

MAKING IT WORK

THE REVIEWS OF THE UN HUMAN RIGHTS COUNCIL, 2011

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INTRODUCTION

“The challenge is how to make this system work better to overcome the persisting abuses, the omissions and the neglect that still stand in the way of the full implementation of human rights.”

Address by Ms. Navanethem Pillay UN High Commissioner for Human Rights on the occasion of the opening of the 9th Session of the Human Rights Council¹

The UN Human Rights Council's founding resolution requires the General Assembly to review the status of the Council within five years²; it also requests the Council itself to review of its work and functioning after five years and to report to the General Assembly³. Consultations on both reviews have already begun in New York and Geneva respectively.

In Geneva, the Human Rights Council has established an Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council (the Working Group) under the chairmanship of the President of the Council. It met once already from 25 to 29 October 2010 and will meet again in February 2011.

In New York, the President of the General Assembly is responsible for the review of the status of the Human Rights Council. He has appointed two facilitators to assist him in this task.

The Council could make substantial improvements in its effectiveness if it were to improve its implementation and follow-up of decisions already taken, whether by the Council itself, its parent body the UN General Assembly, or the Council's subsidiary bodies and mechanisms. Many of the shortcomings of the Council are a reflection of a failure to give effect to the mandate of the Council or to make good use of the established framework and rules that govern its work and functioning. The Council and its members all too often forget that words are not enough. They must translate words into actions and actions into better protection and promotion of human rights.

The Council should use the review of its work and functioning to establish new practices and working methods that will help it ensure that it focuses on following-up on decisions that have already been taken and work that has already been carried out, including by its expert mechanisms and subsidiary bodies. This would be an extension to the Council of the oft repeated calls for the UN and its human rights mechanisms to better implement the existing rich body of human rights standards.

All non-state observers in the Council, such as NGOs, National Human Rights Institutions, intergovernmental organisations and others must be full participants in the review discussions and in all aspects of the Council's work in their own right in accordance with the letter and the spirit of operative paragraph 11 on UN General Assembly resolution 60/251.⁴ States should stay vigilant to prevent and counter efforts to marginalize NGOs and other non-state observers' participation.

This paper focuses on elements that Amnesty International has identified as central to any discussion to improve the Human Rights Council's work and functioning and as key to the New York discussions on the status. It brings together and further develops proposals made by Amnesty International in the consultations to date.

Amnesty International makes the following primary recommendations

Early warning and response to human rights violations

The Council should:

- Establish independent **trigger mechanisms** to prompt consideration of situations that require its attention. For example, the High Commissioner for Human Rights, the Secretary-General, the Coordinating Committee of the Special Procedures, and the President of the Council should be empowered to trigger Council's discussion of situations requiring attention.
- Create a **standing task-force of independent experts** to help the Council to give effect to its mandate of addressing, preventing, responding promptly to and following up on human rights emergencies.
- Make use of a **broader range of working methods to address situations** that require its attention⁵. In addition to the existing tools, these could include special debates (during Council sessions); urgent meetings (during Council sessions); informal meetings to receive briefings by the High Commissioner for Human Rights, the Special Procedures and others; and regional meetings.

Special Procedures

The Council should:

- Develop **criteria to measure states' cooperation** with the Special Procedures, including their responsiveness to communications, urgent appeals, and country visit requests, and **review states' cooperation** through a dedicated regular (annual) debate.
- Adjust its working methods to ensure significantly **better follow-up** to Special Procedures' **recommendations**, whether addressed to states or to the Council itself. For example, the Council should require all **states to present a written response** to Special Procedures' **country mission reports** concerning them, to be presented, together with the latter, in a stand-alone interactive dialogue.
- Strengthen the independence and expertise of Special Procedure mandate-holders, including by ensuring a **non-politicised system for the selection** of experts that is solely based on their expertise, impartiality and skills; **adequate funding** for their activities; and **avoiding a duplicative and unnecessary oversight mechanism of the Code of Conduct** (such as an ethics or legal committee) additional to existing bodies and procedures.

Universal Periodic Review (UPR)

The Council should:

- Require that each state establish a **national UPR implementation plan** to be submitted for information to the Human Rights Council within 12 months of the adoption of the review outcome.
- Make provision for **formal mid-term implementation updates on UPR recommendations** and allocate sufficient time for the presentation and discussion of such information.
- Ensure inclusion of **independent human rights expertise** in the review, e.g. in the form of a team of experts, including to prepare and structure the dialogue in the UPR Working Group.

Mainstreaming of human rights within the United Nations system

The Council should:

- Mandate its **President to brief the Security Council** on the Human Rights Council's consideration of situations on the agenda of the Security Council as well as situations that the Council believes should be

brought to the attention of the Security Council;

- Request the **President of the Security Council to brief the Human Rights Council** at its main session on human rights elements of peace and security issues under consideration by the Security Council.

Membership

The General Assembly should:

- Require election **pledges and commitments** by candidate states **to be concrete, credible and measurable** and submitted at least **60 days in advance** of the elections and require candidates to present their candidacies in a public discussion of the General Assembly 15 days prior to the election.
- Require Council **members to report** to the Council **on implementation of** their **pledges** and commitments within one year of their election.
- Put in place **measures to ensure that elections are genuinely competitive and contested**, such as requiring more candidates than vacant seats, and to encourage member states to vote only for candidates that meet the standards of GA resolution 60/251 even if this means returning a blank ballot if no candidate meet these standards.

Funding

- The **Council** must be able **to count** on a **real-time funding mechanism** in order to implement its decisions. Funding must be determined separately from that required by the Office of the High Commissioner for Human Rights.

THE WORK AND FUNCTIONING REVIEW (GENEVA)

RESPONSE TO VIOLATIONS OF HUMAN RIGHTS AND EARLY WARNING

“Decides also that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.”

