

## **10 years of the UN Human Rights Council: achievements, shortfalls, and future reforms**

In September 2005, UN Heads of State and Government assembled in New York to review progress made since the Millennium Declaration (adopted in 2000). Ahead of this World Summit, the-then UN Secretary-General Kofi Annan presented his report 'In larger freedom: towards development, security and human rights for all,' which assessed the implementation of the Millennium Declaration and proposed a series of practical reforms. Among those reforms, designed to 'breath new life into the intergovernmental organs of the UN,' Kofi Annan proposed to Heads of State and Government that they 'replace the Commission on Human Rights with a smaller standing Human Rights Council.'

Although he left it to States to decide 'if they want to Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly,' he made his own preference clear by placing his proposals under the heading 'The Councils' (i.e. placing the Human Rights Council alongside the Security Council, and the Economic and Social Council) and stating that the new Council would 'accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter.'

At the end of the Summit, the General Assembly passed resolution 60/1 adopting the meeting's outcome. The outcome included a decision to endorse Kofi Annan's proposals and create a Human Rights Council.

In March of the following year, the General Assembly passed resolution 60/251 formally establishing the new Council and setting down its mandate and responsibilities. With resolution 60/251, the UN decided that the Council would be a subsidiary organ of the General Assembly, but that this status would be reviewed within five years. The General Assembly also decided that the Council would review its work and functioning five years after its establishment and report to the General Assembly.

In March 2011, the Council completed this five-year review and adopted resolution 16/21. Three months later, the General Assembly passed resolution 65/281 adopting the outcome. With resolution 65/281, the General Assembly also decided to maintain the status of the Council as a subsidiary body 'and to consider again the question of whether to maintain this status at an appropriate moment and at a time no sooner than ten years and no later than fifteen years.'

From 2021, the international community will therefore once again consider whether the Human Rights Council should become a main body of the UN on a par with the other Councils representing, together, the pillars of the organisation: human rights, peace and security, and development.

## **Building a strong and equal human rights pillar**

The reforms proposed in the 'In larger freedom' report - to build a stronger UN edifice comprising three equal, interconnected and mutually reinforcing pillars - were certainly visionary, but they were also grounded in the ideals and resolve of the founding fathers of the UN, and in the content of the UN Charter.

The Charter clearly positions the promotion of human rights as core to the UN's purpose, principles and actions - alongside the maintenance of peace and security, and the realisation of socio-economic development. Beginning with the words 'We the Peoples' (i.e. individuals - not States), human rights are a permanent and prominent concern running through the entirety the UN's founding document - from the preamble to the purposes, and from the organisation's responsibilities to its foreseen tasks.

The main reason why 'In larger freedom' was so powerful was that it recognised the disconnect between the prominence of human rights in the UN Charter, and the contemporary reality of human rights as the organisation's 'neglected pillar.'

It is of course highly unlikely, considering the significant difficulties involved (not least the need to amend the Charter), that the 2021-2026 review will see the Human Rights Council transformed into a true Council (a main body) of the UN. Despite Kofi Annan's vision of three equal pillars, the reality of the multilateral system is that human rights remains the UN's 'little pillar' - a point made evident by the fact that the human rights pillar receives only around 3% of the UN's regular budget.

Yet the difficulties inherent in raising human rights to its rightful place in the UN's architecture should not discourage proponents, rather it should encourage them to 'make the case,' and use the Council's 10<sup>th</sup> anniversary, and the planned 2021-2026 review to conduct an honest appraisal of the Council's achievements and shortfalls, and key reforms that are needed to strengthen its credibility and effectiveness for the future.

The current document represents a provisional attempt to set the boundaries or parameters of such an appraisal, and to identify the key areas in which the Council must improve over the next 5-10 years.

It is structured according to the principal elements of the mandate of the Council, as set down in General Assembly resolutions 60/1 and 60/251.

### **1. Addressing situations of violations of human rights (OP159, GA res. 60/1; OP3, OP4, OP5f, GA res. 60/251)**

A core mandate of the Council, as determined by UN Heads of State and Government at the 2015 World Summit, and reaffirmed by the General Assembly in resolution 60/251, is to address situations of violations of human rights, including gross and systematic violations.

General Assembly resolution 60/251 states that in doing so, the Council 'shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.'

