

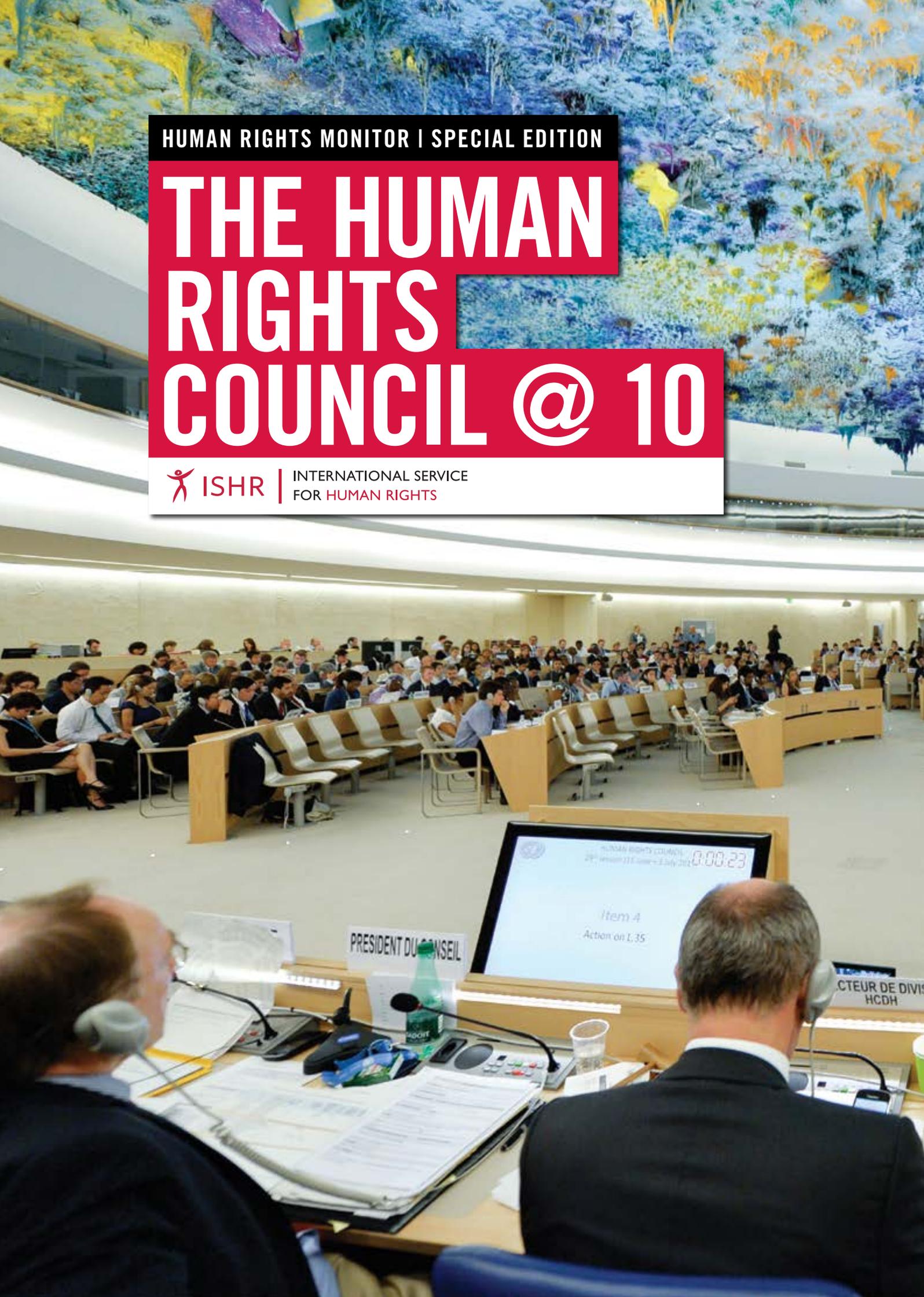
HUMAN RIGHTS MONITOR | SPECIAL EDITION

THE HUMAN RIGHTS COUNCIL @ 10



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



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Australian Government



The International Service for Human Rights (ISHR) is an independent, international non-governmental organisation (NGO) which promotes and protects human rights by supporting human rights defenders and strengthening human rights standards and systems. We achieve this through a strategic combination of research, advocacy, monitoring, coordination and capacity building.

Founded in 1984, and with offices in Geneva and New York, ISHR has a proven track record of achieving human rights change: from facilitating global civil society input to the Vienna Declaration and Programme of Action (1993), and leading the development of the United Nations (UN) Declaration on Human Rights Defenders (1999), to contributing to the establishment of the UN Human Rights Council (2006), and catalysing and coordinating the adoption of the Yogyakarta Principles on Human Rights and Sexual Orientation and Gender Identity (2007).

ISHR has been deeply involved in the Human Rights Council since its inception. Combining research, capacity building, policy development and advocacy, ISHR has continually sought to ensure the Council is accessible to human rights defenders, protects them against intimidation and reprisals, and is an effective mechanism for change on the ground. We also monitor and report on States' cooperation with the Council and advocate for States that seek membership to be held accountable for their commitment to 'uphold the highest standards in the promotion and protection of human rights'.

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ABOUT THIS MONITOR: TAKING STOCK, INITIATING ACTION, DEVELOPING A VISION

Michael Ineichen *Human Rights Council Advocacy Director, International Service for Human Rights*

More accessible to rights holders, more protective for victims of human rights violations, and more effective in holding States and non-State actors to account – this is the direction the Human Rights Council should take as it celebrates its tenth anniversary.

2016 marks the end of the first decade of the Council's work, and an opportunity to take stock of progress, spell out an overarching vision for the future and initiate necessary course corrections. This anniversary edition of ISHR's Human Rights Monitor, featuring an impressive line-up of human rights defenders, national and international policy makers, political leaders, and human rights experts from all regions, is one of our contributions to this task.

While this introductory piece is not intended to comprehensively present the wealth of analytical insight, expertise and visionary ideas contained in this monitor, here's a snapshot of what's in this publication:

Taking stock

In diplomatic circles, the 2006 creation of the Council led to hopes that the faults of the Commission on Human Rights - often misleadingly called 'politicised' - would miraculously disappear, as if States would suddenly put national interests aside and put human rights protection at the top of their agendas. Clearly, such hopes were misguided.

However, many of our contributors point to key successes the Council has achieved. In the words of High Commissioner **Zeid Ra'ad Al Hussein**, this has included the establishment of, 'unprecedented processes for scrutiny of human rights issues', while long-time Council Secretary **Eric Tistouet** argues that the Council has been effective in 'spotlighting crises at an early stage and dealing with chronic and urgent human rights violations'. UN Deputy Secretary-General and former Foreign Minister of Sweden **Jan Eliasson** says that, while much remains to be done, in its first ten years the Council has played a key role in preventing violations, mobilising international action on country situations, and promoting peace, security and sustainable development. Australia's Special Envoy for Human Rights, **Philip Ruddock**, highlights the participation of civil society and national human rights institutions as vital to the relevance, impact and implementation of the Council's resolutions and recommendations.

From the point of view of civil society, the creation of the Council held the promise of renewed political will and dynamism to address ongoing and emerging situations of human rights concern. Ten years down the line, many of the hopes have given way to renewed blockades and realism, but at least part of the promise was fulfilled. As **Hassan Shire** and **Philippe Dam** outline, the Human Rights

Council has - at least in some instances - made a concrete contribution to human rights defenders' efforts at putting a spotlight on urgent and chronic situations of human rights violations, ranging from South Sudan and Burundi to the DPRK. **Feliciano Reyna** highlights how the Council can not only help to have victims' voices heard, but also contribute to the protection of human rights defenders; **Anna Brown** discusses the ways in which the Universal Periodic Review can catalyse national-level dialogue and implementation; while **Ruki Fernando** draws critical lessons from the struggle of Sri Lankan activists for accountability, and the utility of international solidarity at the Council as a crucial element of that struggle.

Immediate and incremental change

Despite some progress, there remains a clear need to improve the Council's work and impact.

Many of our authors agree that progress towards a more effective Council is incremental, depends on a multiplicity of factors, and requires strong individual leadership. They also agree, however, that many changes are possible 'by doing' and without fundamental institutional reform:

- Several authors take a critical look at the Council's bias towards civil and political rights, and **Lucy McKernan** calls for more emphasis on economic, social and cultural rights in item 4 resolutions.
- **Marc Limon** develops the concept of 'hybrid resolutions', which – if implemented well – would help to make thematic resolutions more tangible and meaningful for human rights holders in specific countries or situations.
- Highlighting the role of human rights defenders and national human rights institutions, ISHR's **Phil Lynch** sets out how the Council could be more effective in preventing human rights crises from deteriorating, and how objective triggers could guide action in that regard.
- **Joanna Weschler** outlines ways in which enhanced interactivity between the Security Council and the Human Rights Council and its Special Procedures could better promote human rights as integral to international peace and security.
- **Geir Sjøberg** argues that renewed efforts at boosting implementation of Council resolutions is critical, which in turn requires transparency and citizen engagement, stronger leadership, resourcing and policy coherence.
- In separate pieces, **Catarina de Albuquerque** and **Rosa Freedman** identify ways to strengthen the independence and effectiveness of the Council's Special Procedures and States' cooperation with these vital mechanisms.
- Amnesty International's **Richard Bennett** makes proposals on how to strengthen membership of the Council, ensuring that egregious violators are not elected.

Developing a vision

Looking forward, the final section of the Monitor contains reflections on where the Council could be by 2030, given the right combination of political will, leadership and civil society pressure. As Human Rights Watch's **John Fisher** says, the Council's potential to address human rights situations could be better fulfilled through political will, more consistent leadership, triggers for action on country situations, and a willingness to stand up for what's right.

Among the striking features of the first decade – and perhaps a success in and of itself – is the level of investment civil society has made in the Council's work, both in financial and human resources. Whereas early sessions of the Council were characterised by a relative lack of structured civil society input, there is a strong upward trajectory in terms of the involvement of NGOs in the Council's work.

As three of Latin America's leading human rights organisations set out – **CELS**, **Conectas** and **Corporation Humanas** – the next decade should be used to ensure this investment is matched by increased capacity for catalysing national efforts and increased social participation. In doing so, **R. Iniyam Ilango** of FORUM-ASIA argues, the Council must prioritise substantive and lasting responses over quick political fixes, and ensure it accompanies political transitions to the end in States such as Myanmar and Sri Lanka.

While civil society engagement in the Council is ever increasing, a more prominent and effective role is needed. The Ambassador of Liechtenstein **Peter Matt** further elaborates on the important role of civil society. Human rights defenders also need to be safe in doing so, and former President of the European Court of Human Rights, **Sir Nicolas Bratza** details the Council's legal responsibility to protect against, investigate and provide accountability for reprisals.

The Monitor in your hands – or inbox – also contains key forward looking messages from the current Council President **Choi Kyong-lim**, and several former presidents who have shaped its work. Inaugural President **Luis Alfonso de Alba** calls for a stronger role of the President and the High Commissioner in convening informal briefings to prevent deterioration in critical human rights situations, and challenges the High Commissioner to strengthen his office's analytical contribution to the Universal Periodic Review. **Laura Dupuy** highlights the important role of the President in assuring continued respect for, and protection of, human rights within the Council's work itself, including respecting the role of civil society. Finally, 2015 President **Joachim Rucker** highlights the benefits of making the Council a principal organ of the United Nations.

We hope you enjoy this edition of ISHR's Human Rights Monitor, and use it as a **resource and inspiration** in approaching the Council's work. Let's make the Council's second decade the decisive one, when we collectively make it a more accessible, protective and effective body.

June 2016

THE FIRST DECADE:

ASSESSING THE COUNCIL'S IMPACT AND EFFECTIVENESS



Reflections on the Human Rights Council @ 10

Jan Eliasson *United Nations Deputy Secretary-General*

Ten years since the momentous vote establishing the UN Human Rights Council, there remain deep concerns about a widespread erosion of respect for some of the basic norms of human rights and international humanitarian law. Yet we can also draw great encouragement from the gains made possible by the Council, reflects Jan Eliasson.

I have very clear memories of the moment I gavelled the decision of the United Nations General Assembly to adopt the resolution creating the Human Rights Council on 15 March 2006.

Countless hours of work and negotiations led to that defining moment. It was the culmination of excellent cooperation between Geneva and New York, between Member States and civil society, and within the international community.

Upon arrival at the UN Headquarters that day, I entered a jam-packed General Assembly Hall. Tensions were running high. There was wide recognition that the Commission on Human Rights had lost credibility. But there was no certainty that establishing a better successor was a done deal. At the same time, there was a clear sense that this was the best chance we would have to set a new course for the UN's human rights machinery. Many of us felt we had to seize the moment.

The result was overwhelming: 170 Member States in favour, 4 against and 3 abstentions. When I struck the gavel, people in the room rose to applaud and congratulate each other. It was an unforgettable moment.

The most difficult decision I had to take as President of the General Assembly was whether we should go for a vote on the resolution, given the lack of full consensus on the text. I had the strong sense that if we did not forge ahead with a new human rights body right then and there, we would compromise the entire human rights pillar of the UN.

In the end, I decided we should go for a vote. The result was overwhelming: 170 Member States in favour, 4 against and 3 abstentions. When I struck the gavel, people in the room rose to applaud and congratulate each other. It was an unforgettable moment.

Three months later, in June 2006, the newly established Human Rights Council (the Council) held its first session in Geneva. The first months of the Council were not easy. To many, some of the ills of the former Commission seemed to resurface. Some countries opted not to join the new Council. I myself was criticised by some for helping to create an entity that some feared may repeat the mistakes of its predecessor.

Yet, over the years the Council has defied those early critics convincingly, proving them wrong on many counts.

Its Universal Periodic Review has prompted extraordinarily positive debate and transparency on human rights in every Member State, producing for the first time a global road map of human rights progress.

I also place great importance on the role played by Special Procedures mandate holders, alerting us to deteriorating situations and offering potential solutions. The Special Rapporteurs existed under the Commission, but the Council has greatly expanded the number and diversity of mandates, from 35 to 55.

I particularly value their engagement with a wide range of people during country visits. This helps them create public debate and broadly advance human rights protection. I join the High Commissioner for Human Rights in calling on all States to extend standing invitations to mandate-holders and to cooperate fully with them.

Special Procedures are among the Council's crucial early warning tools. The Council's response last December to the situation in Burundi is one example of how it can help spark an international response to a critical situation.

The Council has also responded to ongoing crises in Syria, Libya, Sri Lanka and Myanmar. It has used special sessions and commissions of inquiry to exert political leverage aimed at preventing violations. Action by the Human Rights Council has often triggered measures by the Security Council and the General Assembly in New York. And the Council has helped to amplify the vital voices of civil society.

The measure of the Council's success, and of the UN as a whole, must be the protection, promotion and realisation of human rights for all people, in all Member States.

The establishment of the Council was accompanied by parallel efforts to strengthen the links across the UN's interdependent three pillars: peace, development and human rights.

Even as hundreds of millions of people have moved out of the most extreme poverty, there continues to be a global crisis of under-development. International peace and security is under grave threat in many places. Inequalities, among and not least within countries, are on a dangerous, unprecedented rise. The impacts of climate change are growing more severe. And we are still far from seeing full respect for the full indivisible economic, social, cultural, civil and political rights.

In this context, the Council is a vital and central institution. We must strengthen the synergies between the Council in Geneva and mechanisms in New York. We must make

sure that human rights defenders and representatives of civil society will have full access to the Council and its machinery.

The Secretary-General's Human Rights Up Front initiative, in which I am deeply engaged, is helping the UN to bring peace and security, development and human rights closer together and to provide early warning signals on emerging conflicts. We must work as a coherent whole so that UN system entities can work collaboratively and with the Human Rights Council, the Security Council and other Member State fora.

Human rights are also at the core of the newly agreed 2030 Agenda for Sustainable Development, which includes a

commitment to support the most vulnerable members of the human family and to leave no one behind.

Ten years since the momentous vote to advance the UN's work for human rights, the Secretary-General and I remain deeply concerned about a widespread erosion of respect for some of the basic norms of human rights and international humanitarian law. Yet we are also encouraged by the gains made possible by the Human Rights Council. We are optimistic about the Council's growing potential as a force for ensuring accountability, upholding human dignity and promoting the universal values of the UN Charter. ■



Successes, failures and lessons to date

Ambassador Luis Alfonso de Alba of Mexico *First President of the UN Human Rights Council.*
Article translated from Spanish.¹

A decade on, what have been the Council's successes and achievements; its shortcomings and limitations? What can be done to improve its functioning? asks Ambassador Luis Alfonso de Alba.

One year on from its first meeting, on 18 June 2007, still under my presidency, the Human Rights Council succeeded in adopting the 'institution-building package,' containing innovative elements that have guided its work over its first decade. The Human Rights Council (the Council) is undoubtedly the result of an enormous effort to preserve the legacy of the Commission on Human Rights – built from the adoption of the Universal Declaration of Human Rights in 1948 to the extinction of the Commission in 2006 – while simultaneously shedding practices and approaches that had gradually weakened the ability of the Commission to promote and protect human rights, in view of the polarisation, partiality and selectivity that defined its final years.

After ten years in existence, it is timely to ask: what have been the Council's successes and achievements; its shortcomings and limitations? What can be done to improve its functioning? Reflection should draw both on the former Commission on Human Rights and on the new elements and approaches agreed upon in the institution-building package, in particular the Universal Periodic Review (UPR), the strengthening of the Special Procedures, the influence of the Council within the United Nations system, and its preventive work.

It is also timely to look into the conduct of the Council's 47 Member States, as individuals and as a collective, in their participation in formal and informal groups. Consideration should be given to the extent to which they have respected the letter and the spirit of the agreed reforms, in particular the need to promote international cooperation in human

rights, approaching the highest international standards with a sense of individual responsibility.

Some will see more achievements than failings or shortcomings. Others will maintain their eternal criticism in view of the inability of the Council to resolve all human rights issues or of its frequent silences when faced with gross and systematic violations. Whatever your position, it is important that any assessment of the Council's first decade be honest, realistic and purposeful.

A critical assessment of the UPR is particularly pressing, as it concerns one of the main achievements of the institution-building package. This new mechanism must continue to serve for the review of the human rights situation in all UN Member States, avoiding double standards and promoting dialogue and cooperation. The UPR has already become part of regular work and has been casting off taboos, apprehensions and doubts. Countries now know that their human rights situation will be periodically analysed, without major confrontation.

However, the UPR is facing challenges in the implementation and follow-up of its recommendations and can often become a routine or even superficial exercise owing to insufficient dialogue, the lack of analytical support from the Office of the High Commissioner for Human Rights (OHCHR) and, in particular, to not having developed a procedure for the timely follow-up of the recommendations made in each cycle, including those that were not accepted by the State in question.

Strengthening the UPR process requires interactive dialogue with the participation of human rights experts. This should not be sacrificed for the sake of the increased participation of Observer States. The process also requires extremely high-quality input from diverse sources, including from

¹ Thanks go to Gustavo Torres for his support in drafting this text.

civil society. There is no justifiable reason why, to date, no analysis is included from the OHCHR, which has limited itself to the provision of logistical support for this exercise.

“Some will see more achievements than failings or shortcomings. Others will maintain their eternal criticism in view of the inability of the Council to resolve all human rights issues or of its frequent silences when faced with gross and systematic violations. Whatever your position, it is important that any assessment of the Council's first decade be honest, realistic and purposeful.”

A critical assessment of the Special Procedures that the Council inherited from the extinct Commission, and of those that it has created over its first ten years, is also essential. Their functioning is crucial to the credibility and effectiveness of the international human rights system. As such, the relevance of existing mandates and the need to coordinate with others should be periodically reviewed, to avoid fragmentation or duplication of work. Moreover, it is important to tackle some long-standing challenges with greater determination: the candidate selection process could still be further improved; greater financial resources and personnel are required to provide more uniform support to the work of Rapporteurs and Experts; increased cooperation between States and mandate-holders should be fostered, as should the respect for their work; the process for the selection and follow-up of country visits should be improved; and greater pressure should be directed towards States that fail to cooperate. These are just a few of the tasks that remain pending.

The effectiveness of human rights resides in their indivisibility and interrelatedness. However, a holistic culture within the UN

human rights system has yet to be achieved. The Council's preventive capacity must also be strengthened relative to its reactive capacity; and it should have a greater capacity to convene and influence. The number of special sessions has been declining and requesting a special session has become a politicised issue. Therefore, the President of the Council and the High Commissioner for Human Rights should have greater scope to convene meetings, even if informative or informal in nature.

Finally, although the institution-building package privileges dialogue over confrontation, it has not been possible to reduce polarisation when tackling various negotiations, such as the discussion of a programme of work, which seeks to make more efficient use of the three regular sessions of the Council; the review of the status of the Council, even if this is not considered viable in the short term; and a better, less precarious relationship, on a stronger basis, with the UN General Assembly and other bodies in the UN system, such as the Security Council.

It is also necessary to reduce the weight and influence of regional or negotiating groups, which, by definition, lead to decision-making based on the lowest common denominator. Furthermore, the role of human rights defenders and other civil society actors should be strengthened, as such actors, most notably groups representing women, young people, persons with disabilities and indigenous peoples, have played an essential role in the Council's achievements over the last decade. ■

AMBASSADOR LUIS ALFONSO DE ALBA was elected as the first President of the UN Human Rights Council – holding the mandate from 19 June 2006 to 18 June 2007, during which time the Council's institution-building package was developed. Ambassador de Alba is currently serving as the Mexican Ambassador in Vienna, Austria.



The world needs a strong Human Rights Council now more than ever

The Hon Philip Ruddock *Australia's Special Envoy for Human Rights*

The Human Rights Council should ensure sustained, high-level attention to country situations, support democratic transitions and human rights progress, and strengthen support for civil society in Geneva and on the ground, says Phillip Ruddock.

Human rights have been at the centre of the United Nations for the past 70 years. From the Charter in 1945 to the Sustainable Development Goals in 2015, human rights have been at the core of the UN's values, activities and purpose.

We live in a period of protracted humanitarian crises and rapid, destabilising change. As the Australian Foreign Minister, the Hon Julie Bishop MP, said at the General Assembly last year, the rise of terrorist groups like Daesh, the continuing depredations of the North Korean regime and the persistence of contemporary forms of slavery reinforce the need for the UN to prosecute a strong human rights agenda – now more than ever.

Australia supported the historic UN General Assembly resolution that established the Human Rights Council (the Council) in 2006 because we recognised the need for

a body which would be more effective in promoting and protecting human rights around the globe. The Council has shown over the last decade that it is up to the challenge of engaging on the toughest human rights issues in the world and contributing to global action. Australia is committed to ensuring the Council continues to give hope to victims and advances human rights for all.

The Human Rights Council has also been effective because it has been inclusive. Enshrining participation by civil society and national human rights institutions as a core principle has paid strong dividends.

At the time of the Council's creation, Australia said the real measure of the new body's success would be in the practical improvements it brought to the lives of people whose human rights have been violated. The tenth anniversary is an opportunity to reflect on what the Council has achieved and how it can remain effective and relevant in the decades ahead.

Significant achievements

In Australia's view, the Council's achievements have been significant. Key to this has been the ability of the Council to be flexible and adaptive in responding to diverse country situations. Through its Special Procedures, commissions of inquiry, fact-finding missions and other mechanisms, the Council has demonstrated an ability to identify situations of human rights concern, investigate violations, offer practical recommendations and pursue accountability.

The Council's responses should continue to reflect the unique characteristics of each country situation. Situations of the utmost human rights concern should continue to receive sustained, high-level attention. It was for this reason that Australia led efforts in 2014 to have the situation in the DPRK (North Korea) placed on the UN Security Council agenda. Australia supports the Council's role as an early warning mechanism to prevent the escalation of human rights violations and abuses. The Council should also engage constructively with countries in transition and offer effective technical support in response to tangible improvements in human rights. Its recent engagement with Sri Lanka is a good example of this type of approach in action. Australia also supports collaborative efforts to promote further improvements in the human rights situation in Myanmar and elsewhere.

In Australia's view, the Council's Universal Periodic Review (UPR) process has been fundamental to the Council's success because it has underscored the universality of human rights. The UPR is a peer-review mechanism without parallel in the history of international relations. It has generated a comprehensive body of assessment and addressed the full spectrum of global human rights practice. But in order

for the UPR to live up to its potential there needs to be a renewed focus on the implementation of its recommendations. In our second UPR appearance in November last year, Australia made a voluntary commitment to develop a public and accessible mechanism to monitor our progress against UPR recommendations, including through a periodic public statement. We encourage other Member States to consider similar approaches.

The Human Rights Council has also been effective because it has been inclusive. Enshrining participation by civil society and national human rights institutions as a core principle has paid strong dividends. Civil society groups have added a richness and robustness to the Council's deliberations and helped to connect the on-ground reality of country situations to outcomes in Geneva.

In this light, intimidation and reprisals against NGOs and human rights defenders related to cooperation with the Council are unacceptable and should have no place in the Council. Australia is in fact supporting efforts to extend the Council gold standard of civil society engagement, particularly by national human rights institutions (NHRIs), to other UN bodies such as the Commission on the Status of Women.

Committed to supporting the Council's work

Ten years after its creation, Australia remains convinced of the Human Rights Council's value and committed to supporting its work. Australia is seeking an inaugural term on the Council for 2018-20. As a member of the Council, we will bring the same values and attributes that have characterised our engagement over the past decade, including a focus on practical outcomes; a principled commitment to upholding the highest human rights standards while striving for further improvement; an understanding of diversity grounded in Australia's multicultural society, our deep engagement in our own Indo-Pacific region and proactive support for indigenous peoples; and an open-minded and pragmatic attitude to proposals for further strengthening the Council and its mechanisms.

On the Council, we would seek to give a special focus to gender equality, governance, freedom of expression, the rights of indigenous peoples, NHRIs and capacity building. We will also continue to champion the abolition of the death penalty and the rights of persons with disabilities.

I congratulate the Council on its tenth anniversary and look forward to Australia's continued close engagement with it in the decades to come. ■

THE HON PHILIP RUDDOCK MP is Australia's Special Envoy on Human Rights. Australia is standing as a candidate for election to the Human Rights Council for 2018-20. Follow the Australian Mission to the UN in Geneva on Twitter @AustraliaUN_GVA.



Activists in an international system: Pushing for change in Sri Lanka

Ruki Fernando Human rights activist and advisor at INFORM Human Rights Documentation Centre.
This article first appeared on OpenDemocracy.net

Ruki Fernando recalls a decade of desperation and emergency in Sri Lanka, when local human rights defenders needed the international system to address gross and systematic human rights violations in the country – but the international system would not have taken action if human rights defenders hadn't pushed for it.

“It was a very dangerous time to be an activist living and working in Sri Lanka, and it is in this context that international solidarity became a crucial element of our struggle for human rights.”

Stephen Hopgood argued several years ago¹ that it is activists, not States, who will make a difference in the future, and to a certain extent this has proved to be true in Sri Lanka. Undoubtedly, the primary struggle for human rights has to be waged at home. But there are also times when international support, such as from the UN High Commissioner for Human Rights, is crucial. For us, 2006-2014 was such a time.

In 2005-2006, I was working at the FORUM-ASIA Secretariat based in Bangkok. As the conflict in Sri Lanka escalated in 2006, I decided to go home, and I arrived back to chaos. There were large-scale enforced disappearances, extrajudicial executions, mass displacement, forcible recruitment (including of children), and severe restrictions on traveling and communication. It was also a time when human rights activists, including non-governmental organisations (NGO) and humanitarian workers, independent journalists, clergy and opposition politicians with critical views of the government, were killed, disappeared, detained or threatened. Domestic human rights protection mechanisms, such as the judiciary, National Human Rights Commission and ad hoc commissions of inquiry, had become completely ineffective.

It was a very dangerous time to be an activist living and working in Sri Lanka, and it is in this context that international solidarity became a crucial element of our struggle for human rights. The primary focus of our international advocacy was targeting the UN, and a secondary strategy of engagement was towards the Commonwealth. The Commonwealth's failure to intervene severely harmed its credibility,² resulting in some heads of States boycotting

the 2013 Commonwealth Heads of Government Meeting (CHOGM) in Colombo. I still believe the level of atrocities we saw in the last phase of the war, particularly in 2009, could have been less if a field presence of the UN Office of the High Commissioner for Human Rights had been established.

In September 2008, when the government ordered all UN agencies to leave the war zone, the people appealed not to be abandoned. But we failed to persuade the UN to stay.

In early 2009, as the war reached its peak and civilian casualties escalated dramatically, we as human rights defenders sought a special session with the UN Human Rights Council (the Council). We finally got it – but only after the war—and the outcome was a disaster for Sri Lanka and the UN.

The internal UN review that followed recognised that 'events in Sri Lanka marked a grave failure of the UN' and that 'many senior UN staff did not perceive the prevention of killing of civilians as their responsibility'. But in March 2012 and March 2013, with continued pressure from human rights groups, the tide started to turn. In March 2014, the Council passed another resolution on Sri Lanka, asking the High Commissioner for Human Rights to conduct an investigation into serious violations of human rights and related crimes in the country.³ Though late and limited, this was a victory for survivors, victims' families and some of us who had long campaigned for this, even when it seemed to be against all odds.

In September 2015, the High Commissioner's office released the report of its investigations.⁴ It detailed horrific accounts of unlawful killings, enforced disappearances, forcible recruitment of children, obstructions of movement to safe areas, sexual and gender based violence, torture, and arbitrary detention on a mass scale and in a systematic manner. The High Commissioner recommended the establishment of a Special Hybrid Court with international judges,⁵ prosecutors, lawyers and investigators to ensure accountability for the reported violations, along with other international action such as universal jurisdiction and vetting. The 'hybrid court' and 'international participation' appears to be what has caught the media attention. Going beyond this to address other needs such as truth seeking, reparations, memorialisation, constitutional change and introspection is where more local activism is so desperately needed.

While the international focus of Sri Lankan human rights defenders was on intergovernmental bodies, such as the

1 www.opendemocracy.net/openglobalrights/stephen-hopgood/human-rights-past-their-sell-by-date.

2 www.opendemocracy.net/openglobalrights/trinanjana-radhakrishnan/will-commonwealth-finally-step-up-in-sri-lanka.

3 <http://un.lk/news/opening-remarks-by-un-high-commissioner-for-human-rights-navi-pillay/>.

4 *ibid.*

5 www.opendemocracy.net/openglobalrights/kate-croninurman/small-steps-forward-international-pressure-and-accountability-for.