Operative paragraph 3 of General Assembly resolution 60/251

The Human Rights Council's mandate requires it to promote universal respect for the protection of all human rights and fundamental freedoms for all without distinction and to *“address situations of violations of human rights, including gross and systematic violations”*. Although there has been some recent modest improvement in the fulfilment of this element of the Council's mandate, the overall record of achievement over the last five years has been poor at best.

Significant improvement in the fulfilment of the operative paragraph 3 mandate is important for several reasons. People and populations in countries around the world expect and the General Assembly has called on the Council to address situations of human rights violations. International peace and security and development will suffer if the UN and its Human Rights Council fails to act to bring relief to the persons and communities who suffer from human rights violations.⁶ Ongoing failure to address situations of violations of human rights undermines the credibility of the Council. It feeds the propaganda of those who work to discredit the Council to protect the interests of certain states or governments.

There is no one size fits all solution to addressing violations of human rights. The Council must have at its disposal a range of working methods and practices. States must show the ‘courage’ to address situations of violations in the Council, and the wisdom to make best use of the full range of methods and practices available to the Council. As it is foreseeable that states might lack the necessary inclination to prompt the Council to address situations that require the Council's attention, the review of the work and functioning should be used to put in place additional working methods and procedures that will prompt the Council to address such situations.

The Special Procedures and the High Commissioner for Human Rights are well-placed to be able to identify and warn of emerging human rights crises. They have a clear role to play in contributing to the Council fulfilling its mandate to *“Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies”*⁷.

Among shortcomings of the former Commission on Human Rights to be ‘fixed’ in the new Council were the politicization and selectivity that characterized much of the Commission's consideration of country situations. The Universal Periodic Review (UPR) was to ensure the universal scrutiny of all UN member states and to help avoid the politicization and selectivity of the Commission. The UPR has been a valuable addition to the UN human rights toolbox, and if properly developed it holds promise to act as a catalyst for the incremental improvement of human rights protection. However, the UPR was never intended to be a

principal vehicle for addressing situations of chronic or acute gross and systematic human rights violations. Yet the inability of the Council to address many such situations in its regular work creates pressures to use the UPR to that end. Using the UPR as a primary vehicle to address gross and systematic violations will damage the UPR mechanism, and it is unlikely to result in an improved situation of human rights on the ground. Failure in giving effect to the Council's mandate to "*address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon*"⁸ is therefore corrosive to the good work of the Council itself.

It is easier to convene special sessions in the Council than it was in the Commission. This was a welcome development because special sessions can be an appropriate mechanism to *begin to* address acute human rights emergencies. However, they are hardly the appropriate tool to address chronic situations of human rights violations such as persistent widespread torture, or systematic discrimination in access to employment, housing or education.

The Council is in many respects locked into the working methods of the past. It is host to countless monologues in the general debates; draft resolutions are introduced pell-mell by individual States or groups of States, and the Council rushes to adopt the draft resolution at the same session. While there have been some valuable innovations such as interactive dialogues and panel discussions, there is considerable room to develop the full potential of these new working methods. The Council needs to make better use of a broader range of existing and new working methods. It must make better use of the room for discussion, consultation and negotiation offered by its multiple sessions over the year. Priorities need to be set and respected in the use of the Council's meeting time.

The UN usually expresses the outcome of its deliberations in resolutions, but resolutions are often complex, labour-intensive, time-consuming and can be difficult to negotiate. Not every consideration of a situation of human rights violations requires a resolution, but there should be an outcome that can be used to translate discussion and debate into action and improvements in the human rights situation in question. The Council needs to give itself additional means of expression that enable it to speak more regularly in ways tailored to the demands of the situations that it considers. For instance, use could be made of new forms of outcomes such as Presidential press briefings and previously used forms such as Presidential statements that have fallen into disuse.

Other NGOs have focused on the need for the Council to address the selectivity in its approach and response to human rights violations, by ensuring that it pays much more attention to addressing human rights violations wherever they occur.⁹ Amnesty International shares this assessment and will continue to be vocal in calling for improvements in the Council's fulfilment of its central mandate to address situations of violations of human rights.

Recommendations

The Council should:

- Establish **independent trigger mechanisms** to prompt consideration of situations that require its attention. For example, the High Commissioner for Human Rights, the Secretary-General, the Coordinating Committee of the Special Procedures, and the President of the Council should be empowered to trigger Council's discussion of situations requiring attention.
- Create a **standing task-force of independent experts** mandated to gather, analyse and report continuously on situations of gross and systematic violations; to provide an informational and analytical basis for the Council to prevent violations; to respond to human rights emergencies at the request of the Council; and to follow up on its recommendations. The standing task-force would be able to receive information from credible sources, provide reports to each session of the Council, carry out fact-finding

missions, cooperate with other UN entities as relevant, and contribute to early warning systems.

- Make provisions to draw on the Special Procedures for early warning and preventive and emergency response by it. For instance the Council could **request the Coordination Committee to draw attention to situations** that require the urgent attention of the Council.
- **Improve significantly its** implementation and **follow-up of decisions** already taken, whether by the Council itself or its parent body the UN General Assembly, **and** its follow-up of **recommendations** and other work of its subsidiary bodies and mechanisms.
- **Expand the scope of** the Council's **Complaint Procedure** (see further in the text) **to consider emerging patterns** of grave violations of human rights so that the procedure can serve as a tool to help the Council prevent violations.

STRENGTHENING THE SYSTEM OF SPECIAL PROCEDURES

Jointly with other NGOs, Amnesty International submitted in May 2010 a document with 10 principles to be upheld in the Human Rights Council review to strengthen the Special Procedures' system and proposals to give effect to those principles¹⁰. The principles in that document are still valid and are further developed in the following text.

