

A decorative graphic consisting of a grid of grey dots of varying sizes, with several dots highlighted in red. The dots are arranged in a pattern that roughly outlines the shape of a world map.

Reviewing the UN Human Rights Council

Perspectives from Civil Society

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- From the viewpoint of rights holders, the UN Human Rights Council (HRC) has largely failed to respond to a majority of human rights crises and chronic situations of human rights violations whereas the institutional framework of the HRC has not been exhausted yet. A number of the following recommendations can help establish a better practice of the HRC based on existing principles.
- It is crucial to bring critical human rights situations to the HRC's attention irrespective of the arithmetic of political majorities. Institutional triggers are needed for the discussion of situations by the HRC. In order to minimise selectivity in the HRC's engagement with situations, the debate at the sessions of the HRC should be divided into regional segments in order to ensure that situations in all regions are discussed. The predictability of the overall Program of Work should be increased.
- The Code of Conduct for UN Special Procedures has still not been fully implemented. As many member states of the HRC do not comply with their duties, benchmarks for measuring the cooperation of states with Special Procedures are needed.
- The Universal Periodic Review (UPR) is generally assessed as a positive mechanism. Nevertheless, for the success of the UPR, an effective follow-up to recommendations is essential, and states should be encouraged to present a mid-term assessment.
- Membership within the HRC should be based on quality, and the competitive nature of the election process should be developed towards this aim. The access of civil society from the regions to the HRC and its sub-organs needs to be increased.



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1. Introduction

Giving birth to the Human Rights Council (HRC) in 2006 via its Resolution 60/251, the UN General Assembly (UNGA) already determined to review the functions and the work of the HRC after five years, that is, in 2011. Operative Paragraph (OP) 1 of the Resolution says, »the General Assembly shall review the status of the Council within five years«, and »the Human Rights Council shall review its work and functioning five years after its establishment and report to the General Assembly« (OP 16). The overall mandate of the HRC to be assessed determines OP 2: to »promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction and in a fair and equal manner.«

The review process had already started in October 2009, when the Human Rights Council established an open-ended intergovernmental Working Group on the review of the work and functioning of the HRC at its 12th session.¹ The first HRC Working Group started 25-29 October 2010, which marked the formal launch of the review process in Geneva. A second Working Group meeting is scheduled for January 2011.

Principally, there are three processes: the review of the work and the functioning of the HRC in general, the assessment of the Universal Periodic Review segment in particular, as well as the future status of the HRC. There is an agreement that the first two processes will be substantially conducted in Geneva, while the status of the HRC is to be reviewed at the level of the General Assembly from the very beginning of the review process. The outcome of the Geneva review will be delivered to New York, and the UNGA will then finally conclude the review process.

After some previous discussions among governments as to whether the review of the UPR should take place at a later stage – the UPR started later than the general functioning of the HRC – there is now the general consensus that these two processes should be developed in parallel. The information flow between Geneva and New York should be reciprocal and coordination between the two processes be ensured. The HRC President should assume a leading role in Geneva and seek the views of all

stakeholders. The results should be brought together to be adopted simultaneously by the UNGA. It is, therefore, expected that the review at Geneva should be completed not later than the end of the 17th session of the HRC (i.e., June 2011).

A number of meetings with states, UN bodies, academia, NGOs and National Human Rights Institutions (NHRIs) have already taken place (e.g., at Mexico City, Paris, Rabat, Seoul, Wilton Park, Algiers, Montreux, to name a few locations). The outcomes of these meetings have been summarised and are posted as non-papers at the UN website (HRC Extranet)² in order to disseminate the results from the discussions to a wide audience and to benefit from a wide range of constructive ideas. Some of the outcomes and recommendations are detailed, some focus on procedural issues, some are brief and concentrate on a few substantial issues, such as the question of expertise. All in all, an extended informal debate already exists.

