

## NON PAPER BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

### ISSUES TO BE DISCUSSED IN THE CONTEXT OF THE HUMAN RIGHTS COUNCIL REVIEW

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#### I. BACKGROUND

According to operative paragraph 1 of General Assembly (GA) resolution 60/251, establishing the Human Rights Council (HRC), the GA should review the status of the HRC within five years. The scope of the GA process on the HRC review has not been clearly defined as there are different views on what a review of the HRC status entails.

The same resolution in operative paragraph 16 provides that the HRC should review its work and functioning five years after its establishment i.e. before 15 March 2011)

On 15 March 2010, the President of the GA appointed H.E. Mr. Christian Wenaweser Permanent Representative of the Principality of Liechtenstein and H.E Mr. Mohamed Loulichki, Permanent Representative of the Kingdom of Morocco, to serve as Co-Facilitators (along with the Permanent Representative of Morocco) for an 'open, inclusive and transparent process' to discuss the HRC review in line with GA resolution 60/251.

The High Commissioner and her Office (OHCHR) attach significant importance to the HRC review process. They contributed to different initiatives and participated in fora organized by several interested stakeholders.

In this context, the High Commissioner made various proposals relating to possible improvements in the work of the Council either at the opening of Council's sessions or in other forums. Some of these suggestions have largely permeated into the thinking of the various participants in the discussions, others have not yet been discussed fully.

It should be underlined that GA resolution 60/251 provides that the Assembly should focus on reviewing the status of the Council, while the review of the work and functioning of the Council should, to the extent possible, remain a Geneva-driven process.

Geneva representatives, Governments and NGOs which are very much aware of the challenges currently faced by the Council should, through regular contacts with the GA co-Facilitators, ensure that their counterparts in New York are fully kept abreast of recent developments. OHCHR stands ready, if asked, to participate in briefings to interested parties on the HRC Review, both in Geneva and New York

The High Commissioner is of the view that the Review should be conducted in an inclusive and transparent manner, with all concerned parties (Member States, UN human

rights machinery, especially Special Procedures, UN departments and agencies), Civil Society, including NGOs and National Human Rights Institutions, in a spirit of cooperation.

## II. PURPOSE OF THE NON PAPER

In preparation for the convening of the first meeting of the Intergovernmental Working Group on the HRC (25-29 October 2010), OHCHR has prepared this non-paper aimed at elaborating on some key elements of the HRC Review while touching on other ones which have not yet been dealt with.

## III. SOME ISSUES TO BE CONSIDERED IN THE CONTEXT OF THE HRC REVIEW

### 1. Governance

The HRC review provides an opportunity to address the lack of clarity on the practical implications of the relationship between the General Assembly and the Human Rights Council as a subsidiary body of the GA, including the reporting line and the way in which the GA takes action/endorsees HRC resolutions and decisions, in particular those with financial and/or political implications. **The current practice of the General Committee to allocate the agenda item entitled "Report of the HRC" either to the Third Committee or the GA plenary, or both of them, further to an ad hoc deliberation of the General Committee should be re-considered with a view to establishing predictable reporting arrangements.**

Every effort should be made to allow the Council to function efficiently in terms of resources required to be authorized by the GA. The current arrangements which do not allow the GA to consider HRC decisions until the end of the year has practical/financial, as well as legal implications for the HRC's work, as well as direct impact on OHCHR which is tasked to contribute to the implementation of a significant number of resolutions adopted by the HRC. Increasingly, new activities and mandates decided upon by the HRC (e.g. a meeting of a new intergovernmental working group; fact-finding missions) have had to be postponed or implemented by diverting resources allocated for other activities on a temporary basis. **Possible solutions to the above-mentioned problem would include the transmission to the General Assembly of Council resolutions/decisions requiring the latter's urgent endorsement soon after the Council session concerned (e.g. in the form of a short session report) and/or the creation of a contingency fund to provide the Council with certain financial autonomy**

## 2. Working methods and arrangements

Efforts aiming at introducing more flexibility into the Council's work face systemic difficulties in view of the heavy and rigid nature of the current working arrangements. All stakeholders and the UN Secretariat are finding it increasingly difficult to operate in an environment with too many sessions, reporting requirements, general debates, statements and resolutions. Accordingly, the Council should embark into a process of re-considering its practices regarding these various elements. **A paper is attached to the present non-paper listing a number of concrete proposals which would benefit from a thorough analysis.** Among such proposals, it would be useful to focus on the following ones as a matter of priority **bearing in mind their financial implications which should be considered fully by the General Assembly at the end of the review process:**