COOPERATION WITH THE SPECIAL PROCEDURES

At the time of the Commission on Human Rights, the chronic lack of cooperation by many states with the Special Procedures was a key factor in undermining their ability to fulfil their mandates. In its resolution 5/2 of 18 June 2007, "Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council", the Council "*urge[d] all states to cooperate with, and assist, the Special Procedures in the performance of their tasks and to provide all information in a timely manner, as well as respond to communications transmitted to them by the Special Procedures without undue delay*". The public record demonstrates that many states have a poor record of cooperation with the Special Procedures. It is time for the Council to adopt new measures to encourage states to be more diligent in cooperating with the Special Procedures and allow the Council to be more assiduous in ensuring that cooperation takes place. The review should include a general assessment of the efforts and attainments made by states in cooperating with the Council and in particular with its Special Procedures.

The reports of the Special Procedures, which are presented to the Council at each regular session, identify states that have yet to respond substantively, and in most cases – respond at all - to allegations of life-threatening situations, or have not accepted or responded to mission requests, in some cases for many years, even more than a decade. The Special Procedures highlight states that want to appear to collaborate by agreeing to a mission, even having issued a standing invitation, while in reality frustrating attempts for a visit to take place.

That so many states feel able to ignore the Special Procedures suggests that the Council must take measures to encourage improved engagement by states. For example, the Council should use information from the Special Procedures and the Office of the High Commissioner for Human Rights to assess the extent to which states are cooperating and to articulate what 'cooperation' means.

In addition to being vigilant in reviewing regularly states' fulfilment of their obligation to cooperate with the Special Procedures, the Council must also follow up on related commitments made through election

pledges and the Universal Periodic Review. It must be prepared to hold accountable states demonstrating persistent non-cooperation.

Recommendations

- The Council should develop a set of **criteria to measure states' cooperation** with Special Procedures; these should include, as a minimum, the following:
 - All **states** should issue a **standing invitation** to the Special Procedures. Standing invitations should be deemed to have lapsed in situations where a state fails to facilitate a visit request within one year of the request, or where a state is still selective in which mandates it agrees can visit, despite the standing invitation.
 - States should **respond to a request to visit within two months**; they should propose dates for a visit within a month of agreeing to it. All visits should take place according to the existing Terms of Reference for Fact-Finding Missions and states should not seek to negotiate their own terms.
 - States should **respond to urgent appeals** by Special Procedures **within five days**. If no response is received, the mandate-holder can send them directly to the foreign ministry and any other concerned ministries, which should respond within five days. In cases where a response to an urgent appeal is still not forthcoming, the Special Procedures can forward the case to the President of the Council for his or her attention.
 - States should provide a **substantive response to letters of allegation** by the Special Procedures **within two months**.
 - States should **report on measures taken** to act on recommendations **following country visits** (see further under Follow-up to Country Visits).
- The Council should hold a **regular (annual) debate devoted to reviewing cooperation with the Special Procedures** that would address:
 - States' responsiveness to letters of allegations and urgent appeals and assess qualitatively the response;
 - The status of visit requests, including accepted requests where there have been long delays in setting dates; and
 - States' willingness to take into consideration recommendations of the Special Procedures following country visits, and to report to the Council accordingly.

The Council should **conclude this debate by taking concrete measures to encourage cooperation** by any states that are persistently challenged in responding to communications and visit requests, including by inviting the High Commissioner for Human Rights and the Secretary-General to take up such challenges with the states concerned at the highest levels.

The basis for this debate should be information captured in two reports by the Secretary-General: one on communications (i.e. Special Procedures' letters of allegations and urgent appeals); and one on the status of Special Procedures' visit requests and invitations received. Country information from the reports should be made available on the Human Rights Council elections and membership webpages.

FOLLOW-UP TO COUNTRY VISITS

The General Assembly decided that the “*methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms*”¹¹. Therefore, the Council’s mandate includes requirements for follow-up and substantive interaction with the Special Procedures.

Country visits are one of the most effective means by which the Special Procedures can assess the protection of human rights at the national and local level and articulate clear, measurable and relevant recommendations. However, existing mechanisms to encourage, support and monitor implementation and undertake follow-up are inconsistent and inadequate.

The five-minute statement allotted to states at the time of presentation of a mission report to the Council is insufficient for adequate reflection and dialogue on the mission conclusions and recommendations or for reporting on steps taken to act on them. Some mandate-holders follow up on implementation of their recommendations two or three years after a mission, including by soliciting input from states and civil society. Engagement by states in this process has been far from encouraging. The Council itself has also not taken the opportunity to follow up on the extent to which a state has implemented recommendations following a country visit.

Recommendations

- The Council should **require** all relevant **states to present a written response to any Special Procedure’s country mission reports**. The response would be a *distinct document* from the mission report. In the written response, the concerned state should respond to all recommendations in the country mission report and indicate the steps that it has taken or intends to take to give effect to them. The state could work with the mandate-holder(s) to identify recommendations that should be prioritised in the implementation.
- Both the Special Procedure’s mission report and the state’s written response should be **presented in a stand-alone interactive dialogue**. If the state has a National Human Rights Institution that is in full compliance with the Paris principles (so-called A-status)¹², the institution should be given the floor right after the state delegation and be followed by other states and stakeholders. The state should be encouraged to send a high-level delegation for this interactive dialogue.
- The Council should require states to provide the relevant Special Procedure and the Council with an **update on follow-up to the recommendations** a year after the holding of this interactive dialogue. It should also require states to publicly declare their willingness to receive follow-up missions by Special Procedures.