The review process offers a good opportunity to evaluate the HRC's performance, to identify gaps and shortcomings, to consider options to current working elements, and, finally, to make the HRC more effective and more efficient in implementing its mandate. According to Human Rights Watch's recent analysis, there are roughly three major aspects to be taken into consideration: a) to address situations of violations of human rights, including gross and systematic violations; b) to contribute to the prevention of human rights violations; c) to respond promptly to human rights emergencies (Human Rights Watch 2010).

In order to make the viewpoints of non-state stakeholders more prominent, an international conference was organised in Berlin from 14-15 October 2010 by the German Forum Human Rights, the German Institute for Human Rights and the Friedrich-Ebert-Stiftung; the latter hosted the event under Chatham House Rule. The participants represented a number of NGOs, NHRIs, United Nations Human Rights Officers, Independent Experts and diplomats. The Berlin Conference sought to assess the HRC's performance, particularly from the viewpoint of non-state actors – that is, rights holders and victims

1. HRC Resolution A/HRC/RES/12/1.

2. See http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm; November 2010. All these non-papers have been considered for this text while some are not explicitly quoted. An overview of these non-papers is also compiled by Heinz / Rathgeber 2010.

suffering from human rights violations – and aimed to develop recommendations for the review. The conference participants considered the following five general themes as being the most pertinent:

- Tools of the HRC to address situations of human rights violations;
- HRC membership, agenda and Program of Work;
- HRC Mechanisms: Special Procedures;
- HRC Mechanisms: Universal Periodic Review;
- HRC sub-organs, role of the Office of the UN High Commissioner for Human Rights (OHCHR) towards the HRC.³

This report constitutes the summary of the conference outcome and presents the recommendations developed on the five general themes. The present paper is an attempt by the author to capture the collective wisdom expressed during the Berlin meeting, to which all participants effectively contributed. The recommendations do not pretend to be comprehensive but reflect the key issues arising in the discussions.

2. Effectiveness and Performance of the Human Rights Council: General Considerations

The UNGA Resolution 60/251 provides a bundle of criteria on the functioning of the HRC, which are particularly detailed in OP 5 of the Resolution.⁴ The list of the single assignments ranges from 5.a) to 5.j). In a joint paper, NGOs have clustered these tasks into four categories, which determine non-state actor's main fields of activities on the ground and their expectations towards the functioning of the HRC (Joint NGO Letter 2010; Joint NGO Paper 2010).

1) Promoting international human rights law, its development and its implementation

- Promote human rights education and learning (OP 5a);
- promote advisory services, technical assistance and capacity-building (OP 5a);
- serve as a forum for dialogue on thematic issues on all human rights (OP 5b);

- make recommendations to the General Assembly on development of international human rights law (OP 5c);
- promote full implementation of human rights obligations and follow-up to human rights goals and commitments from UN conferences and summits (OP 5d);
- undertake a UPR of each state (OP 5e);
- make recommendations for promotion and protection of human rights (OP 5i).

2) Addressing and preventing human rights violations

- Address situations of violations of human rights, including gross and systematic violations (OP 3);
- make recommendations on situations of violations of human rights (OP 3);
- contribute to prevention of human rights violations through dialogue and cooperation (OP 5f);
- respond promptly to human rights emergencies (OP 5f).

3) Promoting coordination and mainstreaming of human rights

- Promote effective coordination and mainstreaming of human rights within the UN system (OP 3);
- assume roles and responsibilities of the Commission in relation to the work of the OHCHR as decided by UNGA Resolution 48/141 (OP 5): *Requests the High Commissioner for Human Rights to report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights and, through the Economic and Social Council, to the General Assembly.*

4) Working methods and rules of procedure

- Be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation with a view to enhancing the promotion and protection of human rights (OP 4);
- work in close cooperation with governments, regional organisations, NHRIs and NGOs (OP 5h);
- members shall cooperate with the Council (OP 9)
- members shall uphold the highest standards in the promotion and protection of human rights (OP 9);
- meet regularly throughout the year (OP 10);
- hold three sessions per year for no less than 10 weeks (OP 10);
- be able to hold special sessions (OP 10);
- apply the rules of procedure of the General Assembly, as applicable, until otherwise decided (OP 11);

