

Minimum outcomes for a successful review of the Human Rights Council

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On 7 February 2011, at the first session of the second open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (the Council), the President of the Council presented a compilation of proposals that emerged from the informal meetings held with facilitators between November 2010 and January 2011. These proposals form the basis for the President's text, as a basis for negotiations towards the final outcome which will form a supplement to the 'institution-building package'. That final text is scheduled to be presented to the Council during its March 2011 session.

As NGOs who have engaged actively with the Council during the past five years, and who have also participated throughout the process of review of the Council, we believe that at a minimum the success of the review requires an outcome that improves the Council's responsiveness to the realities of human rights situations around the world, and strengthens and safeguards the independence of the Council's mechanisms. In this spirit, this document contains a set of fifteen benchmarks that should be met in the outcome of the review.

Emergency and chronic human rights situations

- 1. The agenda and programme of work of the Council must make provision for **responding to serious human rights situations** to enable the Council to fulfil its mandate to address situations of human rights violations.*

The Council must demonstrate that it does not operate in a vacuum but is responsive to the development of serious emergency and chronic human rights situations in countries across the globe. To this end, the agenda and programme of work should be flexible enough to ensure that urgent matters can be taken up promptly, whether within the Council's regular session or during the inter-sessional periods. We are concerned that an annual programme of work consisting of two regular sessions per year would create a protection gap during which the Council would not be able to respond to emerging situations of serious human rights violations, unless its capacity to convene urgent debates on situations is improved. We fully endorse the need for the Council to remain seized of developing and emergency situations. The review should therefore further develop appropriate tools, by means of which the Council can, in a timely manner, be informed of and debate on situations that arise inter-sessionally, regardless of whether it meets for two or three regular sessions a year.

- 2. Methods to address urgent or chronic human rights situations should make full use of the **experiences and information provided by independent voices**,*

including OHCHR, special procedures and human rights defenders working on the ground.

In order to address urgent or chronic human rights situations effectively, there is a need for the Council either to enhance the effectiveness of existing tools, such as informal briefings, panels, urgent debates or if these are not felt to be appropriate, then to develop new modalities to convene debates within the Council, such as the mechanism discussed by the Brazilian Ambassador. In order to avoid selectivity and double standards, the Council could also consider allowing independent institutions or mechanisms, such as the UN Secretary General, the High Commissioner or a group of special procedures, to bring issues to its attention for debate. This would not pre-empt or determine the Council's response to the situation, but would ensure a less selective approach to situations. It would also in no way undermine the intergovernmental nature of the Council, as States would take the final decision.

In all cases it is essential that NGOs and NHRIs, who after all are in a position to provide the Council with the most detailed and accurate information about a situation on the ground, are able to participate in those sessions and provide their information to the Council to enable an informed decision to be made.

Reprisals

*3. Individuals and groups who cooperate with the United Nations, its representatives and mechanisms in the field of human rights, **should not be subject to acts of intimidation or reprisal.***

We welcome the rejection of acts of intimidation and reprisal against those who cooperate with the UN human rights system. Those who cooperate with the Council or its mechanisms provide it with the essential information to ground its work in experience and reality. The Council has a responsibility to ensure that those groups and individuals do not suffer physical violence, verbal abuse, intimidation or other methods of preventing or deterring them or others from engaging with the Council or its mechanisms in the future. However, it is crucial that States are not only expected to follow up on such allegations, but also that the Council remains seized of the issue and develops tools for regularly following up on cases brought to its attention. This could be done either through the Secretary-General's report on reprisals or through other means. Item 5 could be used as a space for cases to be brought to the attention of the Council, and for deciding on follow-up and action when required.

The Council must assure members of civil society that their contributions are valued and protected, which at a minimum requires treating reprisals as matters of urgency, requiring vigorous investigation and follow-up.