PROTECTING THE INDEPENDENCE OF THE SPECIAL PROCEDURES

Disappointingly, some states have taken the opportunity of the Council’s reviews to push for measures that could undermine the Special Procedures’ independence. Among such measures are proposals for another mechanism to oversee implementation of the Code of Conduct (a legal or ethics oversight committee).

In June 2008, Special Procedures mandate holders adopted an *Internal advisory procedure to review practices and working methods*, which allows any stakeholder to bring issues relating to working methods and conduct to the attention of the Coordination Committee of Special Procedures. The procedure was devised to contribute to the self-regulation of the Special Procedures system and of individual mandate-

holders. Under the *advisory procedure*, the Coordination Committee will issue guidance to mandate holders and inform the President of the Council of the outcome. In June 2008, the Human Rights Council adopted a Presidential statement¹³ concerning the terms of mandate holders and their compliance with the Code of Conduct, which recognized the authoritative role played by the Coordination Committee in the proper administration of the Code of Conduct.

The *advisory procedure* and the Presidential Statement allow States and other stakeholders to bring issues concerning conduct and working methods to the attention of the President or the Coordination Committee respectively. Despite the existence of these two procedures, some states have instead chosen to invoke alleged breaches of the Code of Conduct in public debates and interactive debates with mandate-holders, seeking to blame and tame them, without substantiating their claims by reference to specific articles of the Code of Conduct that the mandate-holders have allegedly breached.

Proponents of the proposal for another oversight mechanism have yet to make a *prima facie* case as to why the existing procedures for addressing alleged breaches of the Code are insufficient and why additional time and scarce resources should be wasted through the establishment of such a mechanism. State behaviour in the Human Rights Council demonstrates that an ethics or legal committee would be used to distract attention from the substantive contribution of the Special Procedures and would become an instrument used by certain states to further their efforts to constrain the effectiveness of the Special Procedures. To appreciate this foreseeable abuse, one only need observe how much more time some states have spent criticizing mandate-holders for alleged breaches of the Code at the expense of dealing with the related serious alleged human rights violations the Procedures have brought to the Council's attention.

Recommendations

- All states should firmly **reject proposals for an additional body, by whatever name, to oversee implementation of the Code of Conduct**. The Coordination Committee's Advisory Procedure is equipped to deal with allegations of breaches of the Code and any stakeholders with credible allegations of breaches should take their complaint to that process.

THE APPOINTMENT PROCESS FOR MANDATE-HOLDERS

As part of the review of the Special Procedures system, the Council established a new appointment process for Special Procedures mandate-holders, which has several stages. The basis of the appointment process is a public list¹⁴ of eligible candidates administered by the Office of the High Commissioner for Human Rights. Any government, organisation or individual can nominate experts to the public list.

A Consultative Group consisting of one member from each of the UN regional groups, serving in his or her personal capacity, is tasked with proposing to the Council's President a list of candidates who possess the highest qualifications for the mandates to be filled and meet the general criteria and particular requirements for those vacant mandates. The Group is assisted by the Office of the High Commissioner for Human Rights. To date, the Consultative Group has only been made of Geneva-based ambassadors.

For the most competent candidates to be appointed, it is crucial that the Special Procedures public roster, which constitutes the primary pool of eligible candidates, is extensive and broadly representative, including with regard to geographical regions and gender. It is also important that the roster be regularly and thoroughly updated, and that it contains a sufficient level of detail about possible nominees to enable the Consultative Group and the President to make informed recommendations.

The Consultative Group is expected to take into account the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant

requirements for each vacant mandate¹⁵. The Group's recommendations to the President are to be public and substantiated.

Recommendations

- The **role of the Consultative Group** must **remain of an advisory nature**. The institution-building package made it very clear that the President of the Council is responsible for the appointment of mandate-holders.
- To properly exercise its advisory role, the **Consultative Group should comprise** individuals who are **independent and impartial experts**. These should be individuals who hold no decision-making position in government or in any other organization or entity which could give rise to a conflict of interest with the responsibilities inherent to being a member of the Consultative Group.
- The **Consultative Group should substantiate all of its recommendations** to the President, in particular by describing how the candidates proposed meet the general criteria for mandate-holders (expertise, experience, independence, impartiality, personal integrity and objectivity) and the specific criteria for each mandate to be filled.
- All relevant **stakeholders** should have **a real opportunity to contribute** to the selection process **at each stage**.
- The **public list** should be **advertised widely** at the national, regional and international level and through different networks. Governments should call publicly for candidates and consult civil society nationally before nominating candidates themselves.
- The Office of the High Commissioner for Human Rights should **regularly update the list** and make it **available in a format (e.g. a database) that better allows identification of candidates** with relevant expertise and interest in specific mandates.

FUNDING

In the consultations to date, there has been considerable debate about financial support for the Special Procedures, focussing largely on ensuring no disparity in the financial provisions of all mandates and on the need for transparency of extra-budgetary support. An important point that has gone almost unmentioned is the fact that tasks given to the Special Procedures that are in addition to their regular, independently defined work-plans in the exercise of their mandates require additional resources. Examples of such tasks are joint country reports by thematic mandates (often involving the same group of mandates); elaboration of new standards; consultations with states, experts and other stakeholders; and contribution to studies prepared by other UN bodies. These tasks are rarely given additional funding.

Recommendations

- When the Council requests the Special Procedures to take on **additional ad hoc functions**, it must ensure that the **necessary additional resources** are also provided.
- Similarly, when it establishes **new mandates**, the Council must ensure the provision of **additional resources** to support the mandate.
- The Council should provide **additional resources to facilitate** Special Procedures' **follow-up** on Council's decisions and their own activities.

