

# ISSUE BRIEF

No. 3717 | SEPTEMBER 5, 2012

## The Dysfunctional Human Rights Council Does Not Deserve U.S. Support

*Brett D. Schaefer*

The African Union's decision to nominate Sudan for the United Nations Human Rights Council (HRC) elicited justifiable outrage. Pressure from human rights groups and governments led Kenya to announce its own election bid, causing Sudan to withdraw. This was a welcome development; the notion of the genocidal government sitting on the most visible U.N. human rights body was outrageous. However, notorious human rights violators like Cuba, China, and Russia currently sit on the Council; and even after Sudan's withdrawal, other African countries with dismal human rights records remain virtually assured of election.

The lack of membership standards is a key reason behind the Council's poor record and, sadly, there is little chance for establishing such standards. The Administration's current

strategy of focusing limited diplomatic capital on annually blocking a particularly egregious country while other, only slightly less objectionable states win election is a losing game. Instead of lending credibility to this flawed institution, the U.S. should seek to eliminate it and work to establish a more effective human rights body with rigorous membership standards.

**Sudanese Candidacy: Emblematic of Fundamental Flaws.** Sudan has a repressive government accused of massive human rights violations, including genocide in Darfur and brutally repressing ethnic and religious minorities in other parts of the country. Sudan deserves intense scrutiny by the Council; it should not be passing judgment on other state's records as a HRC member.

Nonetheless, until Kenya announced its decision to run, Sudan was nearly certain to win a seat on the Council. This was due to the absence of meaningful membership standards provided by the General Assembly when it established the HRC:<sup>1</sup>

- Council members must be U.N. member states.

- The 47 Council seats would be allocated by regional group: 13 for Africa; 13 for Asia; 6 for Eastern Europe; 8 for Latin America and the Caribbean; and 7 for Western Europe and other states (WEOG).
- Countries would be elected by secret ballot and must receive an absolute majority in the General Assembly (97 out of 193 countries). Conversely, it takes a two-thirds vote (129 votes) to "suspend the rights of membership in the Council [for] gross and systematic violations of human rights."
- Countries would be elected for three-year terms, with a third of the seats being elected annually. Countries may serve a maximum of two consecutive terms (six years), after which they "shall not be eligible for immediate re-election," and have to wait at least one year before seeking another term.
- Countries were urged to "take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto." However, this is not mandatory.

This paper, in its entirety, can be found at <http://report.heritage.org/ib3717>

Produced by the  
Margaret Thatcher Center for Freedom

**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

### “Clean Slate” Candidacy.

Because there are no meaningful human rights standards, any country—even those with deplorable records like Sudan—are eligible. Regional groups frequently game the system to facilitate their candidacies by offering the same number of candidates as there are open seats. This practice, referred to as offering a “clean slate,” maximizes the chances for each candidate to receive the 97 vote majority necessary to win a seat.

This was the situation before Kenya was convinced to run by human rights groups and governments opposed to Sudan’s candidacy.<sup>2</sup> The Africa Group offered five candidates for the five open African seats on the Council.<sup>3</sup> With only five candidates for five seats, Sudan was a virtual lock to win. When Kenya entered, the African slate became competitive.<sup>4</sup> Sudan decided to withdraw shortly after, likely to avoid the embarrassment of losing.

Sudan’s withdrawal is obviously positive. However, none of the 2013 African candidates have good human rights records. Freedom House ranks

Cote d’Ivoire, Gabon, and Ethiopia as “not free,” and Sierra Leone and Kenya as merely “partly free.”<sup>5</sup> Thus, even though Sudan has withdrawn, when combined with previously elected countries the African group will be represented on the Council in 2013 by seven “not free” countries (more than in any previous year), four “partly free” countries, and only 2 “free” countries.

