legal action in the future. Second, as technology has evolved exponentially over the last few decades, and moreover, as technology is more widespread to all corners of the world,

²⁵ United Nations Human Rights Council, “Equal Participation in Political and Public Affairs,” (adopted 14 October 2021) A/HRC/RES/48/2.

²⁶ Ahmed Shaheed and Rose Parris Richter, “Doing It All and Doing It Well? A Mandate’s Challenges in Terms of Cooperation, Fundraising and Maintaining Independence,” In *The United Nations Special Procedures System* (Leiden: Brill Nijhoff, 2017), 186.

reaching out to the Special Procedures mandate holders as a victim has become much easier. There is a system of online applications that victims can use to share violations they have experienced and call the appropriate mandate holder to action. Without technology it would have been much harder to identify and document violations, especially if states are unwilling to cooperate and restrict access to possible victims or minority groups.²⁷ Accompanying this increasing usefulness of technology, came a growth of civil society into more and more professionally structured organizations. Civil society often has an ear to the ground and works closely together with marginalized communities that experience human rights abuses most often.²⁸ Through close collaboration with civil society, mandate holders can do their work better, connect with victims (who the state might otherwise gatekeep the mandate holder from) and use their experiences in their reports to make recommendations to states.

THE DISADVANTAGES OF THE SPECIAL PROCEDURES SYSTEM

While some advantages exist of the Special Procedures system, unfortunately, a wide array of disadvantages plague all mandate holders, and will also plague a Special Rapporteur on Democracy. As an international organization from and for states, the UN, and the HRC by extension, were designed to not give power to the organization, and rather base its work on voluntary collaboration and approval of individual states. This results in several problems, the first being non-response.²⁹ The Special Procedures system issues hundreds of communications to states every year. To illustrate, between 2008 and 2013 a total of 7,901 communications were issued concerning a variety of concerns from mandate holders on human rights statuses and abuses in member states. As states have no legal obligation to respond to these communications, many simply do not do so. Only 3,988 (roughly 50%) were answered. Out of this number, only 8% contained a substantive response, showing a willingness of states to take action to implement mandate holder's recommendations and improve their human rights records.

Secondly, states have no legal obligation to cooperate with mandate holders' requests for country visits, nor to let them into the country in the first place, nor to allow the mandate holder to speak to all members of society they wish to (especially victims of human rights abuses).³⁰ ³¹ While technology and reliance on civil society groups are two ways to overcome this hurdle, it does continue to hinder the work of Special Rapporteurs and the accuracy and completeness of their country reports. At times, those who speak out about human

²⁷ Ahmed Shaheed and Rose Parris Richter, "Doing It All and Doing It Well? A Mandate's Challenges in Terms of Cooperation, Fundraising and Maintaining Independence," In *The United Nations Special Procedures System* (Leiden: Brill Nijhoff, 2017), 187.

²⁸ *Ibid.*, 187.

²⁹ *Ibid.*, 164.

³⁰ Carolyn Evans, "Strengthening the role of the special rapporteur on freedom of religion or belief," *Religion and Human Rights* 1, no. 1 (2006): 80.

³¹ Ahmed Shaheed and Rose Parris Richter, "Doing It All and Doing It Well? A Mandate's Challenges in Terms of Cooperation, Fundraising and Maintaining Independence," In *The United Nations Special Procedures System* (Leiden: Brill Nijhoff, 2017), 160.

rights abuses face consequences from the perpetrators - whether this be systemic state violence or more individually based.³² The Special Procedures system needs to be designed in a way that protects vulnerable groups and individuals better, in particular with regard to the safety of those who speak out about human rights abuses and to avoid creating a situation in which others are scared into silence.