3. See the programme at <http://www.fes.de/gpol/en/hrc-conference.htm>; October 2010.

4. UNGA Resolution A/RES/60/251.

- participation of and consultation with observers shall be based on arrangements, including UN Economic and Social Council (ECOSOC) Resolution 1996/31 and practices observed by the Commission, while ensuring the most effective contribution of these entities (OP 11);
- methods of work shall be transparent, fair and impartial and enable genuine dialogue, be results-oriented, allow for follow-up discussions to recommendations and their implementation, and for substantive interaction with Special Procedures (OP 12);
- report annually to the General Assembly (OP 5j).

The clusters served to design the architecture of the Berlin Conference and draw attention in particular to the viewpoint of rights holders and victims suffering from human rights violations. To make the ample list of tasks better manageable for a two-day discussion at the conference, the HRC assignments were condensed into the mentioned five general themes and were discussed in respective Working Groups: * Tools of the Human Rights Council to address situations of human rights violations; * HRC membership, agenda and Program of Work; * HRC Mechanisms: Special Procedures; * HRC Mechanisms: Universal Periodic Review; * HRC sub-organs, role of the Office of the UN High Commissioner for Human Rights towards the HRC. The discussions and the outcomes during the conference have confirmed this approach.

During the discussions at the Berlin Conference as well as in a number of the non-papers, it was stated that the review process should not renegotiate the HRC's Institution Building Package (Resolution 5/1 and Resolution 5/2) but rather supplement it. If changes in the Institution Building Package were deemed to be necessary, the working method should follow the core principle of consensus, as followed by the institution building process of the HRC in 2006 and 2007.

The previous statement leads indirectly but immediately to a next conclusion: the institutional framework has not been exhausted yet; as, for example, in addressing country situations and the low use of means other than resolutions. A number of the recommendations below can already be explored, based on existing principles, in order to establish a better and – more precisely – good practice.

A number of contributions emphasised the importance of cooperation and dialogue as the principal methodology; in particular cross-regional dialogues and initiatives. This was also the general understanding at the conference, all the while stating that cooperation and dialogue should not prevent the identification of gaps, challenges and ways and means to remedy the shortcomings. The review process as such should be transparent, constructive and consensual.

In general, a closer cooperation of the HRC with NHRIs and NGOs was underscored. The latter should extend its active role in the development and enhancement of public awareness about human rights situations. It was also reported that there are discussions among states to revise the Consultative Status of NGOs with ECOSOC and to include a Code of Conduct for NGOs. In order to enhance the participation of national NGOs and NHRIs, the HRC should work out a more reliable Program of Work in order to make NGO participation outside of Geneva more feasible. In addition, the financial burden placed on NGOs not based in Geneva for travelling and attending sessions of the HRC or the UPR has been mentioned. Establishing a kind of voluntary trust fund was debated, similar to the fund promoting the attendance of indigenous representatives to meetings at UN bodies.

3. Summary of the Discussion and Recommendations of the Berlin Conference

3.1 Tools of the Human Rights Council to Address Situations of Human Rights Violations

From the viewpoint of rights holders, the HRC has largely failed to respond to a majority of human rights crises and chronic situations of violations that need its attention. Most of the country situations the HRC has addressed are those inherited from the Commission on Human Rights. A number of non-papers by NGOs and countries develop suggestions in order to move away from the current model of ineffective engagement on situations. In general, there are discussions to consider three approaches: 1) generating independent triggers for the consideration of situations by the HRC; 2) ensuring a broader coverage to minimise selectivity in the HRC's engagement; and 3) diversifying the HRC's toolbox.