THE UNIVERSAL PERIODIC REVIEW

The first objective of the Universal Periodic Review is “*the improvement of the human rights situation on the ground*”.¹⁶ For this ambitious aim to be realized at least two things need to happen in *each review*. One, a set of specific targeted recommendations and precise commitments must result from the review to strengthen human rights protection mechanisms and to address the human rights violations in the state reviewed. Two, action must be taken by the state reviewed to implement these commitments and recommendations at the national level in a systematic and timely manner.

In the first UPR cycle much good practice is developing, including in relation to consultations at the national level, active participation in the interactive dialogue, response to recommendations and implementation of the review outcomes. The review of the Council is an important opportunity to further develop this practice. Amnesty International submitted a set of recommendations for strengthening key aspects of the UPR on the occasion of the review¹⁷ and is pleased to note that among the wide range of recommendations made by states so far many are concurrent with Amnesty International’s own. These include recommendations to focus subsequent reviews on the implementation of recommendations by the state under review; for states to clearly indicate their position on all recommendations made to them, preferably in the form of an Addendum to the report of the review; to cluster the recommendations in the UPR Working Group and to ensure their compatibility with international human rights standards.

Effective implementation of commitments and accepted recommendations will be the true test of the UPR. Amnesty International welcomes that many states have developed implementation plans for the UPR outcomes and in some instances also established domestic mechanisms with civil society participation to oversee implementation. Some states have also undertaken national mid-term reviews and used these to update the Council on the implementation of commitments made in the context of the UPR.

National Human Rights Institutions in a number of countries are playing an important role in the preparation for and follow up to the UPR, including by assisting the government in maintaining an overview of UPR commitments and recommendations and developing and managing plans to give effect to these at the national level.

Recommendations

The Council should:

- Require that each State establish a **national UPR implementation plan** to be submitted for information to the Human Rights Council. Such implementation plans should be developed within 12 months of the adoption of the review outcome by the Council and include a clear time frame and key milestones. If needed, technical assistance and funding from the Voluntary Fund for the UPR should be available to states to develop such a plan. The plans should be posted on the OHCHR UPR webpage.
- Encourage states to establish a **national mechanism** with civil society participation to oversee implementation of UPR commitments and recommendations.
- Make provision for **formal mid-term implementation updates** and allocate sufficient time for the presentation and discussion of such information.
- Establish measures that allow **A-status National Human rights Institutions**¹⁸ to make a more substantive contribution in the UPR in the preparation, conduct and implementation of reviews. In recognition of the central, and often unique, role played by National Human Rights Institutions in the UPR, A-status institutions should also be able to submit their own document as part of the review basis.

- Ensure inclusion of **independent human rights expertise** in the review, e.g. in the form of a team of experts, including to prepare and structure the dialogue in the UPR Working Group.
- Make better use in the UPR Working Group of the **UN Compilation and the Stakeholder Summary** to inform and focus the dialogue.
- Encourage **more precise recommendations** to the State under review to address human rights violations and strengthen national human rights mechanisms.
- Continue to carry out the review in the UPR Working Group as a **three-hour dialogue between states** in the interest of equality of treatment.

THE COMPLAINT PROCEDURE

Some government representatives assert that the Complaint Procedure is the Council procedure most responsive to victims of human rights violations. However, the existing procedure invites victims to invest their time, energy and trust in an opaque procedure that to date has produced no evident relief to any of those who have made use of it.

There is no shortage of situations of reliably attested gross and systematic human rights violations in the world. However to judge from the number of complaints reaching the Human Rights Council for consideration under the Complaint Procedure, there are structural problems which place too many hurdles in the way of the consideration of complaints that deserve consideration.

To reach the stage of Council consideration, a complaint has to go through an expert Working Group on Communications, a Working Group on Situations made up of state representatives and a Human Rights Council made up of states. The rule on non-duplication with other UN mechanisms appears to have been applied to exclude consideration of complaints about any situations *within* countries considered publicly by the Human Rights Council.

Even if one were to assume that confidentiality in the deliberation lends itself to a frank and honest discussion of a complaint, there is no reason, other than to protect the sensitivities of governments, to apply the confidentiality rule under the Complaints Procedure in the broad fashion followed so far. Confidentiality need not mean secrecy.

Despite the requirement that *“both the author of a communication and the State concerned are informed of the proceedings at [a number of] key stages”*¹⁹, current practice makes the Complaint Procedure into a ‘black hole’ for the authors of communications. The terse information provided to the authors prevents them from having the possibility of continuing to contribute to a dialogue and an exchange of views with the relevant government under the Procedure.

Decisions taken under the Complaints Procedure might involve commitments by the State concerned, which may be the reason for the Council’s termination of the consideration of the complaint. The Council must have a public record of such decisions so that State making commitments under the Complaints Procedure can be held accountable for the fulfilment of its commitments and, where appropriate, receive any necessary technical assistance.

Recommendations

- When considering complaints under the Procedure, the Human Rights Council must not apply the **rule**

on non-duplication with other mechanisms in relation to situations considered publicly by the Council. The rule applies only to **complaint-specific mechanisms and** narrowly only to the **elements of the complaint** and not more generally to consideration of anything concerning the country in question under other mechanisms.²⁰

- In order to ensure that the Complaint Procedure has before it the full facts at each stage, the **author of the complaint** should be **provided with the complete response of the State** concerned so that any additional information provided by the complainant takes into account this response. This would not be in any way inconsistent with the confidentiality of the Complaints Procedure.²¹
- To lend essential support to the credibility of the mechanism and enable the Human Rights Council to follow up on decisions taken under the Complaints Procedure, **Council decisions under the Procedure should be published as public documents** and read into the record at a public meeting of the Council.
- The Council should **abolish the Working Group on Situations.**
- The Council should change the **selection process for the members of the Working Group on Communications** and follow the selection process used for Special Procedures mandate-holders. Criteria for selection should include experience in handling cases of alleged human rights violations before judicial or quasi-judicial bodies. Working Group members should be appointed for a non-renewable term of four years.²²
- If the changes recommended above, or changes of equivalent effect, are not made the Complaint Procedure should be abolished.