Another significant disadvantage of the Special Procedures system is that none of the Special Rapporteurs or Independent Experts are paid a wage or compensation for their time spent on the work.³³ To make a living, Special Procedures mandate holders often work in academia, NGOs or other positions full time, and fulfill their mandate obligations during their time off or on the weekends. This situation significantly limits the amount of work a mandate holder can do, and results in them needing longer to publish reports. However, the studying of severe human rights abuses should not be required to be a weekend activity, but have people working on this full time. The system was first designed in this manner to ensure the objectivity of the mandate holders. Only at first glance, however, this seems like a reasonable assumption to make, since one can also make the argument that instead of creating objectivity, the lack of compensation makes mandate holders perhaps more receptive to potential bribes. While mandate holders receive reimbursement for expenses related to their country visits, this also only happens at a later moment (sometimes after many months), meaning that mandate holders and staff need to be able to pay for these trips upfront, which could prove difficult for some, and create a barrier for some who wish to enter this field.³⁴ Mandate holders are allowed to receive financial donations from states and NGOs. While most mandate holders, for the sake of transparency, publish their sources of donations on the Internal Voluntary Disclosure Mechanism, it is not mandatory and some sources of donations therefore remain buried.³⁵ At the roundtable discussion one of the speakers expressed the view that mandate holders' credibility towards states was based on them not being paid and that existing modalities in this regard should not be changed. Recognizing that the subject is contentious, we recommend further review and discussion separate from the question of setting up the mandate of a UNRoD.

A general disadvantage of the Human Rights Council as a whole is the make-up of the Council's membership. Not all countries of the Council are full, free democracies that value political participation and civil rights, so how can they be expected to promote human rights, let alone democracy? Based on the Freedom House Index the average freedom score of the current 47 HRC members is 53.80/100.³⁶ Specifically focusing on political rights, the average score is 28.50/40, with one member state even scoring a -2. When it comes to civil liberties, the member states score an average of 33.44/60. Holistically, 16 out of 47

³² Ibid., 165.

³³ Inga T. Winkler and Catarina de Albuquerque, "Working Out a Working Group: A View from a Former Working Group Member," In *The United Nations Special Procedures System* (Leiden: Brill Nijhoff, 2017), 214.

³⁴ Ibid., 200.

³⁵ Ibid., 220.

³⁶ Freedom House, "Countries and Territories," *Freedom House* (accessed November 28, 2022) <https://freedomhouse.org/countries/freedom-world/scores>. (calculations made by author)

countries are classified as free, 18 out of 47 as partly free, and the remaining 11 as not free. Considering this composition of the Council, as well as the GA's statement, mentioned before, that there is no one model of democracy, this context begs the question to what extent we can be lenient with the concept or definition of democracy used for the UNRoD, while ensuring that it does not lose all meaning and is used as a political ploy for autocratic states.

Based on these distinctions, there is often herd voting behavior within the Council of democracies vs non-democracies sticking together on certain resolutions. Moreover, voting within the regional group divisions is incredibly strong. The Russian invasion and subsequent war in Ukraine has created a new level of multi-layered polarization, similar to the divisions of the Cold War, an interviewee pointed out. When the HRC was created, however, the GA stated that "when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights".³⁷ Unfortunately, as the previous numbers testify, this is not the case. We call on governments not to elect members to the HRC who are known to commit egregious human rights abuses and to suspend those who commit such during the term of their membership.

As with any other Special Rapporteur mandate, it is often the good guys that get shot. Countries that are open to allowing country visits and cooperating with investigations, especially in the context of a democracy rapporteur, will often be the democracies themselves, rather than non-democratic states. This leaves democracies open to (while justified and based on evidence) scrutiny and recommendations from the mandate holder and they are "projected to have terrible records and then have to end up defending themselves whilst the real bottom of the barrel just sit on the sidelines and snipe."³⁸

The decision regarding the person of the mandate holder will also be crucial to its success. There is a high level of polarization concerning these appointments with every mandate. One interviewee pointed out the importance of choosing a "neutral" mandate holder. A mandate holder from the United States, or virtually any other "Western" state, in the opinion of this interviewee, will most likely not be received very well by states in the Global South, and allow for non-democratic states to circulate the notion that democracy is an idea from the Global North imposed onto the Global South, which is simply untrue as the above UN resolutions and instruments testify which were adopted with broad support across the world's regions. The unanimous adoption of certain resolutions as illustrated in the previous section showcases that all states, more often than not, officially do endorse language in support democracy and democratization efforts, and at least do not wish to expose themselves as opponents, and should therefore - in theory - support the creation of a new UNRoD mandate.

³⁷ United Nations General Assembly, "Human Rights Council," (adopted 3 April 2006) Resolution A/RES/60/251 para. 8.

