

22 March 2019

Excellency,

**Re: The General Assembly's consideration of the status of the Council between 2021-2026**

Ahead of the first informal exchange of views on the consideration of the status of the Council, scheduled for March 28<sup>th</sup> by Human Rights Council President Coly Seck, our organisations express below their positions in response to the questions raised by the President in his letter of 11 March 2019, on how the Council should contribute to the General Assembly's consideration of the "question of whether to maintain [the status of the Human Rights Council as a subsidiary body of the General Assembly]"<sup>1</sup>, and what the scope of that consideration should be.

We are of the view that in line with the will expressed by the General Assembly in 2011, the scope of the General Assembly's consideration should remain focused purely on the question of the status of the Council, and not be further expanded to cover its work and functioning. We think that an expert report could usefully inform the discussions of the General Assembly in New York, and urge the Human Rights Council President to invite the High Commissioner and the Secretary-General to draft such a report.

**Scope of the General Assembly's consideration of the status of the Council (questions 3-4)**

We consider that a more extensive 'review' of the Council's work and functioning would be unnecessary, carry serious risks for the Council's impact, accessibility and effectiveness, and become a major drain on the resources of small State delegations and civil society.

Many of the improvements to the Council's work methods to date have been a result of **incremental and practical strengthening**.<sup>2</sup> Similarly, none of the proposals for [strengthening the Council from the ground up](#) put forward in a summary report of a consultation our organisations held last year (collated in annex to his letter) would require institutional reform, but could be achieved with sufficient political will and individual State and civil society leadership within the current institutional framework..

More formal review and reform processes, including the institution-building process and the 5-year review of the Human Rights Council's work and functioning, have been time and resource-intensive, have disproportionately drained the resources of small delegations and civil society, and have resulted in limited or no tangible outcomes due to a lack of consensus on meaningful reforms.

Conversely, a more extensive review of the Council's work and functioning, going beyond the limited scope intended by the General Assembly, would **entail significant risks**. These risks include old attempts to limit civil society participation and to weaken the Council's functioning,

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<sup>1</sup> <http://undocs.org/a/res/65/281>.

<sup>2</sup> For example, the use of intersessional panels, side events, informal briefings by the High Commissioner, joint reports by the Special Procedures, as well as civil society efforts such as the UPR pre-sessions.

particularly in relation to its protection mandate. We are particularly concerned by the possibility of revisiting attempts to reduce the Council's ability to address country situations, given past efforts by some States during the institution building phase and the 2011 review to remove country mandates or impose qualified majorities for creating new ones, and the high risk of imposing measures [to restrict civil society participation which, unfortunately, have been hallmarks of previous institutional reform processes](#).

There are therefore valid concerns that a so called 'review' of the Council's work and functioning would result in a less effective, accessible and credible Human Rights Council.

Finally, any 'review' of work and functioning of the Council would be **highly resource and time-consuming**, as was the case for the 2011 review. This is undesirable at a time when the Council should be focused on fulfilling its mandate as efficiently as possible in the context of the apparent resource limitations.

Furthermore, institutional processes of this nature disproportionately affect the ability of small delegations, including SIDCs, LDCs and civil society, to engage meaningfully in the Council's work, and would undermine the important investments and progress these delegations have made in the past few years. Such processes are particularly challenging to manage for civil society organisations, particularly those not based in Geneva, who always have to expend considerable efforts at simply getting a seat at the table.

### **The Council's contribution to the General Assembly's consideration of the status of the Council (questions 1-2)**

We recognise the value of the General Assembly receiving substantive expert guidance as it proceeds to consider the important question of the status of the Council. In this context, we urge States committed to support the Human Rights Council President in seeking expert advice for that purpose.

We consider the best approach would be for the Human Rights Council President to request an expert report, to be prepared jointly by the UN Secretary-General and the High Commissioner for Human Rights, with inputs from States, civil society, national human rights institutions and other relevant stakeholders. The report could address how has the Council achieved its mandate, identify best practices and challenges and present recommendations on how to enhance its impact on the improvement of the human rights situation on the ground. This would ensure the General Assembly has comprehensive and evidence-based guidance as it takes a decision, while ensuring efficiency and avoiding the Council's time and resources being overly diverted from the fulfilment of its core mandate.

We look forward to continuing the discussion on the General Assembly's consideration of the status of the Council with you, and to considering the substantive questions related to that consideration.

We look to your delegation to ensure the Human Rights Council is as accessible and relevant as it can be to rights-holders, and to continue to enhance its impact on the enjoyment of human rights on the ground.