- a. **Resolutions:** Despite many calls to the contrary in the past decades, the number, length and frequency of resolutions have remained more or less unchanged. **It is thus crucial for the Council to ensure that most of its resolutions and reports be bi- or triennialized.**
- b. **Reports:** The number of HC or SG reports requested by the Council is constantly increasing but the time available to discuss them is decreasing as a result of which there is no substantive discussion of most of such reports. **Accordingly, the Council should consider substituting written reports with oral ones, especially progress or annual reports, bi- or triennializing the requests for written reports, and allocate a minimum of time for the consideration of each report.**
- c. **General debates and interactive dialogues:** Far too much time of the Council's sessions is devoted to general debates under each agenda item with too many repetitive statements while interactive dialogues have become somewhat cumbersome with clustering of thematic special rapporteurs and too little time to listen to the mandate-holders' responses to questions. **Thus, general debates should be shortened, and re-engineered while giving additional space to substantive discussions and debates without outcomes. The President may be authorized to propose interactive dialogues, debates or panels on current issues during or in-between sessions and informal plenary meetings could be convened to enable the HC or other UN senior staff, as well as other UN bodies and agencies to brief the Council on issues of interest. The practice of clustering the dialogues with thematic mandate-holders should be discontinued and replaced by full-fledge and individualized interactive dialogues with all mandate holders the format of which could be adjusted to resemble that of panels (two segments of Q&As).**
- d. **Number and duration of sessions:** The current number of sessions is too heavy with arrangements providing for the consideration of all agenda

items three times per year making it unmanageable for small missions or organizations. **It would therefore be opportune to consider reducing the number of substantive plenary sessions (4 weeks duration) to two (March and September) with an additional organizational and UPR session (May/June). Additionally, the Council may wish to consider organizing a yearly session of one week duration outside Geneva at one of the UN Regional Centres<sup>1</sup>.** Such short session would consist of a general debate and of various panels considered of priority importance in the region, with the involvement and participation of all relevant regional human rights stakeholders.

**Additional information is contained in the Annex.**

### **3. HRC procedures and mechanisms**

Sound and constructive relationship between the Council and its mechanisms and procedures should be established.

#### *3.1 Universal Periodic Review (UPR)*

The UPR is rightly considered as one of the most significant successes of the Council so far. However, it will only be possible to assess its impact by the end of the second cycle. It is therefore of utmost importance for the Council to consider the modalities for the second cycle as soon as possible. **The following are proposals which may be taken into consideration in this pressing endeavour:**

- a. **In terms of periodicity, the Council may wish to spread the second cycle over a period of five years which should start in the spring of 2012. The modalities should be agreed upon at the September 2011 session to enable the reporting States to prepare themselves for the UPR process. The order of consideration of the various States should be drawn by lot at that session, with those States having been considered during the three first UPR sessions placed in one lot, those considered during the next three ones in a second lot and so on.**
- b. **Member and Observer States should be strongly encouraged to bring an element of additional expertise to the review process by associating national human rights experts as part of their delegations. This, in turn, would facilitate the work of triokas and enable them to play a more proactive role in the UPR process.**
- c. The recommendations made during the interactive dialogue should be clustered and steps should be taken to ensure that recommendations made in the UPR working group are streamlined, rationalized, pertinent, meaningful, effectively relate to human rights and aim at improving the situation on the ground. They

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<sup>1</sup> The possible costs of such a proposal should be assessed.

- should also be consistent with those formulated by other human rights bodies and mechanisms. The latter role could be played by strengthened troikas.
- d. The current reports of the WG should be organized thematically.
  - e. **Greater rigor by States under Review should be secured in terms of acceptance or rejection of recommendations.**
  - f. **The difficulties with the list of speakers should be immediately addressed by leaving the possibility for all States which are willing to do so to intervene in the process. This would require more time. Since there is redundancy in the current UPR phases with no real clarity as to the role of the plenary, it is suggested to revisit the current arrangements by providing more time to the WG consideration (which may be considered now as plenary meetings) and less to the plenary discussion.**
  - g. **The UPR dialogue should enable the questions and answers segment to be done on one day and the recommendations 48 hours later.**
  - h. **One of the focuses of the 2<sup>nd</sup> cycle will be the follow up to the recommendations made during the first cycle. It will thus be of crucial importance to envisage a specific space to UN entities; particularly UN Country Teams (UNCTs) which are actively engaged in follow up.**

### *3.2 Special Procedures*

The *overall objective of the review with respect to special procedures (SPs)* should be to enhance the impact and effectiveness of the system as independent, expert Council mechanisms whose recommendations should be followed up by the Council, States and others.