UN, the Commonwealth and individual governments, these would only change course if others – smaller in size but perhaps bigger in passion, determination and commitment – pushed them relentlessly. The strong involvement of survivors and the families of victims made a huge difference to international advocacy. Mothers, fathers and wives came forward courageously to give testimony to high profile representatives from foreign governments and the UN, in Sri Lanka itself or in Geneva. Amongst those regular visitors and strong advocates was Mrs Sandya Ekneligoda, the wife of a disappeared Sinhalese journalist, and Dr Manoharan, the father of a teenage Tamil boy killed on the beach in 2006.

Despite the government clampdown on local media, some international media continued to give coverage to stories of survivors of human rights violations and families of victims, in particular their struggles for truth and justice. Though their interest was not consistent and tended to focus on specific events, such coverage was essential since it was an opportunity to share an alternative narrative with the world. Several writers spent significant amounts of time with war-affected persons in the North and wrote books highlighting their stories, while others made films using materials from the last phases of the war and afterwards. They too faced intimidation, defamation, severe restrictions on travel to the North, and surveillance and obstacles once they got there. Some were arrested, detained and deported. But these stories, through articles, video clips, films, photography and books, went a long way in keeping alive the dwindling world attention on Sri Lanka.

Probably the most controversial group has been the Sri Lankan diaspora. I met with several diaspora groups, some exclusively Tamil and some mixed with Muslim, Sinhalese and Tamil. Some diaspora groups clearly supported and justified the war and tried to cover up violence and abuses by the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan Government. But many with whom I engaged appeared to be fuelled by concern and care about what was happening in Sri Lanka, and about the survivors and families of victims of human rights violations. Some groups became very influential in lobbying foreign governments and UN officials, and there is no doubt that they contributed to the developments in the UN in relation to Sri Lanka.

“*Mothers, fathers and wives came forward courageously to give testimony to high profile representatives from foreign governments and the UN, in Sri Lanka itself or in Geneva.*”

For us, the years between 2006-2014 were a time of desperation and emergency, when we local activists, students, artists and many other human rights defenders, needed the international system – but the international system would not have taken action if we hadn't pushed for it. There is slightly more space now for us to work inside Sri Lanka, but it would be a mistake for our international friends to leave us now, especially after the long journey they have undertaken with us. We can only hope the UN and the Commonwealth step up.

As I give thanks, I look forward to a continuing journey. ■



Personal commitment to human rights, political will and creative thinking, the keys to successful leadership

Laura Dupuy Ambassador of Uruguay, and President of the Human Rights Council from June 2011 to December 2012

In steering the Human Rights Council to fulfil its important mandate, the personal commitment of its President to the full and effective promotion and protection of human rights and fundamental freedoms for all persons, and the political will to think outside the box are central, says former Council President Laura Dupuy.

The Human Rights Council (the Council) has a vital role to play in strengthening the protection of human rights, preventing violations, promoting accountability and pursuing implementation of human rights obligations by States. In this endeavour, civil society actors play a key role; they bring the United Nations closer to the realities on the ground, and therefore their participation in the work of

the Council is fundamental. To do so safely, human rights defenders must be protected.

From my experience during a year-and-a-half as President of the Council, in its sixth cycle from June 2011 to December 2012, I realised that many aspects of the Council's work can and should be enhanced, even within the existing norms and rules of procedure which frame its work. Thinking 'outside the box' and having the political will to do so are very much needed.

An example was improving in practice the methods of work of the confidential complaint procedure, winning in interaction and potential, without losing its confidential nature.

Further small steps were improvements made to the accessibility of the UN buildings in Geneva and to the Council's work; changing our daily way of doing things, empathising

with persons with disabilities, and looking for opportunities for them to interact. For example, this included making assistive technology available to them, such as a braille printer, and facilitating their physical entrance into the UN, both achieved without substantial costs.

Personal commitment needed

In steering the Council to fulfil its important mandate, the personal commitment of the Council President, to the full and effective promotion and protection of human rights and fundamental freedoms for all persons, is central. He or she should act as a fair broker on critical human rights and institutional issues, trying to approach all relevant actors, asking for their understanding and cooperation.

On political or sensitive thematic issues, it is clear that governments still tend to repeat methods that have proved to be ineffective. They do so guided by national interests or legal or socio-cultural context, failing to look beyond these restraints for the common good of humankind or of our societies.

Key areas of future improvement

The Council's journey to improvement must include five key elements. First, the consistent message by all Council presidents has to be to demand respect of all human rights and fundamental freedoms for all, starting at the Council's own sessions, meetings and spaces. This means giving space for civil society representatives to engage, contributing to the advancement of international law and standards and their implementation on the ground, bringing both criticism and proposals to enhance rights respect based on good practices.

 *The President should act as a fair broker on critical human rights and institutional issues, trying to approach all relevant actors, asking for their understanding and cooperation.*

Second, we must tackle reprisals. The practice of intimidation or reprisals has already been condemned by the Council as a whole, and by successive presidents, but tackling this issue requires constant vigilance. Council presidents should use both dialogue with the concerned countries, and alerts or clear calls to respect rights and freedoms, depending on the circumstances. This is especially important and urgent when the victims are participants in the Council sessions, or their families.

Third, the financial and human resource limitations of the Office of the High Commissioner for Human Rights (OHCHR)

and the Human Rights Council must be addressed. Voluntary contributions should be used to supplement substantive work, such as by reinforcing human rights officers at a national or regional office or UN stabilisation mission, while getting more budget from the UN to support structural aspects, like the work of Special Procedures and support for webcasting, which is the only official record of the Council and UPR meetings, a tool for a proper follow-up of resolutions and recommendations.

Fourth, while it should be recognised that the Secretariat of the Council President has been slowly institutionalised, the presidency requires further support. It is positive that there is now a team of advisers, making it autonomous from the OHCHR Secretariat. Nevertheless, the President is continually approached by many different actors, including governments, international organisations, NGOs, human rights defenders, national human rights institutions, private lawyers, and academia. This places a heavy burden on the president's office, in advising according to the international human rights standards, promoting existing mechanisms or suggesting new ways to move forward, such as new forms of coordination and synergies at international and regional levels, touching on legal, procedural and political aspects as needed.

Fifth, and finally, we must keep in mind that human rights, development, and peace and security are intertwined purposes of the UN. The UN Agenda for Development with its Sustainable Development Goals and indicators will be an important guide to all States on how to work in an inclusive and non-discriminatory manner, and it has the potential to impact positively on our lives and those of future generations.

The Human Rights Council should definitely help in achieving this objective, through its Special Procedures, the UPR mechanism, and deliberations, to build more awareness, conscience, opportunities of exchanging experiences, and consensus around principled and effective solutions. In the long term, the best cure to prevent human rights violations and atrocities is to invest in building democratic societies under the rule of law. ■

LAURA DUPUY is the former Permanent Representative of Uruguay to the UN in Geneva, and was President of the UN Human Rights Council from June 2011 to December 2012. Prior to that, Ambassador Dupuy served, inter alia, as Director of Human Rights and Humanitarian Law at the Ministry of Foreign Affairs of Uruguay, as Director for the Americas, responsible for bilateral relations with the countries in the region, and as President-Rapporteur of the Social Forum 2010 on Climate Change and Human Rights.



The power of a positive vision: How the Human Rights Council came to adopt a resolution on human rights, sexual orientation and gender identity

John Fisher *Geneva Director, Human Rights Watch*

In September 2014, the Human Rights Council adopted an important resolution on violence and discrimination based on sexual orientation and gender identity. It was the first such resolution after a period of painful inertia since 2011, and was adopted by an absolute majority, with the support of States from all regions, and a substantial increase in the margin of success. John Fisher reflects on the factors that contributed to such a positive outcome.

When the Human Rights Council (the Council) adopted the first UN resolution on human rights, sexual orientation and gender identity, presented by South Africa in June 2011, it seemed that a turning point had been reached in the international protection of LGBTI persons from violence and discrimination.

Most thematic resolutions are annual, some are biennial, but as June 2012, 2013 and 2014 each came and went with no signs of a follow-up initiative, progress seemed stalled, and many began to question when – and even whether – the Council would again take up its responsibility to address human rights violations based on sexual orientation and gender identity.

These questions became particularly acute when the June 2014 session ended on a sour note, with the adoption by a 22-20 vote of the Council's first ever no-action motion on a thematic issue, designed to block the Council from even considering previously agreed language on the diversity of family forms. As a result, many feared a return to the dysfunctional days of the former Commission on Human Rights, when bloc politics and procedural manoeuvres frequently undermined consideration of substantive human rights issues.

And yet, the Council's 27th session (September 2014) ended with the adoption of a resolution on sexual orientation and gender identity, by an absolute majority of the Council, with the support of States from all regions, and a substantial increase in the margin of success from 2011.

How did this become possible? What factors contributed to this positive outcome, and what are the lessons to be learned?

Power of a positive vision

Every initiative needs clear, committed leadership. At initial meetings, States from diverse regions were concerned that the resolution might not succeed. Understandably,

no State wants to risk political capital for an initiative that might fail.

Yet no initiative can come to fruition in an atmosphere of ambiguity. A time comes when it is better to try, even with the risk of losing, than to lose by default because we were unwilling to try.

There is a saying: 'whether you believe you'll succeed, or whether you believe you'll fail, you'll be right.' The fact that the voting outcome surpassed even our best expectations makes one wonder: how many other positive initiatives never see the light of day because of fear of failure?

Strong but constructive leadership

Once Brazil, Chile, Colombia and Uruguay, as lead States, decided to bring a resolution, they gave it their all. Subsequently, Argentina also joined the Core Group. The resolution process was marked by dedicated outreach, tenacity and conviction.

At the same time, the lead sponsors were determined to ensure a constructive process. All points of view were heard during informals, and conversations were held with all stakeholders, including those who had concerns. The lead sponsors opted for a clean process, eschewing procedural tactics to block the seven hostile amendments that were presented, instead allowing these to be debated on their merits.

Non-governmental organisations were requested not to cheer or clap when the resolution was adopted, recognising that – emotional though this milestone was for many of us – it is important not to divide the Council into 'winners' and 'losers', but to instead acknowledge that the increased base of support reflects an ongoing dialogue with States from all regions. In that light, the resolution is not an end in itself but an important step in that continuing process.

The limits of negative campaigning

The constructive approach of the lead sponsors stood in marked contrast to the negative pressure and inflexibility of a small number of States. A barrage of hostile amendments designed to strip the resolution of all substance were defeated each in turn, there was little appetite amongst Council members to revive the much reviled no-action motion, and the most hostile States were reduced to relying upon their own inflexibility to claim that the resolution should not proceed for lack of consensus.

Engaging the debate: from polarisation towards consensus

All too often, 'lack of consensus' or 'polarisation' is invoked as a reason not to advance an initiative at the UN. Consensus is a worthy goal, but it is a process that often begins with polarisation, moves forward through dialogue and results in increased understanding. It is precisely through engaging the debate and addressing sensitive issues that different points of view can be considered and common ground identified.

“ It is easy for the Council to address issues on which everyone agrees. The test of the Council's effectiveness is its capacity to address the issues on which there is disagreement, with a view to protecting all persons from human rights violations in accordance with its mandate.

It is easy for the Council to address issues on which everyone agrees. The test of the Council's effectiveness is its capacity to address the issues on which there is disagreement, with a view to protecting all persons from human rights violations in accordance with its mandate.

Building relationships

The effectiveness of an approach based on cross-regional outreach and dialogue can be seen in the increased constructive engagement by States from all regions.

In the end, the resolution was adopted with support by all States from the Latin American region, from the Western group, and by all States from the Eastern European group except Russia. There was increased support by States from the Asian region, and only 7 of the 13 Member States from the African region voted against the resolution, compared with 10 in 2011. A number of States commended the process and expressed willingness to maintain the dialogue, even if they were not yet ready to commit their support.

This highlights the importance of maintaining relationships, addressing concerns and advancing discussion on an ongoing basis. As one ambassador from a country with

concerns told us when the session was starting: 'we're only approached when our vote is wanted', encouraging us to host briefings and maintain dialogue, not just during Council sessions, but intersessionally when the pressure is off.

Civil society collaborations

Last, but by no means least, the successful outcome highlights the importance of strong civil society collaborations – with States, with the Council, and with each other. The process involved substantial engagement by civil society organisations, working through our own diverse perspectives to articulate clear expectations for the UN human rights system, engaging with States to make these expectations known, bridging the divide between Geneva and capitals, and putting a human face on the challenges we experience.

As one of the lead diplomats wrote to me the day after the vote, 'Your faces yesterday made me feel that my job, that sometimes I have the impression is too abstract, has a real impact on real people. This is the kind of thing that reinforces my commitment to human rights.'

Many factors came together leading into the September 2014 session to transform an initiative that had almost stalled into a positive outcome that actually succeeded in building bridges across diverse perspectives and laying the groundwork for further follow-up. As we reach mid 2016, it is time for the Council to build upon that success by creating a dedicated mechanism such as a Special Rapporteur to finally bring to these issues the systemic attention they require. The lessons of the past provide hope for what can be accomplished with leadership, conviction, a collaborative approach and a shared commitment to putting human rights first.

And that's good not just for the issue, it's good for the Council and for all those who care about human rights. ■

JOHN FISHER was formerly Co-Director of ARC International, an NGO focused on advancing LGBTI rights internationally, and is now Geneva Director of Human Rights Watch. Follow him on Twitter @JohnFisher_hrw.



The UPR and economic, social and cultural rights: A skewed agenda?

Ignacio Saiz Executive Director, Center for Economic and Social Rights

The Universal Periodic Review has given significantly less attention to economic, social and cultural rights than to civil and political rights. Addressing this imbalance is essential if the Human Rights Council is

to fulfil its mandate to promote the indivisibility and interdependence of all human rights, as well as to play a meaningful role in monitoring implementation of the Sustainable Development Goals, writes Ignacio Saiz.

One of the aims of the Universal Periodic Review (UPR), as articulated in its founding resolution,¹ is to promote the universality, interdependence, indivisibility and interrelatedness of all human rights. However, the experience of many NGOs who have engaged extensively with the UPR has raised concerns that economic, social and cultural rights (ESC rights) have been comparatively neglected in the UPR process in its first two cycles.

In order to assess this perception more systematically, the Center for Economic and Social Rights (CESR) and the Sciences Po Law School Clinic undertook a quantitative trends analysis of the recommendations in the UPR Info Database.² This analysis found serious and consistent shortcomings in both the quantity and quality of recommendations on ESC rights.

Too few ESC rights focused recommendations made or accepted by too few States

Alarming, fewer than one in five UPR recommendations focused specifically on ESC rights – half the number of those on civil and political rights. Further, a select range of ESC rights issues – namely education, labour and health – have been the predominant focus, while many other critical ESC rights, such as the rights to food and water, or rights in relation to land and the environment, have received scant attention in both cycles.

Our analysis also uncovered stark regional variations in the number of ESC rights recommendations that States have made and accepted via the UPR. Less than ten percent of the recommendations made by States in the Western Europe and Others grouping focused on ESC rights, compared to 29 percent from Asia and 23 percent from Africa. The lack of attention to these rights by Western European countries has an outsized impact, given that this region accounts for over a third of all recommendations made in the UPR. Regional differences also emerged regarding the percentage of recommendations accepted. While most regions accepted around 80 percent or more of the recommendations focused on ESC rights, Western Europe and Others accepted only 53 percent of these.

In addition to being far fewer, UPR recommendations focused on ESC rights are often vague and ill-defined. Two thirds of a sample reviewed in more depth only called for general action, limiting their utility in guiding policy making at the national level, as well as making it hard to track whether or not they had been successfully implemented.

In addition to being far fewer, UPR recommendations focused on ESC rights are often vague and ill-defined. Two thirds of a sample reviewed in more depth only called for general action, limiting their utility in guiding policy mak-

ing at the national level, as well as making it hard to track whether or not they had been successfully implemented. Less than five percent of those reviewed addressed the question of resources, despite this being central to the progressive realisation of ESC rights. By contrast, two thirds of the recommendations focused on civil and political rights suggested specific actions, such as acceding to treaties, enacting laws, policies or programs, or ensuring the enforcement and implementation of existing laws and policies. More precise, policy oriented recommendations are crucial in order to meaningfully guide and assess the conduct of States in meeting their human rights obligations, particularly in the economic and social sphere.

These findings, echoed in the recent report to the Human Rights Council by the Special Rapporteur on Extreme Poverty and Human Rights,³ underscore the need to build the awareness and capacity of States and civil society organisations engaging in the UPR to craft more specific recommendations for how to operationalise their economic and social rights obligations. The provisions for shadow reporting, follow up and technical assistance under the UPR, as well as the periodic evaluations after each cycle, all provide significant opportunities for improvements to be made in this regard.

As a unique and universal process with a significant degree of legitimacy and engagement on the part of States and civil society, advocating for the effective fulfilment of ESC rights through the UPR is an important means for redressing the comparative lack of attention that these rights still receive on the international human rights agenda.

The potential of the UPR to promote and monitor progress against the Sustainable Development Goals

Addressing these gaps will also be crucial if the UPR is to serve as an effective accountability mechanism for the newly-adopted Sustainable Development Goals (SDGs). The SDGs represent a globally endorsed, comprehensively framed and universally applicable agenda for sustainable development. They reinforce many existing commitments on economic and social rights, such as the rights to water and sanitation, housing and health, as well as including civil and political freedoms without which true social and economic development is impossible. They are also ground-breaking in their commitment to reduce inequality within and between countries and to 'leave no one behind'.

The UPR has a potentially crucial role to play in influencing national efforts to implement the SDGs and the human rights commitments underpinning them. As Member States themselves have recognised, international human rights review mechanisms such as the UPR are a vitally important part of the web of accountability required to achieve the SDGs.⁴ Peer review mechanisms which allow for civil society participation are particularly well-placed

1 A/HRC/RES/5/1 available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13360.

2 www.upr-info.org/database/.

3 Available at www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx.

4 UN Office of the High Commissioner for Human Rights, *Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda*, available at http://cesr.org/downloads/who_will_be_accountable.pdf.

to foster mutual accountability between States for their respective responsibilities in meeting their global commitments, as well as their accountability to the people. It is for this reason that the UPR has been a key point of reference in the debates around a global review mechanism for the SDGs. However, without systematic efforts to address the UPR's blindspots and shortcomings with regard to ESC rights, its potential as an SDG accountability mechanism,

and its legitimacy as a human rights watchdog, will continue to be seriously undermined. ■

IGNACIO SAIZ is Executive Director of the Center for Economic and Social Rights. Follow him on Twitter @ignacioCESR. The author acknowledges the contributions of Allison Corkery, Holly Stubbs and Lena Kahler to this piece. See CESR and Sciences Po, 'The UPR: A Skewed Agenda?', available at www.cesr.org.



The utility, importance and potential of the Human Rights Council to human rights defenders working in restrictive environments

Feliciano Reyna *Venezuelan human rights defender*

The Human Rights Council play a critical role, not only in promoting and protecting human rights, but also in protecting those that defend them in dangerous environments, says Feliciano Reyna.

As human rights defenders working in restrictive and unsafe environments, we have found the Human Rights Council (the Council) and its instruments and mechanisms to be of great importance to the promotion and defence of human rights, both in our countries and internationally, as well as to our own protection and to the prevention of reprisals.

We face restrictions of multiple and diverse forms in many countries, including incapacitating laws and regulations, and threats and stigmatisation on the part of government authorities and non-state actors. These often place our personal integrity, and even our lives, at risk.

However, from 2009, we began working regularly with various Special Procedures of the Council, engaging with several Rapporteurs and Working Groups. Then, in 2010, we began participating in the preparation of reports for the first cycle of the Universal Periodic Review (UPR) of our country, Venezuela, through to the adoption of its recommendations in 2012. These processes brought us into much closer cooperation with the Human Rights Council itself, in which we have found a valuable system for the protection of human rights, which is effective not only for our work of ensuring human rights monitoring in our countries and assisting victims seeking justice and reparation, but also for our own protection.

Protection for human rights defenders

By unanimity or a majority of its members, the Council has issued crucial resolutions for the recognition and protection of an environment in which human rights defenders and our organisations are able to fulfil our role in our countries, to do our work in spite of the restrictions and threats that

we face, and also to exercise our right to promote and defend human rights.

For example, with regard to the creation of an enabling environment, on 3 October 2014, the Council unanimously adopted Resolution 27/31¹ on civil society space. Among its calls, this resolution states that '...domestic legal and administrative provisions and their application should facilitate, promote and protect an independent, diverse and pluralistic civil society... strongly rejecting all threats, attacks, reprisals, and acts of intimidation against civil society actors...'

Regarding the recognition and protection of human rights defenders, on 21 March 2016, the Council adopted Resolution 31/32² on the protection of human rights defenders addressing economic, social and cultural rights. This resolution 'strongly condemns the reprisals and violence against and the targeting, criminalization, intimidation, arbitrary detention, torture, disappearance and killing of any individual, including human rights defenders...' Regretfully, the adoption of this resolution was opposed by six States, including Venezuela, the country of my birth, where I live and serve as a human rights defender.

Effective engagement

We have found that the best results in terms of advocacy before the Council and its mechanisms, as well as for the promotion and protection of human rights and of ourselves as human rights defenders in our countries, can be achieved through interaction between a wide range of diverse local and international organisations. The sum of the combined knowledge and experience of these organisations results in far more effective work.

Furthermore, we have also noted that improved results are a product of the broad and comprehensive design of the Council and its links with other human rights bodies. As such, although the most restrictive and dangerous

¹ Civil society space: A/HRC/RES/27/31.

² Protecting human rights defenders addressing economic, social and cultural rights: A/HRC/31/32.

environments for the defence of human rights generally arise from structural conditions affecting their enforcement – absence of the rule of law, lack of independence of the judiciary, restrictions on freedoms and systematic violations of human rights – the broad diversity of the Special Procedures allows these issues to be dealt with as a package. Through press releases, urgent actions and periodic reports, the attention of States can be drawn to any non-compliance with their international obligations pertaining to the enforcement of human rights. Urgent actions have a particular impact where they involve regional bodies for the protection of human rights, especially when they refer to reprisals against human rights defenders. The press releases, urgent actions, thematic reports and recommendations of Special Procedures are all of crucial value to the work of human rights defenders, both nationally and internationally.

The Universal Periodic Review also offers an extraordinary opportunity to work jointly with other national and international organisations. Not only does it allow comprehensive reporting to the international community on the enforcement of human rights in the country under review, or any lack thereof, but also, on the basis of the resulting recommendations, it allows issues to be added to the agenda for the promotion and protection of human rights by human rights defenders and organisations.

In our experience of working with the Council, its Special Procedures and the UPR, we have seen the need to ‘bring them closer’ to local human rights defenders, as well as to victims. Despite there being many accessible door-

ways to these bodies, they are still perceived as distant, complex and reserved for ‘experts’. It was by our own local efforts that we were able to gain closer interaction with the Council, its mechanisms and the treaty bodies. In addition, with the Venezuelan State declining to allow the in loco presence of Special Rapporteurs, academic visits by mandate holders have also become useful and highly effective forms of closer cooperation, in particular for local human rights defenders, who find themselves in a particularly severe situation of vulnerability, faced with restrictions and threats.

“ *In our experience of working with the Council, its Special Procedures and the UPR, we have seen the need to ‘bring them closer’ to local human rights defenders, as well as to victims. Despite there being many accessible doorways to these bodies, they are still perceived as distant, complex and reserved for ‘experts’.* ”

We would deem it appropriate, and indeed necessary for the legitimacy of the Council, that, in order to be eligible for membership, not only should candidate States have ratified important instruments, such as the Optional Protocol to the Convention Against Torture, but they should also allow the official visits requested by Special Rapporteurs. Furthermore, they should demonstrate observance of the recommendations issued by Special Procedures and treaty bodies, and fulfilment of their obligations relating to regional authorities for the protection of human rights. In this regard, we consider that the Venezuelan State should not be a member of the Human Rights Council. ■



Special Procedures of the Council: Devalued ‘crown jewel’ or powerful tool for the powerless?

Catarina de Albuquerque *Executive Chair of the Sanitation and Water for All Global Partnership*

Additional core resources, mandatory reporting on cooperation and implementation by States, and dedicated support by OHCHR are all necessary to safeguard and strengthen the ‘crown jewels’ of the UN human rights systems, says Catarina de Albuquerque.

Almost every statement or article about Special Procedures starts with the mantra that Special Procedures are the ‘crown jewels’¹ of the UN human rights system. According to the Oxford Dictionary the expression ‘refer[s] to something of great value among other valuable things’. Mandate holders monitor the realisation of human rights,

identify and respond to violations and evaluate a State’s human rights record. To assess the ‘value’ of Special Procedures one has to scrutinise their impact in performing their functions. In this short text I will analyse recent trends, as well as examine future perspectives for the Special Procedures system.

An increase in size...

Since it was created almost 50 years ago the Special Procedures system seems to have gained weight:² it grew in size, in issues covered, as well as in the number of outputs produced. The Special Procedures system is today

1 Kofi Annan is credited with first using this term in 2006: see www.un.org/apps/news/story.asp?NewsID=20770#.Vj08cbQT1H8.

2 In 1967 the Commission on Human Rights adopted two resolutions establishing the first two Special Procedures mandates: an Ad-Hoc Working Group of Experts on South Africa and a Special Rapporteur on Apartheid.

comprised of a total of 55 mandates (41 thematic and 14 country related), and covers a constantly growing range of human rights issues. Its work seems to have a greater impact at country level with a growing number of country missions (in 2015 mandate holders conducted 76 country visits to 53 States and territories) and a bigger number of countries visited (as at 31 December 2015, 167 Member States had been visited by at least one mandate holder). Their outputs have also increased. In 2015, they submitted 134 reports to the Human Rights Council (the Council) and 38 reports to the General Assembly; they transmitted a total of 532 communications (urgent appeals and letters of allegation) to 123 States and 13 non-State actors; and they issued 450 media products, comprising 323 press releases, 53 media statements and 75 media advisories.³

These figures give us an idea of the increasing size and potential impact of Special Procedures in the advancement of human rights. Many mandate holders' actions have had significant impacts at the national, regional and global levels.

“ While the UN's human rights portfolio only receives three percent of the organisation's regular budget, the Special Procedures Branch within OHCHR is allocated 12.6 percent of overall human rights funding.

There is greater transparency in mandate holders' selection. Whereas under the Commission on Human Rights the selection process for mandate holders was somewhat unpredictable and impenetrable (because it was entirely controlled by the chair of the Commission), after the establishment of the Council, the experience and expertise of the candidates now have a greater weight thanks to enhanced criteria. The new system of appointing mandate-holders from a shortlist recommended to the President of the Council by a Consultative Group of ambassadors from all regions ensures greater transparency, but also greater expertise and quality of the chosen mandate holders.

...but an increase in influence?

However, and in spite of an apparent growth in size and relevance of Special Procedures, some say the system was 'designed to be ineffective'. Compared with articles and reports written about them decades ago, the threats and challenges the system faces seem to be pretty much the same. I will therefore look at some of the fundamental 'determinants of influence' of Special Procedures,⁴ namely: their independence and accountability; the expertise and standing of mandate holders; the cooperation of States with the system; the implementation and follow-up to their recommendations; and finally the availability of resources and support. I will assess whether

the apparently positive evolution depicted in the figures mentioned above reflects a real strengthening of the system.

When it comes to the **expertise** and **standing** of Special Procedures, the selection process put in place by the Council clearly gives greater assurances of expertise and quality of mandate holders. Whereas at the time of the Commission on Human Rights this process was entirely led by the Commission's President (even if in consultation with members of the Bureau), now there is a competitive and transparent process which involves an application, followed by the elaboration of a shortlist and telephone interviews by the Consultative Group (composed by five ambassadors of the five regional groups). The final candidate is then proposed by the Council President and approved by the Council.

Such an open and transparent process also gives the whole system greater assurances of **independence**. However, the current process of merging the Office of the High Commissioner for Human Rights' (OHCHR) Special Procedures Branch with the Research and Right to Development Division may be a setback. It may represent a serious threat to mandate holders' independence and identity, but also to Special Procedures' visibility and consistency as a system, which will irredeemably lead to its weakening.

In terms of **availability of resources** to the Special Procedures system, the situation has not improved with time. While the UN's human rights portfolio only receives three percent of the organisation's regular budget, the Special Procedures Branch within OHCHR is allocated 12.6 percent of overall human rights funding.

The increase in the number of Special Procedures mandates puts an additional strain on OHCHR as an increase in funding has not accompanied this. This means Special Rapporteurs regularly seek additional support outside the UN, which might raise **independence** and transparency issues.⁵ To aggravate this situation of lack of funds, recent trends suggest that earmarked funds raised by Special Procedures mandate holders for their own (independent) activities are being targeted to fund regular activities at OHCHR (including the Research and Right to Development Division) where there is a lack of resources. All mandate holders should be provided with increased support by OHCHR (ideally a true team, to enable them to prepare at least two country missions, two yearly reports and act on alleged human rights violations) and a fund to which Rapporteurs could apply to receive additional funds should also be created.

“ Even though positive examples of impact of Special Procedures work exist, the truth is that follow-up and implementation of recommendations is mainly unknown and probably very limited.

³ Report of the 22nd Annual Meeting of Special Rapporteurs/Representatives, Independent Experts and Working Groups of the Special Procedures of the Human Rights Council (Geneva, 8 to 12 June 2015), including updated information on the Special Procedures, A/HRC/31/39 of 17 February 2016.

⁴ Marc Limon and Ted Piccone, 'Human Rights Special Procedures: Determinants of Influence', Universal Rights Group, March 2014.

⁵ Special Procedures have started a very welcome (voluntary) practice of making the external funding received public. See A/HRC/31/39 of 17 February 2016, p 58 and ff.

In terms of **cooperation**, it is a common place to say that the follow up of the recommendations of Special Procedures continues to be the biggest weakness of the system. Even though positive examples of impact of Special Procedures work exist,⁶ the truth is that follow-up and implementation of recommendations is mainly unknown and probably very limited.

The Council could implement a mandatory regular reporting obligation of States that receive Special Rapporteurs' missions. In addition, it could more systematically include key recommendations from Special Procedures' thematic reports into the resolutions it adopts. Involving civil society organisations, including human rights defenders, in actively lobbying for the inclusion of such recommendations, but also in preparing reports and organising side events coinciding with the presentation of the report, is a promising route to ensure follow up to recommendations.

⁶ Several examples of impact are mentioned in OHCHR's annual reports, as in the OHCHR Report 2014 at www2.ohchr.org/english/OHCHRReport2014/WEB_version/allegati/Downloads/1_The_whole_Report_2014.pdf.