Special procedures

*4. The **independence and expertise of the special procedures must be preserved and strengthened.***

Attempts to undermine the independence of the special procedures system have become a feature of the regular Council sessions and have also been evident during the review process. It is imperative that these essential elements of the special procedures system are

preserved and strengthened where possible. States must recognise the inherent limitations of an intergovernmental body such as the Council, and therefore ensure the expert nature of the system of special procedures.

Several States have called for the establishment of a legal committee that would hold mandate holders accountable to the terms of their mandate and to the Code of Conduct for special procedures. Rather than developing new mechanisms, however, it is incumbent on States to first make use of existing mechanisms, such as the Internal Advisory Mechanism established by the Coordination Committee of special procedures, to address concerns about the conduct of special procedure mandate holders.

5. The accountability of special procedure mandate holders must be balanced by similar accountability of States to their own obligations to cooperate.

Calls for special procedures to be held more accountable must be balanced against the abysmal record of States in complying with their obligation to cooperate with the special procedures system. The Council needs to address cases of persistent non-compliance by States who fail to respond promptly and effectively to communications and requests for country visits, when only around 30% of communications sent to States receive a response.

As a starting-point, each State who becomes a member of the Council could take an 'Oath of Office' inspired by article 5 of the Code of Conduct for special procedures, which requires that special procedures make a 'solemn declaration' in writing prior to assuming office. Members of the Council should be willing to hold themselves to the same high standard they expect of the Council's mechanisms, by cooperating with the tools of the Council and committing themselves to giving first priority to achieving the highest standards of human rights. In cases of persistent non-cooperation, merely 'encouraging a more cooperative response' is insufficient and the Council needs to have a stronger response at its disposal.

6. The transparency of the selection process for special procedure mandate holders must be guaranteed.

It is important for the sake of ensuring the quality and independence of appointed mandate holders that the transparency of the selection process is guaranteed. All stakeholders should be able to assess the appointments made against the principle of independence and expertise of the special procedures and against the specific criteria developed for each mandate holder. This will also strengthen the confidence of all stakeholders in the rigour of the appointment process.

If the current proposal to abolish the public list and instead advertise vacancies should move forwards, it is essential that a rolling list of candidatures, updated weekly, including the envisaged cover letters, should be easily accessible through OHCHR's website. It is also important that the advertised vacancies should clearly set out the requirements that the mandate holder should fulfil and that the 'public and substantiated' recommendations made by the Consultative Group to the President should clearly set out how the recommended candidates best satisfy those requirements.

It should also be ensured that if interviews are used that they do not obscure the transparency of the process. At the very least those interviews should focus on the background, experience and qualifications of the candidates, rather than on their wider views on particular issues. Alternatively, information could be requested from the candidates in writing.

The requirement that the President shall justify his or her choices, including why he or she did not follow the order of preference of the Consultative Group where applicable, is essential as a means to ensure that the entire process remains transparent.

Universal periodic review

*7. The universal periodic review (UPR) must include **independent expert assistance** in the summary, analysis and evaluation of the information made available for the review, in the identification of key issues for the review and in the preparation of conclusions and recommendations.*

There is no mention of independent expert assistance in the current proposal. The lack of such expertise is a drawback to the effectiveness of the UPR and greatly compromises the quality of the review. In the past, States have made recommendations inconsistent with international human rights law and the State under review has similarly presented justifications incompatible with its own international human rights obligations as a basis for rejecting recommendations. Independent legal expertise could be provided in the form of a team of experts who could efficiently examine recommendations made.

*8. States must be required to provide the Council with a **clear response in writing on all recommendations made and to develop implementation plans on the basis of the outcome document of the review.***

It is of serious concern that many States strongly oppose the proposed requirement to provide clear responses in advance and in writing on all recommendations made during the UPR Working Group. This is a basic element of the UPR process.

It is also disconcerting that States cannot agree to submit implementation plans, or mid-term reports on progress towards the implementation of the outcome of the UPR. These are necessary components of the State's implementation of the obligations it assumed in accepting the outcome of the UPR. Requesting these documents from States will place no extra burden on those who act in good faith to implement that outcome. Indeed, without such a plan the outcome cannot be implemented. State capacity should be considered and adequate technical assistance provided from the Voluntary Fund for the UPR to achieve these ends.