After ten years of existence, there are significant question marks over whether the Council is fulfilling this core mandate. URG analysis shows that between 2006 and the end of 2015, only 8.2% of the Council's resolutions were considered and adopted under item 4 (situations requiring the Council's attention). Even if one includes resolutions adopted under other agenda items that have sought to respond to violations in other ways (for example, through capacity-building), then still only around a quarter of the Council's substantive output is focused on 'addressing situations of violations.'

This has led to a situation, according to Mr Salil Shetty, Secretary General of Amnesty, in which "too many serious human rights violations go unaddressed, many acute and chronic human rights situations receive little or inadequate attention, and many avoidable emergencies are not avoided."

What is more, the Council's resolutions (and relevant mechanisms) have addressed only around a dozen situations (under item 4), nearly all of them in Africa, the Middle East and Asia. It has also placed a heavily disproportionate focus on Israel, and human rights in the OPT. This suggests the Council's attention is directed more by (geo)-political considerations than by 'the principles of...impartiality, objectivity and non-selectivity.'

It is a similar story with Council mechanisms. Notwithstanding the emergence and development of new mechanisms such as Commissions of Inquiry, the Council has not been able to arrest a historic decline in the number of Special Procedures mandates focused on situations of violations.

It is vital for the effectiveness and credibility of the Council, and for the principle of universality, that stakeholders use the ten year anniversary to reflect on how this situation can be improved, in line with the Council's mandate, and in line with the principles of 'impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.'

Key to that reflection should be how to move beyond rival monologues about the relative merits of item 4 or item 10 approaches, to a more progressive discussion on how to give meaningful effect to paragraph 5f of GA resolution 60/251, which makes clear that the Council shall 'contribute, through dialogue and cooperation, towards the *prevention* of human rights violations and respond promptly to human rights emergencies.'

Strengthening the fulfilment of this *prevention* mandate, which plays to the strengths of the Council and its mechanisms, must be a key part of the Council's efforts to improve its performance over the next five to ten years. That entails securing improvements in early warning, early consideration and early response (triggered, for example, by objective criteria or protocols). Effective prevention

also means improved coordination between the Human Rights Council and the Security Council.

Finally, it will also be important, if the Council is to overcome allegations of bias, politicisation and selectivity, to bring the human rights situation in the OPT to the same level of scrutiny as other human rights situations. It is clearly neither credible nor sustainable for the Council to dedicate one whole agenda item to the situation in the OPT. Unfortunately, in the current international climate, it is difficult to see how this situation will be resolved. Certainly if it is to be resolved, it will require strong yet balanced US leadership.

### **Human rights mainstreaming (OP159, GA res. 60/1; OP3, GA res. 60/251)**

The centrality of mainstreaming to the work of the Council is often overlooked, even though its importance is recognised in both General Assembly resolution 60/1 and resolution 60/251.

That importance is based on an understanding that almost every conceivable policy or action, taken by States or by UN organs and agencies, has the potential to either promote or to undermine human rights. Seen from another perspective, to realise the full enjoyment of human rights, it is necessary for all parts of international system (including all three pillars of the UN) to work in concert. As UN Secretary-General Kofi Annan made clear in 2005: “You cannot have security without development, you cannot have development without security, and you cannot have either without human rights.”

Unfortunately, ten years after the establishment of the Council, there are significant doubts as to whether the body is fulfilling its mainstreaming mission. Important parts of the UN system, in Geneva, New York and in the field (e.g. Resident Coordinators), remain uncertain about their role in promoting human rights, or even about what a ‘rights-based approach’ or ‘human rights mainstreaming’ actually is. This situation is exacerbated by nervousness about bringing sensitive ‘political’ issues like human rights into areas of UN work (especially development work) perceived to be more ‘consensual’ in nature. For the moment, it seems unlikely that the UN Secretary-General’s much-vaunted ‘Human Rights Up Front’ strategy, developed in the aftermath of the UN’s failure in Sri Lanka, is helping to overcome this institutional tunnel vision.

With this in mind, supporters of a stronger Human Rights Council should use the next five years to engage with other relevant parts of the UN system in order to understand the nature of the obstacles to progress on mainstreaming, and to identify ways to overcome those obstacles. This is especially important in order to ensure that the UN human rights pillar contributes in a meaningful way to the realisation of the 2030 Development Agenda and the Sustainable Development Goals (especially SDG16).

## **Technical assistance and capacity building (PP10, OP5a, GA res. 60/251)**

General Assembly resolution 60/251 recognises the primary responsibility of States to promote and protect human rights. However, the General Assembly also recognised that the Council and the wider UN have an important role to play in ‘strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings.’