Safeguarding the jewels

The Special Procedures system's success and reputation is the result of a difficult equilibrium between independence from and cooperation with not only States, but also UN agencies (including OHCHR) and civil society organisations. The Council can and should do more not only to make sure that independence is protected, but also that cooperation, support, financing and impact are strengthened. This should be one of the main ambitions of the Council for the next decades if it wants to make sure that the crown does not lose its jewel. ■

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Risky prospects: Engagement of Chinese human rights defenders with the Human Rights Council

Linda Wang UN Coordinator **Alex Beck** Senior Program and Development Coordinator of Network of Chinese Human Rights Defenders

From the perspective of many Chinese human rights defenders and independent non-governmental organisations, the difficulties and risks associated with engaging the Human Rights Council outweigh the benefits. Engagement is nearly inconceivable because of accessibility problems and the threat of State reprisals, including torture. But there are meaningful actions the Council could take to improve access, and prevent and respond to reprisals, say Linda Wang and Alex Beck.

Despite some improvements in accessibility and pledges to improve the safety of human rights defenders over its first ten years, engaging the Human Rights Council (the Council) still poses risks for Chinese defenders that far outweigh the benefits. For this to change, the Council needs to improve access by enhancing availability of information at the grassroots level, helping to ensure that genuine independent non-governmental organisations (NGOs) gain accreditation, and providing meaningful protection for defenders facing reprisals from their own government.

Challenges to accessibility

Ensuring meaningful access by independent NGOs and human rights defenders to UN human rights mechanisms is crucial because these actors have played a critical role¹ in advancing the development and effective implementation of international human rights standards and agreements. Independent Chinese NGOs, however, must overcome multiple hurdles to have their voices heard at the UN.

First, there is a serious lack of Chinese language materials available to grassroots defenders; often, even the existing translations are problematic or unwieldy. This is a deterrent to engagement.

Notable progress has already been made by the Council, supported by the Office of the High Commissioner for Human Rights (OHCHR), in overcoming this information barrier, including by providing more and better translated documents, simple guidebooks and videos, webcasts of Council sessions, and more easily accessible postings of Council session schedules.

One meaningful additional step the Council could take is to utilise independent translation services to translate mate-

¹ Lucia Nader, 'The role of NGOs in the UN Human Rights Council', available at www.scielo.br/scielo.php?pid=S1806-64452007000200002&script=sci_arttext&tng=en.

rials into Chinese and make those materials available on social media platforms. Although this would have resource implications, it would be a key investment in those seeking to cooperate with or access the UN.

“...it is nearly impossible for local, independent NGOs or international groups promoting human rights in China to gain accreditation because of Chinese authorities’ efforts within the UN NGO Committee to defer the applications of organisations that will critically examine human rights violations and demand accountability.”

Second and most importantly, it is nearly impossible for local, independent NGOs or international groups² promoting human rights in China to gain accreditation because of Chinese authorities’ efforts within the UN Economic and Social Council (ECOSOC) NGO Committee to defer the applications of organisations that will critically examine human rights violations and demand accountability.³ Most of the Chinese NGOs accredited by the UN are government-organised groups (GONGOS),⁴ which do not represent the voices of victims of human rights abuses in China. Resolving this problem is complicated but with some political will, the situation could be improved.

The Council should press for reforms to the process through which NGOs gain consultative status and modify criteria for electing States to the ECOSOC NGO Committee, the gatekeepers to civil society participation at the Council.

- If a State has been the subject of complaints about reprisals or has been determined to have persistently committed gross and systematic violations of human rights, it should be deemed unqualified to serve on the NGO Committee.
- Likewise, if any State, even if already a Committee member, refuses to cooperate with UN human rights mechanisms – by rejecting visits from UN Special Rapporteurs or the High Commissioner for Human Rights or by interfering with efforts of these UN mechanisms to communicate with NGOs – or fails to uphold its obliga-

tions at home – by suppressing freedom of association, targeting NGOs, or refusing to ratify the International Convention on Civil and Political Rights – it should lose its standing as a member.

These kinds of reforms would diversify participation in the Council and other UN mechanisms and make it less dangerous, benefitting the system itself as well as defenders on the ground.

Lethal engagement

During the past decade, Chinese defenders have faced many forms of reprisals,⁵ including intimidation,⁶ harassment,⁷ travel bans, arbitrary detention,⁸ enforced disappearances,⁹

torture, and other punishments, for their efforts to engage UN mechanisms. The most well-known example is Cao Shunli (曹顺利).¹⁰

Chinese authorities detained Ms. Cao as she attempted to board a plane to participate in the 2nd Universal Periodic Review (UPR) of China in 2013. Although UN experts did raise concerns about her case,¹¹ explicitly as a case of reprisals, she later died as a direct result of torture and deprivation of medical treatment while in detention.¹² Her tragic death is the clearest example of the Chinese government’s unrestrained reprisals against defenders who seek to engage with the Council or other UN human rights mechanisms.¹³

“The first challenge to responding to reprisals is the composition of the Council itself. More stringent criteria for membership on the Council would mean more effective action on the Council’s core business, and a timelier response when reprisals occur.”

The first challenge to responding to reprisals is the composition of the Council itself. More stringent criteria for membership on the Council would mean more effective action on the Council’s core business, and a timelier response when reprisals occur. Criteria should include the State’s human rights record—measured by the treaties ratified, implementation of treaty obligations as assessed by treaty bodies, reports by Special Procedures allowed to visit the

2 Joe Sandler Clarke, ‘United Nations failing to represent vulnerable people, warn NGOs’ in *The Guardian*, 11 August 2015, available at www.theguardian.com/global-development-professionals-network/2015/aug/11/united-nations-failing-to-represent-vulnerable-people-warn-ngos.

3 United Nations, ‘Committee on Non-Governmental Organizations defers action on eight applicants, while recommending status upgrade for another’, available at www.un.org/press/en/2014/ecosoc6595.doc.htm.

4 Sonya Sceats with Shaun Breslin, ‘China and the International Human Rights System’, October 2012, available at www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/r1012_sceatsbreslin.pdf.

5 Sui-Lee Wee and Stephanie Nebehay, ‘Special Report: China uses intimidation tactics at U.N. to silence critics’, *Reuters*, 6 October 2016, available at <http://www.reuters.com/article/us-china-softpower-rights-specialreport-idUSKCN0S010420151007>.

6 CHRDR, ‘“Too Risky to Call Ourselves Defenders”: CHRDR Annual Report on the Situation of Human Rights Defenders in China (2015)’, available at <https://chrdrnet.com/2016/02/too-risky-to-call-ourselves-defenders-chrdrs-2015-annual-report-on-the-situation-of-human-rights-defenders-in-china/>.

7 CHRDR, ‘Submission to UN on Reprisals Against HRDs – March 6, 2012’, available at <https://chrdrnet.com/2012/03/submission-to-un-on-reprisals-against-hrds-march-6-2012/>.

8 CHRDR, ‘Women’s Rights Defenders Face Reprisals Over UN Review (10/31-11/6/2014)’, available at <https://chrdrnet.com/2014/11/chrb-womens-rights-defenders-face-reprisals-over-un-review-1031-1162014/>.

9 The Rights Practice, ‘Director’s Blog’, available at www.rights-practice.org/en/blog.html.

10 CHRDR, ‘Cao Shunli (曹顺利) & Her Legacy’, available at <https://chrdrnet.com/2014/04/prisoner-of-conscience-cao-shunli/>.

11 OHCHR, ‘UN experts alarmed by reprisals against activists linked to China’s international human rights review’, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13860.

12 OHCHR, ‘Deadly reprisals: UN experts deplore the events leading to the death of Chinese human rights defender Cao Shunli, and ask for full investigation’, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14394.

13 CHRDR, ‘The Chinese Government Must End Reprisals Against Activists Demanding Participation in UPR’, available at <https://chrdrnet.com/2013/07/the-chinese-government-must-end-reprisals-against-activists-demanding-participation-in-upr/>.

country, successful implementation of UPR recommendations as assessed by independent experts and NGOs, etc.

The second relates to the absence of effective institutional response mechanisms. Internally, the Council could improve its complaint procedure to respond to human rights violations by replacing country-appointed experts with independent experts on the Working Group on Communications and Working Group on Situations. The Council could also help prevent reprisals by supporting establishment of an institutional, UN-wide response that would also help protect defenders seeking to engage human rights mechanisms, in line with the Council's own Resolution 24/24.

Changing the calculus

Awareness of human rights and UN human rights mechanisms is growing inside China. Mounting suppression against defenders and civil society at home has led some individuals to increasingly see the possible benefits of reaching out to the Council and other UN mechanisms. The benefits of engaging through intermediaries and accredited groups include:

- exercising freedom of speech and telling their stories to a wider audience;

- using the media interest in the UN to amplify their message and raise awareness;
- reducing their isolation and building ties to the international community; and
- strengthening their capacity to influence dialogue between the UN, diplomats, and Chinese officials.

Defenders see the Council as one arena where their engagement could help to set the public record straight regarding human rights in China, and could potentially lead to increased pressure on Chinese authorities to adhere to international human rights standards.

But without improved accessibility and better protections for defenders, the UN human rights system, and in particular the Council, will remain a high risk/low return endeavour for human rights defenders in China and other authoritarian countries. ■

See the work of the **NETWORK OF CHINESE HUMAN RIGHTS DEFENDERS** team at <https://chrdnet.com/> or www.facebook.com/CHRDnet and keep up with the latest news by following them on Twitter @CHRDnet.



Ten keys to improving the Human Rights Council

Philippe Dam Human Rights Watch Advocacy Director for Europe and Central Asia, and former Human Rights Watch Geneva Deputy Director

Ten brief 'lessons' highlight the great potential and possible pitfalls of the Human Rights Council's ability to respond to serious violations...when it has the right mix of external pressure, internal leadership and determined diplomacy. These lessons stem from Philippe Dam's direct exposure to the Council during its ten years of existence and its 30 first sessions, and are shaped by his work with then-Geneva Director at Human Rights Watch, Julie de Rivero.

1 The Council can succeed if it shows resolve

When it established the Human Rights Council (the Council), the UN General Assembly mandated it to 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon' and to 'respond promptly to human rights emergencies.' This was a straightforward ask. The Council's authority to scrutinise a government's human rights record can change the course of events on the ground and at the international level. This is precisely why many fear its action and go out of their way to prevent it.

Ten years into the Council, a small number of States continue to oppose action on country-specific situations as a matter of policy and have fought fiercely to prevent the Council from taking action. When this fails, those same States work to weaken the Council's resolve, using procedural objections or promoting a so-called 'cooperative approach' with the concerned State, regardless of the reality on the ground. Despite such diplomatic counter-efforts, in cases such as Eritrea, North Korea, Sri Lanka, and in the early months of the crisis in Syria, the Council's decisive action helped expose human rights violations and shifted or influenced the global response to these situations.

2 The Council does make a difference to human rights defenders on the ground

While the Human Rights Council does not have enforcement powers like the Security Council, its political weapon is to shine a light, to expose violations and their perpetrators. When the Council recognises abuses being committed in a given country, it takes action by appointing an independent mechanism to assess the situation and make recommendations, through engagement with the government and other stakeholders – including, and especially, civil society. This generates independent, interna-

tional scrutiny that supports the causes of human rights defenders and provides legitimacy to their goals as no other institution can do.

Assertive action on situations of concern is more likely when a group of States has a clear vision of what they are trying to achieve through the Council. Yet when it comes to identifying new champions to address a country situation not already on the Council's agenda, few are willing to step forward.

The contributions, session after session, of so many human rights defenders from all over the world and their support for the renewal of reporting mandates, for example on Iran or Belarus, are the best evidence that the Council matters to those on the ground. For human rights defenders and victims of abuses, the Council's relevance lies in its capacity to expose violations and hold governments to account.

3 The Council cannot resolve a human rights crisis on its own but it can help catalyse international action

The Council's actions are most relevant when they amplify the work of national players and contribute to holding perpetrators to account. But given the complexity of many crises, the Council cannot always resolve a situation of human rights violations alone. What it can do is serve as a much needed catalyst to mobilise international attention and trigger action.

For instance, the work of the Commission of Inquiry appointed by the Council on crimes in North Korea led the UN to recognise that crimes against humanity were committed in the country. As a result, the Security Council was encouraged to consider referring the situation to the International Criminal Court. Similarly, the Commission of Inquiry on Syria was repeatedly asked to brief the Security Council on crimes committed by all parties in the conflict. By providing a detailed, independent and expert assessment of a given situation, the Human Rights Council has the potential to provide the groundwork for action by other international bodies.

4 The Security Council can be a more relevant body than the Human Rights Council in preventing human rights violations

Despite the Human Rights Council's specialised mandate, the reality is that the Security Council can sometimes address human rights concerns in a more forceful and direct way. For example, the International Commission of Inquiry on human rights in the Central African Republic was established in December 2013 by the Security Council – not the Human Rights Council. Another clear case in point has been the situation in South Sudan, where the Security Council has developed a peacekeeping presence with a strong mandate, including human rights and protection of civilians. By contrast, the Human Rights Council has struggled to bring the country under international scrutiny.

In these cases, the Human Rights Council can work instead to expose crimes, thus mobilising the interna-

tional community to prevent future violations or promote greater accountability for atrocities. Once a human rights situation deteriorates into an all-out conflict and requires more robust efforts to protect civilians on the ground, the work of the Security Council proves more relevant.

5 Power or regional politics should not trump accountability

The Human Rights Council's capacity to react to serious human rights violations is constrained by regional group politics. The continued bloc-style positioning of the African Group, for example, has de facto amplified the views of States that have expressed the most hostile views against the Council's action on country situations and eroded the diversity of views within the continent. Similarly, by opposing Council actions that do not enjoy the support of the country concerned – i.e. by the government violating rights – the African Group, Arab Group or the group of the Organisation of Islamic Cooperation contribute to a steady erosion of the Council's ability to respond to rights abuses.

When Western countries practice this bloc politics, they also negatively influence the Council's capacity to address grave situations of grave human rights violations. For example, when the European Union has not been able to reach a common position, Western States' paralysis has hampered efforts to address important human rights crises, including on Bahrain, Azerbaijan, Egypt and in response to the crimes committed by the Saudi-led coalition in Yemen.

6 More countries need to step up and take leadership

Assertive action on situations of concern is more likely when a group of States has a clear vision of what they are trying to achieve through the Council. Yet when it comes to identifying new champions to address a country situation not already on the Council's agenda, few are willing to step forward. The United States has traditionally exercised significant leadership in building coalitions to act on human rights violations, as demonstrated by the Council's resolutions on accountability in Sri Lanka or on human rights in Iran. The European Union has at times played a key role as well, including on Belarus and North Korea. But too often, the challenge of taking up new situations is perceived as too costly.

In 2012 and 2013, Switzerland successfully led a series of joint statements denouncing the crackdown in Bahrain and calling for the referral of the situation in Syria to the International Criminal Court. But the failure of other delegations to replicate this approach or to actively support such efforts, either by evolving from a joint statement or by shouldering some of the burden of outreach, is deeply troubling.

7 Council members should not denounce selectivity and double standards while at the same time blocking a more objective response to situations

Since the creation of the Council in 2006, a growing number of States from various regional groups have worked to consolidate the implementation of its mandate to address situations of violations. However, too many continue to

reject country-specific action as a matter of policy. Countries such as China, Cuba, Russia and Venezuela have systematically rejected all country resolutions put to a vote – with the notable exception of each resolution addressing the Occupied Palestinian Territories, which they supported. Those countries invoke ‘selectivity’ to urge the Council to address fewer situations, not more. By doing so, they may protect themselves from scrutiny, but at the same time they allow the Council to ignore many other situations that deserve the Council’s attention, including ongoing abuses in Afghanistan, arbitrary detention at Guantanamo Bay, mass surveillance, or the poor handling of the refugee crisis by European governments.

8 A small group of cross regional States who take a principled stance can make a big impact on the Council’s ability to respond to serious violations

The Council’s success is conditional on the support of States, and over the years a gradually larger number of States have demonstrated their willingness to address country situations. The principled engagement of countries like Chile, Mexico, Uruguay or Costa Rica in the Latin American Group, or of Botswana, Sierra Leone or Ghana in the African Group, has made a massive difference in the way the Council acts. Similarly, the proactive role played in the Western European and Other Group by countries like Switzerland, the Netherlands or Ireland, as well as the UK on Sri Lanka and France on West and Central African crises, acts as a counterbalance to the Council’s tendency toward inaction.

9 ‘West-rest’ politics is the Council’s Achilles heel, but can be overcome

The perception that addressing situations of human rights violations is solely an interest of the West is a key threat to the Council’s ability to hold those responsible for grave violations to account. For States that regularly seek to delegitimise the Council’s role in addressing situations of violations, like China, Russia, Egypt or Pakistan, denouncing the politicised nature of the Council and excluding the sufferings of victims from the debate is a more convincing argument than advertising their open support to abusive governments. However, in response, strong and principled cross-regional partnerships can and do counteract this strategy, as evidenced by the Council actions on Sri Lanka or North Korea. The Council’s most successful engage-

ment came out as the result of the solid engagement of States from different regional groups working.

Cross-regional strategies help avoid the polarising effect of the regional bloc politics mentioned earlier. But as long as Western States remain the main initiators of country specific resolutions, they will have to demonstrate they are unshakably principled if they want to secure cross-regional support.

“ *Cross-regional strategies help avoid the polarising effect of the regional bloc politics mentioned earlier. But as long as Western States remain the main initiators of country specific resolutions, they will have to demonstrate they are unshakably principled if they want to secure cross-regional support. The trust required is very fragile, especially when those same Western countries continue to protect their allies whenever it suits them.* ”

The trust required is very fragile, especially when those same Western countries continue to protect their allies whenever it suits them. The uniform opposition of the US to resolutions addressing violations committed by Israel, or the failure of the US, the UK and others to genuinely address the abuses committed by the Saudi-led coalition in Yemen or by allied militias in Iraq, fail the victims as much as they strengthen the argument that Council debates simply revise confrontation between Western interests and the rest of the world.

10 Individuals, not just States, make a difference

Working at the Human Rights Council exposes defenders and NGOs – including me – to diplomats from all over the world. Of course, their job is to defend the principles and objectives of their governments. But beyond geopolitics, the hard work and passion of many working there is critically important to the Council’s activities, and ultimately one of the central drivers of the Council’s most successful debates. Diplomats from a broad range of countries and from all regions have impressed and sometimes galvanised us by their determination to put human rights before politics. Many of them have been deeply touched by testimonies of victims, have reconsidered their perceptions and have moved mountains. As we discuss the Council’s next ten years, human rights defenders and activists should never forget that many of those sitting behind their country’s name plate in Room XX are true human rights diplomats. ■





Making the most of the Human Rights Council on the African continent

Hassan Shire Executive Director of DefendDefenders (East and Horn of Africa Human Rights Defenders Project)

Despite African civil society's engagement at the Human Rights Council having increased over the last decade, fundamental challenges remain in obtaining timely and effective mechanisms to address the continent's gravest human rights crises, says Hassan Shire.

Few human rights defenders working in war-torn Juba, authoritarian Addis Ababa, or repressive Bujumbura know about the Human Rights Council (the Council). Even fewer understand its mandate and the mechanisms available to strengthen their valuable efforts to protect and promote human rights. DefendDefenders has been heavily involved in building the Council we have today, bridging the gap between Room XX of the Palais des Nations and those fighting for human rights on the frontline.

With increasingly brutal crises and conflicts erupting across the globe, monthly reports of terrorist attacks, and unprecedented numbers of displaced people moving across the continents, the space for civil society at the Human Rights Council has never been more important, nor has it ever been more at risk.

The Council's core mandate is to protect the victims of human rights violations worldwide by promoting their rights. It is critical that these victims get access to the mechanisms established by the Council, such as the Universal Periodic Review or the Special Procedures. And yet, while human rights activists are increasingly able to engage with these mechanisms, the Council is failing to protect those who speak out.

If the Council is to preserve its credibility and maintain a healthy balance between the voices of victims and activists, and those of governments, it needs to respond to reprisals in a substantive manner. It is not acceptable that the lives of defenders are threatened when they speak to the growing corps of experts mandated by the Council to document and report on human rights violations.

In 2015, the President of the Human Rights Council demanded that the Government of South Sudan respond to the allegation of reprisals against an activist supported by DefendDefenders. South Sudanese security agents held him at gunpoint and threatened his family hours before he was due to fly to Geneva. This first public response to on-going reprisals was an important step towards tackling the issue. However, a more structured and systematic response is needed to dissuade governments from engaging in such practices.

Three times a year, the Council represents a vital forum for defenders witnessing, documenting, and reporting on the abuses committed against their people, and to share their knowledge and experiences with those who set the norms and officially record these violations, which might otherwise be swept under the carpet.

The Council's response to country situations

Over the last decade, the Council has been successful in addressing some of the most chronic situations across our sub-region, including Sudan, Somalia, South Sudan, and Eritrea. DefendDefenders, together with countless courageous Eritrean activists, demanded and obtained the creation of a Commission of Inquiry on Eritrea in 2014, which produced a 500-page report,¹ published in November 2015, documenting the Government's egregious and shocking human rights violations. In a flagrant example of the limitations of the Council's mandate, the Eritrean Government refused to cooperate with the mission and denied the Commission members access to the country. Nevertheless, their report is thoroughly researched and stands as indisputable proof of the regime's complete disregard of the rights and lives of its people.

With increasingly brutal crises and conflicts erupting across the globe, monthly reports of terrorist attacks, and unprecedented numbers of displaced people moving across the continents, the space for civil society at the Human Rights Council has never been more important, nor has it ever been more at risk.

In December 2015, Member States of the Council reacted to the worsening crisis in Burundi by convening a Special Session a week after violent attacks were carried out in Bujumbura, leaving over 100 dead, and adopted a strong resolution by consensus. But when will it start reacting to the early warning signs of a looming crisis?

The world we live in is changing, and methods of repression are evolving. In Burundi, the adoption of repressive legislation and the imprisonment of journalists and human rights defenders preceding the outbreak of the crisis should have set off alarm bells in the halls of the Palais des Nations.² Yet little attention was paid to these worrying trends, and little has been paid to similar patterns documented during elections in other countries.³

¹ Report available at www.ohchr.org/Documents/HRBodies/HRCouncil/ColEritrea/A_HRC_29_CRP-1.pdf.

² DefendDefenders, '2015: Burundi at a Turning Point, Human Rights Defenders Working In the Context of Elections', available at www.defenddefenders.org/wp-content/uploads/2015/02/burundi-2015-en.pdf.

³ DefendDefenders, 'Caught Up in Bitter Contests, Human Rights Defenders working in the Context of Elections in Sudan, Ethiopia, Burundi and Uganda', available at www.defenddefenders.org/wp-content/uploads/2015/09/Caught-Up-in-Bitter-Contests.pdf.

As a body made up of Member States, international politics have always played a part in shaping the Council's agenda. However, I am concerned to see worrying and unholy alliances emerge, striving to encroach on some of the Council's achievements. Prime human rights violators such as Russia, China, Egypt, Cuba, and Pakistan were seen working together at the March 2016 session to weaken the Council's recognition and protection of defenders working on economic, social and cultural rights.

The Africa group, historically working as a bloc to counter country-specific resolutions, significantly hampered the Council's response to the devastating civil war in South Sudan. A Commission for Human Rights in South Sudan was only established in March 2016. For over two years, bowing to the pressure of the group, African States refused to establish a mechanism that would work in parallel with the African Union's on-going process. Can there really be too many cooks when it comes to bringing justice to the victims of one of the world's most brutal conflicts?

Cooperation between the international and regional human rights systems

The Addis Ababa Roadmap, adopted by the Special Procedures mandate-holders of both Human Rights Council and the African Commission on Human and Peoples' Rights in 2012, is a significant step towards improving such cooper-

ation and collaboration between the two mechanisms, and has the potential to meaningfully advance the protection of human and peoples' rights on our continent. Stronger collaboration between these two mechanisms is fundamental to improve responses to human rights crises in Africa.

To end on a positive note, there have recently been encouraging examples of bloc politics being put aside to prioritise victims of violations, most notably during the Special Session on Burundi. In a moving statement to the Council, the representative of Ghana spoke in solidarity with the people and the human rights defenders of Burundi, referring to the words of Nelson Mandela who, in 1999, asked 'for how long shall innocent people of Burundi die at the hands of their own fellow citizens?'

Let us hope that over the course of the next ten years, we will see more States withstand political pressure, not only to fulfil their obligations towards the mandate of the Council but, more importantly, to stand side by side with victims of human cruelty and brutality and those fighting to defend them. ■

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The Universal Periodic Review and human rights progress: A case study from Australia

Anna Brown *Director of Advocacy & Strategic Litigation, Human Rights Law Centre*

The UPR has received mixed reviews about its effectiveness as a mechanism to achieve positive human rights change. However, the case study of Australia demonstrates the capacity of the UPR to open space for dialogue and facilitate positive, albeit modest, human rights progress and monitoring, writes Anna Brown.

On a four-year cycle the UN Human Rights Council examines every country's human rights record in a process known as the Universal Periodic Review (UPR). Countries question States under review about their human rights record and make recommendations on how they can improve. As to its effectiveness as a mechanism for achieving positive human rights change, the UPR has received mixed reviews. However, the case study of Australia demonstrates the capacity of the UPR to facilitate positive, albeit modest, human rights progress.

The first-cycle review: Promise stymied by lack of political will

In Australia's first cycle UPR in 2011 a record number of recommendations (90 percent) were accepted in whole or in part and NGOs welcomed Australia's commitment to translate them into concrete action. A number of positive steps resulted from the review, including the establishment of a new Children's Commissioner, the creation of the National Disability Insurance Scheme, and the development of new federal discrimination protections for lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

However, a change of government revealed the fragility of Australia's commitment to implementation. Under a newly elected Coalition Government progress on many recommendations stalled and new areas of regression emerged, such as an increasingly cruel and punitive treatment of asylum seekers. There were no longer any public reports on progress on implementation by the Government and the status of the former Government's National Human

Rights Action Plan, the vehicle intended to drive and monitor implementation of the UPR recommendations, was unclear. By the time Australia's second cycle review took place in November 2015, the Australian Human Rights Commission assessed that only 10 percent of the 2011 recommendations had been fully implemented.

This lack of progress coupled with regression in key areas and remarks from the former Prime Minister Tony Abbott and senior government ministers in early 2015 that evidenced increasing hostility towards the UN meant that civil society was not overly optimistic about the potential of Australia's second-cycle UPR to achieve positive human rights change.

Preparing for the second-cycle review: Opening space for dialogue

Australia's second-cycle review took place in late 2015 and, while still early days, at this point it is clear that this review provided an opportunity for NGOs to open up dialogue with the Government on human rights issues and resulted in modest positive outcomes.

After coming into power, the Coalition Government reduced funding to community organisations and restricted the ability of community legal centres to use federal funding to advocate on policy issues. Relationships between the sector and the Government were strained. The UPR therefore provided civil society with a common language or reference point to open up discussion with the Government and the broader community on progressive human rights issues.

“The UPR therefore provided civil society with a common language or reference point to open up discussion with the Government and the broader community on progressive human rights issues.”

The Australian NGO Coalition, representing nearly 200 NGOs across Australia, was able to use the UPR as the basis to secure a meeting with the Attorney-General to discuss human rights issues in Australia ahead of the review. Following this meeting, the Attorney-General's Department and the Government more broadly continued to engage positively and constructively with civil society throughout the UPR, in both Canberra and in Geneva. Officials responded to NGO perspectives and concerns respectfully and in good faith; by way of example, the Government adopted civil society suggestions regarding potential voluntary commitments to be made in the course of the formal review.

The second-cycle review outcomes: Modest commitments, but important mechanisms

During its appearance in November 2015, Australia was questioned by 107 countries and 291 recommendations were made across a range of issues. An overwhelming focus of the review was Australia's harsh treatment of asylum seekers, with over 60 recommendations criticising Australia's policies in this area. Unfortunately this chorus of criticism was met with shallow justification by Australia. In its opening remarks the Australian Government acknowledged the challenges the country faced in a number of

areas but stated that its 'strong' policies on asylum seekers and migration had built public confidence and saved lives at sea.

However, despite the continuing blight of Australia's myopic approach to asylum seekers and refugees, in other areas the UPR has been able to act as a driver for positive reform. The UPR provided the impetus for the Government to make a number of modest positive commitments, including:

- work towards a National Action Plan on business and human rights;
- the withdrawal of its reservation to the Convention on the Elimination of All Forms of Discrimination against Women; and
- a commitment to close a loophole in federal discrimination protections for LGBTI people that allowed states and territories to continue to discriminate on the basis of sexual orientation, gender identity and intersex status.

The UPR provided a much needed impetus to pick up the national conversation on ratification of the Optional Protocol of the Convention Against Torture. After inter-governmental discussions some years ago had led to some progress with states and territories but failed to achieve consensus on ratification, political momentum on this issue had reached a stand still. The UPR provided a political imperative to re-start these conversations and, at the time of writing, the Federal Government supports ratification with only a small number of states left to come on board. Without the external driver of the UPR, civil society calls for reform on this issue may have continued to fall on deaf ears for years to come.

The most recent UPR has also led to some significant institutional reforms to improve Australia's engagement with UN human rights mechanisms. During its UPR appearance, Australia committed to creating a standing mechanism to monitor the implementation of UN recommendations, a much needed measure to facilitate greater accountability and advance positive national reform. In addition, Australia has taken steps to ensure the introduction of a monitoring mechanism specifically for the second-cycle UPR recommendations. Bipartisan support for the UPR process, demonstrated by the inclusion of opposition parliamentarians in Australia's delegation last November, is a promising sign of continued political commitment to implement recommendations, regardless of the outcome of this year's federal election.

Overall, while the gains may have been modest, and while setbacks remain, the second-cycle UPR provided an opportunity to open up dialogue between the Government and civil society on progressive human rights reform. In this way, the UPR has been and will continue to be a force for positive change and greater accountability in Australia. ■

ANNA BROWN is Director of Advocacy & Strategic Litigation with the Human Rights Law Centre in Australia. Anna co-ordinated a large NGO Coalition engaged in the UPR, including preparing joint submissions, continuing dialogue with the Australian Government and lobbying states in the lead up to Australia's appearance. Follow her on Twitter @AnnaHRLC.



Bringing human rights home: National human rights institutions and the Human Rights Council

Katharina Rose Geneva Representative for the Global Alliance of National Human Rights Institutions

Paris Principles compliant national human rights institutions can play a pivotal role in bridging the implementation gap between universal human rights norms and standards and their full realisation in-country. More can be done at the Human Rights Council to ensure their effective engagement, says Katharina Rose.

The United Nations General Assembly Resolution 60/251 founding the Human Rights Council (the Council) provides a visionary commitment to close cooperation with national human rights institutions (NHRIs). Whilst over the years important strides have been made in forging such cooperation, the tenth anniversary should serve as opportunity to renew and reinforce the Council's commitment to NHRIs and to identify measures to maximise the Council's ability to draw on the unique contribution that NHRIs can make to its work.