³⁸ Interview, performed under Chatham House Rules.

These disadvantages are rather structural to the Human Rights Council and not related specifically to the possible mandate of a Special Rapporteur on Democracy. They will however, influence the work of the mandate holder to various extents and are therefore important to consider when envisioning the new mandate. Unfortunately, none of these issues can be solved through the creation of a Special Rapporteur on Democracy, this instead would be a campaign addressing the HRC's design and methods as a whole.

ENVISIONING A NEW MANDATE

We envision that the mandate of a UNRoD would examine how the right to democratic representation and participation of citizens included in the UDHR and ICCPR (the “democratic rights” as defined earlier) is implemented, and make recommendations on possible improvements. Overall, the mandate would serve the purpose of helping strengthen democracy and democratization, in particular from an institutional point of view. The rapporteur should not only address deficiencies but also highlight good practices and arrangements others can learn from. As shown before, democracy is a part of the UN's DNA and yet remains under-represented in the UN's activities and projects. A UNRoD can help change this. Throughout the series of interviews conducted for this report and at the roundtable discussion, it has become clear that there is a broad agreement that, even though the HRC has its disadvantages, and the creation of a new mandate may be difficult to achieve, this is a goal worth pursuing. A mandate such as this would fill the gap that currently exists within the Council and add to the current human rights protection system as it pertains the democratic rights to political representation and participation. While mandates exist for an array of other human rights, these democratic rights are clearly missing from the list. Although several elements of a functioning democratic society are represented in other mandates, for instance the Special Rapporteurs on the Right to Development, Independent Judges and Lawyers, Freedom of Assembly, Freedom of Opinion and Expression, Freedom of Religion, and Rights of Indigenous Peoples, what lacks is an institutional and structural analysis of the state of democratic rights as such.

Without democratic institutional frameworks, human rights are nothing more than some words on a piece of paper and subject to arbitrary application at the discretion of a given government. It necessitates a system of checks and balances and political accountability around it that is able to help guarantee the protection and promotion of human rights. Past experiences have shown that democracy is the best institutional framework for that. The argument in favor of a UNRoD is also based on this assumption. In order to ensure that citizens can exercise their human rights, specifically third generation rights³⁹, the institutional framework of democracy is best suited. Democracy allows for an economic, political,

³⁹ The rights to development, to peace, to a healthy environment, to share in the exploitation of the common heritage of mankind, to communication and humanitarian assistance.

social and cultural environment that gives space to fundamental freedoms to be realized to an extent that autocratic states cannot compete with.⁴⁰

In order to realize an efficient mandate that looks at how access to and implementation of democratic rights can be improved in a structural and institutional manner, careful negotiations will be required. One thing that requires clarity is the definition of democracy that the Special Rapporteur should adhere to, in particular to avoid the mandate being misused by autocratic states that wish to present themselves as “democratic”. According to International IDEA, an international governmental organization with 29 member states, democracy “is a system in which the government is controlled by the people and citizens are considered equals in the exercise of that control.”⁴¹ International IDEA also stresses that democracy is based on context and should be approached with a pluralistic understanding of the concept. However, it is possible to use Article 21 UDHR and Article 25 ICCPR as a key element for a definition as their universal character can hardly be contested. In addition, the “essential elements of democracy” identified by UNHRC resolution 2002/46, quoted above, represent an important reference. The Community of Democracies’ founding Warsaw Declaration of 2000 has also chosen a rights-based approach towards identifying “core democratic principles and practices”. A rights-based approach was also recommended by one of the participants of the roundtable. Further input to our consultation noted that the definition should be inclusive, comprehensive and ambitious. It was suggested that minimum criteria to assess the quality of democracy are 1) universal, adult suffrage; 2) recurring, free, competitive, and fair elections; 3) more than one serious political party; and 4) alternative sources of information.⁴²

Democracy, in the context of a UNRoD mandate, building on the above thus embraces, among other things, a system of institutions and legal rights and guarantees based on checks and balances and the separation of powers that allows for individuals’ direct influence on and pluralistic representation in structures of public authority through competitive, periodic, free and fair elections as well as methods of participation and access to justice.