*9. The **universality of the UPR process must be maintained.***

Universality in scope and coverage is the *raison d'être* of the UPR process. The second-cycle focus on follow-up must not be allowed to undermine the universality of the UPR by unduly limiting the scope of issues that can be raised with the State under review.

*10. The UPR should be a truly **equitable and participatory process.***

All States who wish to speak during the UPR of a given State must have the time to take the floor. The inability of all States who wish to speak to do so during a particular review has been a persistent problem throughout the first cycle of the UPR. As long as this problem is not resolved the UPR is open to accusations that State reviews are not conducted in the most equitable and fair way possible.

Complaint procedure

11. The complaint procedure must be victim-oriented, efficient and conducted in a timely manner.

At present the complaint procedure is not victim-oriented. The working group on situations is characterised by political bargaining that effectively prevents situations from being considered by the Council. The most effective way to improve the complaint procedure would be to remove this political stage by abolishing the Working Group on situations.

The membership of the Working Group on communications should have sufficient experience and expertise to be able to handle the complaints received appropriately and efficiently. The selection process for members should be open, fair and transparent, and members should be required to have experience of handling cases of alleged human rights violations before judicial or quasi-judicial bodies.

The Council must ensure that it follows up on decisions made in the complaint procedure. To facilitate this, all decisions should be public documents and read into the public record at Council meetings.

12. Transparency for the victims and complainants must be improved at all stages of the process.

Lack of transparency results in victims and complainants being unsure at what stage of the process their complaint is, or the reasons as to why it is not being taken further. The information and recommendations from the Working Group on communications and the report on consistent patterns of gross and systematic violations of human rights and fundamental freedoms prepared by the Working Group on situations, should be made available on OHCHR's website, together with recommendations made by the Working Group on situations to the Council on the course of action to take.

Human Rights Council Advisory Committee

13. The selection process for Advisory Committee members should ensure that the Council is provided with the most qualified expertise possible.

In order to ensure that the most qualified expertise is made available to the Council, States shall publicise vacancies and establish an open, fair and transparent process at the national level for the selection of candidatures. Members should meet the highest standards of independence, impartiality, skills and expertise. The composition of membership should be inter-disciplinary and reflect the full range of expertise required by the Council.

In addition, member States are encouraged to work to redress the current gender imbalance in the composition of the Advisory Committee.

Agenda and programme of work

14. The agenda and programme of work should allow for the most effective participation of all members and observers, including NGOs and NHRIs.

Consideration should be given at all times to ensuring that the agenda and programme of work of the Council takes into account the capacity of all members and observers, including NGOs and NHRIs. The programme of work must be predictable and developed far enough in advance to allow NGOs and NHRIs to schedule their participation effectively.

We are concerned that if the UPR report adoptions do not remain part of the regular Council sessions, civil society representatives may not come to Geneva in order to make a two-minute statement, especially when they have no guarantee of getting on the speakers' list. Since this is the only opportunity that NGOs have to comment on the UPR process, it is crucial that their participation is be optimally enabled.

Methods of work and rules of procedure

*15. The Council's rules of procedure must provide **adequate opportunities for all stakeholders to participate in all aspects of the Council's work including NGOs and NHRIs.***

There is a need for the Council to welcome the participation of NGOs and NHRIs in each and every aspect of its work. To this end, work formats including briefings, seminars, panels and stand-alone events should include NGO and NHRI participation as a matter of course.

Consideration should also be given as to how available technologies, including videoconferencing, could be used to increase the capacity of NGOs to participate in all aspects of the Council's work.

While the Council is an inter-governmental body, the Council has always followed the practice of full and effective participation of observers, including NGOs and NHRIs. The review should recognise and build on this heritage – including in any new mechanism that may be developed in the context of the review – rather than undermine it.