NHRIs are established as independent institutions with a broad legal or constitutional mandate and powers to protect and promote human rights. Their establishment and operations are guided by the UN Paris Principles, adopted by the General Assembly in 1993.

Paris Principles compliant NHRIs can play a pivotal role in bridging the implementation gap between universal human rights norms and standards and their full realisation in-country. This role of NHRIs is widely accepted and acknowledged. The General Assembly and the Human Rights Council have continuously welcomed and further encouraged NHRI contributions to, and participation in, the work of the Council and its various mechanisms.

Practices and arrangements have evolved to allow for the independent participation of NHRIs in the work of the Council. They are distinct from, yet complementary to, those of States and NGOs. When the Council reviewed its operations five years after its establishment, it decided to strengthen NHRI participation and make their contributions, particularly to the Universal Periodic Review (UPR) and Special Procedures, even more visible.

In line with their Paris Principles-based mandates and functions, NHRIs contribute to the work of the Council and its mechanisms in a number of ways:

- They provide the Council and its mechanisms with credible, independent and evidence-based information about the domestic application of international human rights norms, standards and recommendations, with reliable analysis about areas where progress has been made and where implementation challenges remain.

- They increase awareness by national-level institutions and actors of the work of the Council and boost their involvement with it, thereby helping to make the Council more relevant and accessible to the national and grassroots level, including rights-holders themselves.
- They support the Council's work in developing international human rights treaties and other norms and standards, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child, by coordinating input through their global voice, the Global Alliance of National Human Rights Institutions (GANHRI).

Ensuring the effective engagement of NHRIs

Whilst it is clear that NHRIs have an enormous potential in contributing to the Council's work and maximising its impact on human rights in-country, it is important to ensure NHRIs have sufficient resources and orientation to do so as effectively as possible. Three provisions are essential in this regard.

“Paris Principles compliant NHRIs can play a pivotal role in bridging the implementation gap between universal human rights norms and standards and their full realisation in-country.”

Firstly, NHRIs' **capacity** to engage with and through the Council to strengthen human rights on the ground.

Many NHRIs are still building their capacities on how to use their diverse functions to engage with the Council effectively. GANHRI and its four regional networks work to build the capacity of NHRIs, through training, peer support and the exchange of good practice between its members. Many similar initiatives are under way, including by the Office of the High Commissioner for Human Rights (OHCHR), yet much more could be done.

As increasing expectations are being placed on NHRIs, there is also a need to advocate collectively for NHRIs in all regions and all national contexts to have sufficient powers and resources to respond to this welcome recognition. This is key to the efforts of GANHRI and its regional networks, and a responsibility that the Council and the international community clearly share.

The second essential item is **space**; that is, an environment in which NHRIs and civil society have meaningful opportunities to engage with the Council and other UN mechanisms.

The Council has developed practices and arrangements to engage with NHRIs and important achievements have been

made, for example with the provision for webcasts and video statements. However, further efforts could make the Council and its mechanisms more accessible to national-level stakeholders, including NHRIs. This should include all stages of the Council's work: from reporting on national situations, to the development of recommendations, and to follow-up, monitoring and assessment of progress made at the country level.

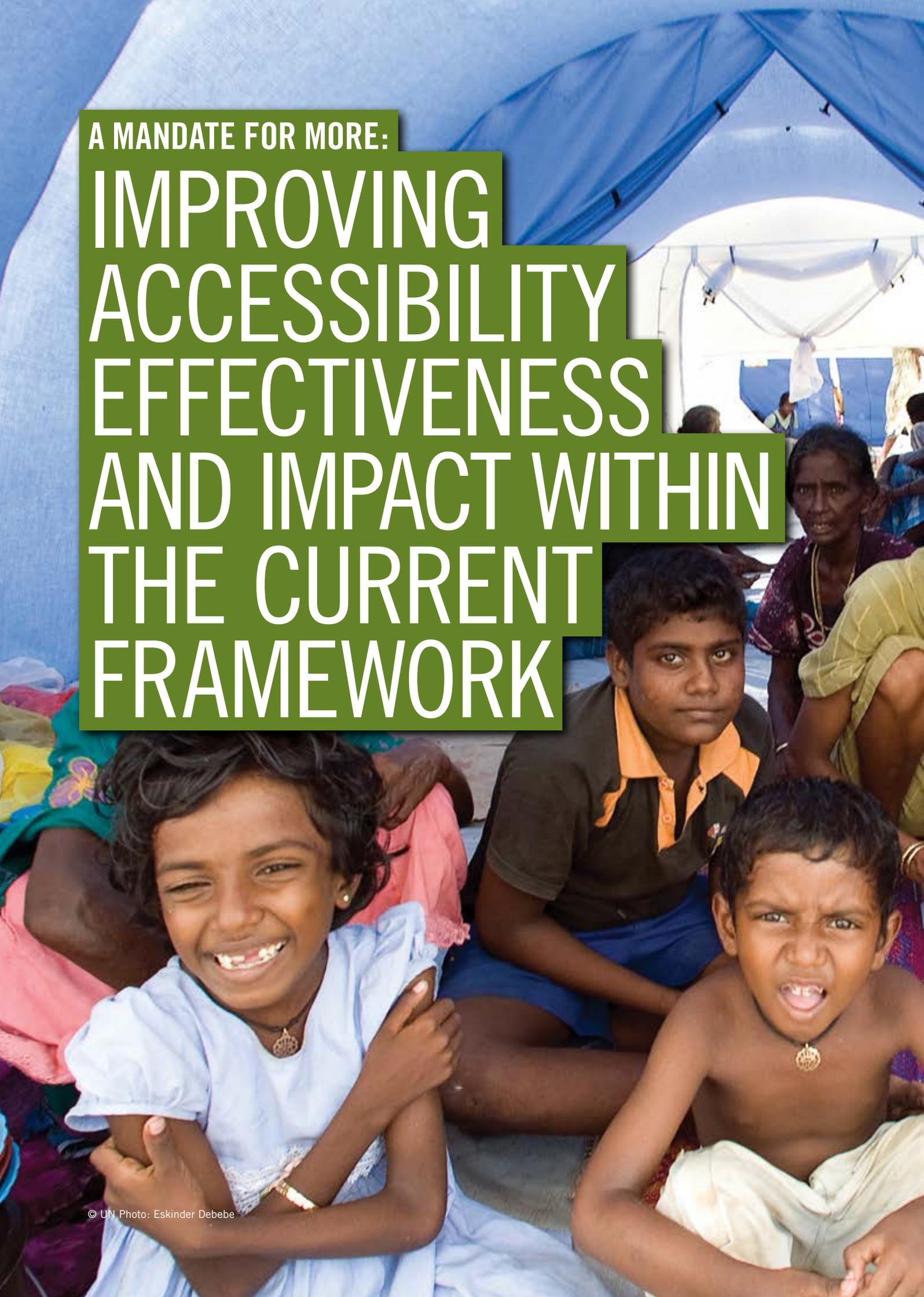
Thus, the Council would also implement the General Assembly's landmark resolution on NHRIs of December 2015, which calls on all relevant UN mechanisms and processes 'to further enhance the participation of national human rights institutions compliant with the Paris Principles'.

The third item is **protection**. The international community has been concerned by reported acts of reprisals or

acts of intimidation against persons cooperating with the international human rights mechanisms. This has included NHRIs, their members and staff. Whilst both the General Assembly and the Council in their respective NHRI resolutions have taken a clear stance against reprisals and other acts of intimidation against NHRIs, it will be important for the Council – and the broader UN system – to develop a common and coordinated approach to most effectively address and respond to the issue, and prevent such cases from occurring in the future.

Looking ahead, the Council must be encouraged to continue to forge stronger partnerships with national institutions as vital components of the global and national human rights protection systems. Thus, NHRIs can help the Council fulfil the call of the Vienna World Conference of Human Rights: to bring human rights home. ■





A MANDATE FOR MORE:

IMPROVING ACCESSIBILITY EFFECTIVENESS AND IMPACT WITHIN THE CURRENT FRAMEWORK



Strengthening the Council's focus and impact on implementation and accountability

Zeid Ra'ad Al Hussein *United Nations High Commissioner for Human Rights*

Enhancing the role and participation of civil society and national human rights institutions at the Human Rights Council could contribute to strengthening State implementation of obligations and accountability for violations, writes High Commissioner Zeid.

To act as the world's most authoritative human rights forum is a far-reaching ambition. In its first ten years of existence, the Human Rights Council (the Council) has set up unprecedented processes for scrutiny of human rights issues, initiated vital investigations into new crises and chronic violations, and formulated crucial recommendations.

The Council enters its second decade in a world of turmoil, with sharpening signals of faltering commitment by States to fundamental human rights norms. There is no room for complacency in this context of deepening crises. To continue its work of upholding the rights, equality and dignity of people across the world, the Council will need to focus much more intensively on implementation.

National follow-up is the key to achieving real improvement in human rights. For the Council's standing – and, more importantly, for the rights of millions of people across the world – it is crucial that its three annual sessions not drift into becoming elaborate performances of ritualised, high-level theatre. At the 31st session in March, I expressed alarm at the widespread practice of what could be termed 'human rights window-dressing'. The ratification of treaties, adoption of resolutions and graceful acceptance of the Universal Periodic Review (UPR) recommendations are important steps – but what matters is implementation, and real change.

The UPR is in many ways the Council's signature process. Reviews examine in detail, and at regular intervals, the human rights record of every State, with no exceptions. To watch a live webcast of a high-level delegation responding to precise and comprehensive queries regarding the gender impact of social protection systems, conditions in prisons, treatment of migrants, access to justice and far more is to understand that the world has changed.

“ There is no room for complacency in this context of deepening crises. To continue its work of upholding the rights, equality and dignity of people across the world, the Council will need to focus much more intensively on implementation. ”

Before the onset of its third cycle of UPR reviews, which will begin in April/May 2017, the Council needs to sharpen focus on how it can best assess real progress towards implementation of the 175 recommendations that each country, on average, receives. It cannot be content to

roll over recommendations from one session to another, allowing the UPR to become an empty routine. Similarly, during the review process, Member States cannot allow themselves to be fobbed off by bland assurances of full implementation without details of actual measures taken by States, and assessment of real impact. States under review should be accountable for whether and how implementation has taken place, and they should report concretely on the impact of implementation and actual changes on the ground. If this is not achieved, there is a risk that the UPR will become obsolete or overly ritualised by the end of the coming cycle.

Towards these objectives, the role of civil society, including national human rights institutions (NHRIs), could be strengthened, providing a degree of independent verification for the Council's use with submissions that assess actual implementation of recommendations. There is no doubt that civil society has a key role in making States accountable at the national level for their UPR commitments; at the same time, civil society engagement with state institutions responsible for implementation can support and give greater thrust to actions that have a real impact on the enjoyment of human rights on the ground.

There should also be stronger links between the UPR and the treaty bodies and Special Procedures, to enable more direct expert assessment of the implementation of relevant recommendations. States' reporting needs to focus more on implementation, and to demonstrate their political will to implement with structures and detailed plans that can help identify capacity gaps. Overall, the Third Cycle reviews will need to shift away from the numbers game that ticks over how many recommendations have been received and supported, and move into real assessment of implementation, with accountability for the State concerned.

The Council's landmark achievements include the commendable work of many of its Special Procedures, commissions of inquiry and fact-finding missions, which like the Council itself are supported by my Office. The ground-breaking report on the Democratic People's Republic of Korea, the multi-year investigation of the Commission of Inquiry on Syria, and the report on Sri Lanka – these and many others have informed decision-makers at the highest level of the UN and beyond. They have been instrumental in efforts to achieve accountability and to shape mechanisms for transitional justice. Often the investigators must function in extremely difficult conditions. All of us in the human rights community owe them a debt of gratitude, and in coming years the international community would do well to reflect on ways such reports can be put to better and more decisive use.

Similarly, the 77 Special Procedures mandate holders are remarkably effective in providing all of us with important

and timely recommendations for prevention and the protection and promotion of human rights. The exceptional clarity of many of their reports cries out for better compliance. Much more should be done to pressure States into implementing their recommendations, and to act on information received.

No forum within the UN system has embraced civil society as thoroughly as the Human Rights Council. Non-governmental organisations and human rights defenders have a strong participatory role in plenary discussions, the UPR and many panels, and this mobilisation of expertise, awareness-raising and reporting contributes to the Council's efficacy, relevance and credibility. NGO organisation of side-events and participation in general debates or interactive dialogues are of core importance. It is absolutely vital that victims, defenders, activists and other civil society groups be empowered to cooperate with and contribute to the Council's work without obstruction and fear of reprisals. And just as the Council encourages member States and the international community to enable the exercise of public freedoms, the Council can use the occasion of its tenth anniversary to review how it can further boost the participation of civil society in its work.

In recent years the Council has grown increasingly flexible and alert to crises, signalling alarm ahead of potential crises or fast-deteriorating situations. Its discussions have repeatedly triggered debates and action at the General Assembly and Security Council, adding to the Human Rights Council's growing stature and authority. This has helped to place human rights at the core of the UN's work, bridging the often-decried gap between New York and Geneva. We need to continue working to ensure that work done by the Human Rights Council is properly echoed and implemented by other bodies throughout the UN.

But most important of all is the need to place real people front and centre. The ballet of diplomacy can be useful, but only as a tool. Every human rights actor – my Office included – needs to intensify focus on what matters: improving respect for the freedoms, rights and dignity of all people. ■

ZEID RA'AD AL HUSSEIN is the United Nations High Commissioner for Human Rights. Follow the Office of the High Commissioner for Human Rights on Twitter @UNHumanRights.



The main UN human rights body has a more prominent role to play in the prevention of conflict

Didier Burkhalter *Former Swiss President and now Head of the Federal Department of Foreign Affairs (FDFA) of Switzerland*

The effective implementation of human rights is a major challenge: there is a gap between the Council's activity and the reality on the ground. Switzerland's Didier Burkhalter outlines some of the opportunities to close this gap and ensure the effective realisation of the human rights of every individual.

“ Human rights violations are warning signs that are all too often ignored. They frequently pave the way for major tragedies and are always an indicator of potential instability or the escalation of a conflict. It is up to the UN Member States to ensure that such indicators are taken seriously and are followed up by adequate measures.

Ten years ago, the United Nations General Assembly took the historic decision to create the Human Rights Council (the Council). This was a milestone for human rights and also for Switzerland, which places human rights at the heart of its political activity. Switzerland hosts the Human Rights Council and the Office of the High Commissioner for Human Rights (OHCHR). A broad array of institutions and non-governmental organisations active in the field of

human rights are based in Geneva. The city serves the international community and individuals all over the world as the world capital of human rights.

Since it was created, the Council has achieved remarkable success, as two noteworthy examples demonstrate. First, the Council has established solid mechanisms whose authority is beyond doubt. The Universal Periodic Review (UPR), for example, has become a driving force for advancing human rights. The system of Special Procedures, the eyes and ears of the Council, has been further developed in the last ten years. Second, the Council has proved to be highly responsive to human rights violations and situations that require urgent consideration and action. Furthermore, it tackles new issues resulting from societal change. The Council's successful action has helped to sustainably improve and consolidate the UN's human rights architecture. But there is a lot of work ahead of us.

The effective implementation of human rights is a major challenge: there is a gap between the Council's activity and the reality on the ground. Although numerous human rights conventions have been adopted and a growing number of States have ratified them, human rights violations remain a widespread reality in our time. We must work together

to close this gap and to ensure the effective realisation of the human rights of every individual.

Switzerland has identified three possible ways to increase the Council's impact on the ground:

- First, the Council must place greater emphasis on monitoring the implementation of its work at the national level. We need to support countries that demonstrate their commitment to human rights, and to hold those that violate them to account.
- Second, we need to strengthen collaboration with civil society and the private sector, as they play a vital role in ensuring that human rights are respected. Protection for human rights defenders and the participation of civil society in the Council must therefore be reinforced.
- Third, we believe that the Council can and should play a greater role in the prevention of conflict. Human rights violations are warning signs that are all too often ignored. They frequently pave the way for major tragedies and are always an indicator of potential instability or the escalation of a conflict. It is up to the UN Member States to ensure that such indicators are taken seriously and are followed up by adequate measures. We must put the promotion and protection of human rights at the heart of conflict prevention. A strong human rights pillar is needed in order to improve collective security and the well-being of all peoples.

In June of this year, marking the tenth anniversary of the Council, we will launch an appeal with a number of other countries. Our aim is to ensure that the UN's human rights work, especially the work of the Human Rights Council and its mechanisms, is given optimal consideration in conflict prevention activities. A number of practical steps can be taken to achieve this goal: communication and collaboration between the Human Rights Council in Geneva and the Security Council in New York can be enhanced and optimised; members of the Human Rights Council and the Security Council can systematically ask for the transmission of human rights analyses and for briefings relevant for conflict prevention; and OHCHR's human rights monitoring and analysis capacities can be expanded, to name just a few.

The Human Rights Council has accomplished a great deal in its first ten years. In the future, we will need a Council and more broadly a human rights system which not only responds to the most pressing human rights challenges, but which also contributes more systematically to conflict prevention, peace, stability and development. Be it in Geneva, New York or in the field, we must invest together in human dignity and in respect for the human rights of every individual. We owe this investment to future generations – the generations the peoples of the UN were determined to save from the scourge of war when they founded the organisation. That is our common task and our common responsibility. ■



The 10th Anniversary of the Human Rights Council: Reflecting back and looking forward

Choi Kyonglim *President of the UN Human Rights Council*

The Human Rights Council has played a significant and positive role in protecting human rights, promoting dialogue, and contributing to the prevention of violations. The work of human rights defenders has been and will continue to be critical to the Council's success. The anniversary of the Council should be an occasion for celebration, but also a commitment to make the Council more efficient and effective, says its 2016 President.

Ten years ago, on 15 March 2006, the Member States of the UN created a new inter-governmental body with the hope that it would breath new life into the organisation's human rights programme and revitalise the important human rights pillar. They gave the new body the guiding principles of universality, impartiality, objectivity, constructive international dialogue and cooperation.

Since then, the Human Rights Council (the Council) has lived up to its mandate to promote and protect human

rights and fundamental freedoms for all. It has established itself as the premier forum to hear a wide range of voices from all stakeholders, and played a key role in sounding the alarm on potential or deteriorating crises.

The Council's role in protecting rights, promoting dialogue and contributing to the prevention of violations

The Council has also contributed to mainstreaming human rights within the UN system. Discussions in the Council on challenging and pressing issues have often triggered much needed debates in the Security Council and the General Assembly. The Human Rights Council's actions on Syria, the Democratic People's Republic of Korea and Burundi are just three examples of this, illustrating the link between human rights and peace and security, and demonstrating how these two pillars of the UN are mutually reinforcing.

The Universal Periodic Review (UPR), a universal and inclusive mechanism of the Council that provides a forum for non-politicised, non-selective and non-confrontational discussion among peers, continues to show great promise.

Widely recognised as one of the most important achievements of the Council and commonly referred to as the Council's 'crown jewel', the UPR illuminates the human rights situation in all 193 Member States.

The Special Procedures also play a central role within the Council, acting as its ears and eyes and shining a light into the darkest corners of the world. The reports of the Special Procedures mandate holders constitute one of the main sources of reliable information for the Council and provide a solid basis for dialogues, discussions and debates. The country visits carried out by the mandate holders provide the Council with direct information on achievements made and challenges faced by the concerned countries.

Indeed, the Council has made great achievements. But it also faces difficult challenges. In many parts of the world, serious violations of human rights continue to take place. Issues relating to migrants, refugees, terrorism, violent extremism, climate change and development remain serious hurdles in the promotion and protection of human rights. The world looks to the Council for guidance, and the victims and the vulnerable look to the Council for help.

The tenth anniversary: An opportunity to make the Council stronger, more efficient and more effective

The tenth anniversary provides us with the opportunity to reflect on the Council's achievements and challenges, assess what we have learned, prescribe change where necessary, and look forward to a stronger and more effective Council.

This year, I have the great honour and privilege to witness first-hand and up close the achievements of the Human Rights Council as well as the challenges it faces.

The latest session of the Council, in March 2016, was the busiest to date. In just 19 days, we considered 99 reports, hosted more than 100 dignitaries, listened to more than 3000 statements, and adopted 40 resolutions and decisions. The programme of work was completely packed with back-to-back meetings: 66 in total, including six night meetings, in less than four weeks.

While the Council's considerable workload demonstrates the importance that so many attach to its mandate, the overload affects the quality of what we do. The Council has become so busy that it lacks sufficient space and time to properly address important current issues and focus on implementation. For example, the potential of the 2030 Global Agenda for Sustainable Development to promote the universal enjoyment of human rights deserves more heeded discussion in the Human Rights Council. However, the Council does not have enough time to focus on the issue more closely. The Council has, in fact, become a victim of its own success.

The Human Rights Council faces an additional challenge that is often referred to as the gap between New York and Geneva. For example, initiatives undertaken in Geneva are not always adequately supported by decisions in New York, and information related to discussions being held in New

York often fails to reach Geneva in time. The relationship between New York and Geneva, and more specifically between the General Assembly and the Human Rights Council, is of the utmost importance. This gap must be bridged in order for the Council to work more efficiently and to have greater impact.

The UPR process is not without its imperfections. As we prepare to close the second cycle of the UPR and commence the third cycle, we should embrace the moment to assess what we have learned and consider what should be done to further strengthen this unique and valuable process.

Human rights defenders: Indispensable contributors to the Council's impact

Human rights defenders, regardless of the form that they take, are an essential piece of the Human Rights Council. They provide the Council and its mechanisms with first-hand information about human rights situations and the effect our decisions have on the ground, and infuse passion and perspective into our discussions. It is our duty to encourage their participation in the Council and its mechanisms, and protect them against all acts of intimidation and reprisal that result from their work.

The next ten years

The Human Rights Council is still young. In its first ten years it has encountered many challenges, but it has also demonstrated enormous potential, including by empowering people and groups who would not otherwise be able to make their voices heard.

The Council will host a high-level panel on the first day of its 32nd session in June, to reflect on the body's achievements, shortfalls and future challenges. Between now and then, I would like to encourage all stakeholders to consider how we can work together to strengthen the work and the impact of the Council.



Issues relating to migrants, refugees, terrorism, violent extremism, climate change and development remain serious hurdles in the promotion and protection of human rights. The world looks to the Council for guidance, and the victims and the vulnerable look to the Council for help.

I am immensely proud of what the Human Rights Council has achieved in its first decade, and am truly honoured to be serving as President of this august body during this momentous year. Over the next ten years, we must continue to build on our successes and address the challenges, while always maintaining our focus on those we aim to serve – the vulnerable and victims of human rights abuses. ■

CHOI KYONGLIM is President of the Human Rights Council during 2016. He previously served as the Ambassador and Permanent Representative of South Korea to the UN in Geneva.



An obligation to act now to end reprisals

Sir Nicolas Bratza *Former President of the European Court of Human Rights*

The UN Human Rights Council, Member States, and the Council President and Bureau all have legal duties to prevent, protect against, investigate, and ensure accountability for cases of intimidation and reprisals. Sir Nicolas Bratza sets out what they should do to discharge those duties.

“Despite a decade of resolutions and public statements regarding the importance of ensuring unhindered access to UN human rights mechanisms, the Council has yet to adopt in practice the robust, consistent and unified approach that it has publicly endorsed for the prevention of, protection against, investigation into and accountability for reprisals.”

As the Human Rights Council (the Council) enters its second decade, the issue of reprisals against individuals who have recourse to or engage with the Council and its subsidiary mechanisms remains one of the central challenges facing it and the United Nations more generally.

As is emphasised in the submission to the Council lodged on behalf of ISHR,¹ such reprisals violate human rights and fundamental freedoms that the UN and the Council are obliged to promote and protect. They also seriously impede the Council’s ability to discharge its mandate effectively, threaten the integrity of the Council as the primary human rights organ of the UN, and undermine the credibility of the UN’s work in the field of human rights.

While the primary obligation to secure the right of unhindered access to the Council rests on States themselves, the Council itself has a crucial role to play in taking effective action to prevent and protect individuals against the risk of reprisals and, where there is credible evidence that reprisals have occurred, to bring about a prompt and effective investigation with a view to holding accountable those responsible.

Despite a decade of resolutions and public statements regarding the importance of ensuring unhindered access to UN human rights mechanisms, the Council has yet to adopt in practice the robust, consistent and unified approach that it has publicly endorsed for the prevention of, protection against, investigation into and accountability for reprisals.

As the primary human rights organ of the UN, the Council, its President and its Bureau should take additional practical steps to ensure they comply with their obligations under international law and with the Council’s mandate

to promote universal respect for the protection of human rights and fundamental freedoms for all.

Prevention

To more effectively prevent reprisals, the Council as a whole or its President and Bureau should provide guidance that clearly outlines the steps that the Council will take upon receipt of information about credible risks of reprisals to ensure consistency of action across different terms of the presidency and memberships of the Bureau.

The Council should also request that the Office of the High Commissioner for Human Rights (OHCHR) prepare a study, in consultation with relevant Special Procedures mandate holders, to review the ways in which individuals engage with the Council and its subsidiary mechanisms, and make recommendations for the improvement of these processes to better protect persons who communicate or cooperate with the Council.

Protection

To better protect individuals who cooperate with the Council, the President in consultation with the Bureau, should publicly identify and denounce specific instances of reprisals by issuing formal statements, conducting press-briefings, corresponding directly with the State concerned and publicly releasing such correspondence with and from States.

The President in consultation with the Bureau should also meet with delegations of Member States to discuss information the Council possesses about credible risks of reprisals occurring or allegations of reprisals having occurred, and express serious concern about such acts, as some previous Council presidents have done. In such instances, the President should also seek clarification of the facts and insist on undertakings from the State concerned to investigate, hold the perpetrators accountable and report back to the Council concerning measures taken. In accordance with the Council’s mandate to perform its work in a transparent manner, minutes should be kept and made publicly available for all such meetings.

In addition, the Council should adopt resolutions that publicly and unambiguously identify and condemn reprisals every time they occur, calling on States to uphold their human rights obligations by investigating, ensuring accountability of the perpetrator, providing appropriate remedies and reporting back to the Council on the measures it has taken.

¹ ISHR, ‘Submission made on behalf of the International Service for Human Rights to the United Nations Human Rights Council on its obligations to protect from reprisals individuals who cooperate with the council and its subsidiary mechanisms’, October 2014, available at www.ishr.ch/sites/default/files/article/files/freshfields_advice_on_reprisals_print_0.pdf.

Lastly, the Council should require States concerned to report back to the Council by including the discussion of its response to the risk or allegation of reprisals in item 5 statements and in its next Universal Periodic Review report. The Council should also consider recommending that the Special Rapporteur on the situation of human rights defenders or the President correspond with and visit the State concerned.

Investigation and accountability

To better ensure effective investigation and accountability, the Council should seek information concerning actions taken by States to prevent and ensure accountability for reprisals, assess States' compliance with international human rights obligations, and call on States to take further action where they fall short of meeting those obligations.

The Council could also designate a specific individual or body, such as a working group on reprisals, to receive and investigate all such information. This could be carried out by the system-wide focal point on reprisals envisaged by Human Rights Council Resolution 24/24.

Finally, where acts of intimidation, harassment and reprisals occur during or in connection with Council sessions against individuals who are seeking to participate in Council sessions or events, the Council, acting through the President, has a responsibility to investigate and publicly denounce such acts, in order to preserve the integrity of its processes.

Time to act

The connection between a strong and consistent response to reprisals and the effectiveness of human rights regimes is well established. It is time for the Council to consider seriously the threat that reprisals pose to its legitimacy and integrity, and take the necessary steps to ensure the continued effectiveness of its processes. ■

SIR NICOLAS BRATZA is former President of the European Court of Human Rights and Vice-Chair of ISHR.



Progressive realisation? The role of the Human Rights Council in protecting economic, social and cultural rights

Lucy McKernan Geneva Representative, Global Initiative for Economic, Social and Cultural Rights

States and NGOs alike should do more within the Human Rights Council to promote the full realisation of economic, social and cultural rights – and to address gross and systematic violations of those rights – in concrete ways, says Lucy McKernan.

Can you imagine the Human Rights Council adopting a country resolution and appointing a Special Rapporteur under item 4 in response to mass evictions or displacement?¹ Or perhaps a Commission of Inquiry established to investigate widespread and systematic denial of the right to education in a country?

These are the type of resolutions routinely adopted by the Council in relation to civil and political rights (C&P rights) violations, but the suggestion seems far-fetched in relation to economic, social and cultural rights (ESC rights) violations.

As the Council enters its second decade, and as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) celebrate their 50th anniversaries, it is time to reflect on the perceived hierarchy of rights in the Council and the common refrain that ESC rights have second-class status and receive less attention in the Council's work.

Are economic, social and cultural rights 'second class'?

It is important to start by separating the political rhetoric from genuine concerns about imbalance in the Council's work. Certainly many of the calls for greater attention to be paid to ESC rights appear politically motivated, and are not substantiated or backed up with practical suggestions or meaningful initiatives. Sometimes they are not even accompanied by support for the ESC rights initiatives already existing in the Council. However, there is also much truth in the allegations. For instance: broadly speaking there are fewer ESC rights resolutions; frequently ESC rights Special Procedures mandates are not perceived as 'heavy hitters' and so do not receive the same political and financial support as their peers; ESC rights resolutions do not attract the same level of scrutiny or high level negotiation; and States are less likely to make statements on ESC rights issues of concern.

The Universal Periodic Review (UPR) is perhaps the starkest and most measurable example of this imbalance, as shown in recent research by the Centre on Economic and Social Rights and discussed in the forthcoming report of the Special Rapporteur on extreme poverty and human

¹ Human Rights Council agenda item 4 focuses on 'Human rights situations that require the Council's attention'.

rights, Mr Philip Alston. Alston's research (which focuses on the legal recognition of ESC rights) finds that only 1.26 percent of relevant UPR recommendations specifically requested a State to take measures to guarantee the status of ESC rights through constitutional amendments, enactment of legislation, or providing national courts with jurisdiction to provide remedies for ESC rights violations.

However, we should also recognise the advances in ESC rights in the work of the Council. For instance, there is now a small but solid 'Group of Friends of ESC rights' led by Portugal, which made its first joint statement to the Council during the 31st session. There is increasing cross-regional support for some ESC rights mandates, such as the cross regional core group on the housing resolution and the slowly increasing support from all regions for the right to food resolution. There are also many initiatives that endeavour to incorporate both ESC and C&P rights, such as the resolution on human rights defenders that focused on ESC rights defenders at the March 2016 session of the Council. A number of Special Procedures mandates have also done focused work on the indivisibility of rights and highlighted the ESC rights dimensions of traditionally C&P rights issues.