Yours sincerely,

International Service for Human Rights

Amnesty International

## **ANNEX: RECOMMENDATIONS FROM REPORT ON STRENGTHENING THE HUMAN RIGHTS COUNCIL FROM THE GROUND UP, APRIL 2018**

### **CREDIBILITY**

- When electing members to the Council, States should base their votes on the criteria set out in GA resolution 60/251: “the contribution of candidates to the promotion and protection of human rights” and “their voluntary pledges and commitments made thereto.” Members of the General Assembly could affirm their commitment to applying these criteria through a joint statement, and renounce practices such as vote-swapping.
- During their term, there should be particular attention to the human rights situation in Council Member States, to ensure compliance with the membership obligation that they “shall uphold the highest standards in the promotion and protection of human rights” and “fully cooperate with the Council” (GA resolution 60/251, OP9). An expectation of heightened scrutiny, as envisaged by GA resolution 60/251, could itself serve as a deterrent to rights violators seeking Council membership. Such scrutiny could be applied through an annual report by the High Commissioner focused on cooperation by Council members with UN mechanisms, and other membership criteria, which could be considered under item 5.
- Candidates for election to the Council should be encouraged to develop pledges in a more transparent manner, in conjunction with civil society and individual rights-holders, while the OHCHR could provide an objective assessment of each candidate’s compliance with the membership criteria in GA resolution 60/251.
- Candidate pledging events should be maintained and strengthened in both New York and Geneva, and should continue to be accessible to national level civil society (e.g. through making comments or raising questions remotely). Some participants proposed a more formal pledging process in New York, potentially facilitated by the President of the General Assembly. This could be supported by OHCHR materials on levels of compliance by candidates with the membership criteria, and with the opportunity for States and civil society to make comments and raise questions. The candidacy of States which decline to participate should be discussed *in absentia*.
- Australia indicated its intent to develop a pledge in consultation with other incoming members, based on principles laid out in the [Dutch-led joint statement](#) at the 35<sup>th</sup> session of the Council. It was suggested that this incoming members’ pledge (which was [subsequently delivered](#) on behalf of a cross-regional group of States at the 37<sup>th</sup> session of the Council) could also be endorsed by existing Council members, and by candidates at pledging events.
- Where there is evidence of a Council Member State committing gross and systematic violations, the GA should take action to consider suspension of its membership, in line with OP8 of GA resolution 60/251. This need not require immediate suspension, but could also take the form of identifying actions to be taken by the State to ensure compliance with its membership obligations within a prescribed timeframe.

### **VISIBILITY**

- States, NHRIs, UN country teams, and civil society should effectively communicate the outcomes and recommendations of the Council and its mechanisms, including by translation.
- States are encouraged to actively consult with national level stakeholders, and invite their contributions into Council outputs (a good practice already applied by some Foreign Ministries).
- The Council’s presence on social media platforms, in Geneva and in the OHCHR’s regional offices, should be improved. Social media should be used in a way which is responsive to local contexts, to more effectively communicate with relevant populations.
- The communications capacities of the Special Procedures and other mandate-holders should be increased, with a view to publicising their findings and reports in a timely manner.

- Where possible, the time span between the conclusion of mandate-holders' country visits and the presentation of their reports at the Council should be reduced. Reports should be published as soon as they are available. If these reports reveal early warning signs of gross and systematic human rights violations, consideration of the report should be expedited, for example through an informal briefing or urgent debate, to enable the Council to discharge its preventative mandate.
- Participants expressed appreciation for efforts to make the Council website more accessible and user-friendly, and encouraged continuation of this work in consultation with civil society and other stakeholders. Efforts should be made to ensure all statements are uploaded to the extranet to provide a complete record of Council proceedings.

## **ACCESSIBILITY**

- Work to ensure that the Council is a safe space for civil society engagement, including by adopting a zero-tolerance policy on reprisals, harassment and intimidation against persons, groups and organizations cooperating or seeking to cooperate with the Council and its mechanisms. This would involve:
  - States speaking out on cases of reprisals to express concern, request information, and seek appropriate follow-up;
  - The President of the Council maintaining a database on cases of alleged intimidation and reprisals, consulting with victims, and regularly updating the Council on action taken and the status of such cases during each session (e.g. at the session opening, closing, or under a relevant agenda item such as item 5);
  - The creation of a standard procedure for dealing with unresolved cases of reprisals, with clear timelines and reporting to the Council;
  - Active State engagement with the report of the Secretary General on reprisals, including in relation to specific cases, and oral updates at each session by a representative of the Secretary General on new cases and developments;
  - Consideration by the Council of action needed to address persistent violators, particularly where these are Council members, acting in breach of their membership obligations.
- States should consider establishing funds and/or providing technical assistance to local and national level civil society organizations to enable them to better engage with the Council – including through the provision of information and follow-up on implementation – in a similar fashion to the provision of assistance to States through the Voluntary Technical Assistance Trust Fund for Least Developed Countries and Small Island Developing States.
- States and OHCHR should strengthen human rights education and activities that raise awareness about the Council's mandate, value, and actions at the national level, including through supporting national actors to engage in these activities. Guidance should be provided to all civil society organisations engaging with the Council, to allow them to make their interventions and advocacy at the Council more impactful.
- States with positive records on safeguarding space for civil society should stand as candidates for the NGO Committee, and ECOSOC members should only vote for States with such a record.