The mandate holder can work as an ombudsperson that is open to do their own research, as well as receiving complaints and draft recommendations based on that.⁴³ A democracy mandate should look into the existing structures that ensure free and fair elections and make recommendations on what could be improved, for example related to gerrymandering. However it appears that monitoring specific elections, in particular, should be reserved as a task for other agencies and organizations and should not be a focus of this mandate. Ad-

⁴⁰ Lorne Neudorf, “Promoting independent justice in a changing world,” *Human Rights Law Review* 12, no. 1 (2012): 108.

⁴¹ International IDEA, “About Us: Our Approach,” (accessed 30 November 2022). www.idea.int/about-us/mission-values.

⁴² Diamond, Larry, and Leonardo Morlino. 2004. “The Quality of Democracy: An Overview.” *Journal of Democracy* 15 (4): 20–31, p. 21.

⁴³ Maxwell A. Cameron, “After the democratic charter’s first decade: achievements, limitations, and next steps,” *Latin American Policy* 3, no. 1 (2012): 58 - 73.

ditionally, the mandate for instance could allow the mandate holder to make recommendations on the structural protections and enablement of fundamental freedoms and human rights in member states, such as those described in the UNHRC's 2002/46 resolution above. This could include a recommendation to enshrine human rights guarantees and fundamental freedoms in the constitution, rather than through passing bills through parliament, an interviewee pointed out. This is just one element that could be improved to create better functioning democracies that, even if a regime change occurs, the reversal of these fundamental freedoms is made much more difficult. Many other elements of democracy are already dealt with by other mandate holders in the council. It is essential that UNRoD closely collaborates with these other mandates. Publishing joint reports and conducting joint investigations on situations of concern may be useful, if applicable, rather than replicating and duplicating each other's work. At the roundtable it was suggested that the mandate of a UNRoD "had the potential of bringing together the work of all relevant special rapporteurs related to economic, social, civil and political rights, from peaceful assembly to freedom of expression."

The mandate holder should not reinvent the wheel. Necessary of course is that the mandate holder is someone with experience in the field, and has knowledge on how to track and analyze the status of democracy within nations. The mandate holder is not expected to publish reports on the state of democracy in all countries like other organizations already do, but rather work together with them to identify points and countries of concern and possible improvements. In doing so, the rapporteur will be expected to consult with citizens and relevant stakeholders to the extent possible. It is clear, though, that the possibility of conducting useful consultations on the spot will be severely limited or outright impossible with regard to countries where democratic rights are least developed. In order to make the creation of the mandate smoother, and to help the mandate holder in their work, much attention should be given to the methodologies and data already used and compiled by organizations such as V-Dem, International IDEA, Freedom House, the Economist Intelligence Unit, Polity5 Project or the Electoral Integrity Project who assess the state of democracy in the world's countries, among others. Experts on democracy should be working closely with the mandate holder to help identify which countries should be prioritized as the next country visit and/or report subjects, among other things. In particular, the UNRoD could connect with the proposed International Scientific Panel on Democracy, if it is set up, and similar initiatives.⁴⁴

For this purpose, we suggest that an advisory group should be created under the mandate that has the purpose to help steer the mandate holder in deciding what situations, topics, or countries to examine and to provide scientific support, among other things. The advisory group could consist of a number of experts, from civil society, academia and beyond in the field of democracy promotion and monitoring, elected by the HRC for a period of three years, so that the advisory group could be changed halfway through the mandate holder's

⁴⁴ V-Dem Institute, "Democracy Report 2022: Autocratization Changing Nature?," (Gothenburg, 2022) 40-43. https://v-dem.net/media/publications/dr_2022.pdf.

tenure, if need be (re-election should be possible). The mandate holder should consult the advisory group on relevant statements to be made and other matters. During the roundtable discussion, support for such an advisory group was expressed. Other than that, the mandate holder will work in a similar manner to existing mandate holders. This includes regular report writing based on research from abroad and from country visits, to the extent possible, or information gained through collaboration with various stakeholders. The reports will be presented to the Human Rights Council and the GA on a regular basis. It was pointed out in a response to our consultation that an annual report of the UNRoD “would be central to the mandate, as it would provide a point of reference for monitoring current trends, developments, and challenges to democracy globally. The report should also include general recommendations for countries to implement effective strategies to better protect democracy, regardless of their current level of democracy.” Apart from making recommendations, it was suggested that the mandate holder should also act as a mediator and engage with relevant actors with a view of guiding their actual implementation.