Some non-papers argue for reorganising the discussions under Item 4 (*human rights situations that require the Council's attention*), which centres the complaints and debates on country situations and, thus, is highly controversial among governments. The suggestion aims to divide the debate on Item 4 into regional segments in order to ensure that situations in all regions are discussed, and, thus, the debates be structured away from selectivity and double standards. For discussing country situations, the HRC should use a wide array of means, such as holding briefing sessions, sending letters of inquiry to the concerned states, issuing Presidential Statements, organising hearings with victims of particular situations, or requesting the High Commissioner for Human Rights and Special Procedures to brief the HRC on the situations (Human Rights Watch 2010). The HRC should further cooperate with regional groupings and mechanisms.

In addition, the HRC could create Working Groups of Independent Experts for each of the five regions. Like Special Procedures, the mandate of such a Working Group would be to examine the situations in the specified region; report the findings to the HRC; send communications and urgent appeals to governments; carry out country visits and report the findings; issue media releases; report on trends and good practices; provide advice; and make recommendations on how to improve the human rights situations under their consideration. Country mandates would be necessary when the HRC agrees that specific reporting, advice, or monitoring by a Special Rapporteur or an Independent Expert is needed.

In relation to an independent trigger for the consideration of a situation by the HRC, the authority to do so may include the HRC President, the UN Secretary-General, the High Commissioner for Human Rights, the General Assembly, the Security Council, and the Special Advisor to the UN Secretary-General on the Prevention of Genocide. Requests by any of these experts, officials, or institutions would automatically trigger a formal discussion of the situation. Contrary to that, the document of the meeting that happened in Algiers reveals discussions that country mandates could only be maintained when approved by the country concerned, by the regional organisation or by the regional human rights body concerned (Algeria 2010). Taking into account these and other proposals, the participants of the Berlin Conference have chosen the following recommendations as key elements.

Recommendations

- Other actors than states should be allowed to put situations on the agenda, for example, the High Commissioner for Human Rights, the Secretary-General, a group of Special Procedures mandate holders;
- through a grouping of five Special Procedures, an issue for discussion by a joint request may be put forward, which would automatically trigger a formal discussion of the situation;
- under the current Item 4 of the HRC agenda, the general debate on situations should be addressed in regional segments;
- all agenda Items should be open to address country-related situations of human rights violations;
- the HRC should use different formats or a combination of formats for addressing situations, like letters, briefings, resolutions or technical cooperation;
- a format should be established that includes the follow-up of current and past recommendations and the consideration of situations involving failure or denial of cooperation by governments;
- the country reports of the High Commissioner and the reports of the Special Procedures should be presented and discussed individually, not all at once; in addition, a broader participation of NGOs in the interactive dialogue is needed;
- NHRIs and local NGOs should be strengthened as a link between the HRC and the grassroots level;
- the HRC should establish a fund for the protection of human rights defenders who suffer reprisals.

3.2 HRC Membership, Agenda and Program of Work

The non-paper of Algiers reflects discussions whether there should be universality of membership, though it will not be an immediate issue. Other participants to this meeting considered that the focus should be on the quality of the members rather than their number (Algeria 2010). Most of the non-papers as well as the discussions at the Berlin Conference concluded that, regarding the institutional architecture, there are a large number of prospective aspects that are rather underdeveloped concerning bringing the human rights situation to the public's attention. In relation to membership, the criteria that states should uphold the highest standards, fully cooperate on human rights issues, be parties to a significant number of international human rights conventions or provide stand-

ing invitations to Special Procedures still leaves a lot of room for improvements within the parameters of the current framework. According to several non-papers, the HRC could produce a mechanism to review and assess the state of cooperation between the HRC and the Special Procedures through candidates and member states of the HRC; for example on an annual basis. The competitive nature of the HRC election process can also be improved, for example by avoiding clean slates. The HRC could further develop a procedure in order to check the state of voluntary commitments and pledges by the member states (Human Rights Watch 2010; Switzerland 2010a; Report on Wilton Park Conference 2010; Algeria 2010).