A good recent example is the Study of the Working Group on Enforced Disappearances,² which found that those advocating for ESC rights are at a higher risk of enforced disappearance and that those whose ESC rights were not realised are more vulnerable to enforced disappearance. Other recent examples include the report of the Special Rapporteur on Eritrea³ that focused on forced evictions and housing demolitions in the context of the right to adequate housing; the North Korea Commission of Inquiry report addressed violations of the right to food in great detail; and the Special Rapporteur for Cambodia recently completed a country visit which focused on the situation of women and indigenous peoples and covered labour rights concerns and land issues in the country.⁴

So how do we move beyond the political rhetoric about imbalances in the Council and advance tangible suggestions to correct the imbalance?

We need to start with the Council as a whole reaffirming that ESC rights are fundamental elements of the dignified human existence envisioned by the Universal Declaration of Human Rights. The Council also needs to acknowledge that its own purpose and vision cannot be realised without taking ESC rights seriously in its work. In fact, the Council's

work in relation to C&P rights is likely to continue to grow if economic and social grievances continue to be sidelined, with strong evidence showing that unresolved economic and social grievances can lead to conflict, in some cases to radicalisation and violent extremism, to the undermining of political transitions and to massive international migration. This is not to suggest that the value of taking ESC rights seriously is merely instrumental – in fact it goes to the very heart of the human rights project.

The point was highlighted in a recent article by Sri Lankan commentators Ahilan Kadirgamar and Swasthika Arulingam,⁵ who complained about the over-emphasis on C&P rights solutions in the reform processes in Sri Lanka, saying 'its predominant thrust has been to prioritise war crime prosecutions – heavily influenced by international actors – at the cost of addressing continuing economic inequalities and exploitation'. They assert that the 'processes of reform are overwhelmingly influenced by international knowledge industries in transitional justice and comparative constitutional making. ... But how long can human rights experts ignore the repeated socio-economic concerns that citizens are raising in the consultative processes?' The most recent 2015 resolution of the Human Rights Council on Sri Lanka reflects this bias also (although the issue of the return of land is dealt with briefly in the resolution).⁶



Broadly speaking there are fewer ESC rights resolutions; frequently ESC rights Special Procedures mandates are not perceived as 'heavy hitters' and so do not receive the same political and financial support as their peers; ESC rights resolutions do not attract the same level of scrutiny or high level negotiation; and States are less likely to make statements on ESC rights issues of concern.

How can the Council respond to such critiques? Can we foresee an item 2 or 4 country resolution addressing predominantly ESC rights concerns?⁷ There are examples of item 4 resolutions also addressing ESC rights concerns together with those of C&P rights. For instance the 2015 resolution on Cambodia⁸ which, following the report of the Special Rapporteur, highlighted concerns regarding women's rights, labour standards and land in the context of development projects (especially paragraphs 14 and 15). Perhaps more can be done in this respect to ensure that ESC rights dimensions of conflicts and transitions are paid due attention in item 2 and 4 debates and resolutions.

2 'Report of the Working Group on Enforced or Involuntary Disappearances, Study on enforced or involuntary disappearances and economic, social and cultural rights', July 2015, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_38_Add_5_ENG-.docx.

3 'Report of the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth', available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_41_en.doc.

4 'Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith', available at http://cambodia.ohchr.org/WebDOCs/DocStatements/2016/SR_Mission_Statement_31_March_2016-Eng.pdf.

5 Ahilan Kadirgamar and Swasthika Arulingam, 'When international agendas trump the people's demand for reform, no one wins', available at www.opendemocracy.net/openglobalrights/ahilan-kadirgamar-swasthika-arulingam/when-international-agendas-trump-people-s-dem.

6 A/HRC/RES/30/1, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1.

7 Human Rights Council agenda item 2 focuses on the 'Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General'.

8 A/HRC/RES/30/23, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/23.

The other key mechanism where significant advances can be made in promoting indivisibility and correcting the ‘imbalance’ is the UPR. States should make more effort to include targeted, measurable, achievable, relevant, and time-bound ESC rights related recommendations.

There is also considerable room for international NGOs to increase their advocacy in relation to ESC rights in the Council. The Special Rapporteur on extreme poverty and human rights in his recent reports to the Council applauds international NGOs for advancing ESC rights in a number of areas. But he also critiques them for not tackling difficult questions about redistribution of resources or budgetary allocations and for over reliance on a non-discrimination lens when addressing ESC rights.

Conclusion

The first ten years of operation of the Human Rights Council have been characterised by a greater emphasis on C&P rights and consequently the institution has developed conventions, processes and modes of operation that reflect that history. However, institutions are evolutionary and capable of change. The tenth anniversary of the Council is an opportune time to acknowledge this history and to look for new ways to increase the focus on ESC rights issues in the work of the Council, with the ultimate aim of returning the Council to the path of realising its founding vision. ■

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Potential unfulfilled: Strengthening the Council’s approach to country situations

John Fisher Geneva Director, Human Rights Watch

The Council’s potential to address human rights situations could be better fulfilled through political will, more consistent leadership, triggers for action, and a willingness to stand up for what’s right, says John Fisher.

From the Commission to the Council

When the UN Commission on Human Rights was dissolved ten years ago, allegations of politicisation and selectivity had long undermined its credibility. It had become perceived as a body where many human rights violators joined forces to protect themselves from scrutiny, while failing to give principled and effective attention to human rights situations of concern. This led then Secretary-General Kofi Annan to conclude:

The Commission’s ability to perform its tasks has been ... undermined by the politicisation of its sessions and the selectivity of its work. We have reached a point at which the Commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole.¹

It is for these reasons that its successor body, the Human Rights Council (the Council), was tasked from the outset to ‘address situations of violations of human rights, including gross and systematic violations’ and to be guided by principles including ‘universality, impartiality, objectivity and non-selectivity’ with a view to enhancing the promotion and protection of all human rights.

Ten years into its mandate, the key question remains: to what extent has the Council been able to overcome the challenges faced by its predecessor, and to what extent

do issues of politicisation and selectivity still risk eroding its credibility?

First, the good news

There is no question that the Council has made a real difference in bringing global attention to a number of significant human rights violations, and putting in place mechanisms to ensure continued scrutiny.

At its March 2016 session, for example, a new three-person Commission on human rights in South Sudan was created; a resolution on North Korea was adopted without a vote, creating a group of experts on accountability; the mandate of the Special Rapporteur on Myanmar was renewed under item 4 and the mandate-holder tasked to develop a report focusing on reform benchmarks; a joint statement on China brought attention to the crackdown on civil society and human rights lawyers in the country; the mandate of the Special Rapporteur on Iran was renewed and a procedural no-action motion brought by Venezuela to block debate was rejected; a resolution on the Occupied Palestinian Territories requested the Office of the High Commissioner for Human Rights (OHCHR) to compile a database of businesses carrying out specified activities in Israeli settlements; and the mandate of the Commission of Inquiry on Syria was renewed, with a focus on enforced disappearances and arbitrary detention, and calls for ‘accountability for crimes committed’ as an integral part of any peace process.

... but not all good

Significant challenges remain, however. Despite a requirement that members of the Council uphold the ‘highest

¹ Secretary-General’s Address to the Commission on Human Rights, Geneva, 7 April 2005, available at <http://www.un.org/sg/STATEMENTS/index.asp?nid=1388>.

standards in the promotion and protection of human rights', the records of many Council members fall short of this standard.

A number of States decline to support country situations without the consent of the State concerned, thereby rewarding non-cooperation, and clearly breaching the Council's mandate to address gross and systematic violations. Even this standard is applied inconsistently. For example, a number of States backed Russia in declining to support the Ukraine resolution, even though it had the support of the State concerned.

Many States continue to resist scrutiny of country situations under the Council's agenda item 4 (human rights situations that require the Council's attention) instead preferring to address even serious violations under item 10 (technical assistance and capacity-building). Technical assistance is certainly warranted where a State acknowledges its human rights challenges and seeks international support to address them, but is hardly appropriate when a State refuses to acknowledge responsibility, and is seeking to deflect scrutiny. At the Council's 30th session in September 2015, several key States failed to embrace a Dutch proposal for an 'international independent and impartial mechanism' on abuses and violations in Yemen. As a result, the Council instead adopted an item 10 resolution presented by Saudi Arabia on behalf of the Arab Group supporting a national investigation process with technical support from OHCHR. Unsurprisingly, avoidable civilian casualties and deaths have continued and accountability remains elusive.

Many States hold the pen under item 10 on resolutions concerning their own country situations, leading to one-sided texts that fail to reflect realities on the ground. In an effort to avoid the item 4 vs item 10 dichotomy, an increasing number of resolutions are brought under item 2 (reports of the High Commissioner for Human Rights), displacing responsibility to the OHCHR, without a commensurate increase in resources.

Lack of follow-up also limits the Council's effectiveness. While the special sessions on Iraq and Nigeria/Boko Haram were welcome, it is concerning that the recommendations of the High Commissioner have not been implemented, and neither situation remains on the Council agenda.

Political considerations continue to trump human rights. When asked why there is not more sustained attention to human rights violations in Azerbaijan and Saudi Arabia, one Western diplomat frankly told me: 'we all need gas and we all need oil'. UK Prime Minister David Cameron attempted to justify an allegation of vote-swapping with Saudi Arabia for a seat on the Human Rights Council by telling Channel 4 news:² 'it's because we receive from them important intelligence and security information that keeps us safe'.

While there are many followers on country situations, there are few leaders. The fact that country resolutions are often led by Western States fuels allegations of selectivity, while

also allowing these States to escape scrutiny of their own records. Regional and bloc politics often divide the Council, with moderate voices lost or silenced while entrenched group positions dominate. Points of order, no-action motions and other procedural tactics are still employed in an attempt to foreclose debate.

A way forward

There are ways in which the Council can build on its achievements and work to address the challenges it faces in an effective and non-selective way. The proposals that follow, many of which are articulated more fully in a joint civil society paper coordinated by ISHR,³ do not require institutional reform, but simply principled leadership and the political will to make a difference.

- **Incoming members' pledge:** Incoming Council members could voluntarily take the initiative to deliver a joint statement at each March session outlining the principles by which they pledge to be guided throughout their term. These might include cooperation with the Council and its mechanisms, responding in a timely manner to country requests and communications from Special Procedures, presenting mid-term implementation reports on their Universal Periodic Review (UPR) commitments, defending civil society space and ensuring effective action to prevent and address reprisals, committing to address country situations on their merits and without selectivity, engaging in genuine self-reflection when faced with concerns relating to their own country, and eschewing procedural tactics – such as points of order or no action motions – to foreclose debate, instead expressing themselves through rights of reply.

Clearly not all new members would agree to be guided by such standards – and existing members and observers should also be given the opportunity to join – but incoming members willing to do so could lead by example through such a joint statement and begin to raise the bar on expectations for Council membership.

“*Political considerations continue to trump human rights. When asked why there is not more sustained attention to human rights violations in Azerbaijan and Saudi Arabia, one Western diplomat frankly told me: 'we all need gas and we all need oil'.*”

- **Trigger mechanisms:** In order to reduce selectivity, States could develop and implement a joint commitment to address a situation or country-specific initiative if a certain threshold or key triggers are met. A good precedent exists in a joint statement delivered by the Maldives on behalf of a cross-regional group of States at the 20th session of the Council, in which signatory States 'voluntarily commit ourselves to be guided by a number of independent considerations when assessing whether a situation or specific issue merits the attention of the Council'. These triggers included 'whether there has been a call for action by the UN Secretary-General,

² 'David Cameron challenged over Saudi Arabian teenager', available at www.channel4.com/news/david-cameron-challenged-over-saudi-arabian-teenager.

³ 'Joint civil society paper: Strengthening the Human Rights Council at 10', available at www.ishr.ch/HRCat10.

the High Commissioner for Human Rights, by a group of Special Procedures, or another indication of either a chronic or urgent human rights situation’.

- **Overcoming the item 4/item 10 dichotomy and establishing clear criteria:** In determining what kind of response to a situation of concern is appropriate, the Human Rights Council should recognise the efforts of those that cooperate and engage genuinely, distinguishing them from those that clearly fail to do so. States should overcome the resistance to item 4 consideration, recognising that item 4 is broad and inclusive and can cover a range of situations. In addition, clear criteria should be developed to assess when technical assistance and capacity-building is warranted under item 10. For example, the State concerned should (i) acknowledge the violations that are the source of the Human Rights Council’s concerns; (ii) allow unhindered access to information, including in-situ by independent actors such as the High Commissioner for Human Rights, UN Rapporteurs, media and human rights defenders; and (iii) demonstrate a verifiable commitment to remedy these violations through concrete action, including with the assistance and continued engagement of the Council.
- **Benchmarks:** There has been much discussion of bringing increased focus to implementation of Council resolutions. This can be enhanced by including within resolutions concrete benchmarks to identify progress and monitor implementation, and to more objectively assess what future engagement by the Council is warranted. For example, the resolution on South Sudan adopted at the 29th session of the Council failed to create a Special Procedure but did identify benchmarks to assess the need for subsequent creation of a mandate; the resolution on Sri Lanka adopted at the Council’s 30th session laid out a number of needed reforms, and requested the High Commissioner to present an implementation report; and the resolution on Myanmar adopted at the 31st session specifically requested the Special Rapporteur to work with the Government of Myanmar to identify benchmarks for human rights reform.
- **Alternative tools and work formats:** The country situations faced by the Council are diverse, and require creatively applying a more varied range of tools from the toolbox. Informal briefings by the High Commissioner have provided a useful platform to initiate discussion of country situations that might otherwise escape consideration by the Council. Urgent debates have taken place to address situations of concern, and could be called inter-sessionally as needed, as could roundtables or panel discussions. The voices of human rights defenders from countries under consideration should be routinely integrated into panel discussions. More attention could be given to debate and follow-up to recommendations arising from Special Procedures’ country visits, and the Council might request a joint briefing by relevant Special Procedures to address emerging situations of concern. When a visiting dignitary or head of State requests a ‘special meeting’ to address the Council, the floor should be opened to all stakeholders

to ensure a genuine dialogue on the human rights situation in the country.

- **Thinking outside the blocs:** The ability of States to move beyond the bloc politics of the Council could be enhanced through more cross-regional initiatives, early outreach and dialogue with a broad range of potential partners, an increased willingness of moderate States to challenge group positions that fail to adequately reflect their views, and ensuring that States cosponsor resolutions in their national capacity, rather than being assumed to cosponsor by regional or political bloc leaders.
- **Working Group on country situations:** States in all regions face human rights challenges, but often political considerations determine which challenges attract Council scrutiny. Consideration should be given to establishing a cross-regional Working Group, consisting of an expert from each UN region, to bring to the Council’s consideration situations in each region that warrant the Council’s attention.
- **Reprisals and anti-bullying policy:** The Council has appropriately committed to addressing acts of reprisal against human rights defenders who participate in its processes. It is also an open secret that States hostile to consideration of their own country situations have been known to engage in tactics of intimidation, threaten political or economic consequences against States that support resolutions or joint statements contrary to their perceived interests, or threaten retaliation or hostile amendments to unrelated resolutions led by delegates who defy their will. While often accepted as an inevitable part of the ‘working culture’ of a political body such as the Council, such tactics of intimidation seriously erode the ability of the Council and its members to address human rights situations on their merits. More could be done to bring such tactics into the light when they occur, and the Council presidency and Bureau should exercise their institutional responsibility to encourage reporting of such incidents so they can be considered and addressed.

The Human Rights Council is an inherently political body. Its strength and its weakness is that it is a forum where the world’s governments meet to shape responses to the pressing issues of our times. But the Council’s credibility hinges upon the willingness and capacity of its members to address the full range of serious human rights violations falling within its mandate, and this can only be measured through impact on the ground. Its potential could be better fulfilled through political will, more consistent leadership, and a willingness to stand up for what’s right. Perhaps that is idealistic. But if the opportunity for reflection and revision afforded by the tenth anniversary is to mean anything, it is incumbent on the Council, its members and observers, to try. ■

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10 years of the UN Human Rights Council

Salil Shetty *Secretary General of Amnesty International*

At a high-level discussion held during the 31st session of the Human Rights Council, Salil Shetty discussed successes and failures of the Council to date, together with imperatives for the decade ahead.

Ten years is an important milestone. And yet, the challenges around us are plain to see. The very systems put in place to protect human rights are under unprecedented strain, with catastrophic consequences for those who suffer at the hands of governments and armed groups. While we celebrate ten years of the Human Rights Council (the Council), its success must be judged above all by the impact it has on real lives, those of ordinary people around the world.

Let me start by saying Amnesty International has been committed to the Human Rights Council from its inception. We engaged fully with the processes that led to its creation, and to the negotiations to make it functional. We made leading contributions to the creation of the Universal Periodic Review (UPR) and the enhancement of Special Procedures. We have invested heavily both in the work of the Council, and in the Council as an institution. I speak today with the assurance of Amnesty International's ongoing commitment to building a Council fit for purpose.

“A successful Council would contribute substantially to preventing serious human rights violations; it would respond promptly; it would promote accountability; it would be consistent; it would promote good human rights practice input throughout the UN system; and it would promote full implementation of human rights obligations everywhere. This is a tall order, but aiming any lower would be an abdication of responsibilities under the UN Charter.”

And the Council has chalked up some important successes. The UPR has functioned well as a review mechanism. The Special Procedures have grown in strength and influence. New mandates have been created to address important issues such as the right to privacy and the elimination of discrimination against women. Important new standards have been adopted and are starting to be used, such as the 'Guiding Principles on business and human rights'. Informal normative development has fleshed out existing rights, such as the rights to water and sanitation. Emergencies have been addressed in special sessions. Council initiatives have contributed to accountability efforts in countries ranging from Côte d'Ivoire to Sri Lanka to the Democratic People's Republic of Korea. Recently in connection with Burundi, the Council has embarked on tentative steps to prevent gross and systematic violations.

As a fairly high-profile forum it ensures that human rights remain visible among UN activities. Webcasting has taken the Council out into the world.

Yet too many serious human rights violations go unaddressed. Many acute and chronic human rights situations receive little or inadequate attention. Many avoidable emergencies are not avoided. Accountability for violations is severely limited. Too many decisions and recommendations go unimplemented.

An inspiring mandate

General Assembly Resolution 60/251, which established the Council, remains an important checklist to map aspirations for its future development. A successful Council would contribute substantively to preventing serious human rights violations; it would respond promptly; it would promote accountability; it would be consistent; it would promote good human rights practice input throughout the UN system; and it would promote full implementation of human rights obligations everywhere. This is a tall order, but aiming any lower would be an abdication of responsibilities under the UN Charter.

The Council is in danger of becoming a victim of itself. Its current programme of work is a symptom of a malaise that stalks the Council. More statements, more reports, more experts, more panels and more of everything is not a recipe for success. The overwhelming intensity disenfranchises smaller delegations and civil society organisations. Innumerable hours of monologues do not permit the constructive dialogue needed to prevent violations or find solutions. The urgent and the essential risks are being drowned by the fashionable and the routine.

The Council is full of smart diplomats, but cries out for smarter diplomacy. It needs to be able to set institutional priorities. It must find ways to identify the highest priority human rights issues and address them effectively and durably. And against the reality that the Council is a political body, we must aspire to less power and alliance politics and to a different politics: a politics aimed at finding durable human rights solutions to human rights challenges.

Six imperatives for the coming decade

I would like to address briefly six simple but important imperatives for the Council, in order that it can be fit for its essential purpose over the next decade.

The first concerns **the way the Council is constituted**. While every State can improve its human rights record, some members of the Council plainly fail to uphold the

highest standards we are entitled to expect. The pressure of contested elections is essential. Candidates must make their case through election pledges and defend their candidacy in hustings. The General Assembly must use its power to suspend the membership rights of any Council member that commits gross and systematic violations of human rights.

Second, the next ten years must see a **far greater projection of the Council's work** beyond the Geneva bubble. Eleanor Roosevelt observed, human rights begin 'in small places, close to home'. The UPR has been somewhat successful in drawing attention to human rights issues across governments, between levels of government and within society. But the Council needs to aspire to go much further, to project counter narratives in the face of leaders prepared to walk away from human rights for short-term gains.

Third, **the Council's work must become better integrated into the work of the UN system.** This starts with human rights standards becoming much more central to the planning and delivery of all UN operations. The Human Rights Council and the Security Council need to develop a closer symbiotic relationship, and the Council must also develop working relationships with regional human rights bodies.

Fourth, **the contributions of civil society are integral to the Council's effectiveness.** It must be safe and welcoming to civil society; there must be consequences for intimidation or reprisals. The status quo is not enough.

There must be creative new ways to enhance civil society contributions, particularly in regions where civil society engagement with the UN is underdeveloped.

Fifth, **the Council needs to perform considerably better in preventing grave violations** and in responding forcefully to gross and systematic violations. This demands both better early warning procedures, and greater responsiveness. The Special Procedures, the High Commissioner for Human Rights and the Secretary-General, informed by his Human Rights Up Front initiative, should contribute as trigger mechanisms. Above all, early warning must lead to early action by the Human Rights Council and by the Security Council and other parts of the UN, working together.

Sixth and last, **the Council must be judged ultimately by implementation and impact.** The next ten years must see a far greater emphasis on the implementation of the Council's decisions, of election pledges, of UPR commitments, of the recommendations of the Special Procedures.

The Human Rights Council is only as strong as its Member States allow it to be. We have to learn from history that the only way to achieve lasting peace and development is through respecting human rights. Not doing so will have a heavy price, as we have seen in Syria. On behalf of its 7 million members, activists and supporters, Amnesty International is calling on Member States for a Council that is fit for purpose. ■



Between the cycles: The UPR's achievements and opportunities

Roland Chauville *Director of UPR Info*

Now at the end of the second cycle of the Universal Periodic Review (UPR), it is clear that the mechanism has so far proven its worth. But we must now complete the UPR framework to realise its full potential, says Roland Chauville.

“No other human rights peer-review mechanism can claim 100% participation from all corners, cultures and political fabrics of the world. It has consolidated the recognition that human rights are not merely a domestic issue, but are a matter of both national and international accountability.”

This year will mark the end of the UPR mechanism's second cycle, with the third cycle due to begin in spring 2017. At this timely juncture, UPR Info, an NGO working to advance human rights by strengthening the UPR, takes stock of the numerous achievements of the UPR, while highlighting that there is also significant room for improvement.

By and large the UPR has accomplished its mandate of universality. No other human rights peer-review mechanism can claim 100% participation from all corners, cultures and political fabrics of the world. It has consolidated the recognition that human rights are not merely a domestic issue, but are a matter of both national and international accountability.

Having studied the level of implementation of recommendations from the first cycle, it is encouraging to note that one in two recommendations were either fully or partially implemented by mid-term. Concrete examples of the UPR in action include: Fiji's abolition of the death penalty from its military code, and Côte d'Ivoire's implementation of a law for the protection of human rights defenders.

The UPR is universal not only geographically but also thematically. This includes recent developments in the field such as business and human rights, sexual orientation and gender identity issues, and the rights of the elderly. The UPR itself strengthens the other UN human rights mecha-

nisms, where recommendations call for standing invitations for the Special Procedures, ratification of international treaties and submitting reports to the treaty bodies.

As official stakeholders of the UPR, civil society organisations (CSOs) have used the broad scope of the mechanism to both engage with States and to coordinate with one another. The UPR has indeed become a vehicle for social inclusion amongst rights-holders themselves. In Viet Nam and Sri Lanka, the UPR was a key process in legitimising the role of lesbian, gay, bisexual, transgender and intersex (LGBTI) activists. The mechanism has also led to coalition building amongst CSOs, both for joint submissions in advance of the UPR, and to follow up on the implementation of recommendations. Strong and effective coordination can be seen in civil society coalitions from Australia, Singapore, Ireland, Thailand, and Swaziland, to name a few.

In many national contexts, the UPR has also prompted a shift in the traditional adversarial paradigm between CSOs and governments to a more cooperative, partnership-based relationship. After Kenya's second UPR, the national human rights institution and local NGOs helped draft the implementation plan adopted by the Government.

Despite its significant achievements, it would be both inaccurate and hubristic to say that the UPR is flawless. A critical Achilles heel of the UPR framework is the lack of any formal follow-up mechanism. This issue was addressed in a Human Rights Council resolution in October 2015, which encourages States to establish national follow-up systems and to share best practices. This discussion will take place during the 26th session of the UPR Working Group in 2016. States should use that occasion to reaffirm their commitment to the UPR by adopting stronger provisions and standards for follow-up, including the establishment of national plans of actions and national coordinating mechanisms.

While the implementation of recommendations is the alpha omega of the UPR, the reporting on implementation is also critical. Both CSOs and the State under review must significantly improve their reporting in order that recommending States know whether and to what extent progress has been made since the previous UPR.

2016 is a milestone year for the UPR. States, civil society and the international community as a whole have a vested interest in its continued success. The mechanism has so far proven its worth; we must now complete the UPR framework to realise its full potential. ■



Principles over politics: Strengthening the membership and impact of the Human Rights Council

Peter Matt Ambassador and Permanent Representative of Liechtenstein to the UN in Geneva

A more principled approach to electing members to the Human Rights Council, adequate resourcing for the Office of the High Commissioner for Human Rights, and enhanced access and protection for civil society are the essential ingredients for a more effective Council with a more positive impact on the ground, says Peter Matt.

Strengthening the rule of law and protecting human rights are guiding principles of Liechtenstein's foreign policy. Our thematic priorities within the promotion of human rights are the rights of women and children as well as the fight against torture and the death penalty. We are also strongly committed to strengthening the international human rights structures and mechanisms and to combating impunity for the most serious violations of human rights. In this regard the Human Rights Council (the Council) has achieved some significant success in strengthening the protection of human rights, preventing violations, promoting accountability as well as addressing critical situations of human rights violations.

Yet while we celebrate the tenth anniversary of this body, human rights violations around the globe continue to per-

sist. Conflicts and situations of violence are on the rise, and instability seems to have become the new normality. It is therefore of utmost importance that the quality of the Council is measured by the degree to which it discharges its responsibility to address specific human rights emergencies. The tenth anniversary marks a significant opportunity to reflect on how to enhance the Council.

Strengthening membership

When founding the Council, the General Assembly set out the principles for members of the Council as well as for the electing States. Liechtenstein strategically monitors whether Council members uphold the highest standards in protecting human rights and fully cooperating with the Council. These observations are regularly brought up in the form of recommendations during the Universal Periodic Reviews of Council members.

When deciding who to vote for, Liechtenstein fully takes into account the contributions and commitments a candidate has made in protecting human rights. Unfortunately, far too often, electors turn a blind eye to these principles and trade their votes for elections to other human rights bodies. We need to discuss, also with civil society actors, how electors can play a more responsible role which is in

line with the principles set forth by the General Assembly a decade ago. An interesting option to discuss would be for members to pledge not to vote for candidates whom do not comply with the principles set forth by the General Assembly in the Council's founding documents.

“ *When deciding who to vote for, Liechtenstein fully takes into account the contributions and commitments a candidate has made in protecting human rights. Unfortunately, far too often, electors turn a blind eye to these principles and trade their votes for elections to other human rights bodies.* ”

Securing resources for implementation

Another key challenge we are confronted with is the serious lack of funding of the Council, its mechanisms and the Office of the High Commissioner for Human Rights. This is a severe impediment to the effective implementation of resolutions, recommendations and advice at the national level. It affects not only the Council, but the United Nations as a whole: with one of the three pillars of the UN severely underfunded, its mission as a whole is at stake. We should therefore work together to address the irresponsible funding shortfall.

In this regard, we call upon the Secretary-General to recognise the unique situation of the Office in the UN's budget planning. Liechtenstein is the largest per capita donor to the Office of the High Commissioner for Human Rights and has been a longstanding supporter of the human rights pillar of the UN. To address this financial implementation gap, we doubled our core annual contribution to the Office of the High Commissioner for Human Rights. But we also need to encourage members of the Council to redouble their financial efforts.

Supporting and safeguarding civil society

In founding the Human Rights Council, the General Assembly stipulated that the Council shall work in close cooperation with civil society. And indeed, civil society is a valuable and indispensable partner to our work. In Liechtenstein we have a well-established regular dialogue between the Government and civil society. We are convinced that these actors are essential partners who enable us to incorporate different voices and perspectives in our human rights deliberations.

In order to fulfil the Council's mandate, potential Council members should strongly advocate for an even more accessible and protective space for civil society. It is unacceptable that reprisals against persons who cooperate with the Council and its mechanisms persist and have become even more severe over time. Efforts to counter these intolerable incidents have been made, but we need also a more resolute and united response from Member States of the Council, including the long-overdue creation of a senior focal point on reprisals.

The next ten years

I consider the Council's tenth anniversary as an important event to reflect on how to enhance the quality of the membership of the Council sustainably. More frank and open discussions with the goal of producing concrete outputs are needed to enhance the quality and impact of the Council. Even more importantly, we need sincere commitments on financing the UN human rights system and on strengthening the space of civil society actors. ■

PETER C MATT is Ambassador and Permanent Representative of Liechtenstein to the UN in Geneva



A vote of confidence: Enhancing the Human Rights Council Elections

Richard Bennett *Representative and Head of Amnesty International's UN Office in New York*

The Human Rights Council is only as strong as its members enable it to be, and its ability to live up to its human rights protection mandate hinges on the election of strong, committed States, writes Richard Bennett.

Ten years is an important milestone for the UN Human Rights Council (the Council) and a good moment to reflect on its achievements. There is no doubt that the Council has chalked up some important successes in this time, not least in ensuring that human rights remain visible across the UN's activities.

And yet, vast challenges remain. As Amnesty International warned in its 2016 Annual Report 'The State of the World's Human Rights', international protection of human rights and the institutions that promote them are under critical strain and are in danger of unravelling altogether. Across the globe, governments are shamelessly painting the protection of human rights as a threat to security, law and order or national 'values', while millions of people are suffering at the hands of repressive States and armed groups. Accountability for violations is severely limited and too many decisions and recommendations by international human rights bodies go unimplemented.

In the face of these immense challenges, a robust and effective Human Rights Council is needed now more than ever.

The Council is most effective in promoting and protecting human rights when all of its members are firmly committed to doing so. While every State can improve its human rights record, some members of the Council have plainly failed to get even close to upholding the highest standards we are entitled to expect and in some cases their conduct has deteriorated while they have been Council members.

It is becoming increasingly common for candidates to fail to make election pledges, especially in blocs that have presented a 'clean slate'. In fact, at the last election in October 2015, nearly half of the election hopefuls (12 out of 21) failed to make their voluntary pledges and commitments available as official UN documents. Moreover, far too many of the pledges are vacuous and fail to include commitment to concrete action to protect human rights.