POTENTIAL HURDLES

It is clear that in many countries democracy is under pressure in the current political climate even though studies consistently show strong popular support for democracy as a principle of government.⁴⁵ Democratic governments have often played a defensive game, compromising at the UN and in other international bodies to have more states on board during decision-making, rather than taking a stance for what they truly believe in. The time has come to realize the UN cannot just be a body to protect state sovereignty, it is an organization meant to protect the people’s interests and provide a safe and just world based on human rights. Without democracy, this is not possible. In a previous section the disadvantages of the HRC mechanism have already been identified. Here, the report will touch on some hurdles related to setting up the mandate of a UNRoD.

Contention around the term “democracy” and its definition may make it impossible to achieve consensus and make it harder to pass a HRC majority resolution creating the mandate even if previous UN resolutions and international instruments on the subject are referenced as recommended above and a rights-based approach appears hard to be contested. Opposition from autocratic states in the Council, and their allies, is to be expected. Open contestation of this mandate will show the world the true colors of some of the HRC’s member states ever more clearly as several interviewees pointed out. If need be, the creation of the mandate can be postponed until, through rotation in HRC membership, at least a slim majority of the Council members would be favorable towards establishing such a mandate. Countries that are actually interested in promoting human rights and democracy need to be encouraged to join the HRC, not only with a view of this but for the sake of the HRC’s

⁴⁵ See, for instance: Latana, and Alliance of Democracies Foundation. 2022. “Democracy Perception Index 2022.”

general credibility and efficiency, too. We believe there is little space, if any, for compromising on the definition of democracy as outlined before. The possibility of a potential misuse of the mandate by authoritarian regimes cannot be accepted.

DWB has considered several other ways in which the UN could do more to protect and promote democracy, as will be elaborated upon below. However, we are encouraged by the successful campaign to create an Independent Expert under the HRC on Sexual Orientation and Gender Identity. This years-long campaign was led by over 600 NGOs from 151 countries, 70% of which came from the Global South.⁴⁶ It was quite a close vote to pass, and the initial proposal was changed slightly, through a long campaign, 23 countries voted in favor of the resolution. A campaign for a Special Rapporteur on Democracy should look closely at this example and utilize best practices.

OTHER WAYS TO PROMOTE DEMOCRACY

It is, unfortunately, reasonable to assume that the proposal of a UN Special Rapporteur on Democracy will not be welcomed enthusiastically by all HRC member states. Still, we believe that consensus is not necessary and that this is a mandate worth advocating for, a mandate that is needed to fill a crucial gap currently left unaddressed by the HRC. Simultaneously, we recognize that even if enough states were to sponsor the mandate, it would have to go through detailed negotiations before being implemented. DWB has considered several other formats in which the democracy rapporteur might evolve into. Although they are not as strong as the position of Special Rapporteur, which we prefer, and come with their own array of issues and hurdles, they might come up during these talks.

First, there is a possibility of replacing the proposed UNRoD mandate with establishing a Working Group on Democracy under the HRC. A Working Group usually consists of a member state representative of every regional group within the council, which might diminish the politicization of the appointment of a mandate holder, and create an environment in which each regional group feels heard and has a voice in the proceedings and research that the group performs. However, this arrangement also allows for non-democratic member state governments to possibly have representatives in the Working Group, which could render the whole Working Group ineffective during their tenure.

It is also worth considering opening up negotiations surrounding the meaning and purpose of the mandate on the Promotion of a Democratic and Equitable International Order, established by the HRC in 2011, by positing that in order for the international order to function democratically, individual member states themselves must also guarantee democratic rights. Although this approach failed in the past, as one interviewee pointed out, under the right make-up of the HRC, this might be a pursuit worth undertaking. This mandate also

⁴⁶ Human Rights Watch, “UN Makes History on Sexual Orientation, Gender Identity: Human Rights Body Establishes an Independent Expert,” *Human Rights Watch* (June 30, 2016), www.hrw.org/news/2016/06/30/un-makes-history-sexual-orientation-gender-identity.