The General Assembly therefore decided that the Council should promote ‘advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned.’

The importance of this mandate is clear. Where countries, especially developing countries, have ratified international human rights treaties, possess the necessary political will to implement recommendations, but lack the capacity to make progress, it is vital for the international community to be able to intervene and provide necessary support. This is especially true for Least Developed Countries (LDCs) and Small Island Developing States (SIDS).

Unfortunately, while the Council has been relatively active in the area of capacity-building and technical assistance (i.e. item 10 of its agenda), it remains the case that there is no simple one-stop-shop channel, at the Council, through which developing countries can request and access international technical assistance and capacity-building support, and nor is there a space, on the Council’s agenda, for States to follow-up on and consider the effectiveness of such support.

It is true that the Council has established various Independent Expert mandates under item 10. However, these tend to be created in response to pressing human rights situations, rather than being seen as a universally accessible mechanism for delivering technical assistance. The Council has also established a Trust Fund to help developing countries implement UPR recommendations, and a Human Rights Council Trust Fund to help LDCs and SIDS engage with the Council. However, again, these do not represent a universal ‘on demand’ mechanism for the delivery of capacity-building support.

Over the next five years therefore, stakeholders should assess the effectiveness of Council interventions under item 10, and to consider the creation of new types of Council mechanism, such as a Special Roster of experts, that might strengthen the ability of the Council to receive requests for support and to deliver effective assistance.

## **Promote the full implementation of human rights obligations undertaken by States (OP5d, GA res. 60/251)**

In 2006, the then UN Secretary-General, Kofi Annan, called on the new Human Rights Council to lead the international community “from the era of declaration to the era of implementation.” As the Council marks its 10th anniversary, there

are important signs that States are increasingly turning their attention to the question of implementation, and the best ways to support it.

Viewed from the 'bottom-up,' this includes an enhanced focus on, and interest in, so-called 'standing national implementation, coordination and reporting structures' (SNICRS) – inclusive domestic mechanisms or processes designed to feed UN human rights recommendations into domestic policy-making, to monitor progress, and then to report back to relevant UN mechanisms. And it includes increased interest in the role of NHRIs to promote and monitor implementation, the role of domestic NGOs to hold governments accountable against their international obligations, and the role of parliaments to oversee progress.

Viewed from the 'top-down,' there is increased awareness of the importance of improved transparency and public accountability around which States are cooperating with the UN human rights system – and which are not, and of the importance of strengthening the Council's ability to deliver effective technical assistance and capacity building support (see above).

Over the next five years, it will be vital to further build on this evolving momentum, and to finally bridge the long-standing 'implementation gap' between universal norms and local realities. As Mr Salil Shetty, Secretary General of Amnesty International pointed out during the 31<sup>st</sup> session of the Council: "the ultimate success [of the Council] must be judged above all by the impact it has on real lives, those of ordinary people around the world."

### **Methods of work (OP5bis, OP10, OP12, GA res. 60/251)**

The importance of implementation and follow-up for the effectiveness and credibility of the Council is reflected in operative paragraph 12 of General Assembly resolution 60/251 which states 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.'

Unfortunately, a steady increase, over the past 10 years, in the number of general thematic debates, reports and panels, has placed increased strain on the Council's agenda. Today, many delegations, especially Small State delegations, are *de facto* excluded from important discussions by the sheer volume of the Council's workload. What is more, there is now little genuine substantive interactive dialogue, but rather a succession of monologues (for example, during 'interactive dialogues' with Special Procedures, States regularly now have only two minutes to engage with three mandate-holders). And perhaps most importantly, there is little or no space for results-orientated discussions (for example, under item 5) on follow-up to recommendations and their implementation.

It is crucial, for the future credibility and impact of the Council, that this situation is addressed, and that the Council orientates its methods of work towards greater efficiency and effectiveness.

Efforts have already begun in that regard, including reforms lead by H.E. Ambassador Joachim Ruecker, the ninth President of the Council. Those reforms will need to continue, and even speed up, if the Council is to remain relevant and credible, and if it is to have a real impact on the on-the-ground enjoyment of human rights.

### **Participation, transparency and new technology (PP7, OP12, GA res. 60/251)**

In order to promote public accountability and engagement, and to 'enhance dialogue and broaden understanding among civilizations,' the General Assembly called for the methods of work of the Council to be transparent, and emphasized the importance role of NGOs and the media.