The forthcoming election of 14 new members in October 2016 is an opportunity to improve the composition of the Council and can go a long way towards remedying this.

On paper at least, the Human Rights Council has by a long stretch the most robust and transparent election process of any UN body; but in order to achieve its aim these modalities need to be followed in good faith. UN General Assembly Resolution 60/251 which established the Council paves the way for open and contested elections – but Member States must play their part in making this work.

Contested elections

As in any democratic process, the pressure of contested elections is essential. A consistent failure of the regional blocs in Council member elections is the practice of presenting 'clean slates'; whereby they provide exactly the same number of candidates as the vacancies to be filled. This essentially denies the General Assembly the opportunity to choose the most suitable candidate and flies in the face of the spirit of Resolution 60/251.

However, over the last decade, all of the five regional groups have resorted to presenting clean, that is uncontested, slates in the majority of these elections. The African group has shown itself to be the worst 'clean slate' offender, presenting clean slates at seven out of nine elections. Asia-Pacific States and Western Europe and Other States closely followed them with six clean slates. Latin America and the Caribbean States and Eastern Europe each presented five clean slates. Every region has presented a clean slate more often than a contested one. This is a very disappointing record in the Council's first decade.

Qualified candidates

As well as having a choice of candidates, Resolution 60/251 states that General Assembly members should assess each

candidate's commitment to the promotion and protection of human rights before deciding how to cast their vote.

All candidates should make their case by submitting concrete, credible and measurable pledges and commitments to promote and protect human rights at the national and international levels. Guidelines for these have been provided in the Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council, as prepared by the UN Office of the High Commissioner for Human Rights.¹

Crucially, pledges should include a commitment to ratify and implement the core human rights treaties and the Rome Statute of the International Criminal Court, to withdraw limiting reservations to such treaties, to submit periodic reports on time and come before the treaty bodies to discuss them, and to act on the recommendations of the treaty bodies promptly. The guidelines also ask candidates to commit to a national human rights policy including in the areas of discrimination, women's rights and collaboration with civil society.

Unfortunately, it is becoming increasingly common for candidates to fail to make election pledges, especially in blocs that have presented a 'clean slate'. In fact, at the last election in October 2015, nearly half of the election hopefuls (12 out of 21) failed to make their voluntary pledges and commitments available as official UN documents. Moreover, far too many of the pledges are vacuous and fail to include commitment to concrete action to protect human rights.

Considered vote casting

Finally, it is imperative that UN Member States only vote for candidates that have clearly demonstrated their commitment to human rights. Where a clean slate has been presented, States can, and should, leave the ballot paper blank if a suitable candidate has not been presented. The dismaying practice of vote trading on human rights should never be employed.

The way forward

Ultimately, the Human Rights Council is only as strong as its members enable it to be, and its ability to live up to its human rights protection mandate hinges on the election of strong, committed States. General Assembly Resolution 60/251 has been undermined by poor practice; however it can still provide an important roadmap to achieving this goal.

A successful Council would contribute substantively to preventing serious human rights violations. It would respond promptly; it would promote accountability; it would be consistent; it would promote good human rights practice input throughout the UN system; and it would promote full implementation of human rights obligations everywhere.

This might seem like a tall order, but aiming any lower would be an abdication of responsibilities under the UN Charter. ■

¹ Available at www.ohchr.org/Documents/HRBodies/HRCouncil/Pledges.pdf.



Bridging the divide: A proposal for ‘hybrid’ resolutions at the Human Rights Council

Marc Limon *Executive Director of the Universal Rights Group*

The use of ‘hybrid’ resolutions, focusing on particular human rights situations in a particular country or region, could be a way for the Council to avoid being a thematic ‘talk shop’ and to more effectively address human rights situations in a concrete and targeted way in line with its mandate, writes Marc Limon.

It is hard to think of a question that divides the Member States of the United Nations as thoroughly and as intractably as the question of whether - and how - the international community should address situations of violations of human rights in specific countries.

“ *A third option to help overcome divisions between those States that believe that the Council has a clear mandate to address country situations, and those that believe that the Council’s main function is to provide a forum for thematic debate, is simply to combine the two approaches.* ”

During the early decades of the United Nations’ existence, it was the major Western powers that held the position that the UN should not interfere in the internal affairs of States. Fortunately for the victims of human rights violations in places like South Africa and Chile, in the late 1960s and 1970s a courageous group of developing countries from Africa, Asia and the Caribbean begged to differ. More recently of course, there has been something of a role reversal: today, an influential group of developing States (containing some of the same States that helped dismantle Western exceptionalism half a century earlier) maintains a so-called ‘principled position’ against country-specific resolutions and mandates, which they consider to be an unfair, selective, politicised and, ultimately, futile exercise in ‘naming and shaming.’

When one considers the mandate and purpose of the Human Rights Council (the Council), this continued schism in the international body politic is perhaps surprising. When UN Heads of State decided to establish the Council in 2005, they made clear that the new body’s main purpose would be to address gross and systematic violations of human rights (GA Resolution 60/1). This core mandate was repeated by the General Assembly in Resolution 60/251.

The first ten years: An inadequate focus on situations requiring attention

Yet, despite this clear mandate, the fight over whether and how the Council should address human rights violations has remained one of the defining characteristics of the first decade of the Council’s existence. One consequence of this polarisa-

tion is that, over the past ten years, only around eight percent of all Council resolutions have been adopted under ‘item 4’, i.e. human rights situations requiring the Council’s attention.

This imbalance has also been evident in terms of the amount of Council time devoted to different parts of its mandate. Universal Rights Group research has shown that during the period 2010-2014, activities under item 3 (general thematic issues) took up approximately one-third of the Council’s session time (an average of 129 hours per year). This is in stark contrast to the hours devoted to item 4: around ten percent of the Council’s total session time (around 31 hours per year).

If the Council is to ever fulfil its mandate, it is imperative that the international community uses the body’s tenth anniversary to reflect on possible solutions to this situation.

There are a number of options. One is to focus on paragraph 5f of GA Resolution 60/251, which states that the Council shall contribute, through dialogue and cooperation, to the *prevention* of human rights violations. There are of course numerous benefits to a preventative approach, not least the fact that, unlike the Council’s normal reactive approach, prevention emphasises dialogue and cooperation with the State concerned, and is thus more likely to be accepted.

A second possibility is what is often called the ‘incremental approach.’ During the second Glion Human Rights Dialogue in 2015, some States that traditionally oppose country-specific resolutions explained that they do not oppose such resolutions per se, rather they oppose them as an approach of first resort. Following this logic, if the Council makes a genuine attempt to reach out to and work with a concerned State, but such overtures are rejected, then traditional opponents of item 4 might be more willing to let subsequent, more condemnatory resolutions pass.

A third option to help overcome divisions between those States that believe that the Council has a clear mandate to address country situations, and those that believe that the Council’s main function is to provide a forum for thematic debate, is simply to combine the two approaches.

Hybrid resolutions: Fulfilling the Council’s mandate

There is nothing in GA Resolution 60/251, or in the Council’s institution-building package, to suggest that Council resolutions should be either country-specific or thematic. Indeed, item 3 of the Council’s agenda says nothing about general thematic debate. Rather, it speaks of ‘the *promotion and protection* of all human rights.’

This means that there is nothing to stop the Council addressing a particular theme or human right (e.g. freedom

of expression, the right to food) but in a specific geographic setting (e.g. a country). On the contrary, such a ‘hybrid’ approach has much to commend it. For example, if the Council, instead of passing generic annual resolutions on the rights of migrants, on the rights of minorities, on the right to education, or on freedom of expression, were to adopt ‘hybrid’ resolutions on, say, the rights of migrants in the Mediterranean basin, or the rights of religious minorities in Europe, or the right to education of girls in northern Nigeria, or on the maintenance of blasphemy laws in OIC countries, it would have the double advantage of showing the Council’s relevance (especially in the eyes of the media and the public), and of allowing Member States (potentially) to agree on specific and implementable recommendations. It is also (just) possible that such resolutions might be more acceptable to the concerned State than a broader resolution on ‘the human rights situation in...’

There is some evidence that States are aware of the potential benefits of this approach. In June 2010, the Council

adopted Resolution 14/15 on ‘Addressing attacks on school children in Afghanistan.’ More recently, in 2015, after discussions on the issue during Glion II, Pakistan, on behalf of the OIC, tabled a resolution on the rights of [religious] minorities in Myanmar.

Human rights violations do not differentiate between being ‘thematic’ and being ‘country-specific,’ and there is no reason why human rights resolutions should draw so strict a distinction. Instead, hybrid resolutions offer an innovative approach to addressing specific cases of violations in the context of their general theme. Such resolutions would enhance the protection mandate of the Council, and help redirect it from becoming a thematic ‘talking-shop’ into serving as a body that responds quickly and efficiently to cases of gross and systematic violations of human rights. ■

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The Human Rights Council and the Security Council: Time to think about better synergies?

Joanna Weschler Deputy Director of Security Council Report

Strengthened interactivity between the Human Rights Council and the Security Council, including by way of tabling and discussing the reports of the Human Rights Council’s Special Procedures in the Security Council, could assist to elevate vital human rights considerations in the discussion and resolution of issues of peace and security, writes Joanna Weschler.

“The establishment of the Council, with its regular sessions spaced throughout the year, a simplified procedure for holding emergency sessions, and the cycle of periodic reviews of the human rights record of every Member State, dramatically enhanced the UN’s human rights performance. But the interaction between the human rights and the peace and security architectures has surprisingly been less than robust.”

In the early 2000s, when the idea of creating a new human rights body began taking shape in conversations among concerned Member States, UN officials and civil society members, one of the key elements of the thinking was that human rights could not be addressed effectively in isolation from the world’s other ills. With the nature of conflict having evolved during the last 15 years of the 20th century, from wars between States to mostly internal conflicts, the need to connect efforts to ensure peace and security with those to address human rights violations became particularly apparent. In nearly all cases, human rights abuses have

been among the first warning signs of a looming internal conflict. They have been often among the conflicts’ root causes, and, invariably, they have been a feature of every stage of the conflict as such. It became obvious to many that achieving lasting peace and security would be much more likely if addressing human rights concerns were part of the overall effort.

One of the strongest voices advocating incorporating human rights thinking into the outlook of the world’s top peace and security body, the UN Security Council, was the organisation’s seventh Secretary-General, Kofi Annan. When he took up his post in 1997, while not entirely absent from the Security Council, human rights concerns were highly controversial within that body. From his first year in office, Annan undertook a consistent effort to highlight the need for a holistic approach to peace and security and human rights.

From the late 1960s, when the then Commission on Human Rights (the Commission) begun addressing human rights in specific countries, there had been overlaps between its agenda and that of the Security Council. But the flow of information from the Commission to the Security Council was extremely rare. By the end of the Cold War when numerous civil wars erupted in different parts of the world, the Commission, through its Special Procedures, had an increasingly rich system of fact-finding and producing highly professional reports on specific situations. More often than not, the Commission had in-depth information and analyses on issues that the Security Council was only

just beginning to discuss (Rwanda comes to mind), but there was resistance on the part of some Security Council members to tapping into that knowledge.

When a Special Rapporteur on human rights in the former Yugoslavia was appointed, in a resolution adopted at an emergency Commission session on the Balkans in August 1992, Member States – in a highly creative move – asked the Secretary-General to make all reports of the Special Rapporteur available to the Security Council (as a result the Security Council over the next few years received 23 reports on this situation). Subsequently, the Security Council received reports of the Special Procedures of the Commission with respect to a few other situations.

Progression at the Human Rights Council

The establishment of the Human Rights Council (the Council) in 2006, when Member States overwhelmingly affirmed that ‘peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security’ and that ‘development, peace and security and human rights are interlinked and mutually reinforcing’, brought hopes that the flow of specialised human rights information would become easier, and an interaction between the world’s top peace and security body and its top human rights body more effective.

The establishment of the Council, with its regular sessions spaced throughout the year, a simplified procedure for holding emergency sessions, and the cycle of periodic reviews of the human rights record of every Member State, dramatically enhanced the UN’s human rights performance. But the interaction between the human rights and the peace and security architectures has surprisingly been less than robust.

Enhancing reporting and briefing by Special Procedures to the Security Council

Resolutions of the Council have only very infrequently asked for its reports to be transmitted to the Security Council, and there has been no regular such transmittal on any of the situations on the agenda of both bodies. There have been no attempts, even informal, at establishing contacts between the two bodies’ presidencies.

There could also be enhanced interaction of the Council’s Special Procedures with the Security Council. The Security Council has never taken full advantage of the very professional reporting of the Special Procedures (which often display a level of frankness otherwise hard to achieve in the UN context). There have only been four occasions when Special Procedures briefed the Security Council formally; only one of them since the establishment of the Human Rights Council. All other briefings occurred under the Arria-formula format (these are generally very informative meetings allowing for substantive interactions, but their limitations include that not all are attended by all Security Council members, and that there is no written record and no outcome). One Human Rights Council mechanism, the International Commission of Inquiry on Syria, on the initiative of various elected members of the Security Council, has provided regular briefings since 2012. A few other Special Procedures briefed sporadically. Given the two bodies’ overlapping agendas and the mandate holders’ intimate familiarity with the situation on the ground, the Human Rights Council’s investigators remain a largely underutilised source for the Security Council.

It is hard to explain this state of affairs. Perhaps because the establishment of the Human Rights Council – which by UN standards happened with lightning speed – involved such massive mobilisation and ceaseless advocacy by all human rights actors (States, UN officials and civil society), the success led to something of a collective sigh of relief and a decrease in advocacy efforts.

A lesson that probably should be drawn from the experience of the first decade of the Council is that human rights work is never done, that things do not happen by themselves, and that constant, targeted and strategic advocacy by all actors is indispensable to maximise all resources and effectiveness. ■

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¹ Available at www.securitycouncilreport.org/special-research-report/human-rights-and-the-security-council---an-evolving-role.php.



Reform of selection process needed to strengthen Special Procedures

Rosa Freedman Senior Lecturer at Birmingham Law School, University of Birmingham and Advisory Committee member of the Universal Rights Group

The Special Procedures system has a vital role to play in promoting and protecting human rights worldwide and in mainstreaming human rights across the UN. Their status and influence could be further enhanced, however, by reforming the process for their selection and appointment, writes Rosa Freedman.

Since Kofi Annan first pushed for reforms of the UN human rights machinery there has been increasing discussion about the need to mainstream human rights across the organisation. The key goal has been to elevate the status of the human rights pillar so that it is no longer the poor relation of development, peace and security. It is crucial for all UN activities that the work of human rights bodies are used by other UN bodies and agencies and that human rights monitors are heeded as early warning systems.

“The Special Procedures system is probably the least understood and yet most important of all parts of the UN human rights machinery.”

Changes made to Special Procedures, and the system's evolution since the Human Rights Council (the Council) was created, demonstrate the drive towards mainstreaming human rights across all UN activities.

Over the past two years, the Universal Rights Group – a Geneva-based think tank set up by former diplomats and human rights experts – together with Norway has pushed for concrete, practical steps to ensure that those aims occur in practice.

One example of concrete change in recent years is that mandate holders' reports, or even in-person briefings, are now being used by bodies such as the Security Council. The use of those reports, which often contain early warnings relating to peace and security, health, the environment, or other activities relevant to UN bodies and agencies, is a significant step forward in the mainstreaming of human rights across all UN work. That welcomed development has resulted from concerted efforts by the UN, States and civil society to ensure that human rights do not remain the far-away, Geneva-based cousin to all other UN activities.

Special Procedures: most important yet least understood

With the increased focus on the work of the UN human rights machinery, there also needs to be an increased understanding of those bodies' composition, powers and activities.

The Special Procedures system is probably the least understood and yet most important of all parts of the UN

human rights machinery. Mandate holders are independent experts on human rights. Each mandate either covers a thematic issue or all human rights within a specific country or region. The mandates are created or renewed at the Council, and mandate holders are appointed by the President of that body for fixed terms. The individuals undertake their duties on a part-time basis and without being paid for their work. Some operate individually – Special Rapporteurs and Independent Experts – while others are appointed to a five-person Working Group.

Special Procedures undertake fact-finding, information sharing, reporting, and communicating with individuals, States and civil society. The mandate holders identify specific issues, provide recommendations, and highlight best practices within their reports. Their work is crucial to promoting and protecting rights, and they contribute to the development of international human rights law through working on guiding principles, through mainstreaming human rights, and through engaging with the normative content of rights. Mandate holders are independent both from their own national States and from the UN. But the independence and expertise of some mandate holders is a sore point that is becoming an increasing issue within and outside of the UN.

Special Procedures have developed ad hoc since 1967. Initially mandates only addressed situations in specific countries but there has been an increased focus on thematic rights since 1980. Until recently there were relatively few mandates, but they now number 55. Until the Council was created in 2006, many of the mandate holders were UN insiders – human rights experts that had previously or later held positions on treaty bodies or as other Special Procedures mandate holders. Often they had impeccable general human rights expertise but not necessarily on the specific thematic or country issue at hand. Moreover, many of these mandate holders were white, middle-aged men from Global North countries, thus not representative of the UN or the world that it serves.

Improved but problematic selection procedures

With the creation of the Council there was a significant shift away from these 'known faces' moving from one position to another, with the specific requirement that mandate holders could not be appointed to a new mandate immediately after finishing their duties. Staff of the Office of the High Commissioner for Human Rights' Special Procedures Branch actively sought to encourage a greater range of individuals to apply for the posts, with a focus on expertise, prior experience, nationality and gender. Appointments became more transparent, with nomination forms posted online and with a selection process undertaken by Member States of the Council.

While there is now greater representation of geographic regions, gender, and expertise, the changes to the selection process have brought their own problems. The appointment process now includes interviews with representatives of the five States (one from each region) comprising the Consultative Group, giving those countries significant powers that are at times abused.

“ While there is now greater representation of geographic regions, gender, and expertise, the changes to the selection process have brought their own problems.

It is noteworthy, for example, that many Canadians were appointed in 2014 when Canada chaired the Consultative Group. Likewise, a list of proposed mandate holders prepared by the Consultative Group that did not include any Argentinian candidates was effectively blocked by Argentina when it was Vice President of the Council.

It undermines the perceived independence of the mandate holders that they, and often their home countries, have to undertake political and diplomatic processes when nominated and interviewed for the positions. To protect the independence of mandate holders, and to ensure de-politicisation of the appointments system, the selection and appointment process should be revisited. Some small adjustments could be made; for example, the model could be adapted to include human rights experts on the selection committee, or could be moved in-house to the

Special Procedures Coordination Committee or Annual Meeting. But the current model cannot remain as it stands.

Questionable appointments demonstrate a need for change

To a large extent mandate holders are experts and undertake important work. There are, of course, always a few questionable appointments and they are the ones that tend to receive the most attention. There was the appointment of Jean Ziegler to the mandate on the right to food: an individual who allegedly received the Qaddafi Human Rights Prize and used his platform to compare Gaza to a concentration camp, for which he was roundly criticised at the highest levels within the UN. Or there are mandate holders who have been appointed despite holding far less expertise than others against whom they were running. Or stellar candidates, such as Christine Chinkin for the Israel and the Occupied Territories mandate, being blocked for politicised reasons after being recommended by the Consultative Group.

Special Procedures were rightly described by Kofi Annan as ‘the jewel in the crown’ of the UN human rights machinery. The line-up of excellent individuals demonstrates just how much expertise and experience is injected into the UN by having these mandates. But to ensure that the system is strengthened it is crucial that the weaknesses and flaws are understood and addressed. ■

Follow ROSA FREEDMAN on Twitter @GoonerDr.



Towards a UPR which is accessible, strong, effective and protective



Tess McEvoy Programme Coordinator and Legal Counsel
Ben Leather Advocacy and Communications Manager, International Service for Human Rights

As the UPR reaches the end of its second cycle, ISHR has developed a strategy detailing measures that would enhance the UPR’s ability to fulfil its potential and achieve a greater vision for the UPR during its third cycle. Ben Leather and Tess McEvoy provide a snapshot of that strategy, which will be launched later this year.

The Universal Periodic Review (UPR) has emerged as one of the key rallying points for civil society engagement within the UN human rights system. Many civil society organisations and coalitions have used it to gain the recommendations needed to back their national level advocacy, with some taking advantage of its peer-to-peer nature to ensure buy-in and follow-up from recommending States.

However, a lack of follow-up mechanisms, procedural weaknesses and patchy implementation have exacerbated

ed fears that the mechanism risks degenerating into a purely ‘ritualistic’ review. Obstacles to safe and effective participation by human rights defenders mean the process is not reaching its full potential.

There are several changes which could be applied to the UPR to ensure that its outputs have a more positive impact on the behaviour of State and non-State actors, including by strengthening civil society’s role at all stages in the process.

Ensuring an institutionalised reprisals mechanism

The Secretary-General’s annual report on reprisals shows an increase in intimidation and attacks against human rights defenders in association with their engagement with the UPR. As well as constituting a violation of international human rights law, reprisals – if not tackled – will deter other defenders from interacting with the UPR and prevent civil society from following up on recommendations, thus hindering implementation.

Human Rights Council Resolution 24/24,¹ existing legal research² and a recent cross-regional joint statement³ by 65 States have made it clear that the President and Bureau of the Council have a moral and legal duty to tackle reprisals. This duty needs to be better operationalised and discharged. In the framework of the UPR, the Council President, Bureau and Secretariat should amongst other things:

- a) Elaborate a comprehensive policy to prevent, investigate, remedy and promote accountability for cases of intimidation or reprisal, establishing accessible secure channels for making allegations;
- b) Take proactive steps to investigate and follow up on allegations, adopting the precautionary principle;
- c) In consultation with alleged victims, seek protection, non-recurrence and remediation guarantees from the State concerned; and
- d) Include alleged cases of intimidation and reprisals in the report of the UPR Working Group, together with the concerned State's response; Cases should also be discussed at the adoption of the report.

States, meanwhile, as well as preventing and ensuring accountability for reprisals, ought to make recommendations on the issue through the UPR and during item 5 and 6 debates within the Council.

Ensuring civil society space at the Working Group stage of the UPR

The UPR is a peer review mechanism – in this respect the main aim of civil society at the Working Group stage is to attain useful recommendations from recommending States. At the same time, the UPR should be a 'cooperative mechanism based on interactive dialogue' (GA 60/251)⁴ and should 'ensure the participation of all relevant stakeholders, including NGOs' (HRC 5/1).⁵ Regrettably, however, civil society actors do not have a formal, recognised role to play at the UPR Working Group stage.

Introducing civil society space at the Working Group stage, by way of ten, two-minute long interventions, would strengthen the UPR and its impact on the ground in the following ways:

- a) Reaffirm the central role of civil society in the UPR process and harness the energies of civil society actors who travel to Geneva for the Working Group;

Introducing civil society space at the Working Group stage, by way of ten, two minute long interventions, would strengthen the UPR and its impact on the ground

- b) Increase the quality and utility of State recommendations and responses, due to an awareness that civil society is bearing witness to the process;
- c) Ensure an up-to-date picture of the human rights situation in a given State; and
- d) Increase civil society buy-in to the process and its outcomes, which is essential for national level follow-up.

NGO interventions could also be recorded in the Working Group report, in the form of comments rather than recommendations.

Ensuring greater follow-up to and implementation of recommendations

Implementation of UPR recommendations remains varied. Nonetheless, the following concrete steps could be taken to guarantee formal follow-up and monitoring of State compliance between cycles, thus enhancing the probability of effective implementation:

- a) The Office of the High Commissioner for Human Rights (OHCHR) should publish, two months prior to Working Group sessions, an evaluation of UPR recommendation implementation since the previous cycle, in order to inform recommending States. Civil society and other UN mechanisms must be properly consulted in the development of this report; and
- b) The OHCHR should ensure that, in the Working Group report, greater emphasis is placed upon those recommendations that have been reiterated since the first cycle.

Increasing the standard of UPR proceedings

Feedback from a range of local civil society organisations suggests that the following initiatives would enhance the UPR's process and, consequently, its impact:

- a) The programme of work of Council sessions should be rearranged to ensure that item 6 falls at the end of the agenda. This would assist to ensure that debates on UPR Working Group reports occur after resolutions are mostly agreed upon. It is anticipated that this will increase the number, quality and candour of interventions by States;
- b) States should use the Council's item 6 debate to both update the Council on implementation of recommendations previously received, and seek information regarding implementation by States to which they have made recommendations previously on priority issues;
- c) States should focus their attention on the quality of recommendations, not the quantity, in line with a statement made by 47 NGOs at the Human Rights Council's 28th session; and

¹ Available at www.ishr.ch/sites/default/files/article/files/hrc_res_24-24.pdf.

² 'Submission made on behalf of the International Service for Human Rights to the United Nations Human Rights Council on its obligations to protect from reprisals individuals who cooperate with the council and its subsidiary mechanisms,' October 2014, available at www.ishr.ch/sites/default/files/article/files/freshfields_advice_on_reprisals_print_0.pdf.

³ Joint statement to the Human Rights Council on preventing reprisals, available at <https://geneva.usmission.gov/2015/09/25/u-s-joins-hrc-joint-statement-on-preventing-reprisals/>.

⁴ A/RES/60/251, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf.

⁵ Institution-building of the United Nations Human Rights Council Resolution 5/1, 18 June 2006, available at www.ohchr.org/EN/HRBodies/UPR/Pages/BackgroundDocuments.aspx.

d) Guidelines should request States to respond to recommendations at least two weeks before the beginning of the Council session at which their Working Group report will be adopted. This would make it easier for NGOs and States to prepare their responses to the Working Group report, including through statements.

By ensuring an institutionalised reprisals mechanism, an increase in civil society space at the Working Group stage, greater follow-up to, and implementation of, recommendations, and through the fine tuning of UPR processes, the UPR will be able to better fulfil its intended vision in the third cycle and beyond. ■



Early warning, effective response: The role of the Human Rights Council in preventing gross and systematic violations

Phil Lynch *Director of the International Service for Human Rights*

The contributions of human rights defenders, together with principled leadership and a commitment to action based on certain triggers or criteria by States, are vital if the Council is to be effective in preventing gross and systematic violations of human rights, says Phil Lynch.

Human rights defenders, independent non-governmental organisations, and A-status national human rights institutions (NHRIs) all have a vital role to play in the prevention of gross and systematic human rights violations. This is a role they should be better supported and enabled to play, both on the ground and at the UN Human Rights Council (the Council), where the experience and expertise of defenders can contribute significantly to early warning of, and early and effective response to, human rights crises and emergencies.

The obligation of States to prevent human rights violations by protecting and supporting human rights defenders

The Council has explicitly recognised the central role of NHRIs, NGOs and human rights defenders in the prevention of human rights violations and the duties of States in this regard. Specifically, Council Resolution 24/16,¹ adopted by consensus in September 2013, stresses that:

3. States should promote supportive and enabling environments for the prevention of human rights violations, including, inter alia, by: ...

- (g) Promoting a free and active civil society;*
- (h) Promoting freedom of opinion and expression;*
- (i) Ensuring, where they exist, strong and independent national human rights institutions, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);*

The contribution of defenders and NHRIs to prevention was further elaborated in a 2015 report by the Office of the High Commissioner for Human Rights (OHCHR), which recognises the importance to prevention of defenders' work to monitor, report and advise on human rights issues and violations.² The report particularly highlights the preventative contribution that NGOs and NHRIs can make by engaging with regional and international human rights reporting mechanisms, and by 'bringing cases at the national, regional or international level'.

In order for defenders, NGOs and NHRIs to fulfil these functions the OHCHR report recommends a number of actions for States at the national level.

First, States should establish strong, independent NHRIs in compliance with the Paris Principles.

Second, States should develop and implement laws, policies and mechanisms that enable, support and protect the work of defenders and NGOs, including those most at risk, such as women defenders.

Third, States should investigate and ensure accountability for violations against defenders and end impunity for attacks against them.

Fourth, States should guarantee safe and unhindered access to international human rights mechanisms and prohibit, prevent and promote accountability for intimidation and reprisals against those who communicate or cooperate with national, regional or international human rights bodies.

Early warning: The role and relevance of defenders

The relationship between civil society and early warning of gross and systematic human rights violations, emergencies and crises has two key facets.

First, human rights defenders, independent NGOs, Paris Principles compliant NHRIs and a free press have a crucial role to play in monitoring and reporting on human rights issues. These actors are often at the frontline and the

1 A/HRC/RES/24/16, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/16

2 A/HRC/30/20 available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_20_ENG.docx

first (and sometimes only) actors to observe, document and sound the alarm on emerging patterns of gross and systematic violations or human rights crises. As former UN High Commissioner for Human Rights Navi Pillay said in one of her final addresses to the Council, ‘Human rights defenders inject the life blood into human rights: they are the promoters of change, the people who ring the alarm about abuse, poor legislation and creeping authoritarianism.’

Second, restrictions, criminalisation and crackdowns against human rights defenders are themselves an early warning sign of gross and systematic violations, with authoritarian governments, paramilitaries and terrorist organisations frequently moving to silence or even eliminate those who may bear witness and hold them to account. In this regard, the Council should look to develop an early warning indicator based on the situation of defenders and other civil society actors. Proposed Sustainable Development Goals indicator 16.10.1 is instructive in this regard, calling for monitoring and reporting on the ‘number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, media personnel, trade unionists and human rights advocates in the previous 12 months’.

Both of the facets outlined above – defenders as monitors and as canaries – have been paradigmatically evident in Burundi, for which NGOs like the East and Horn of Africa Human Rights Defenders Project and ISHR produced reports and made statements warning of looming gross and systematic violations months before any attention by the international system. These warnings were informed, at least in part, by the evidence of worsening restrictions and attacks on Burundian human rights defenders and their families, such as the arbitrary detention and attempted murder of Pierre Claver Mbonimpa³ and, later, the actual murder of his son.⁴ As ISHR said during an informal briefing of the Human Rights Council by the High Commissioner in May 2015:

There is a strong association between respect for civil society actors and respect for human rights and the rule of law. By contrast, there is also a strong association between restrictions and attacks against human rights defenders and serious regression in the realisation of human rights and the rule of law. In this context, ISHR is gravely concerned at the recent wave of assaults and arrests against human rights defenders in Burundi, including the assault and arbitrary detention of Pierre Claver Mbonimpa, together with the excessive use of force against peaceful protesters and the closure of independent media outlets.

During that briefing ISHR called on the Council to take ‘urgent and resolute action to restore respect for human rights and the rule of law in Burundi’, a call finally heeded some six months later when the Council convened a Special Session on the situation in December 2015.⁵

A full twelve months before the Special Session, in November 2014, the Special Rapporteur on human rights defenders undertook a country mission to Burundi. His report documented defamation, attacks and killing of human rights defenders, together with worsening legislative restrictions on their work, all ‘classic’ early warning signs. Due to its programme of work, the Council did not consider the report until March 2016. There must be a mechanism for the Council to expedite the consideration of reports of country missions that disclose or warn of imminent widespread violations.