THE ADVISORY COMMITTEE

The work of the Advisory Committee must be conceived to ensure that the Council can benefit fully from the expertise that should be available on that body. There seems to be broad agreement that the Council is not benefitting fully at present. There needs to be better communication between the Human Rights Council and the Advisory Committee about how the latter can best assist the Council.

One important element of better communication would be to expand the limited scope of initiative of the Advisory Committee²³. The Advisory Committee should make well-elaborated proposals to the Council about work for the Committee to conduct.

NGOs made a substantial contribution to the work of the former Sub-Commission. It is essential to improve substantially the working of the Advisory Committee in order to encourage much broader NGO contributions to the Advisory Committee consistent with provisions of Council's resolution 5/1²⁴.

The effectiveness of the Advisory Committee and the quality of its work depends in large measure on the selection of independent, impartial, competent and expert women and men who have proven expertise and experience and a strong commitment to human rights. The process of selection of members must be open, fair and transparent to guarantee the selection of independent and qualified experts. In a UN context, elections involve nominations by individual states, vote-trading which may include exchanges based on votes in other (non- human rights) bodies, and secret ballots. Consequently, Amnesty International does not support a process of selection of independent human rights experts in this manner.

Recommendations

- The Advisory Committee should be empowered to **make well-elaborated proposals** to the Council about work for the Advisory Committee to conduct.

Should the current election system of Advisory Committee members be maintained, the following must be done:

- The Council should put in place measures to **ensure full respect of the provisions** of Human Rights Council **decision 6/102** on technical and objective requirements for the submission of candidatures.
- The Council should request **states to publicise vacancies** and **establish an open, fair, transparent process at the national level for the selection** of candidatures. This is in order to give effect to the requirement that when selecting their candidates, states consult their national human rights institution and civil society organizations.²⁵
- Human Rights Council members should **vote only for candidates who meet the highest standards of independence, impartiality, skills and expertise**. They should be guided by Council resolution 5/1 that requires that candidates meet requirements of “*recognized competence and experience in the field of human rights; high moral standing; independence and impartiality*”²⁶; and that “*individuals holding decision-making positions in Government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded*”.²⁷
- States nominating candidates should **work to redress the current gender imbalance** in the Advisory Committee composition and give effect to Council recommendation that in electing Committee members due consideration should be given to gender balance²⁸. Currently only four out of 18 Advisory Committee members are women.
- States should not be precluded from nominating candidates from regions other than the one from which they belong.
- Council members should put forward a large pool of highly qualified, independent women and men from which to choose, and should put forward more candidates than vacant seats in each region (i.e. **no ‘clean slates’**).
- Council members should **select** Advisory Committee **members who are multi-disciplinary** and reflect the broad range of expertise that is required for the Committee to fulfil its mandate effectively.

MAINSTREAMING OF HUMAN RIGHTS WITHIN THE UNITED NATIONS SYSTEM

General Assembly resolution 60/251 mandates the Human Rights Council to promote effective coordination and the mainstreaming of human rights within the United Nations system.²⁹ Unfortunately, like so much else in resolution 60/251, this element of the Council’s mandate has been poorly implemented, and there is little follow-up in the Human Rights Council or the General Assembly to improve its implementation. As the principal political human rights body, the Human Rights Council must fulfil its promise to provide human rights leadership and support effective mainstreaming of human rights throughout the UN, including the Security Council, peace-keeping missions, the Peace-Building Commission and other UN bodies and agencies.³⁰

Recommendations

- **Discussion of mainstreaming** of human rights throughout the UN system should be made a **standing item on** the Human Rights Council's **program of work**.
- The Council should recommend to the General Assembly and the Security Council that the **President** of the Human Rights Council **brief the Security Council** on the Human Rights Council's attention to situations on the agenda of the Security Council as well as situations that the Human Rights Council believes should be brought to the attention of the Security Council.
- The Council should issue a standing invitation to the **President of the Security Council** to **brief the Human Rights Council** at its main session on human rights elements of peace and security issues under consideration by the Security Council.

The **Secretary-General** should be asked to prepare **an annual report** to the Human Rights Council and the General Assembly **that describes how the UN system** (beyond the Office of the High Commissioner for Human Rights) **has responded to decisions taken by the Human Rights Council**. The objective would be to establish an informational basis to have informed discussions of mainstreaming and measures that could be taken to improve the effectiveness of the Council in promoting the mainstreaming of human rights within the UN system.

THE REVIEW OF THE STATUS (NEW YORK)

As noted in the introduction, the Council's founding resolution requires the General Assembly to review the status of the Council within five years. A number of issues are linked to the review of the status. They include: whether the Council should remain a subsidiary body of the General Assembly; clarity on the relationship between the Council and the General Assembly, including the relationship between the Council and the Third (Social, Humanitarian & Cultural) Committee; composition and membership of the Council; budgetary issues.

STATUS

The place of a Human Rights Council in the UN system must correspond to the primacy that the UN Charter accords to international cooperation in promoting and encouraging respect for human rights and fundamental freedoms, as further recognized in the Vienna Declaration and Programme of Action and the repeated acknowledgement by the UN membership, including at the highest levels, that human rights, development and peace and security are the pillars of the United Nations system and the foundations for collective security and well-being.³¹ The Human Rights Council should be made a principal organ of the UN at the next occasion that the UN Charter is opened for amendment.