has its own issues, being presented first by the illiberal Cuban government as a political ploy rather than a mandate meant to have a progressive impact. Despite this limitation, the mandate holders tried to use the mandate in a genuinely productive way and to encourage democratic countries to engage. Its actual substance is highly relevant and important, something that many countries are yet to recognize. Democratic rights do indeed extend to the UN and the international system in general, too.⁴⁷ Unless the historical context can be overcome through new negotiations on what exactly the mandate holder's responsibilities are, this approach is not preferred by DWB. This existing mandate and a new UNRoD mandate will be complementary as they address two different levels of applying democratic rights, the former the international order and the latter member states.

Finally, DWB recognizes that the Human Rights Council is already dealing with a large number of mandates that currently exist within the Council and might not have an inclination to increase the capacity to take on another mandate and finance more country visits. In order to combat this problem it may be considered placing a Special Rapporteur on Democracy under a different human rights mechanism of the UN. An example of this is creating a Special Rapporteur specifically for Article 25 ICCPR. The mandate holder's responsibilities would be to safeguard the rights laid out in Article 25, quoted above, similar to what the mandate would do in the HRC framework.

In such an arrangement, the Special Rapporteur may be connected to the United Nations Human Rights Committee, a treaty body of the ICCPR, or the convention's state parties might also consider creating the mandate separately. 172 countries have ratified the ICCPR, which means that a Special Rapporteur tasked with investigating compliance with Article 25 could have a significant impact. Although six signatories are not legally bound to follow the convention and what it sets out, through signing they did express support and promised to not engage in behaviors that go against the spirit of the convention. Signatory states are therefore also valid objects of investigation for this special rapporteur. ICCPR state parties have an obligation to report the status of ICCPR rights to the Committee. By contrast, a Special Rapporteur would proactively conduct their own research and investigations. Given the larger prominence of the HRC in public perception, its experience in dealing with rapporteurs and considering the fact that the funding and additional capacity required isn't substantive, creating a UNRoD under the HRC still appears like the best path to take.

⁴⁷ Andreas Bummel, "Representation and Participation of Citizens at the United Nations: The Democratic Legitimacy of the UN and Ways to Improve It," In: *How Democracy Survives*, edited by Michael Holm and R.S. Deese (London and New York: Routledge, 2023), 158–75.

CONCLUSIONS AND RECOMMENDATIONS⁴⁸

DWB has come to the conclusion that a UN-mandated Special Rapporteur on Democracy can help strengthen and protect democratic rights and institutions, revitalize democracy and promote improvements.

The work of this rapporteur can be based on the UN's support of democracy and numerous resolutions and instruments adopted in this regard continuously up to the present. These documents already contain collectively agreed institutional elements and principles of democracy as well as broadly accepted democratic rights related to representation and participation which can be used to underpin the mandate.

The Special Rapporteur will be in a position to conduct investigations, consultations, and research, to publish assessments and reports and to make statements and recommendations related to the state of democratic rights and institutions in UN member states and in general. While the rapporteur will need to address infringements, limitations and deficiencies and how those could be overcome, the mandate on the other hand should also include identifying and highlighting good practices and innovations in improving the quality of democracy.

We recommend that the Special Rapporteur is assisted by an advisory board composed of experts and practitioners in democracy research, monitoring and promotion which is created as an element of the mandate. The mandate holder should seek the advisory board's guidance on what countries and subjects to focus on and will benefit from the board members' expertise and input with regard to official reports, recommendations and statements.

The mandate of a Special Rapporteur on Democracy will fill a gap in the work of the Human Rights Council as there is no procedure dedicated to investigating democratic rights and institutions and their development as such. However, there are many mandates that deal with specific rights that are fundamental to democracy. While overlaps and duplication are to be avoided, the new mandate can serve an integrating role in this regard.

DWB recommends that like-minded states committed to democracy seek a swift establishment of the mandate of a Special Rapporteur on Democracy by the UN Human Rights Council. Negotiations on this new mandate should include relevant experts, researchers, civil society representatives, parliamentarians and other stakeholders.

DWB welcomes and joins coordinated civil society efforts for the establishment of this mandate.

⁴⁸ As approved by DWB on 22 February 2023.