

Joint NGO submission on the 2011 Review of the Human Rights Council

African Centre for Democracy and Human Rights Studies, ARC International, Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Legal Resource Centre, Cairo Institute of Human Rights Studies, Canadian HIV/AIDS Legal Network, Centro de Estudios Legales y Sociales (CELS), Commonwealth Human Rights Initiative, Conectas Direitos Humanos, Democracy Coalition project, East and Horn of Africa Human Rights Defenders Project, Human Rights Watch, International Federation for Human Rights (FIDH), International Service for Human Rights (ISHR), Open Society Foundations, West African Human Rights Defenders Network

15 October 2010

Tailoring the Human Rights Council's response to situations of violations of human rights

This paper focuses on the role of cooperation in the Human Rights Council's response to situations of violations of human rights. It was prepared through the collective effort of the undersigned nongovernmental organizations, all of which are committed to improving the response of the Human Rights Council to assist the victims of human rights violations.

General Assembly Resolution 60/251 states that "the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue aimed at strengthening the capacity of Member states to comply with their human rights obligations." This paper proposes ways of effectively using cooperation and dialogue as a tool to respond to situations of violations. The response of the Council should be tailored both to the needs arising in the specific situation and the level of genuine cooperation and engagement by the concerned state.

This paper also focuses on the importance of avoiding selectivity when addressing situations of concern. One way to address this would be for the Human Rights Council to allow a restricted number of UN institutions or related mechanisms to bring situations of violations to its attention for debate.

I. General Framework of Cooperation at the Human Rights Council

There has been much talk about improving cooperative approaches at the Human Rights Council, particularly when it comes to addressing situations of violations of human rights around the world. Proponents of the use of more cooperative approaches argue that many countries would benefit from technical assistance to address their human rights problems and criticize the lack of mechanisms to respond to the technical assistance needs of states at the Human Rights Council. They often criticize the use of so-called naming and shaming tools because those approaches are

said to have been unsuccessful in provoking change and have isolated rather than engaged those countries that are facing human rights challenges.

As Brazil recognized in its non-paper on cooperation, cooperation needs the consent of the concerned state in order to work. Furthermore, cooperative approaches can only be used where there is a genuine willingness and commitment by the concerned state to acknowledge and address the violations taking place on its territory or in territory under its effective control. Yet, when egregious violations of human rights are taking place, the concerned state frequently dismisses the allegations or makes no genuine efforts to address violations. In these cases, violations often occur as a deliberate policy of the state, rather than because the state fails to act or lacks the capacity to protect human rights.

It is clear that all stakeholders favour an approach which reinforces the full range of approaches to cooperation, including when addressing situations of violations. However, most proponents of cooperation concede that in situations where violations reflect intentional repressive state policies, technical cooperation cannot solve the problem. So how can the Human Rights Council identify the situations where cooperative strategies are appropriate and useful? And how can it improve its response to situations in which the concerned state lacks the will necessary to address the violations?

II. In which situations can cooperative approaches be pursued?

In order for cooperative approaches to yield results it is important to draw distinctions between governments that engage in genuine dialogue and cooperate with the Human Rights Council and its mechanisms, and those that don't. If such distinctions are not drawn, there is a risk that some governments will use the idea of cooperation as a way of avoiding scrutiny or accountability rather than to address real human rights challenges.

When it comes to human rights and the work of the UN, there are varying levels of engagement in and commitment to genuine dialogue by States. Mechanisms such as the UPR and the Special Procedures have helped test the openness to international scrutiny and willingness of States to address human rights violations, as have country specific mandates and fact finding missions. The practice of the Human Rights Council has shown for instance, that a number of States have been willing to use the UPR to reflect on their weaknesses and have engaged in a genuine debate on the solutions. At the same time, other states have sought to camouflage any criticism of their rights record during the UPR by orchestrating praise by friendly states or by denying the existence of problems and rejecting outright the proffered recommendations. The same discrepancy can be observed in the way in which governments engage with Special Procedures. While some states are open to Special Procedures visits, monitoring and advice, other states are averse to it, rejecting the findings of Special Procedures or refusing to engage on the substance of their conclusions, particularly on issues where the government is known to face significant challenges.