MEMBERSHIP

Membership in the Council should be based on a demonstrable commitment on the part of candidate countries to uphold human rights and fundamental freedoms to the benefit of their own populations and in the international community as a whole. The record of the Human Rights Council demonstrates that its ability to carry out its mandate to promote and protect all human rights in all countries depends overwhelmingly on the commitment of its members to human rights. The modalities for election of Council members in the General Assembly, set out in General Assembly resolution 60/251, envisage a process intended to lead to the election of states with that commitment³².

Members of the Council are required to uphold the highest standards in the promotion and protection of human rights and to fully cooperate with the Council, including its mechanisms and subsidiary bodies. The candidates' contribution to the promotion and protection of human rights shall inform voting by members of the General Assembly.

Members of the Council are elected directly and individually and may serve only two consecutive terms before they must leave the Council membership for at least one year. The threshold for election is high: successful candidates require the support of the majority of the members of the General Assembly, i.e. a minimum of 97 votes.

A Council member that commits gross and systematic violations of human rights may have its membership rights suspended.

In recent years member states have not given full effect to these provisions to ensure the election of states that are seriously and demonstrably committed to the promotion and protection of human rights. Not all candidates have made pledges, and of those that have, many pledges are vague and imprecise.

One of the greatest impediments to the effective functioning of the election of Council membership is the role often played by regional groups. Increasingly, regional groups have presented 'clean slates' for the elections in which the number of candidates matches exactly the number of seats available for the region. This is inconsistent with the spirit of General Assembly resolution 60/251, which clearly contemplates contested elections. Regional groups should not be allowed to put forward 'clean slates' of candidates that get seats in the Council without competition, thereby short-circuiting the competitive election process.

Recommendations

- The General Assembly should:
 - Establish measures for **elections to be genuinely competitive and contested** so that Council Members are indeed elected directly and individually, and so that members of the General Assembly have a real choice of candidates for every regional group. Such measures would include requirements that regional groups put forward more candidates than vacant seats in each region (i.e. **no 'clean slates'**); making mandatory for **candidates to declare their candidacy and present their pledges at least 60 days in advance** of the election.
 - Require candidates for elections to submit **concrete, credible and measurable pledges** demonstrating their commitment to promote and protect human rights to enable members of the General Assembly to fully take into account candidates' contribution to the promotion and protection of human rights. Member states should adhere to the *Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council*, prepared by the Office of the High Commissioner for Human Rights when drafting their pledges.³³
 - Establish a procedure by which **candidates present their pledges and vision of the Council in public discussion** in the General Assembly 15 days prior to the election.
- The Council should set **guidelines to measure how its members abide by the pledges** and commitments made when they sought to become part of the Council.
- Member states elected to the Council should be required to **report within one year of their election to the Council on their progress in implementing their pledges** and commitments.

ADEQUATE FUNDING TO SUPPORT THE COUNCIL AND ITS MECHANISMS

The Council requires dedicated financial and personnel resources funded from the regular budget of the United Nations in order to function effectively and to implement its decisions. The current practice for funding of Council's decisions involves a retrospective approval for the release of funds by the Fifth Committee and the General Assembly plenary. This practice creates difficulties.

Recommendation

- The Council ought to be able to count on a **real-time funding mechanism** to be able to implement its decisions. Funding must be determined separately from those required by the Office of the High Commissioner for Human Rights.

RELATIONSHIP WITH THE THIRD COMMITTEE

General Assembly resolution 60/251 made the Human Rights Council the main UN human rights body, but it was silent on how the Council would relate to another Assembly organ dealing with human rights, the Third Committee. This has led to a lack of clarity regarding the Council's reporting as well as duplication of work, with attendant contentious debates. The review should clarify the relationship between the two while ensuring that 'streamlining' and efficiency do not become bywords for lack of action or neglect of serious human rights situations.

Recommendations

- As the main UN human rights political body, the Council should **report directly to the General Assembly Plenary.**
- The review should consider **how the Third Committee can complement and add value to the work of the Council** while maintaining its unique status as the only UN human rights body with universal membership, capable of acting on the full range of human rights issues, including situations of violations of human rights.

CONCLUSION

The principal challenge in the review of the Human Rights Council is the need for improvement in the working culture of the Council. Positive change to the working culture of the Council is unlikely to be achieved by the formal review process, but the review process is unlikely to lead to substantial improvement unless there are significant improvements in the working culture and working methods.

As the reviews head into their final months, Amnesty International urges state delegations to break away from rigid positions and group straitjackets to work across regions to turn the trenches that have been dug into the foundations for improvements to the work and functioning of the Human Rights Council.

Amnesty International urges governments to support the recommendations identified in this paper and to do their utmost to ensure that the Human Rights Council that emerges from the 2011 reviews is strong, effective and authoritative and fulfils its mandate fully.

LIST OF KEY DOCUMENTS

Amnesty International documents, including joint documents

Ten principles to guide a successful outcome of the Review of the UN Human Rights Council as it relates to the Special Procedures (Joint NGO document). <http://www.amnesty.org/en/library/info/IO42/001/2010/en>

Amnesty International's recommendations for strengthening the Universal Periodic Review in the context of the Review of the UN Human Rights Council: Submission to the Open-ended Intergovernmental Working Group on the Review of the Human Rights Council
<http://www.amnesty.org/en/library/info/IO41/036/2010/en>

NGO documents

Tailoring the Human Rights Council's response to situations of violations of human rights (Joint NGO document).
<http://www.demcoalition.org/pdf/pdf/Cooperation%20NGO%20proposal%202011%20Review.pdf>

Curing the Selectivity Syndrome. The 2011 Review of the Human Rights Council.
<http://www.hrw.org/en/reports/2010/06/24/curing-selectivity-syndrome-0>

UN documents

General Assembly resolution 60/251. *Human Rights Council*.
http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

Human Rights Council resolution 5/1. <http://www2.ohchr.org/english/bodies/hrcouncil/>

Background on the review http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm

Compilation of State proposals at the first session of the Open-Ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council (UN Index: A/HRC/WG.8/1/CRP.1/Rev.1, 16 November 2010).