Parallel to the optional regional division of Item 4, the documents elaborate on suggestions for increasing the variety of tools in organising the HRC agenda in general and extending the discussion opportunities. There are proposals to extend panel discussions and roundtables,⁵ to increase the work in cross-regional formats, to introduce intersessional briefings without formal outcomes, to carry out special sittings during regular HRC sessions like an ad hoc half-day panel session or to organise open-ended meetings held by the HRC President. In addition, other outcomes such as recommendations could be conclusions, summaries of discussions and Presidential Statements. Clustering debates with Special Procedures can be useful when there are connections between the mandates as well, as joint reports have shown quality and additional value for in-depth discussions. Clusters are not useful when the topics are too diverse.

Human Rights Watch suggests reducing duplication and merging the general debates of agenda Items 3 (*on promotion and protection of all human rights*), 8 (*on follow-up to the Vienna Declaration on Human Rights*) and 9 (*on racism and discrimination*) into one general debate on thematic issues. In addition, Human Rights Watch suggests merging the general debates of Item 4 (*situations that require the attention of the Council*), Item 7 (*human rights in Palestine and the other occupied Arab territories*) and Item 10 (*technical assistance and capacity-building*) into one general debate on situations and capacity-building. These general debates could each be structured into separate regional segments.

5. This suggestion is controversial though, as some participants of the Berlin Conference felt that the Program of Work currently is overloaded by panel discussions and time-consuming in detriment to the participation of NGOs as well as the proliferation of updates on Special Sessions.

A major concern for NGOs relates to the low predictability of the Program of Work and lack of clarity concerning the schedule. Currently, no deadline exists for when the specific Program of Work has to be lined up. In the past, there was sometimes no scheduling certainty even two weeks ahead of the session. Such circumstances have a negative influence on NGOs' work and planning, as their representatives are obliged to stay longer than necessary, which puts a strain on their budgets. The question was raised as to why it was not possible to arrange, for example, the dialogues with the mandate holders of the Special Procedures like debates on the UPR outcome? A fixed time allocation per mandate holder is tentatively being developed by pre-inscription for oral statements in order to predict how long the interactive dialogues will be. Another remark related to resorting to points of order in plenary sessions and in connection with statements by NGOs: points of order should not be used as a general practice – as they are now – but only in extreme situations. Taking all this into account, the participants of the Berlin Conference have chosen the following recommendations as key elements.

Recommendations

- The possible criteria for membership should be considered in terms of exclusion from candidacy or membership:
 - countries under consideration of the UN Security Council;
 - those countries that are not cooperating seriously with Special Procedures;
 - those committing massive violations of human rights;
 - those which have ratified less than 50 percent (5 of 9) of the core human rights instruments;
 - no standing invitation to Special Procedures;
- avoid clean slates and make the election a choice;
- have the Program of Work be published six weeks before HRC session starts, at the latest;
- dialogues with Special Procedures should be fixed, like debates on UPR work;
- there should be a legal advisor for the HRC Presidency from the UN New York Office in order to improve the coherence and continuity of the technical functioning of the HRC;
- in relation to membership, there should be hearings in New York or Geneva on state candidates and their pledges for election;

- have a data base and provide proper monitoring for keeping pledges on record;
- via the hearing, states should be encouraged to fulfil the requirement to act according to the highest standards.

3.3 HRC Mechanisms: Special Procedures

There are concerns that the independence of the Special Procedures might be undermined in the context of the review process beyond the already existing Code of Conduct. Indeed, the document of Algiers reports about considerations for a so-called Advisory Committee of Magistrates to be established to address state's complaints on non-compliance by mandate holders with the Code of Conduct. Some of the participants of the Algiers retreat argued that Special Procedures should pay more attention to the cooperation and consultation with the government concerned in a constructive and considerate manner. Some mandate holders of the Special Procedures would not fully understand the complexities of certain situations, particularly in armed conflicts; some are too ready to speak to the media, and they should rather focus on technical assistance.