In order to strengthen the general framework of cooperation in the Council, it is therefore important to take into account the quality of cooperation. It is not enough for governments to participate in the UPR or to accept the existence of a Special Procedure. The government's engagement with these and other human rights mechanisms needs to demonstrate a commitment to addressing human rights problems and their solutions. Cooperation is about allowing unhindered access to information, engaging transparently, recognizing violations and taking steps to address them.

For cooperation to work, the responsibility to cooperate with the mechanisms of the Human Rights Council should fall equally upon all governments. The Human Rights Council should recognize the efforts of those that cooperate and engage genuinely, distinguishing them from those that clearly fail to do so. It should develop a system that treats those states that engage in good faith differently from those that prevent scrutiny and resist genuine dialogue.

In order for the Human Rights Council to pursue a cooperative approach in a given situation, a concerned state should meet three basic requirements. It should:

1. acknowledge the violations that are the source of the Human Rights Council's concerns;
2. allow unhindered access to information including in-situ by independent actors such as the UN High Commissioner for Human Rights, UN Rapporteurs, media and human rights defenders; and
3. demonstrate a verifiable commitment to remedy these violations through concrete action, including with the assistance of the Human Rights Council.

These three conditions would allow the Human Rights Council to draw an objective distinction between governments committed to engaging with the UN human rights system in a bona fide way and those that are not. These conditions can be equally met by all states. They only require the political will of the state and are not dependent on a state's capacity to address human rights violations through financial or other means. Being able to assess a government's level of engagement can help the Human Rights Council tailor its response in order to ensure that cooperative governments are provided with the assistance they need to secure human rights improvements on the ground.

The tools that the Council uses to address situations of violations serve not only to respond to identified needs but to provide incentives for cooperation. The next section identifies ways of adapting the tools of the Human Rights Council to match the level of cooperation from the concerned State.

III. Tools to address situations of violations and incentives for cooperation

The Human Rights Council has a number of tools at its disposal to respond to situations of human rights violations and implement the mandate provided by GA Resolution 60/251. These tools can be used in different ways in order to respond to varying degrees of cooperation by the concerned state. The chart below shows that a tool such as fact-finding could be implemented in different ways

depending on the approach of the concerned state. It looks at ways of “rewarding” cooperation without changing the nature of the Council’s engagement. As this chart illustrates, when a state is cooperative, it has the advantage of being able to help define and participate in the Council’s actions.

Tool & objective	Examples of response when concerned state engages in a non – cooperative approach	Examples of response when concerned state engages in a cooperative approach
<p>Fact Finding</p> <p>Specific action carried out to obtain and clarify the facts of a situation when they are disputed, unknown or require international investigation.</p>	<p>An international independent commission, fact finding mission or group of experts is appointed and dispatched to investigate the facts and report back to the Human Rights Council.</p>	<p>The concerned state is involved in the fact-finding process. This involvement could take different forms such as a hybrid international and national fact finding mission or inviting the concerned state to provide an annex as part of the fact finding report.</p>
<p>Monitoring</p> <p>Unlike fact finding, monitoring is the observation of a situation sustained over time. This is particularly useful in prolonged or chronic situations of violations of human rights.</p>	<p>Special Procedure mandate on a country or specific situation, visits and reports.</p>	<p>In addition to reports by relevant Special Procedures, the concerned state participates in discussions and presents its own report on the situation</p>
<p>Human Rights Council debate of the situation</p>	<p>Special Session</p> <p>Urgent Debate</p>	<p>Special Session is conducted following consultation with the concerned state</p> <p>Urgent debate is conducted following consultation with the concerned state</p> <p>Briefing in the HRC organized by the UN with the involvement of the concerned state and the participation of relevant actors in the field of human rights.</p>