Early and effective response: The need for principled leadership and triggers for action at the Council

As the evolution of the situation in Burundi clearly demonstrates, prevention requires both early warning and an effective response. In many cases prevention fails not for lack of early warning but for lack of early, effective, or any, response. Indeed, as the Universal Rights Group has stated in an instructive background paper, ‘if progress is to be made with prevention, it will be necessary [for the Human Rights Council] to **build a response framework driven by independent and objective analyses of human rights situations**’.

The work of defenders, NGOs and NHRIs is central to this project and I’d like to make three brief points in this regard.

First, many independent NGOs and A-status NHRIs produce such ‘independent and objective’ and evidence-based analyses. In many situations, they are the only actors on the ground producing such analysis and it is vital that they be supported and not impeded in doing so.

Restrictions, criminalisation and crackdowns against human rights defenders are themselves an early warning sign of gross and systematic violations, with authoritarian governments, paramilitaries and terrorist organisations frequently moving to silence or even eliminate those who may bear witness and hold them to account. In this regard, the Council should look to develop an early warning indicator based on the situation of defenders and other civil society actors.

Second, if the Council is to benefit from such reports, evidence and analyses, it must be a safe and accessible place for the defenders, NGOs and NHRIs who produce them and the victims whose testimonies are contained therein. This requires greater space for substantive engagement and contributions by civil society, together with stronger and more effective policies and mechanisms to prevent, respond to and promote accountability for reprisals. Such mechanisms should include the designation or appointment by the Secretary-General of a Special Representative or senior focal point to coordinate and strengthen the response to reprisals across the UN system.

3 ISHR, ‘Burundi and Tunisia: Stark contrast in approaches to human rights defenders’, available at www.ishr.ch/news/burundi-and-tunisia-stark-contrast-approaches-human-rights-defenders.

4 ISHR, ‘Deteriorating human rights situation in Burundi’, available at www.ishr.ch/news/deteriorating-human-rights-situation-burundi.

5 ISHR, ‘Human Rights Council dispatches expert mission to investigate human rights abuses in Burundi’, available at www.ishr.ch/news/human-rights-council-dispatches-expert-mission-investigate-human-rights-abuses-burundi.

Third, and finally, while the 2011 review of the Human Rights Council regrettably failed to produce agreement on or institutionalise triggers for action, the occasion of the Council's tenth anniversary is an opportunity for principled States to come together to develop and implement a joint pledge in this regard. Such a pledge could commit signatory States to request a special session of the Council, or to commence work on a situation- or country-specific initiative, in situations that meet a certain threshold, or are referred to the Council by independent actors. Such triggers could include, for example:

- the High Commissioner for Human Rights suggesting Council action;
- a group of four or more Special Procedures mandate holders suggesting Council action;
- relevant regional mechanisms flagging a situation as requiring the Council's attention;

- the General Assembly or the Security Council flagging a situation as requiring the Council's attention; or
- a group comprising a State's A-status NHRI, together with three or more ECOSOC-accredited NGOs, suggesting Council action.

Implemented effectively, such an initiative could substantially strengthen the Council's ability and track record when it comes to fulfilling its own mandate, spelt out in operative paragraph 5(f) of General Assembly Resolution 60/251, to contribute to the 'prevention of human rights violations and respond promptly to human rights emergencies'.

We owe it to the likes of Pierre Claver Mbonimpa, and the scores of other defenders who have been arbitrarily detained, disappeared or died, to at least try. ■

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What happens in Geneva should not stay in Geneva: How communication, coherence and cooperation can strengthen implementation

Geir Sjøberg Policy Director for Human Rights, Ministry of Foreign Affairs of Norway

Building on the Council's eventful first decade will need renewed efforts to translate important decisions into action. Addressing the role of the Council, shortcomings of the international system and the primary responsibility of States, such implementation requires transparency and citizen engagement, stronger leadership, resourcing and policy coherence, writes Geir Sjøberg. The author is the policy director for human rights of the Norwegian Ministry of Foreign Affairs. While the article reflects Norway's positions, formulations used in the text are his own.

“ Let us not forget that whatever happens in Room XX at the Palais de Nations and in the basement of the UN building in Geneva is not the end of the process, it is the beginning.”

As the Human Rights Council (the Council) turns ten, there will be a lot of debate on how to enhance its ability to better fulfil its role – and rightly so. Moving forward, together we will identify areas in which the Council can, and certainly needs to, improve.

In so doing, let us not forget that whatever happens in Room XX at the Palais de Nations and in the basement of

the UN building in Geneva is not the end of the process, it is the beginning.

Why do I say this?

I say this because we must not be sidetracked from the real world by overly focusing on nor relying on the Council to secure the ultimate solutions. It never has, and it never will. Even lifting the Council to the level of an independent UN body – like the Security Council or the Economic and Social Council (ECOSOC) – would be unlikely to change this.¹ While continuing to seek to improve the Council, we therefore need to focus more on linking its decisions to the actions and impacts of other forces in our societies.

After all, despite all its shortcomings, which may have political, economic, administrative and other dimensions, the fact remains that the Council has – over its ten years – dealt with a number of highly complex issues, by adopting far-reaching, positive and potentially influential conclusions. On paper we have arrived at progressive and constructive decisions supported by a wide group of States from all regions, the resolutions on human rights defenders being a case in point, such as the most recent one on defenders addressing economic, social and cultural rights. The problem lies, as we all know, in the implementation gap.

¹ The UN Human Rights Council's status as a subsidiary organ under the General Assembly is a weakness in the light of the Council's mandate to safeguard one of the three UN pillars.

This, of course, is mainly the responsibility of States – as the primary duty bearers. However, when stating or pledging in Geneva this or that, when signing on to this or that resolution, while not following through at national level, the question arises: What can the Council do about that?

Better communication and active citizen engagement needed

A first step would be to communicate better to the world what is decided in Geneva. This, I would argue, is a prerequisite for more effective follow-up action on the ground. The media also has a critical role to play here. Whatever happens in Geneva should not stay in Geneva.

Clearly, we need more transparency in the process. Ideally, all States should be obliged to make Council decisions and voting records public at home, at the national level, in local languages, in order for their citizens to get easy access and better understand this potentially highly significant information – concerning their own rights and fundamental freedoms.

In order for accountability to take hold, the knowledge and engagement of citizens and civil society at home is indispensable; which may be exactly why such transparency is not desirable from the perspective of some governments. However, States simply cannot be counted on to ensure accountability without the involvement of their citizens. History has taught us this lesson time and again. There is a move now to map out effective and inclusive national procedures for coordination, follow-up and reporting. Let us collectively pursue such a path. And, in so doing, let us ensure that the work of governments in this area, be it through intra- or inter-ministerial processes, truly benefit from the input of national human rights institutions and civil society.

Starting from a global level, modern means of communication can contribute to transparency and accountability locally. As an example, yourHRC² by the Universal Rights Group in collaboration with Norway provides a step towards strengthening the visibility, relevance and impact of the decisions produced by the Council. Nevertheless, much, much more remains to be done.

Cooperation and resourcing

Consider the following: the overall regular UN budget is less than that of the local police department at its main venue (NYPD). Out of this limited global budget, UN Member States allocate less than three percent to the human rights mechanisms, notably the Office of the High Commissioner for Human Rights, seeking among other things to service the Human Rights Council in its work, in Geneva and beyond. In other words, we are trying to achieve a whole range of highly complex objectives world-wide with – in reality – a level of resources that it is, respectfully, laughable in a global context.

Still, more often than not, we seem to try to create the impression that we are actually addressing the issues before us in a serious way, where the response is proportional to the challenge at hand. Unfortunately, this is not always the case. Take for instance the UN Special Rapporteurs. While having global mandates, the Rapporteurs are typically permitted funds and support to carry out two (!) official country visits a year. Despite the important work that they carry out, how can this be considered as providing a satisfactory level of global protection or prevention? Really, it rarely does, and deep down we all know that. Perhaps it is time to stop acting as if it does.



Consider the following: The overall regular UN budget is less than that of the local police department at its main venue (NYPD). Out of this limited global budget, UN Member States allocate less than three percent to the human rights mechanisms...

While certain advances can be made in terms of Council working methods, observers frequently point to the Universal Periodic Review (UPR) as a groundbreaking mechanism. In many ways it is. However, it will only be effective to the extent that it generates results on the ground. The Council plays an important part in this process, setting the stage for important follow-up by agents of change at the national level. However, the Council is ultimately unlikely to be a guarantor of real progress.

This is bound to depend largely on actions outside of Geneva. Which prompts the question: is the international system equipped to support this process in a meaningful way? In this light, the effectiveness of the Council agenda item for technical assistance and capacity building (item 10) may need to be re-examined, in order to ensure useful assistance and support to States that display a genuine political will to follow up on the recommendations.

States and heads of UN must provide leadership and policy coherence

Likewise, the impressive Room XX at the Palais des Nations provides an important global theatre for talking about mainstreaming of human rights in the UN system and beyond. In turn, however, the real mainstreaming of human rights across the UN system, regional and bilateral mechanisms, funds and programs, will require leadership in such a direction by the respective management structures involved; the mandated governing bodies and its owners, usually us as States. The sooner we are willing to realise this, the sooner we will be able to place our attention where needed in order to address more effectively the implementation gap.

The new UN Secretary-General, taking office on 1 January 2017, should be a strong advocate for promoting the whole spectrum of human rights globally and strengthen human rights across the UN system.

² <http://yourhrc.org>

³ Norwegian Ministry of Foreign Affairs, 'Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation — Meld. St. 10 (2014–2015) Report to the Storting (white paper)', 2014–2015, available at www.regjeringen.no/en/dokumenter/meld.-st.-10-2014-2015/id2345623/?ch=1.

Setting the path towards policy coherence for human rights, the Norwegian Parliament last year endorsed a White Paper on human rights.³ We are now working across the civil service to ensure its application, as mandated by Parliament. Linking multilateral and bilateral efforts across the different policy sectors and arenas is essential in this

regard. While change takes time, we are on an ambitious track in this direction.

Similarly, in tackling the implementation gap, the Human Rights Council must be a catalyst in turning human rights obligations and commitments into broader action. It is that simple and that difficult. ■



ESC rights: The need for a courageous, uncompromising approach

Miloon Kothari *Former UN Special Rapporteur on the Right to Adequate Housing*

In a world of increasing inequality, what more can and should the UN Human Rights Council do to promote and protect economic, social and cultural rights, especially those of the most disadvantaged and vulnerable, asks Miloon Kothari.

The 1993 Vienna World Conference on Human Rights issued a clarion call for the world to take economic, social and cultural rights as seriously as civil and political rights. The Conference called for an approach where ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis’.

The UN Commission on Human Rights (the Commission) and its successor the Human Rights Council (the Council) heeded this call and promoted economic, social and cultural rights (ESC rights) through the appointment of Special Rapporteurs on health; food; adequate housing; water and sanitation; extreme poverty; and foreign debt. A series of path-breaking thematic resolutions (the rights of lesbian, gay, bisexual persons and human rights defenders, among others) were adopted in addition to the bi-annual ESC rights omnibus resolution and the resolutions guiding the work of the various Special Rapporteurs tasked with the promotion and protection of ESC rights.

A remarkable set of new soft-law standards that protect ESC rights have emerged from the Commission, the Council and its mechanisms, including declarations of the rights of indigenous peoples and on the right to development; and guidelines on internally displaced persons, extreme poverty, structural adjustment and debt, and forced evictions and displacement. A series of new standards are in process: the Draft Declaration on the rights of peasants, and the initial discussions to consider a binding treaty on transnational corporations and other business enterprises are among them.

The continued attention to ESC rights by the Council is welcome but, given the escalating scale of the crisis, not nearly enough. Copious evidence from around the world demonstrates a continued assault on the ESC rights of the most vulnerable, including through growing social

and economic inequality. Governments continue to treat ESC rights, if recognised as human rights at all, as the poor cousins of civil and political rights. Excuses for the non-recognition and non-implementation of these rights are many, including lack of resources; non-justiciability; and helplessness in the face of global economic and trade policies that give primacy to profit and investment over the fulfilment of ESC rights, especially of the most vulnerable.

Given this continued reluctance on the part of the international community and nation States to recognise and implement ESC rights, what more can the Human Rights Council do?

Confronting the structural causes of poverty and inequality

An unavoidable task before the Council, if it is to constructively intervene to change this dire reality, is to summon the courage to analyse and confront the structural faults that arise from misguided global, regional and national economic and trade policies. This approach unabashedly continues to promote the neo-liberal ideology; an ideology that evidence from across the world has discredited. As part of such an effort it is imperative that the Council confronts, in resolutions and through its mechanisms, the privatisation of ESC rights (including health, housing, water and sanitation) and the wanton, uncontrolled speculation of land and property including through historically unprecedented land-grabbing prevalent across the world today. Part of this effort must also include action to confront the obscene growth of the power of transnational corporations and the continued widespread ambit of play and influence enjoyed by global financial institutions (such as the World Bank and the International Monetary Fund) that champion the destructive neo-liberal approach.

Normative development and recognition of the right to land

The Council must continue the normative development of ESC rights – for example through the recognition of land as a universal human right. While the world is concerned with rapid urbanisation, the underlying causes for this human exodus are not being addressed. Such migration is generally not voluntary, but is the product of extreme rural poverty

due to landlessness; land insecurity; land conversions; the loss of means of subsistence resulting from a failure to give priority to agrarian reform or promote rural infrastructure; project-induced evictions and displacement; distressed housing; or the industrial takeover of farmland. In cities, these migrants are often precluded from accessing adequate housing and forced to live in informal settlements characterised by insecure and inadequate living conditions

Urban and peri-urban areas across the world today are witness to the violations of a range of human rights, due to the inability or unwillingness of the authorities to adequately control land and housing speculation and to reverse the concentration of land ownership and hoarding of property. This phenomenon is also spreading to rural areas. The privatisation of land often leads to land becoming less affordable, which has particularly affected women-headed households. Land is also of great importance to certain groups that have suffered historic discrimination on grounds of descent, race or colour. The lack of legal recognition of the right to land contributes to these situations.

Increasing specific attention to ESC rights through the Universal Periodic Review

An overarching step that the Council can take towards bringing parity between ESC and civil and political rights would be to make a concerted effort, during the third cycle of the Universal Periodic Review, for States to ask questions and make recommendations on ESC rights.

Research done, by the Center for Economic and Social Rights (CESR) and the Human Rights Clinic at Science Po, on the recommendations from the first and second cycles of the UPR, demonstrate that recommendations on ESC rights account for less than one-fifth of all recommendations. When we look in more depth at the substantive nature of these recommendations the story becomes even more lopsided in favour of civil and political rights; an analysis of the recommendations made on a sample of countries showed that only a third of ESC rights-focused recommendations called for a specific action, as compared to two thirds of civil and political rights-focused recommendations.

Precision and specificity is critical, including for groups that defend ESC rights. The Council is on the right path as it recognises the role of particular groups that defend ESC rights, as it has done through the adoption of its March 2016 resolution on human rights defenders and ESC rights. This critical recognition amounts to little, however, if those that mobilise for and defend ESC rights are not offered protection, and those governments and third parties responsible for violating the human rights of defenders prosecuted or otherwise held accountable. The UPR recommendations must continue the path-breaking work started by the adoption of the Council resolution on defenders and ESC rights.

The recommendations on ESC rights in the UPR third cycle need to be precise. They need to call for the development

of indicators and monitoring tools, impact assessment of policies and programmes, and budgetary allocations to assess progress on ESC rights. The recommendations need to guide States to engage with national human rights institutions, parliaments, civil society and independent institutions in a constant process of dialogue and monitoring. Any attempt made by the Council, through the UPR mechanism, has to target the removal of the bias towards civil and political rights that has characterised the first and second cycles of the UPR.

Coordination, implementation and accountability at the national level

The UN human rights system ensures the active, and legitimate, role of non-State actors, particularly civil society and national human rights institutions, in the process of monitoring recommendations emanating from the three nodal points of the UN human rights system – the UPR, treaty bodies and the Special Procedures. The Council, as the UN's premier human rights body, must play a leadership role in guiding States to adopt a range of dynamic opportunities for national level action on human rights. Such action can take the form of human rights trainings across sectors, human rights education at all levels of society and government, and local and national level mechanisms for monitoring the State's human rights commitments. If this process of active national level participation to ensure State compliance can involve national parliaments, national human rights institutions and political and non-political formations, then State accountability can perhaps be ensured at the national level where it matters the most. This in turn can lead to the strengthening and institutionalisation of implementation mechanisms informed by the domestication of international human rights commitments and the upholding of national constitutional commitments.

“The continued attention to ESC rights by the Council is welcome but, given the escalating scale of the crisis, not nearly enough. Copious evidence from around the world demonstrates a continued assault on the ESC rights of the most vulnerable, including through growing social and economic inequality.”

In the spirit of the Vienna World Conference on Human Rights and more importantly the upholding of ESC rights for the millions across the world whose human rights continue to be violated, the Council must do all in its power to bring parity between ESC and civil and political rights. Nothing less than the global credibility of the Human Rights Council is at stake. ■

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The missing link: What kind of relationship should there be between the treaty bodies and the Human Rights Council?

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The UN human rights system is a mish-mash of parts that operate relatively autonomously from each other, says Olivier de Frouville in examining the relationship between the many parts and how coherence and coordination could be improved.

Over 70 years, the United Nations has provided a special multilateral framework for the development not only of universal standards for human rights, but also of international protection mechanisms. Thanks to the proliferation of these mechanisms, it has now become difficult for a State to violate human rights. More than ever, we are nearing the kind of utopia described by Kant two centuries ago: that of a cosmopolitan society in which the violation of a single right in one place is felt everywhere else. One of the key aspects of the development of this system was to follow an empirical and progressive method, by moving in small successive measures, making the most of opportunities offered by one political context or another, or by using circumstantial majorities. At the end of the war, three big proposals for institutional reform were put forward, without success: the creation of an Office of the High Commissioner for Human Rights, the creation of an international criminal court and the creation of a global court of human rights. Of these three proposals, which at the time seemed completely utopian, two have become a reality today. This, in itself, shows how far things have progressed but also draws attention to the necessity to keep on striving.

...the two sub-systems are largely complementary, insofar as the situations not dealt with by the treaties are likely to be examined by the institutional mechanisms; on the other hand, a so-called duplication could turn out to be beneficial, by creating an almost continuous follow-up of a specific situation, with the reports of the Special Procedures following the final observations of the treaty bodies and the reports adopted after the UPR.

Empiricism also has its drawbacks, including the relatively anarchical development of structures and sub-systems that are disconnected from each other. The main reason behind this is that the system has in fact never been considered as such – a coherent and coordinated entity – but rather as a mish-mash of parts that are relatively autonomous from each other, each with its own history and dynamics. It is

the same for the so-called ‘institutional’ and ‘charter-driven’ sub-system, as well as the ‘conventional’ or ‘treaty-derived’ sub-system.

Both of these sub-systems have undergone separate developments: while the institutional system was developing according to established political arbitrations within the Commission on Human Rights (the Commission) and the Human Rights Council (the Council), the conventional system was following the treaties’ logic, which binds only the States that have ratified them and is therefore organised according to the community of Member States. In the same way, both sub-systems have generated their own independent expert mechanisms: with the Special Procedures and other expert bodies that report to the Commission and the Council, and that benefit from a general authority over all the UN Member States, on the one hand; and on the other hand with the treaty committees that are only tasked with monitoring the implementation by States of one treaty in particular.

Some have criticised the separate development of these two sub-systems by pointing out that it creates regrettable duplication. In reality, this argument was and remains for the most part unfounded: on the one hand, the two sub-systems are largely complementary, insofar as the situations not dealt with by the treaties are likely to be examined by the institutional mechanisms; on the other hand, a so-called duplication could turn out to be beneficial, by creating an almost continuous follow-up of a specific situation, with the reports of the Special Procedures following the final observations of the treaty bodies and the reports adopted after the Universal Periodic Review (UPR).

Yet, there again, empiricism prevails. Coordination appears inevitable when two bodies respectively belonging to the two sub-systems have the same thematic mandate: this is why, from its very beginning in 2010, the Committee on Enforced Disappearances (derived from the 2006 Convention on Enforced Disappearances) established a tight working relationship with the Human Rights Council’s Working Group on Enforced and Involuntary Disappearances. But outside of this very specific hypothesis, coordination is far from systematic. It is possible to roughly distinguish three levels.

At the first level, during the preparation stage of the reports of the different mechanisms, coordination is overseen by the Secretariat in a relatively satisfactory manner: Special Procedures working on a country have, in their basic doc-

umentation, the final observations from the committees on this country, while the committees use the reports from the visits made by the Special Procedures to develop the questions they will ask the States in the constructive dialogue held during the examination of their report. Similarly, one of the three compilations that serve as the basis for the UPR is mostly made up of a combination of the recommendations made by the treaty bodies and the Special Procedures.

At the second level, which is the planning of actions, coordination is non-existent: there is no mechanism and not even the slightest hint of a thought dedicated to the way in which the agendas and actions of the different mechanisms could be coordinated. This gap can be seen inside each of the sub-systems, as well as in the relationship between the two of them. The 'control continuum' that is mentioned is something that can be empirically witnessed, but it has not been thought out or organised with the goal of achieving a more effective protection of human rights. In this regard, it would be useful to give some serious thought on how to establish what could be called integrated tactics for each country, the goal of which would be to better express the intervention of the different bodies and mechanisms of the two sub-systems.

The third and final level is the follow-up of the recommendations made by the mechanisms as a whole. Currently, each mechanism within each sub-system ensures follow-up of its own recommendations through its own procedures. This creates a great loss of means and energy for a relatively weak result. There again, some thought should be given to how to make follow-up more efficient.

On the one hand, it could be more centred rather than scattered between so many different bodies. On the other hand, follow-up is usually best carried out by a political body made up of States who have the necessary authority to put pressure on their peers so that they implement the recommendations that have been given to them.

In the current institutional layout, it is the Human Rights Council that is in the best position to ensure the follow-up of the independent bodies' recommendations. In this respect, we can question the added value of the UPR: is it really up to the States to give recommendations to their peers regarding the implementation of human rights?¹ This legal analysis is already being carried out by independent experts who, in fact, do it much better than the States. To avoid having the UPR badly duplicate the work of the experts, while at the same time undermining it, it would be better to give this mechanism the sole function of following up on their recommendations. That way, the UPR would have a real added value compared to the other existing mechanisms, and the Council would be able to better fulfil its mandate to encourage the full respect of the States' obligations in the field of human rights.² ■

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1 Please see our critical analysis on the subject: 'Building a Universal System for the Protection of Human Rights: the Way Forward', in M. Cherif Bassiouni and William A. Schabas (eds.), *New Challenges for the UN Human Rights Machinery. What future for the UN Treaty Body System and the Human Rights Council Procedures?*, Intersentia, 2011, p. 241-266, available at www.frouville.org/Publications_files/New%20Challenges%20-%20de%20Frouville.pdf.

2 General Assembly Resolution 60/251, paragraph 5,d.



BEYOND 2021:

A HUMAN RIGHTS COUNCIL FOR THE FUTURE





Repositioning the Human Rights Council as a principal organ of the UN

Joachim Rucker Former President of the UN Human Rights Council and German Ambassador to the UN in Geneva. This article reflects the author's personal views

Repositioning the Human Rights Council as a principal organ of the UN has the potential to elevate the status and influence of human rights within the UN and worldwide, writes former Council President Joachim Rucker.

In 1948, the UN Charter recognised human rights, development, and peace and security as three separate but equal and inter-related pillars of the UN. The promise and principles of the Charter, however, were not fully reflected in the architecture of the UN, with the Commission on Human Rights and its successor Human Rights Council established only as subsidiary bodies. Almost 70 years on, and on the occasion of the tenth anniversary of the UN Human Rights Council (the Council), the time has come to modernise this architecture by committing to establishing the Council as a principal organ of the UN by 2021. This would serve to elevate the status of the Council and its ability to positively influence the promotion, protection and realisation of human rights within the UN and worldwide.

“Repositioning of the Council as the critical third pillar of the UN system would also promote its value as a political institution. If progress is to be made on human rights, we need to increase the political recognition and rewards associated with compliance and implementation, and the political costs and consequences associated with lack of implementation or with outright violations.”

Over its first decade, the Human Rights Council, the UN's main political body dedicated to human rights, has played an increasingly important and influential role in promoting and protecting human rights, including by contributing to the protection of rights holders, the prevention of violations, and by promoting accountability for perpetrators and justice for victims. There is ample room for further improvement and development of course, but the growth trajectory of the Council now leads it towards the tipping point of institutional readiness to take its place as a principal organ of the UN system.

Three key benefits: mainstreaming, enhanced political value, and clarifying institutional autonomy

The key benefits of repositioning the Human Rights Council as a principal organ of the UN would be: promoting and mainstreaming human rights as a genuine and equal pillar within the UN system; enhancing the status of the Council in such a way as to enhance its political influence and capacity to fulfil its mandate; and clarifying and entrenching its institutional autonomy.

Mainstream human rights as a genuine and equal pillar of the UN system

The establishment of the Council as a principal organ would contribute substantially to the recognition of human rights as a genuine and equal pillar, together with development, and peace and security, while also assisting to mainstream human rights across the entire UN system. This is consistent with, and would reinforce, such initiatives as Rights Up Front and the Sustainable Development Goals; the former recognising that promoting and protecting human rights is vital to securing and maintaining peace and security, and the latter recognising that respect for human rights is crucial for sustainable development and ensuring that no-one is left behind.

Enhanced political net value and overall influence

As a principal organ of the UN, the Human Rights Council would be better placed to further drive change and close the implementation gap in places where it is most needed.

It would enhance the legitimacy, application and more critically, the impact of its outputs. It would also provide a more powerful platform to rights holders, victims and human rights defenders, ensuring that their vital voices are heard worldwide.

Repositioning of the Council as the critical third pillar of the UN system would also promote its value as a political institution. If progress is to be made on human rights, we need to increase the political recognition and rewards associated with compliance and implementation, and the political costs and consequences associated with lack of implementation or with outright violations.

Clarify and entrench institutional autonomy

In his 2005 report: 'In Larger Freedom: Towards Security, Development and Human Rights for All', former Secretary-General Kofi Annan explained that:

'Establishing the Human Rights Council as a principal body of the United Nations would allow it to stand as a peer alongside both the Security Council and the Economic and Social Council and would require an amendment to the Charter. Establishing the Council as a subsidiary body of the General Assembly would not require an amendment to the Charter.'

Ultimately, the decision was taken for the Human Rights Council to be established as a subsidiary body of the UN General Assembly, reporting annually back to the GA. While politically expedient, this has created certain roadblocks for the UN's rights protection role, such as when the GA sought to delay implementation of a critical and

duly adopted resolution of the Council on the prevention of intimidation and reprisals, Resolution 24/24. In my view, the Council must have the ability and autonomy to adopt, promote implementation and follow up on all resolutions and decisions on human rights. Entrenching the Human Rights Council as a principal organ of the UN system would help clarify this and realise former Secretary-General Kofi Annan's original vision for the creation of a Human Rights Council offering 'architectural and conceptual clarity, since the United Nations already has Councils that deal with two other main purposes – security and development.'

Towards a principal organ of the UN

Those of us who recognise human rights as a critical element of not only domestic but also foreign policy must join

efforts to ensure the UN architecture reflects this priority. The next logical step in the institutional evolution of the Council is to properly recognise and integrate it as a principal organ of the UN. This would also enhance the scope for the Council to offer an accessible, effective and protective space for human rights defenders and civil society.

Ten years of achievement by the Human Rights Council supports our collective aspirations for its evolution, growth, standing and impact throughout the UN system. The optimal path to achieve this is to reposition it as a principal organ of the UN. ■

JOACHIM RÜCKER is Germany's Ambassador to the UN in Geneva and was President of the UN Human Rights Council in 2015. The views expressed are his own.



A meaningful Human Rights Council in 2030: Catalyse national rights protection

Camila Asano *Conectas Human Rights (Brazil)*, **Gabriela Kletzel** *Center for Legal and Social Studies (CELS, Argentina)*, **Daniela Quintanilla** *Corporación Humanas (Chile)* & **Paulo de Tarso Lugon Arantes** *CELS, Conectas and Corporación Humanas*

A meaningful Council should bolster its capacity for catalysing national efforts; keep the human rights flame alight by strengthening its presence in relevant global debates; increase social participation; and call for more responsible and accountable Member States, say Camila Asano, Gabriela Kletzel, Daniela Quintanilla and Paulo de Tarso Lugon Arantes

Rather than celebrating the tenth anniversary of the UN Human Rights Council (the Council), we should take a moment to reflect upon what must be improved. This applies not only to States but also to civil society. Social actors may not make decisions, but they do influence decision-making processes and have long-standing experience in working to promote and protect human rights on the ground.

“A strong Council should take greater stock of the ever more plural and diversified nature of social actors... greater attention should be paid to those facing challenges of all sorts to be present in Geneva and to work with the Council from the ground. Remote participation and other innovative solutions are tasks for the present that will help build a more participatory Council in the future.”

In our case, we are three human rights organisations based in Latin America that combine strong national work with international advocacy and litigation both in regional and

international human rights systems. Our work regarding the Council in the past ten years has sought to contribute to reducing the distance between on-the-ground violations and the debates and decisions made in Geneva. In 2011, we established a joint representation in Geneva to have a collaborative platform of action before the Council and other relevant UN bodies and mechanisms.

We believe that a meaningful Council should bolster its capacity for catalysing national efforts; keep the human rights flame alight by strengthening its presence in relevant global debates; increase social participation; and call for more responsible and accountable Member States.

Addressing situations on the ground

The Council's effectiveness in 2030 will be measured by the extent to which it addresses situations on the ground.

Hence, we hope the Council will reinforce its role as a catalyst to national efforts that advance human rights.

For instance, in November 2015, the UN Special Rapporteurs on toxic waste, environment, and water and sanitation took decisive and timely action on the disaster following the burst of an iron-ore waste dam owned by the companies Vale/BHP/Samarco in Brazil. This caused pollution along 800 kilometres of the Doce River, 19 deaths, and a long-term impact on the lives of one million other people. Local communities and civil society groups demanded that those responsible be held accountable and that victims receive proper attention and reparations. The Rapporteurs'

involvement contributed to shifting the domestic dynamics and narratives in place, which had been marked by the authorities' inertia and by the notion that this was an unfortunate accident—instead of a clear case of corporate irresponsibility and insufficient State oversight that caused significant social-environmental damage.