Other non-papers also deal with this issue but turn the duty of evidence onto the complaining governments, which should provide detailed explanations of the nature of the alleged violations of the Code of Conduct. A professional legal body of, for example, jurists or judicial figures would evaluate whether the mandate holder may have erred (Report on Wilton Park Conference 2010). Contrary to that, NGOs consider that any discussion about extending the Code of Conduct should concentrate on the duties of the states and develop a procedure to hold governments accountable. The mandate holders of the Special Procedures, its Coordination Committee and the OHCHR have constantly addressed this issue, too (OHCHR 2005, 2007, 2010a/b; Coordination Committee of the Special Procedures 2007; Special Rapporteurs 2007; Special Procedures 2008 and 2009).

There are a number of governments, including members of the HRC, that do not cooperate with Special Procedures. There is a massive gap of non-cooperation. They are not held accountable for that by the HRC, although the Code of Conduct is quite clear on this subject. As of now, the HRC does not even foresee a report on this

issue, whereas agenda Item 5 (*on human rights bodies and mechanisms*) already offers the opportunity to address the status of cooperation with Special Procedures.

Several non-papers address this situation and suggest that, once a year, the UN Secretariat may brief on the number of communications sent by Special Procedures and the responses received, by country and region. Benchmarks for measuring the cooperation of states with Special Procedures could be, for example, the states' replies to urgent appeals. The state's diplomatic mission should deliver a substantive response within five days of the receipt of the communication. The HRC Secretariat would also inform about the status of visits requested by Special Procedures. States should respond to a request for a visit within two months. A state that has agreed in principle to a visit should propose dates within a month. If a state with a standing invitation has failed to respond to a request for visits for over a year, the standing invitation should be deemed inoperative. In addition, information should be provided on the Notes Verbales sent to state delegations in connection with specific studies or reports by Special Procedures and the responses received. The entire procedure should conclude with a summary of the situation that would be adopted by the HRC (Human Rights Watch 2010; Kemileva et al. 2010; Report on Wilton Park Conference 2010).

There are further concerns expressed in various non-papers, namely that the HRC does not sufficiently discuss the substance of the Special Procedures' reports compared to the Third Committee of the UNGA, which holds a much more interactive dialogue with the mandate holders. Their findings and recommendations are not systematically considered either, prior to the adoption of country mandates, whereas the Special Procedures have often proven to be a pertinent tool for fact-finding, inquiry, monitoring and early warning. The public hearings during the Goldstone inquiry have been a good example for victims and witnesses participating in the work of the HRC, giving visibility to their plights and allowing their voices to be heard. During the discussions at the Berlin Conference, the concern was raised that the HRC was not only omitting the Special Procedures' assessments but that it was going to lose its prevention capacity and, thus, lose sight of the victims or rights holders. Furthermore, complementarity between the HRC, UN treaty bodies and Special Procedures should be sought.

Taking all this into account, the participants of the Berlin Conference have chosen the following recommendations as key elements.

Recommendations

- As principle of cooperation between states and Special Procedures, there should be a guidance for governments, as already exists within the Code of Conduct on Special Procedures;
- a definition of state cooperation is needed; it should be measured, for example, by looking at the communication between Special Procedures and states via statistics on replies by states to letters of allegations or visits requested by the Special Procedures;
- the interactive dialogue on the reports of the Special Procedures need to be improved; that is, the cluster of the issues should be revised;
- the follow-up of the Special Procedures' recommendations should be institutionalised, for example, after the debate on the report presented to the issue or the country;
- the prevention role of the Special Procedures needs to be strengthened and highlighted;
- the mandate holders of the Special Procedures need a substantially better budget and equipment of staff;
- the Coordination Committee of the Special Procedures needs to be strengthened;
- the selection of mandate holders should gradually be developed in the format of a global pool of experts.

3.4 HRC Mechanisms: Universal Periodic Review

The UPR has been generally assessed in positive terms while the effectiveness of the UPR depends on the willingness of states to respond to recommendations of their peers and to undertake necessary measures. An effective follow-up to recommendations is essential to the success of the UPR, and states should be encouraged to present a mid-term assessment.