Deficiencies in membership are one of the key reasons behind the Council’s fundamental shortcomings: bias against Israel, willful inattention to serious human rights situations, and a weak and politicized Universal Periodic Review (UPR).<sup>6</sup> The lack of meaningful membership standards are likely permanent after nearly all of the substantive reform proposals—including U.S. proposals establishing stronger criteria for candidates and requiring regions to offer competitive slates—were rejected during the 2011 review.<sup>7</sup>

Bereft of institutional filters, those opposed to human rights violators being elected to the HRC are forced to mount annual campaigns

hoping to block their election. But not every unworthy candidate can be the focus of such an effort, thus only the most egregious are targeted each year while the slightly less awful candidates win election. The 2013 candidates likely to win election with poor to terrible human rights records are: Cote d’Ivoire, Ethiopia, Gabon, Kazakhstan, Kenya, Pakistan, Sierra Leone, United Arab Emirates, and Venezuela.<sup>8</sup>

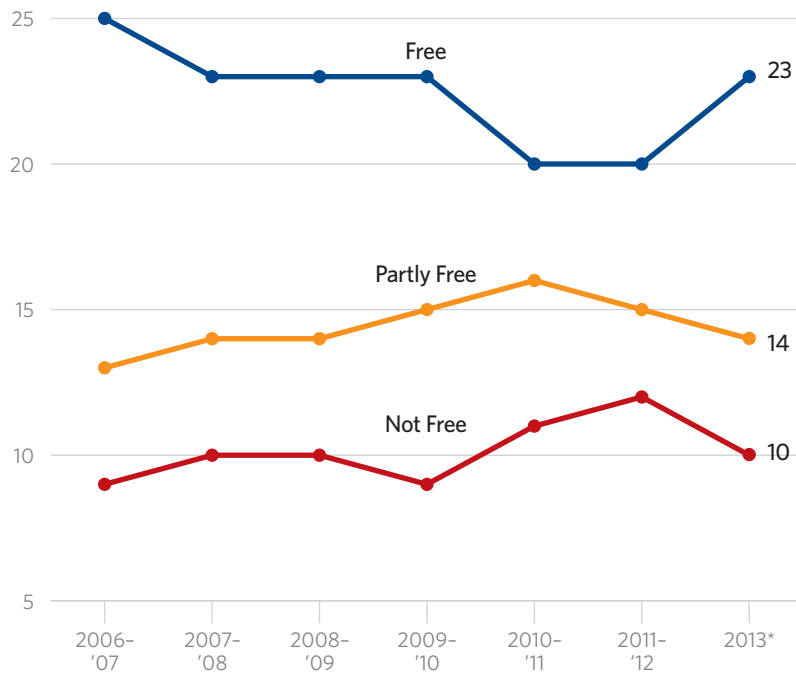
**2013: A Brief Window of Opportunity.** Africa is not the only region to offer a clean slate to ensure that countries with poor human rights records have greater chances of winning a seat on the Council. Every region except WEOG has offered the same number of candidates as vacancies in 2013. This situation, along with the fact that Freedom House ranks all five WEOG candidates (for three vacancies) as “free,” makes projecting the human rights composition of the Council for 2013 simple: the number of “free” countries should increase from 20 to 23 and the number of “not free” countries should decrease from 12 to 10.