<p>Decisions and outcomes of the Human Rights Council</p>	<p>Resolutions</p>	<p>Resolutions or presidential statements – expressing the views of the HRC on areas of concern</p> <p>Declaration of Commitment by the State to take priority action to remedy the situation</p> <p>Record of the debate</p>
<p>Technical Assistance</p> <p>Technical cooperation is a concrete tool used to assist governments to fulfill their human rights obligations by helping them build their capacity in specific and specialized areas.</p>	<p>Technical assistance can only be effective with the cooperation of the state. By its nature, technical assistance requires the concerned state to agree to an assistance plan and to support its implementation. Recommendations from Special Procedures and from the UPR can help guide areas in which technical assistance can be provided. The Human Rights Council could also decide to dispatch technical assistance missions aimed at independently assessing the technical assistance needs in a country. The concerned state’s views, coupled with Special Procedures and UPR recommendations and any recommendations emanating from an independent assessment should together provide the basis for an agreement on the technical assistance to be implemented.</p>	

IV. Process through which the Human Rights Council chooses its response to a given situation

Ensuring non-selectivity in Council discussions on areas of human rights concern

Currently there are different ways in which situations are brought forward for discussion by the Human Rights Council, all of them state-driven. States have used special sessions, urgent debates, informal briefing and/or tabled decisions or resolutions in order to address a situation.

In order to avoid selectivity and double standards, the Human Rights Council could also consider allowing a restricted number of independent institutions or mechanisms to bring issues to the Human Rights Council’s attention for debate. This would in no way pre-empt or determine the Human Rights Council’s response to the situation but would ensure a less selective approach to situations. The following actors could be requested to alert the Human Rights Council on situations that need to be considered:

- a. The UN Secretary-General
- b. The UN High Commissioner for Human Rights
- c. The President of the Human Rights Council
- d. A group of at least five Special Procedures

The request by the High Commissioner, the UN Secretary-General, the Human Rights Council President or five Special Procedures would be formally tabled and would explain in writing why it is important for the Human Rights Council to consider the issue. The Council would convene a session to discuss the situation of concern at the earliest possible time. The outcome of that discussion would be entirely dependent on member states.

Once it has been suggested that an issue be taken up, the concerned state should have an opportunity to respond. As noted, a state can set the Council's engagement on a cooperative track by:

1. acknowledging the human rights violations raised by the Human Rights Council;
2. allowing unhindered access to information on the situation, including in-situ, by relevant stakeholders, including UN mechanisms, human rights defenders and the media; and
3. demonstrating a verifiable commitment to remedy these violations through relevant concrete action and is willing to engage in a genuine dialogue with the Human Rights Council on the problem and solutions.

The concerned state's response to the tabling of an issue at the Council will then be reflected in the Council's discussion. As noted, the Human Rights Council will need to reflect on which tools are appropriate to address the situation at hand and tailor its response to the level of cooperation of the concerned State. The Human Rights Council also has the possibility of identifying innovative ways of addressing the situation.

It is essential for the Human Rights Council to consider victims needs first when addressing a situation. The aim should be to ensure an end to the violations and remedies for victims. Fact finding missions, commissions of inquiry and special procedures missions can be useful when trying to clarify the facts and document the violations so that victims' needs are adequately addressed.

V. Conclusion

The aim of this paper is to contribute in a constructive manner to the 2011 review of the Human Rights Council. We hope the ideas in this paper will help shape the debate on improving cooperative approaches and more effective engagement in the Human Rights Council. As stated, we believe that the ultimate goal of this work should be to improve the Council's ability to address the needs of victims of human rights violations. We encourage governments to adopt the recommendations contained in this paper in order to create a more impartial, less selective and more transparent process to address situations and strengthen cooperation and genuine dialogue in the Human Rights Council.