Among the pros of the UPR is the cooperative framework, which can be used to debate and to address human rights situations, although the UPR is an insufficient tool for responding to situations that require an urgent or sustained engagement. The UPR has proved that there are human rights issues that deserve to be dis-

cussed in all states. Such situations could be examined in seminars or workshops organised by the OHCHR for relevant states. By allowing NGOs that are not accredited at the UN to submit information, the UPR has significantly expanded the participation of domestic NGOs. Furthermore, the UPR has encouraged governments to start human rights reforms that have led to meaningful changes on the ground.

The discussions reflected in several non-papers as well as conducted at the Berlin Conference deal with further improvements. One main suggestion refers to incorporating more independent or national expertise such as parliaments, the OHCHR, treaty bodies and Special Procedures in order to improve the quality of the interactive dialogue. In addition, the HRC could create a roster of Independent Experts to provide their expertise during the UPR process. The NHRIs should play a more active role in the implementation of recommendations, as some NHRIs did during the hearings, which were broadcasted through webcasts and received in countries like South Africa and Brazil, where NHRIs organised parallel events for civil society, journalists and other interested stakeholders (McMahon 2010a/b/c; UPR-Info 2010; Human Rights Watch 2010; Kemileva et al. 2010).

There was some discussion about whether NGOs should be able to participate in the interactive dialogue within the UPR Working Group. The prevailing view considers that the examinations within the UPR Working Group should remain a peer (inter-state) process. Other ways should be found to enhance the roles that national NGOs can play within the UPR examinations. For instance, the Troika might hold an informal briefing with non-state stakeholders before the interactive dialogue with the concerned government starts; in analogy to the customary procedure of the UN treaty bodies.

With regard to the second UPR cycle, non-state actors' opinions tend to consider both the general situation of human rights as well as the implementation of the accepted recommendations. Technical cooperation should be provided to countries in order to help them prepare their national reports. In relation to the problems concerning the list of speakers, there are several suggestions such as, for example, allowing HRC members to speak first, or to extend the interactive dialogue in the Working Group from three to four hours – or to an unlimited time – and to correspondingly extend the cycle to five years,

thus allowing the examination of 13 states per UPR session instead of 16 (Mexico and France 2009, 2010a/b; Switzerland 2010a). From the large amount of details, the participants of the Berlin Conference have chosen the following recommendations as key elements.

Recommendations

- Measures should be taken to ensure that the states under review fulfil their obligations to clearly indicate their positions on all of the recommendations. The states under review should clearly explain their positions on each recommendation;
- recommendations to the states under review should be more specific and action-oriented; there should be fewer and better recommendations, which would make it easier for the states under review to act on the recommendations. It would be easier to monitor the implementation of sufficiently specific recommendations;
- the next cycle of the UPR should look at the implementation of the outcome of the first cycle of the UPR; each state under review should elaborate a UPR implementation plan and should present an interim report on implementation, and there should be a requirement to discuss them in the HRC;
- the complementary character of the international UPR system to the national system should be recognised as a basis for the discussion of measures to improve the UPR;
- improvements should be made for the arrangements of genuine national NGOs (i.e., not GONGOs – Government-Orientated NGOs) and »A status« NHRIs in the UPR process;
- regional organisations and parliaments should be involved in the follow-up;
- the OHCHR could play a larger role in assisting national consultations. It could develop guidelines for the conduct of national consultations and assist NGOs in their contribution to national consultations;
- non-ECOSOC-accredited NGOs should have an opportunity to speak in relation to the adoption of the UPR outcome for their country in the HRC plenary;
- improvements should be made to how the examination is carried out in the Working Group; for example, there should be a true interactive dialogue in the UPR Working Group examination;
- the Troika should play a more substantive role in guiding the examination in the UPR Working Group; how-

ever, the role of the Troika should only be enhanced if true human rights expertise is brought to the work of the Troika; there should be a group of experts who would follow the UPR process for particular states from beginning to end, including in implementation;

- »A status« NHRIs should have a formal opportunity to contribute to the UPR Working Group.