- a. Encourage the Council and States enhance interaction and engagement with the special procedures, incl. as early warning mechanisms and contributions to urgent debates/ discussions on country situations, including through making more systematic and regular use of thematic expertise in special sessions, urgent debates or other, new forms of crisis response by taking SP recommendations and proposals into account and formally inviting SP, through their Coordination Committee, to participate
- b. Enhance the interactive dialogues (IDs): one ID per SP, min. 1 hour with several rounds of questions and more time for concluding remarks, and questions to be sent to SP in advance (following the UPR model).
- c. Encourage more high-level interactive dialogues / panels on thematic issues that are the subject of thematic / annual reports and studies
- d. Underline the principle of cooperation of States in the Code (Operative paragraph 1) and suggest elaboration of this principle:

- Council to adopt benchmarks for cooperation by States: standing invitations, substantive responses to communications, responses to requests for country visits with a certain time frame
  - States to include in their pledges to GA specific cooperation measures such as standing invitations or holistic national strategies to ensure integrated and coordinated follow-up to recommendations of the special procedures and UPR
  - States to document and provide evidence of cooperation and legislative, policy or programmatic follow-up, in advance of IDs with special procedures, to make the dialogues more meaningful and sustained (see also below).
- e. Make better use of existing formal and self-regulatory mechanisms:
- Presidential statement of 18 June 2008, which allows for situations of persistent non-compliance with the Code of Conduct to be brought to the attention of the President
  - Internal Advisory Procedure of the Coordinating Committee (CC): and have set up the Internal Advisory Procedure, which they are committed to implement proactively and make better known
  - Encourage the CC to ensure constructive engagement and more visibility with President and States, including by providing its Chairperson with an opportunity to present the report of the annual meeting of the SPs to the Council
  - Separate thematic and country mission reporting and cluster reporting on country missions
- f. Encourage greater linkages between the SP and the UPR through CC- coordinated participation of thematic and country mandate holders.
- g. Encourage enhancement of regular budget resources for special procedures
- h. Enhance the selection procedure of mandate holders so as to ensure that they are the most qualified, independent experts
- i. Underline the responsibility of the President and Council to select experts who fulfil the highest standards of independence, integrity and competence.
- j. Encourage States and other stakeholders to enhance outreach to potential candidates and nominations from all regions of the world and backgrounds.
- k. Suggest additional resources for President to interview or otherwise contact shortlisted candidates:
- l. Enhance the role and functioning of the Consultative Group (CG) providing it with strengthened support
- m. Encourage greater transparency of CG's mandate-specific criteria in advance of short-listing (as opposed to current justification of recommendations)

### *3.3 Advisory Committee*

The relationship with the Advisory Committee may be adjusted to enable the Committee to report to the Council after each one of its sessions (governance issue) and involve the Committee more closely into the Council's activities such as panels or briefings.

### *3.4 Complaint Procedure*

The complaint procedure would benefit from serious revamping with the possible consideration of merging the two working groups into one thus facilitating and speeding up the transmission of cases to the plenary and taking full advantage of all possibilities for the outcome of the plenary discussion as envisioned but not implemented yet in para.109 of resolution 5/1.

#### **4. How to address chronic and urgent human rights situations?**

The High Commissioner has constantly and consistently urged the Council to expand its toolbox of procedures and mechanisms aiming at dealing effectively and efficiently with chronic and urgent human rights issues. Since her first statements to the Council she has argued for flexibility to be introduced into the work of the Council to enable it facing such crises by **referring to special sessions without an outcome, an increased recourse to Presidential statements or declarations, convening of in-session or inter-sessional briefings or discussions, expanding and mainstreaming the practice of organizing panels during or in-between sessions.**

These various calls have not remained unheard and the Council has already envisaged and/or implemented such new features by calling for thematic Special Sessions, urgent debates or stand-alone interactive dialogues, or informal dialogues. **These efforts should be revisited with a view to provide the Council with tools enabling it to react more easily to whichever human rights crisis, wherever it may occur, and in whatever form.** This may be at the national, sub-regional or regional levels, it may be thematic or country based. The crucial importance is for the Council to be in a position to respond to human rights emergencies and be perceived by civil society as addressing its needs and being in a position 'to make a difference'.