Compilation of non-State observers' contributions at the first session of the Open-Ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council (UN Index: A/HRC/WG.8/1/CRP.2/Rev.1, 22 November 2010).

1 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8935&LangID=E>

2 "the [General] Assembly shall review the status of the Council within five years". General Assembly resolution 60/251, operative paragraph 1.

3 "the Council shall review its work and functioning five years after its establishment and report to the General Assembly". General Assembly resolution 60/251, operative paragraph 16.

4 “Decides that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and National Human Rights Institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;”. General Assembly resolution 60/251, operative paragraph 11:

5 See for example Human Rights Watch, “Human Rights Council: New Approaches to Addressing Human Rights Situations,,” 15 September 2006., available at: <http://www.hrw.org/en/reports/2006/09/15/human-rights-council>

6 “Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,” General Assembly resolution 60/251, sixth preambular paragraph.

7 General Assembly resolution 60/251, operative paragraph 5(f) .

8 General Assembly resolution 60/251, operative paragraph 3.

9 See for example Human Rights Watch “Curing the Selectivity Syndrome. The 2011 Review of the Human Rights Council”, available at <http://www.hrw.org/en/node/91074/section/4> and the Joint NGO document “Tailoring the Human Rights Council's response to situations of violations of human rights” available at <http://www.demcoalition.org/pdf/pdf/Cooperation%20NGO%20proposal%202011%20Review.pdf>

10 Ten principles to guide a successful outcome of the Review of the UN Human Rights Council as it relates to the Special Procedures, available at <http://www.amnesty.org/en/library/info/IO42/001/2010/en>

11 General Assembly resolution 60/251, operative paragraph 12.

12 Accreditation is done by the International Co-ordinating Committee of National Human Rights Institutions (ICC), which determines whether the institution is full compliance with the 1993 Paris Principles .

13 Human Rights Council 8/PRST/2. Terms of office of special procedure mandate-holders

14 The roster is available on the Human Rights Council extranet.

15 “The consultative group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate.” Human Rights Council resolution 5/1, operative paragraph 51.

16 Human Rights Council resolution 5/1, Institution-building of the United Nations Human Rights Council, Annex, paragraph 4 (a).

17 Amnesty International Recommendations for strengthening the Universal Periodic Review in the context of the Review of the UN Human Rights Council, October 2010, IOR 41/036/2010 <http://www.amnesty.org/en/library/info/IO41/036/2010/en> .

18 Institutions in full compliance with the Paris principles. Accreditation is done by the International Co-ordinating Committee of National Human Rights Institutions (ICC).

19 Human Rights Council resolution 5/1, operative paragraph 106.

20 “A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that: ... (f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;” Human Rights Council resolution 5/1, operative paragraph 87.

21 The optional communications procedures under the various core human rights treaties are confidential and yet they allow the complainants the opportunity to know and respond to the State submissions.

22 Members of the Working Group on Communications are currently drawn from among members of the Advisory Committee, the Council's think tank. The qualifications of a member of a think-tank are not the same as members of a quasi-judicial body that must assess the merits of alleged human rights violations.

23 “The Advisory Committee shall not adopt resolutions or decisions. The Advisory Committee may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council.” Human Rights Council resolution 5/1, operative paragraph 77.

24 "Member States and observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and National Human Rights Institutions, as well as non-governmental organizations shall be entitled to participate in the work of the Advisory Committee based on arrangements, including Economic and Social Council resolution 1996/31 and practices observed by the Commission on Human Rights and the Council, while ensuring the most effective contribution of these entities". Human Rights Council resolution 5/1, operative paragraph 83.

25 Human Rights Council resolution 5/1, operative paragraph 66 requires that "All Member States of the United Nations may propose or endorse candidates from their own region. When selecting their candidates, States should consult their National Human Rights Institutions and civil society organizations and, in this regard, include the names of those supporting their candidates." This is reiterated in Human Rights Council decision 6/102 that, under " Technical and objective requirements for the submission of candidatures", states that "When selecting their candidates, States should consult their National Human Rights Institutions and civil society organizations".

26 Human Rights Council resolution 5/1, operative paragraph 67

27 Human Rights Council resolution 5/1, operative paragraph 68

28 Human Rights Council resolution 5/1, operative paragraph 66 and Human Rights Council decision 6/102, operative paragraph III/D

29 Operative paragraph 3.: This element of the Council's mandate gives effect to decisions taken by heads of state and government at the 2005 World Summit addressing the importance of mainstreaming human rights throughout the United Nations system, A/60/L.1 of 15 September 2005, par. 159. See also paragraphs 126 and 169 of the same document.

30 In its resolutions and Presidential Statements, the Security Council now often condemns violations of international humanitarian, human rights and refugee law by all parties to the conflict and includes human rights components, sometimes with wide-ranging mandates, in peace-keeping operations. UN agencies are at different stages in integrating human rights into their work, with most agreeing that 'human rights and human development are close enough in motivation and concern to be congruous and compatible, and ...different enough in strategy and design to supplement each other fruitfully' (Human Rights and Human Development, UN Development Programme Human Development Report, 2000).

31 2005 World Summit Outcome, A/60/L.1 of 15 September 2005, operative paragraph 9. Also General Assembly resolution 60/251, sixth preambular paragraph.

32 General Assembly resolution 60/251. operative paragraph 8

33 Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council, prepared by the Office of the High Commissioner for Human Rights. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/pledges.pdf>