An important strength of the Council is its openness to NGOs and civil society organizations. If 'human rights' is to be taken seriously as an equal pillar of the UN system, it is important to maintain and build on this situation, and avoid any moves to restrict civil society space.

Likewise, it will be crucial, over the next 5-10 years, to find new and innovative ways to make the Council and its work more accessible and interesting to the media and the wider general public. New technology, the Internet and social media have an important role to play in that regard. As a starting point, the Council decided (in 2015) to develop its own 'distinguishable, accessible and user-friendly website...including a user-friendly extranet, with features such as technical alert functions, and aiming at multilingualism' (PRST 29/1).

### **The Council's mechanisms (OP5e, OP6, GA res. 60/251)**

With resolution 60/251, the General Assembly decided that the Council would 'review and, where necessary, improve and rationalize all mandates [and] mechanisms...in order to maintain a system of Special Procedures.' Unfortunately, efforts to 'review, rationalize and improve' (RRI) mandates in 2006 were unsuccessful and since then the system has continued to increase in size and scope.

Over the intervening years and despite the proliferation of mandates, the Special Procedures mechanism has taken important steps forward. The strengthened role of the Coordination Committee, the publication of a new annual report containing information on cooperation and implementation, and an annual dialogue between the Chair of the Coordination Committee and the Council (item 5), are all welcome improvements.

However, for the Special Procedures system to remain relevant and effective, it will be necessary to use the next five years to identify an RRI procedure through which the Council can regularly review and, where there is agreement to do so, discontinue or merge mandates.

The international community should also use the next five years to review the accessibility, responsiveness and delivery of the Council's Confidential Complaints Procedures (together with the Special Procedures and Treaty Body communications procedures). The UN human rights petitions systems represent the most direct link between individual victims and the international protection system, and yet in the vast majority of cases they are failing to deliver remedy or redress.

An important innovation of the Council in 2006 was the establishment of the Universal Periodic Review (UPR) mechanism. Ten years on, the UPR is seen as an important success – every UN Member State has been reviewed at least once, while there is evidence that many recommendations have led to some action or change at domestic level.

### **Membership of the Council (OP8, OP9, GA res. 60/251)**

As a political, intergovernmental body, it is clear that the Council can only be as good as its membership. This point was well understood by those who negotiated General Assembly resolution 60/251, because it was questions over the membership of the Commission on Human Rights that had led to the latter's demise.

For that reason, the General Assembly set various criteria for both the election of Council members, and the performance of members once they take their seat.

On the former point, resolution 60/251 stipulates that when electing members of the Council, 'States should take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.'

On the latter point, the General Assembly decided that 'members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council.' Where a sitting Council member commits gross and systematic human rights violations, it was agreed that the General Assembly could suspend its membership rights.

Unfortunately, after ten years of Council elections and membership cycles, there is little evidence of States honoring these important criteria. Many elections (organized according to regional groups) are 'clean slate' elections; meaning membership is determined through political horse-trading rather than the ballot box. Where there is a competitive election, votes are usually cast according to bilateral diplomatic relationships rather than human rights considerations.

Furthermore, it is clear that once elected some members of the Council are



failing to uphold the highest human rights standards. Nor is there convincing evidence of States strengthening cooperation with the Council and its mechanism once they become a member. Finally, in the history of the Council, only one country – Libya – has ever had its membership rights suspended.

More than any other issue, strengthening the membership of the Council, by improved adherence to the criteria set down in resolution 60/251, has the potential to improve the body's performance and reputation. Over the next five years, concerted efforts must be made to ensure that all Council elections are competitive, that there is improved transparency and awareness around the human rights performance and contributions of candidates, and that greater pressure is brought to bear on States to vote according to human rights considerations rather than political ones.

Finally, resolution 60/251 makes clear that 'membership in the Council shall be open to all States Members of the United Nations.' This is important, as the universality of human rights demands the active involvement and engagement of *all States*. As of today, many UN Member States (48% of African States, 62% of Asia-Pacific States, 30% of Eastern European States, 55% of Latin American States, and 48% of Western States) have never held a seat on the Council. It is particularly noteworthy the very few LDCs or SIDS have ever been members of the Council.

This relative lack of inclusivity in turn has important implications for States' perceptions of the Council and of 'Geneva.' States that have never been involved with the work of the Council are less likely to be positively disposed towards it – an important point when one considers all UN Member States (the General Assembly) will participate in the 2021-2026 review.