**Geneva, 30 September 2010**

## ANNEX TO THE NON PAPER BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

### Some proposals related to Governance

- The reporting line of the Council: should this be to the GA plenary or the Third Committee (bearing in mind there has been no consistency to date) ? It is to be noted that the Peacebuilding Commission's report is submitted to and considered by the GA plenary
- The reporting cycle of the HRC: currently the annual report of the Council to the GA covers sessions from June to June. At GA 63 an addendum to the annual report was submitted to the GA as it was required to consider HRC decision 9/103 on resources and conference servicing of the HRC. An addendum containing the report of the twelfth special session was submitted to GA 64 and considered by the plenary
- The format of the report: should this include a chapter listing recommendations with financial implications requiring GA action as in the case of the CHR, and existing subsidiary bodies? The inclusion of such a chapter would assist Member States and the Budget Division.
- The reporting relationship with the GA: should the HRC's annual report (with a new chapter listing recommendations with financial implications requiring GA action) or only this first chapter be presented to the GA plenary for action throughout the year? This would allow for more timely action on recommendations and revised estimates could be submitted more frequently to ACABQ and the Fifth Committee, bearing in mind the Third Committee meets once a year only.

### Some proposals related to working methods

#### *Proposals related to work-load:*

- Biennialize or triennialize items and/or sub-items
- Stagger items throughout the year
- Biennialize or triennialize submission of reports under items and related resolutions
- Consolidate reports according to items rather than have these require reports to respond to each resolution
- Reduce the number of and shorten resolutions
- Frame resolutions on procedural questions as decisions
- Encourage omnibus or comprehensive resolutions, the former on one item, the latter encompassing many, but not all the issues
- Focus resolutions on new elements, in particular action-oriented ones
- Task the Bureau of the Council with the role of ensuring that draft resolutions are concise, clearly formulated and incorporate a clear message
- Convene an open, informal meeting of the Council to discuss the number of draft resolutions needed under each item or cluster of items (see here Commission on



Crime Prevention and Criminal Justice). If a draft resolution is deemed necessary, the proponents or drafters could be requested to identify main new elements contained therein

- Require sponsors of draft resolutions to monitor the implementation of their resolutions actively, in particular in relation to implementation on the ground, so as to create a sense of accountability
- Substitute written reports with oral reports, especially progress reports or annual reports
- Allocate a minimum time for consideration of each report prepared in response to Council requests.

*Proposals related to revitalization of sessions*

- Shorten and reengineer general debates
- Develop strategies for more interactive debates, such as 'Question time' following presentations from the HC, other secretariat staff, special rapporteurs etc
- Introduce flexibility for dealing with situations and issues on the HRC's agenda, including by using the tools available to it to address them
- Focus less on outcomes and more on substantive discussions and debates
- Authorize the Pdt of the HRC propose interactive debates on current issues on the agenda of the Council in consultation with Member States
- Consider convening informal plenary meetings where briefings could be provided by inter alia the HC or other senior staff, as well as those of other UN bodies and agencies
- Examine the possibility of introducing a multi-year programme of work for the Council along the lines of CSocD; CSW; CSD
- Convene expert group meetings on themes to be taken up by the Council, with the report of such meetings replacing existing reports
- Elaborate formal outcomes (Ptd's summary) of panel discussions to be included in the HRC report
- Reduce the number of sessions to two: eg March and September; in June the HRC should consider the UPR reports in plenary
- Hold one session of one week's duration outside Geneva at one of the regional centres and this should consist of a general debate and several panels on themes considered of priority importance in the region, with the participation/involvement of relevant regional human rights bodies.
- Increase possibilities to deal with emergency issues and chronic human rights violations at sessions and inter-sessionally
- Increase opportunities for participation and exchange of views with other stakeholders, such as other UN bodies and agencies, academics etc in order to improve human rights mainstreaming and the dissemination of the HRC's work
- Convene HRC retreats

Geneva, October 2010