1. United Nations, “Human Rights Council,” General Assembly Resolution A/RES/60/251, April 3, 2006, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf) (accessed September 5, 2012).
2. UN Watch, “Victory: Shamed Sudan Pulls Out After UN Watch Campaign,” September 2, 2012, [http://www.unwatch.org/cms.asp?id=3433700&campaign\\_id=63111](http://www.unwatch.org/cms.asp?id=3433700&campaign_id=63111); and Colum Lynch, “Will Sudan Really Get Elected to the Human Rights Council?” August 28, 2012, [http://turtlebay.foreignpolicy.com/posts/2012/08/28/sudan\\_human\\_rights\\_council](http://turtlebay.foreignpolicy.com/posts/2012/08/28/sudan_human_rights_council) (accessed September 5, 2012).
3. The original candidates were Cote d’Ivoire, Ethiopia, Gabon, Sierra Leone, and Sudan. U.N. General Assembly, “Election of the Human Rights Council,” <http://www.un.org/en/ga/67/meetings/elections/hrc.shtml> (accessed September 5, 2012).
4. Sudan’s U.N. Mission stated that “it is no longer interested in taking up one of the vacancies available in the Human Rights Council.” Associated Press, “Sudan Withdraws Candidacy for UN Human Rights Council Seat After Criticism on Rights Record,” August 31, 2012, [http://www.washingtonpost.com/world/middle\\_east/sudan-withdraws-candidacy-for-un-human-rights-council-seat-after-criticism-on-rights-record/2012/08/31/4e8e102c-f3b5-11e1-b74c-84ed55e0300b\\_story.html](http://www.washingtonpost.com/world/middle_east/sudan-withdraws-candidacy-for-un-human-rights-council-seat-after-criticism-on-rights-record/2012/08/31/4e8e102c-f3b5-11e1-b74c-84ed55e0300b_story.html) (accessed September 5, 2012).
5. Freedom House, “Freedom in the World 2012,” [http://www.freedomhouse.org/sites/default/files/FIW%202012%20Booklet\\_0.pdf](http://www.freedomhouse.org/sites/default/files/FIW%202012%20Booklet_0.pdf) (accessed September 5, 2012).
6. For a detailed analysis, see Brett D. Schaefer, “The U.S. Should Pursue an Alternative to the U.N. Human Rights Council,” Heritage Foundation *Backgrounder* No. 2572, June 23, 2011, <http://www.heritage.org/research/reports/2011/06/the-us-should-pursue-an-alternative-to-the-un-human-rights-council> (accessed September 5, 2012).
7. John F. Sammis, “Explanation of Vote by John F. Sammis, Deputy Representative to the Economic and Social Council, in the General Assembly on the Human Rights Council Review,” U.S. Mission to the United Nations, June 17, 2011, <http://usun.state.gov/briefing/statements/2011/166477.htm> (accessed September 5, 2012).
8. U.S. Department of State, “Country Reports on Human Rights Practices for 2011,” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (accessed September 5, 2012).

CHART 1

## Freedom House Rankings for Members of the U.N. Human Rights Council

NUMBER OF COUNTRIES IN EACH FREEDOM CATEGORY



\* Projected based on 2012 election slates and using 2012 Freedom House rankings.

**Note:** Starting with the upcoming election on November 12, 2012, which establishes the membership for 2013, terms for the Human Rights Council (HRC) will be based on the calendar year. Previously, the HRC elections were conducted in May and the newly elected members started their terms at the end of the June session of the Council.

**Sources:** U.N. General Assembly, "Election of the Human Rights Council," <http://www.un.org/en/ga/67/meetings/elections/hrc.shtml> (accessed September 5, 2012); and Freedom House, "Freedom in the World," 2006-2012 editions, <http://www.freedomhouse.org/reports> (accessed September 5, 2012).

IB 3717 heritage.org

This improvement is not due to more prudent selection, but from the requirement for countries that served two consecutive terms to cycle off the Council for at least one year. This means that "not free" countries like Cameroon, China, Cuba, Russia, and Saudi Arabia—whose terms end in 2012—cannot run for re-election this year.

China, Cuba, and Russia have been instrumental in undermining the work of the Council and their

2013 absence could open a brief window for a more effective Council before they are almost certainly re-elected next year. However, this temporary opportunity should not be confused with fundamental improvement. Council membership is likely to reach new lows in 2014, when those countries are eligible to return.

The brevity of the potential window speaks volumes. Moreover, considering the number of countries

with deplorable human rights records cycling off the Council, it is disappointing that the membership is set to improve so little in 2013.

**Time for a New Approach.** The U.S. should reject this institutionalized bias, mediocrity, and ineffectiveness. Instead, the U.S. should:

- Not seek re-election and eschew the Council unless direct U.S. interests are involved;
- Propose eliminating the Council and shifting its responsibilities—such as receiving the reports of the special procedures—to the 3rd Committee; and
- Establish a more effective alternative body outside the U.N. to examine and promote human rights practices.

The Obama Administration has sought to positively influence the Council, but these efforts have rarely been successful and, when so, modest. Most notably, the 2011 review failed to institute meaningful reforms, particularly membership standards. As a result, the HRC will continue to be dysfunctional, differing only in degrees from disappointing to shameful, and fall far short of the standard that the premier U.N. human rights body should meet.

—*Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation and editor of ConUNdrum: The Limits of the United Nations and the Search for Alternatives (Rowman & Littlefield Publishers, 2009).*