## **RESPONDING EFFECTIVELY TO HUMAN RIGHTS VIOLATIONS: PREVENTION, EARLY RESPONSE AND ACCOUNTABILITY**

- A number of ideas were proposed with a view to applying the "Irish principles" more consistently, including the creation of a standing core group of States to apply the criteria, and/or a group of experts to apply them to situations for referral for action.
- Regular inter-sessional or pre-sessional briefings by the High Commissioner could contribute to both the application of the Irish Principles and fulfillment of the Council's prevention mandate, by providing a vehicle for bringing to the Council's attention situations which meet the criteria in the Principles or where 'early warning' information suggests a need for a Council response. Such briefings could also include other relevant actors, such as Special Procedure mandate-holders, treaty bodies, or OHCHR regional offices, and could be held alongside the

Organizational Meeting, as resources are already committed and the timing before each Council session is ideal.

- The Council should make more effective use of existing tools to respond to situations as they develop, for example through Urgent Debates and Special Sessions to address priority situations requiring attention, including those arising between sessions.
- States should explore ways for the Council to make better use of Special Procedures, including by encouraging joint reports, and of treaty bodies, whose outputs can provide valuable analysis of country situations.
- The Council should take action to bridge the New York-Geneva gap, including through more consistently mandating Council mechanisms (such as Special Procedures, Fact-Finding Missions or Commissions of Inquiry) to present their reports to the GA or brief the UNSC.
- The Council and resolution sponsors should strengthen the contribution of Council mechanisms to accountability, including by designing mandates and allocating resources so that information and evidence gathered by such mechanisms inform effective accountability processes.
- The Council and its Bureau could strengthen the role of UN Country Teams and UN Resident Coordinators in the area of human rights, including in addressing the root causes of violations, and reporting to the Council on progress or obstacles in this regard e.g. UN Resident Coordinators could report to the Council under items 5 or 6, or as inputs to the UPR Working Group review.

## **FOLLOW UP AND IMPLEMENTATION**

### ***Technical assistance and capacity building***

- OHCHR should identify concrete criteria for the provision of technical assistance, and Council resolutions should require States to report back on the tangible impacts of technical assistance to the enjoyment of human rights in the country, in order to monitor and evaluate their impact.
- Focal points, such as Resident Coordinators, could be designated for technical assistance from the UN system as a whole, providing support to States to implement Council resolutions and recommendations from the Council and its mechanisms.

### ***Follow up on recommendations and resolutions***

- Resolutions should identify reforms and next steps that are as concrete and implementable as possible, to assist with follow-up. Lead sponsors should consider incorporating processes for identifying benchmarks, and reporting on implementation, into resolutions.
- UPR recommendations should be concrete, based on “S.M.A.R.T.” criteria (Specific, Measurable, Achievable, Relevant and Time-bound).
- States that lead on resolutions should develop a communications strategy for the national level, and follow up on their implementation, for example through subsequent reporting or advanced questions in the UPR.
- Sponsors of resolutions, and States involved with their implementation, could use side events or briefings to reflect in concrete terms on how the resolutions have been implemented, or have sparked change, and to share challenges, lessons learned and good practices.
- Lead sponsors could take a more integrated approach by considering how the outcomes of the Council could be followed up by other parts of the UN system, and integrating such processes into their resolutions.

### ***Implementation and cooperation with the Council and its mechanisms***

- States should report to the Council on the actions they have undertaken as a result of cooperation with it and its mechanisms – for example the impact of their engagement with a Special Procedures visit – and share their experience of implementation, both in terms of the challenges, obstacles and achievements. The Item 5 General Debate could be a useful forum for such discussions.

- A space to meaningfully discuss implementation and cooperation with the Council and its mechanisms should be created. This could be done, for example, through:
  - discussion of the reports of the Special Procedures system, notably the communications reports and the report of the annual meeting;
  - inviting the President of the Council to address persistent cases of non-cooperation; and
  - publishing an annual report on this issue, linking the outcome of this report to the election of future Council members.
- Concrete criteria for what cooperation with the Council and its mechanisms means in practice should be developed, such as by translating the principles in the joint statement on Council participation and/or incoming members' pledge into specific measurable commitments (e.g. responding to Special Procedures' urgent appeals, communications and country visit requests substantively, and within a specified time-frame).
- Each State and/or OHCHR should maintain a comprehensive monitoring database, bringing together relevant recommendations from Special Procedures, Treaty Bodies, the UPR and Council resolutions, and report on implementation of these recommendations.