Much more is still needed, but this is a good example of how actions taken within the Council framework can serve to fuel local efforts to denounce abuses, and we believe in the importance of intensifying the Council's mechanisms in that direction.

Putting human rights in the centre of global discussions

At the same time, a meaningful Council should strengthen its role as a key player in formulating international policies and discussing new perspectives. It should keep the human rights flame burning by stressing the importance of human rights law in issues of global interest, among other actions.

An important initiative of this type was the unprecedented discussion on drug policies and human rights, which prompted a comprehensive report by the High Commissioner for Human Rights and a panel at the 30th Council session, broadening the focus of the discussions held by the UN Commission on Narcotic Drugs and other UN bodies in preparation for the Special Session of the UN General Assembly 2016. For the UN to speak as one, any global debate disregarding the Council will remain incomplete, and thus out of touch. Moreover, the Council must keep the issue of drug policy on its agenda in the coming years since its human rights impacts are innumerable.

Increasing broad social participation

A strong Council should also take greater stock of the ever more plural and diversified nature of social actors. Thus, greater attention should be paid to those facing challenges of all sorts to be present in Geneva and to work with the Council from the ground. Remote participation and other innovative solutions are tasks for the present that will help build a more participatory Council in the future.

Often the distance between the Council and local societies is exacerbated by the fact that there is little dissemination of what States are discussing in Geneva. Even worse, social actors on the ground frequently struggle to find out what positions their own representatives are taking in forums like the Council. Lack of State accountability on foreign policy should also be targeted since Member and Observer States have a fundamental responsibility in designing an effective and responsive Council by 2030.

Our reflection on what needs to be improved stems from our desire to see more bridges built between the Council and local realities and to ensure that more diverse voices are heard in Geneva. That way, this body committed to ending abuses and advancing the promotion and protection of human rights may be truly effective. ■

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The Human Rights Council still to come

Chris Sidoti *International human rights expert and ISHR Board member*

How can the Human Rights Council be better in its second decade than in its first? Where should it be at the end of its second decade? International human rights expert Chris Sidoti sets out five key proposals to make the Council more principled and effective in its work.

Can it really be ten years?

Ten years since the Human Rights Council's first exciting, exhausting, excruciating year of institution building?

Ten years since the Council's first President, the inspirational Ambassador Luis Alfonso de Alba, led days and nights of complex negotiations and barely acceptable compromises?

It feels like both a long distant memory and a still present nightmare. Looking back on the Council over the decade since then, I see it as having been significantly better than I had feared and expected but far, far less than it could and should be.

The Human Rights Council (the Council) was established to replace what by 2005 had become known as the 'Discredited Commission on Human Rights'. There was never any proper assessment of the Commission and its work – both achievements and failures – before the tide of political opinion, led by the United States and certain leading international human rights non-governmental organisations, turned irrevocably against it. It was condemned for not being objective, impartial, apolitical, even handed and balanced in its work. As if any United Nations body constituted by States could be objective, impartial, apolitical,

even handed and balanced. The rhetoric surrounding the establishment of the Council was that the Council would be, but of course it is not. Certainly it has not been as bad as the old Commission was in its worst years, but nor has it been as good as the old Commission was in its best years.

So how can the Council be better in its second decade than in its first? Where should it be at the end of its second decade? I have five suggestions, of equal significance for the Council's future.

A focus on implementation

First, the Council's priority for the second decade has to be implementation. This was said ten years ago too. In fact some said that the era of human rights standard setting was over and the era of standards implementation was beginning. Neither has proved to be correct. Some new standards were recognised as needed and more are still required. And implementation is still sadly deficient. While not closing the door to further standard setting, the priority now has to be implementation. That includes implementation of the Council's own resolutions. A body that resolves endlessly to no effect quickly loses credibility and respect and the Council is well advanced along that path.

“The rhetoric surrounding the establishment of the Council was that the Council would be objective, impartial, apolitical, even handed and balanced, but of course it is not. Certainly it has not been as bad as the old Commission was in its worst years, but nor has it been as good as the old Commission was in its best years.”

At each of its sessions the Council should have a report from the High Commissioner for Human Rights on the implementation status of its resolutions, identifying, in respect of each resolution, the obstacles to implementation. A status report updated three times a year would at least focus attention better on implementation. Then the Council should discuss what action to take to deal with obstacles to implementation.

Getting serious about cooperation with the Council

Second, the General Assembly and the Council need to take more seriously the obligation on UN Member States to cooperate fully with the Council and the broader international human rights system. Cooperation has two dimensions for each State: respect for and compliance with international human rights standards at the domestic level, and positive engagement with the human rights system at the international level. These should be the guiding principles in electing States to membership of the Council and then in suspending States from membership of the Council.

If necessary, General Assembly Resolution 60/251 that established the Council should be supplemented by new eligibility criteria for candidates for Council election and for the application of the current suspension provisions. It is ridiculous, when we look at the behaviour of States that have been members of the Council over the past decade,

that the Council has exercised the suspension power on only one occasion, in the case of Libya.

Strengthening the appointment of Special Procedures

Third, the procedure for the appointment of Special Procedures mandate holders should be changed to involve non-political human rights experts rather than political diplomats. In the days of the Commission, mandate holders were appointed by the Commission's chairperson personally. There was usually some consultation with States, non-governmental organisations, academics and other experts but an appointment was basically the individual decision of the chairperson in a completely opaque process. The process adopted by the Council, where the appointments are made with the endorsement of the Council itself following recommendations of a consultative group of five ambassadors, is certainly far more formal and regularised, and less opaque. However, I have no doubt that, although there are some excellent mandate holders today, the average quality of mandate holders is lower under the present Council system than it was under the old Commission system. On average, mandate holders today are less expert and more innocuous than they were ten years ago.

The current system should be changed rather than scrapped. Two changes would greatly enhance the quality of mandate holders, while maintaining or even increasing the level of transparency in the process. First, replace the five ambassadors on the consultative group with independent human rights experts who have been nominated through a wide process, including past and present mandate holders and members of treaty monitoring bodies, and appointed by the Council President personally. Second, have the Council President personally make the appointments of mandate holders from short lists of highly suitable candidates produced by the consultative group of experts. In making appointments the President should report publicly on the process in a similar manner to the present reports of the consultative group and the President.

Expert involvement in the UPR

Fourth, the Universal Periodic Review (UPR) should involve experts. This was discussed during the Council's institution building year and the way was left open for individual States to involve experts in their delegations in the UPR process. In practice this has not occurred. As a result, the UPR is more politicised than it should be and less effective than it could be.

The active participation of Council Member States and other States in the UPR process has been one of the reasons for its success. That should not change. However, there should also be a role for independent experts to bring both greater knowledge and sharper focus to the process than diplomats bring. The way to do this is to change the membership of the 'troikas' that support each review, replacing the diplomats with independent experts taken from a panel of experts appointed for this purpose. The role of the 'troika' should also be expanded to give it

responsibility for identifying the most critical human rights issues in respect of each State. The 'troika' should not limit the ability of States to raise whatever issues they wish to raise but it should assist in prioritising issues and bring greater focus to the review.

Ensuring the participation of rights holders and defenders

Fifth, the Council must ensure and protect the full participation of human rights defenders in its processes. Indeed, it should extend participation. In the institution building year the Council continued the procedures of the old Commission for the participation of non-governmental organisations. However, the practice has fallen far short of the agreed procedures. Many States have sought to silence the voices of defenders and some have even threatened and intimidated defenders at the Council sessions. Some Council presidents have resisted these pressures with determination, but others have been as weak as water.

The Council's agreed procedures for NGO participation should be respected and enforced. In its first year the Council spent significant time and effort in developing a

code of conduct for Special Procedures but ignored the far greater need for a code of conduct for States. The Council should develop and enforce a code of conduct for States, both members and observers, to ensure that its own procedures are respected. It should have an independent committee to consider allegations of violations of the code of conduct for States that reports to the President and the Council on the results of its deliberations.

The Council to come

In many ways the Human Rights Council has come a long way in ten years. Nonetheless, it has a far longer way still to go before it can claim to be effective and principled in its work. This is the Council that is still to come. ■

CHRIS SIDOTI is an international human rights expert and was appointed by the UN Secretary-General to the Board of Trustees of the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights in 2011. He served as Director of ISHR from 2003 to 2007, and is currently a board member. He has also served as Australian Human Rights Commissioner (1995-2000) and Australian Law Reform Commissioner (1992-1995), among other distinguished posts.



The Human Rights Council in 2030: Relevant or moribund?

R. Iniyang Ilango UN Advocacy Programme Manager at the Asian Forum for Human Rights and Development (FORUM-ASIA)

Despite some successes, the Human Rights Council's responses to situations of human rights violations still lack substance and a rigorous approach to measuring progress. In its next decade, it should become more responsive to people's needs and inclusive of victims' voices, writes R. Iniyang Ilango.

The most basic and fundamental function of the UN Human Rights Council (the Council) is to address and prevent human rights violations. Despite several debates in the last ten years, a clear methodology to systematically and effectively address serious human rights violations is still absent.

“In a political body such as the Council it is no coincidence that 'politicisation' is a common accusation deployed by States of all shades against one another. In such a situation it may be beneficial to have independent trigger mechanisms that prompt members of the Council to discuss situations.

The Council is a political animal; Member States primarily function based on their national self-interest and political alliances. The acceptance and rejection of calls for

attention on human rights situations often depend on the vagaries of international politics. Attempts have also been made to soften the Council's scrutiny of situations by suggesting that human rights situations should only be addressed thematically or as matters of capacity building and assistance. However, the impracticality of this can be seen from the fact that many States that support this themselves do not always follow this argument in their voting behaviour.

Despite this, in the last ten years the Council has been able to address several serious human situations with some level of success. For example, in Asia: the Council acted as a key reference point for opposing a repressive regime and exposing wartime atrocities after the Civil War in Sri Lanka; it has maintained sustained international pressure in the context of key democratic changes in Burma/Myanmar; and the Council mandated investigation in North Korea was instrumental in exposing the enormous human rights catastrophe in the country.

While the Council must be recognised for its successes it should also not be forgotten that these successes are far from the ideal. In Sri Lanka, the Council failed to stop gross human rights violations as they happened. Instead in 2009, when the war

ended, it passed a deeply flawed resolution that overlooked violations and marked one of the lowest points in the Council's history. It took many more years for the body to make amends and gain some eventual success. The process is still ongoing while justice and accountability on the ground are still lacking. Can the Council change all this by 2030?

In a political body such as the Council it is no coincidence that 'politicisation' is a common accusation deployed by States of all shades against one another. In such a situation it may be beneficial to have independent trigger mechanisms that prompt members of the Council to discuss situations. This could be in the form of a recommendation by the High Commissioner for Human Rights, a group of Special Procedures mandate holders, relevant regional mechanisms, or an A-Status national human rights institution in association with recognised NGOs. These triggers would not erode existing prerogatives of States to flag human rights situations but add to them.¹

The Council must also ensure that its responses are substantive and lasting. A key gap in the current approach is a tendency to stop focusing on a human rights situation very quickly, particularly when there has been some form of political transition. Political change does not necessarily mean better protection of human rights. The Council should ensure that it is able to measure progress in an objective manner using benchmarks, and base its deci-

sions to end scrutiny of a situation on actual results on the ground. It has taken a good step in this direction in its latest resolution on Burma/Myanmar, where it called for benchmarks to measure progress. This is a model that could be further built on.

The Council's increasingly overloaded schedule needs relief if enough time is to be found to effectively discuss human rights situations. Further, the Security Council should be reformed and democratised, so that a few States do not monopolise the power structures of the UN, causing imbalances that can and do affect debates in the Human Rights Council. The Human Rights Council cannot be an ivory tower. It needs to become more relevant for people on the ground and be able to directly listen to victims and be inclusive of diverse voices. This change requires not just the efforts of States, but also that of UN officials and civil society.

Addressing human rights situations is the *raison d'être* of the Council and there is a need to move towards increased effectiveness. Ten years is a short time, some argue. But consider this: almost 100 years ago failure to be effective brought another institution, the League of Nations, to its death bed in only about 15 years. As we look ahead to 2030, the UN Human Rights Council, which is located in the same premises as the erstwhile League, has the benefit of learning from this grim reminder. ■

¹ For more see proposals in a document produced by a group of civil society organisations entitled 'Strengthening the Effectiveness of the Human Rights Council at 10', available at www.ishr.ch/HRCat10.



Strengthening the Council's mandate and impact: A vision for the (near?) future

John Pace *Former Secretary of the UN Commission on Human Rights and Coordinator of the Vienna Conference on Human Rights*

The Human Rights Council should be a principal organ of the UN, civil society should be able to put items and initiatives on its agenda, and norms and standards should be developed by experts if the Council is to be the truly responsive, influential and effective body the world so desperately needs, says John Pace.

Great expectations

The establishment of the Human Rights Council (the Council) in 2006 was generally viewed with expectations of a new approach to human rights by the United Nations. It marked a milestone in the evolution of a process launched 70 years earlier, in 1946. The Council carried on with most of the work of its predecessor and introduced the Universal Periodic Review (UPR) – a more sophisticated version of an earlier version, the System of Periodic Reports (1956–

1981) – in addition to setting out certain criteria for the membership of its 47 States. Importantly, the Council was a General Assembly body, as distinct from the Commission on Human Rights, which was a functional commission of the Economic and Social Council. Since 1994, the Security Council acknowledged violations of human rights as a possible threat to international peace and security. In 1998, the Rome Statute included human rights crimes, (crimes against humanity) in the jurisdiction of the International Criminal Court (ICC).

The Commission on Human Rights was set up to draft the International Bill of Human Rights, and as the international political situation evolved, so did its work, through the Cold War, the emergence of the non-aligned and de-colonised countries, as well as the various economic (and more recently environmental) and social developments and upheavals. By 2006, the Commission had developed a rich arsenal of tools most of which were assumed by its successor, the Human Rights Council.

Much hope and expectation was expressed at the Council's inaugural meeting on 19 June 2006. The then President of the General Assembly, Jan Eliasson, and UN Secretary-General Kofi Annan both emphasised the arduous negotiations leading to the adoption of GA Resolution 60/251 which established the Council. Significantly, the Secretary-General underlined the fact that 'For the moment it is a subsidiary organ of the Assembly. But within five years the Assembly will review its status. I venture to hope – and I suggest it should be your ambition – that within five years your work will have so clearly established the Human Rights Council's authority that there would be a general will to amend the Charter, and to elevate it to the status of a Principal Organ of the United Nations'. Indeed that was the recommendation of the High Level Panel on Threats, Challenges and Change.

“*Significantly, the Secretary-General underlined the fact that 'For the moment it is a subsidiary organ of the Assembly. But within five years the Assembly will review its status. I venture to hope – and I suggest it should be your ambition – that within five years your work will have so clearly established the Human Rights Council's authority that there would be a general will to amend the Charter, and to elevate it to the status of a Principal Organ of the United Nations'.*

Unfulfilled promise ... and a vision for the future

The exhortation of the Secretary-General to upgrade the Council to Principal Organ status did not materialise. The review that took place in 2011 not only maintained the status of the Human Rights Council as a subsidiary body of the General Assembly – as distinct from a Principal Organ – but it put off further review to 'an appropriate moment and at a time no sooner than ten years and no later than fifteen years.'

The trend that emerged since has been one of a 'stockade mentality' by a number of States who view human rights as a threat to their sovereignty or an offence to their dignity. This in turn has produced a trend to push to minimise – if not exclude – the role of civil society in the Council's work.

This push risks depriving the Council of that oxygen that has driven human rights in the United Nations since its first days. This phenomenon is further reflected by the Council's treatment of the Advisory Committee, described as the Council's 'think-tank' but subject to strict control by the Council, thereby limiting its potential benefits.

History shows that this is but a passing phase – but there is a need to help history along. The current situation reflects a Council very much immersed in its own agenda and working methods, a civil society that is growing but increasingly outside any meaningful involvement in the Council's agenda, and a conventional system sorely in need of streamlining and alien to the Council's work.

So what might an accessible, responsive and effective Council look like in 2030? Here's my humble vision.

Global civil society should be able to put items and issues on the Council's agenda

There is a clear need to harness civil society energy to the benefit of the work of the Council. This could be accomplished by setting up a Chamber for Civil Society within the Council, consisting of organisations representing various interest groups, coming from the respective regions. In much the same way as occurred in preparation for the Vienna Conference in 1993, regional civil society forums could be held to thrash out priorities and to designate representatives to the Chamber. The Civil Society Chamber could formally put issues and items on the plenary Council's agenda and follow up on those issues, reporting back to the regional forums. This would much better connect the Council to the ground.

Human rights norms and standards should be developed by experts

The Council will have a second Chamber on Norms and Standards, made up of the Human Rights Committee and the Committee on Economic, Social and Cultural, whose task would be to define issues and priorities relating to standards. These issues and priorities would be identified in consultation with a Standards Advisory Group, consisting of a plenary of all other treaty bodies. This arrangement would also assist in streamlining the work of the treaty bodies, without necessitating any amendment to the existing conventions. Like the Civil Society

Chamber, the Chamber on Norms and Standards should be mandated to put issues on the agenda of the Council and ensure follow up with the treaty bodies.

The Council should be a Principal Organ

For this system to function effectively, the Council would need to become a Principal Organ of the UN – a move that remains on the agenda and which must not be lost sight of. Increasing the membership is the best way of ensuring accountability and universality, principles underpinning the UPR, which should carry on under this arrangement. It should also contribute to changing the current defensive culture that has stymied the work of the Council.

On its tenth anniversary, the Council presents a picture of an institution that has almost reached its 'use-by' date in the current configuration. The delivery of the Council on substantive issues has been disappointing in comparison to the expectations at its creation. This would be one way of ensuring a renewed and stronger future for human rights. ■

DR JOHN PACE served for more than three decades in a range of senior human rights positions within the UN, including as Secretary to the Commission on Human Rights (1978-91 and 1993-94), Head of Special Procedures, Technical Cooperation, Research and Right to Development with the Office of the High Commissioner for Human Rights, and Chief of the Human Rights Office of the UN Assistance Mission to Iraq (2004-2006). He was also Coordinator of the landmark World Conference on Human Rights held in Vienna in 1993.



Ten years on: From a short play with intermissions to opera without pause

Eric Tistoune *Chief of the Human Rights Council Branch of the Office of the High Commissioner for Human Rights (OHCHR) and former Secretary of the Human Rights Council.*
This article reflects the author's personal views

In its inaugural decade, the Human Rights Council has been very effective in spotlighting crises at an early stage and has dealt with chronic and urgent human rights violations. However, routine and workload risk turning it into a long opera without any pause, says Eric Tistoune.

The Human Rights Council's experience in the past ten years has indeed been a success; there is no doubt about it. Multiple panels, debates, interactive dialogues, inter-sessional activities, informal conversations and other features have been organised to sharpen the focus on issues demanding the attention of the human rights community. Numerous mandates of Special Rapporteurs, Independent Experts, commissions of inquiry, fact-finding missions, ad hoc investigations or mechanisms were established. It is fair to state that the Council has addressed issues broadly and boldly and has thus served the countless human rights victims across the globe over the past ten years.

The recently concluded session of March 2016 confirms this active engagement. Throughout the four-week session, no fewer than 99 reports were presented and discussed covering a wide range of topics; some 100 dignitaries participated in the annual high-level segment; 30 interactive dialogues were held with leading experts on a vast array of issues; and 250 side events organised by governments and civil society took place in parallel.

“The expansion in the number of Special Procedures should be matched with an expansion in the attention given to their work, and this should include a way to deal efficiently with their findings.”

Beyond this factual assessment, it is important to underline the invaluable role of the Special Procedures – the Council's independent human rights experts – and other Council bodies, which have been expanded significantly with a view to addressing the complexity of human rights violations and crises around the world. Since the Council began operating ten years ago, the number of Special Procedure mandates has grown from 35 to 55.

Civil society continues to play a crucial role in the Council, unparalleled in their involvement in any other UN body. Indeed, at any given session, NGO representatives expose in an honest and direct manner human rights violations as they may unfold anywhere in the world. Some 2000 representatives of 250 organisations attend each Council

session instilling passion and resolve into the work of the Council, sometimes at a very high personal cost.

Reflecting on the achievements and challenges of the Council over the past ten years, it is my firm personal conviction that it has been very effective in spotlighting crises at their early stages before they intensify or spiral out of control; the Council's special session on Burundi held last December is just one example. It has also dealt with chronic and urgent human rights violations, initiating urgent investigations with the aim of establishing facts, holding perpetrators accountable and sending a message of hope to victims.

Compared with the former Commission on Human Rights, the Council has demonstrated its flexibility by addressing vital issues in timely and innovative ways, including urgent special sessions, enhanced interactive dialogues, targeted panels, or other ad-hoc formats.

A different sense of frustration against the international community

From the 1970s to the 1990s, the main criticism raised against the Commission on Human Rights was that it had not been a sufficient alarm bell in cases of gross and massive human rights violations. This intense frustration was evident in the Commission's inaction on the genocides in Cambodia or Rwanda.

Nowadays, the main issues raised by civil society and the world opinion are of a different nature. The Council is indeed credited for alerting the international community about gross and massive human rights violations, but questions are being raised about concrete measures taken to address them in a meaningful and efficient manner.

This means that the previous sense of frustration directed against the Commission solely has now moved slightly away from the Council and is also directed at other UN organs and bodies.

Risk of routine exercise by the UPR and Special Procedures

As far as the Human Rights Council is concerned, the Universal Periodic Review mechanism (UPR) represents the most prominent, innovative and powerful tool to promote change and reflection on sensitive issues for each community, region and country. However, I need to share my personal anxiety about a risk of fatigue as we embark into the 3rd UPR cycle. The UPR should not turn into a

routine exercise and its UPR recommendations should be translated into action.

This collective thinking and action must also focus on the responses to the Special Procedures' recommendations, urgent appeals or communications. The expansion in the number of procedures should be matched with an expansion in the attention given to their work, and this should include a way to deal efficiently with their findings.

Lost in translation?

Indeed, the Council operates like a stage play: there is a message (human rights violations exposed to the public scrutiny); an audience (governments, NGOs, media representatives, civil society at large); and a setting (the beautiful Room XX at the Palais des Nations in Geneva with its stellar ceiling).

But, from a purely 'personal podium' point of view, I believe we have moved away from a short play with adequate intermissions to long operas without any pause.

The Human Rights Council has done its best to operate in a transparent manner using webcasting and social media – which incidentally came into being more or less at the

same time as the Council was established – and including civil society deeply into its work.

However, 11 panels, six weeks of meetings packed into four, with consecutive meetings lasting from 9:00 am to 9:00 pm, and some 30 interactive dialogues, have led to a loss in purpose and focus, and risk undermining the fundamental aim of the Council.

Two issues require priority action. We need to delineate in a much clearer manner what the Council's priorities are, and we need to ensure that we are not desensitised to the many important messages echoed during the Council proceedings.

While much has been achieved by the Human Rights Council over the past decade, we need to continue working collectively, across borders, to ensure it is as efficient and effective as it can be. The world's human rights problems are just too big to be tackled by any one nation alone, or even regionally by a group of nations. The Council has made a difference in people's lives by addressing and exposing human rights in an international setting and by triggering much needed action. If this global stage did not exist, where would the world turn in the face of adversity, misfortune, suffering, and human rights abuses? ■



Setting the global standard on freedom of expression: Successes and challenges in the Council's first decade

Andrew Smith *Legal Officer at ARTICLE 19*

In its first decade, the Human Rights Council has made a valuable contribution in advancing the protection of freedom of expression worldwide, but there lie challenges ahead to continue this positive trajectory, writes Andrew Smith.

The Human Rights Council's anniversary year marks a challenging time for freedom of expression worldwide: impunity for murdered journalists and bloggers, arbitrary arrests of government critics, blocking of social media sites, and the adoption of more laws to further reduce the space for dissent and dialogue.

ARTICLE 19 believes the international legal framework can empower on-the-ground actors with tools to meet these challenges, to change national laws, policies and practices, and to ensure accountability for human rights violations.

In its first decade, the Council has made a significant contribution to advancing this normative framework, and taking steps towards implementation. The work of the

Special Rapporteur on freedom of expression continues to be instrumental: the detailed recommendations of the Rapporteur's biannual thematic reports¹ address persistent and emerging threats to freedom of expression, guiding States on complying with their international obligations. These often lay the groundwork for standard-setting Council resolutions that can be leveraged at the national level to expand the space for free expression.

Of the thematic resolutions, Resolution 12/16 on freedom of expression,² adopted by consensus in 2009, remains the most comprehensive. Three other successes from the Council's first decade stand out:

- **Ending impunity:** the Council has been unequivocal that attacks and murders against journalists must never go unpunished. In Resolution 27/5 on the safety of journalists,³ the Council provides a practical blueprint for action to break this cycle of violence. The Council must additionally call for States to create a safe and enabling environment in law for free expression, and respond to digital threats to journalists' safety.

¹ Available at www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx.

² A/HRC/RES/12/16, available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=100&t=11.

³ A/HRC/RES/27/5, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/5.

In the coming decade, the Council must ensure these resolutions are not the high water mark of the institution's accomplishments, but are instead a benchmark for future progress.

- **Expression online and offline:** the Internet is the front-line in the battle to safeguard civic space. The Council's important pronouncement that 'the same rights people have offline must also be protected online, in particular freedom of expression' (most recently in Resolution 26/13)⁴ has reverberated globally. The Council has recognised that a global and open Internet is a driver of development, that the digital divide must be addressed, and that human rights must underpin Internet governance. Resolution 26/13 commits States to ensure that measures to protect national security online comply with international human rights obligations. Equally crucial Council initiatives on civil society space,⁵ peaceful protest,⁶ and privacy⁷ have recognised that online freedom is essential in addressing human rights concerns.

The Special Rapporteur's reports on digital issues give normative clarity to this debate, but bolder leadership from States is needed to translate this into more concrete commitments in resolutions, and action on the ground, crucial in the current context of proliferating State efforts to clamp down on online freedom.

- **Combating intolerance:** the adoption of Resolution 16/18 by consensus in 2011 bridged polarised views on how to address intolerance based on religion or belief, committing States to an eight-point action plan to tackle its root causes. This series of resolutions have overcome divisive calls to combat 'defamation of religions' to stress that intolerance, discrimination and violence is best countered by opening space for debate.

The Office of the High Commissioner for Human Rights (OHCHR) Rabat Plan of Action⁸ has strengthened this framework and given guidance for implementation. Endorsed by the Special Rapporteur on freedom of religion or belief,⁹ it makes clear the primacy of positive legal and policy measures to encourage pluralism, and addresses misconceptions regarding the circumstances for legitimately restricting free expression. This should guide the 'Istanbul Process', a series of inter-governmental meetings to support implementation, which has enormous potential if made more inclusive, cross regional, and practically focused.

In the coming decade, the Council must ensure these resolutions are not the high water mark of the institution's accomplishments, but are instead a benchmark for future progress.

The Council has three challenges in this mission:

1 Universality

All States, across all regions, must unite to counter attacks on the universality of freedom of expression, which has roots in all parts of the world, as well as strong protections in many national and regional human rights instruments.

A minority of States at the Council persist in claims that, because freedom of expression is not an absolute right, they have absolute discretion to violate the right. This is often advanced through regressive resolutions or hostile amendments designed to weaken, qualify or obfuscate States' human rights obligations.

There must be a more robust and nuanced defence of the right to freedom of expression: why protections with a broad scope are needed, and how any limitations must be justified in accordance with international human rights law. The requirements of Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights have been authoritatively explained in the Human Rights Committee's General Comment No. 34¹⁰ and the Rabat Plan of Action. Attempts at the Council to misrepresent international law should be rebutted.

When the worst violators of freedom of expression are Council Member States, the execution of the institution's mandate is obstructed, and credibility undermined. Robust membership criteria must be enforced, with clear expectations that States respond thoroughly to the Special Rapporteur on freedom of expression's individual communications and requests for country visits.

2 Scrutiny for worst violators

The Council must step up scrutiny on countries with the worst freedom of expression records, acting early to prevent gross and systematic violations; too many are evading accountability.

Crackdowns on freedom of expression should be considered an urgent wakeup call to a deteriorating situation, and country-specific resolutions must be initiated sooner, regardless of a country's economic, political or military power. Attempts by States to derail or frustrate country-specific initiatives, including 'no action' motions to shut down debate, or tactics to divide and distract attention, should be opposed.

When the worst violators of freedom of expression are Council Member States, the execution of the institution's

4 A/HRC/RES/26/13, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/13.

5 A/HRC/RES/27/31, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/31.

6 A/HRC/RES/25/38, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.20.

7 A/HRC/RES/28/16, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/28/16.

8 www.article19.org/data/files/Rabat_Plan_of_Action_OFFICIAL.pdf.

9 www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx.

10 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F20%2F2013%2F34&Lang=en.

mandate is obstructed, and credibility undermined. Robust membership criteria must be enforced, with clear expectations that States respond thoroughly to the Special Rapporteur on freedom of expression's individual communications and requests for country visits.

Increased transparency is needed to ensure accountability, as well as innovative collaborations between States, the OHCHR, national human rights institutions and civil society.

3 Implementation

The gap between international commitments and national realities for freedom of expression is widening.

States are failing to lead by example. New laws, in addition to existing draconian censorship measures, close the space for freedom of expression, and directly contradict international human rights law and States' Council commitments. Interactive dialogues with the Special Rapporteur, and engagement in other relevant Council debates, should include accounts of concrete measures taken towards implementation.

The third cycle of the Universal Periodic Review should enable robust critique of all States' records, and demands specific responses from States on the steps taken to implement recommendations.

The Council must cut through vague rhetoric and deliver measurable change, ensuring that thematic resolutions can function as yardsticks for this task.

Implementation requires bridging information and resource gaps. The standards it produces must be more effectively disseminated and translated for national actors, to empower human rights defenders advocating for change, and to assist parliamentarians, civil servants and judges seeking to deliver it. The Special Rapporteur on freedom of expression is indispensable in assisting States to comply with their obligations, and to ensure accountability. Financial and human resources must match increasing demand for the mandate's interventions and technical expertise.

Conclusion

It is crucial that the Council reflects on its accomplishments in advancing normative protections for freedom of expression, and assesses how to consolidate and build upon these gains. It must, however, also confront challenges to closing the implementation gap, ensuring it does not become a fatal credibility gap.

Innovation and resources are needed to strengthen the institution's agility in translating international standards into national action and accountability. Civil society and human rights defenders are essential to identify where the gap between international commitments and national realities is widest, and what action is needed. The secure and meaningful participation of civil society is essential, and must be strengthened if current challenges are to be overcome. ■

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