3.5 HRC Sub-organs, Role of the Office of the UN High Commissioner for Human Rights towards the HRC

Considering the relationship between the HRC and the OHCHR, it is obvious that the High Commissioner on Human Rights and the Office of the High Commissioner on Human Rights receive their core mandate from the UNGA and, therefore, are independent from the HRC and neither is subject of the review. Nevertheless, the participants of the Berlin Conference discussed and agreed that the OHCHR may increase its support to the sub-organs of the HRC and that this would require more financial provisions for the OHCHR.

In relation to the HRC and its sub-organs, the sub-organs are covered by various resolutions of the HRC. With exception of the Advisory Committee, the Social Forum, the Forum on Minority Issues and the Expert Mechanism on the Rights of Indigenous Peoples have been barely meeting since their establishment. Therefore, any substantial assessment would be premature. However, there is the understanding that these sub-organs are part of a long process of development of the international human rights machinery, and the review is part of this process. Suggestions about the Advisory Committee can apply to the other sub-organs *mutatis mutandi* when appropriate.

In relation to the Advisory Committee, it was generally argued in the Working Group that the Advisory Committee should be granted the right to initiate work and make suggestions to the HRC, as well as to receive sufficient resources. Civil society should be regularly encouraged to attend the meetings of the Advisory Committee and the participation from the regions should be effectively increased (Zoller 2010).

The Berlin Conference has chosen the following recommendations as key outcomes.

Recommendations

- The access to, participation with and expertise of rights holders and victims must be reinforced in all sub-organs.

Towards the Advisory Committee

- Enhance the communications and outreach of or by the Advisory Committee about its work in the HRC and, more globally, towards all stakeholders;
 - the role for the President of the HRC should be strengthened in order to facilitate the communication between the Advisory Committee and the HRC;
 - the Advisory Committee should be enabled to report to, and dialogue with, the HRC after each of its sessions in the presence of one of its members (Chair or Rapporteur) during the respective HRC session;
 - experts in the Advisory Committee should be nominated through the selection process as established for Special Procedures (i.e., Consultative Group and President of the HRC);
 - the Advisory Committee should be able to receive mandates also through Presidential Statements;
 - involve the Advisory Committee in more of the HRC's activities such as panels, discussions, briefings;
 - the Advisory Committee need more resources to provide its substantive support and work;
 - the sessions of the Advisory Committee should be better distributed throughout the year;
 - the HRC should respond in a timely and substantive manner to research proposals from the Advisory Committee.
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- In relation to the Complaint Procedure, the Working Group on Communication and the Working Group on Situations should be merged;
 - the experts in the Working Group on Communication should be nominated through the selection process established for Special Procedures (i.e., Consultative Group and President of the HRC).

4. Conclusion

All oral and written contributions express the will to make the review process a constructive exercise in order to improve the effectiveness of the HRC. How proposals will be implemented or whether they remain in limbo will be revealed by the process. While most of the contributions coincide with the shortcomings of the current HRC, the conclusions differ in their principal approach. It is not a surprise that among governments we find a more state-orientated approach that repeatedly stresses the governments' cooperation as a basic mechanism in the HRC. In contrast, non-state actors prefer a more normative orientation with clear benchmarks for making the HRC act.

The contributions by non-state stakeholders not only stress the shortcomings but provide many detailed recommendations on how human rights violations can be better addressed and how the handling by the HRC can be effectively improved. A remarkable set of recommendations exist. Beyond the intellectual contribution, it is time to make use of the momentum to lobby governments and member states of the HRC in order to make the recommendations part of the HRC review process. Public attention is needed, too, in order to make governments move their policies towards implementation. A real effort is necessary to make the rights holders' viewpoint the reference point for any assessment and conclusions in the review process.



References

Coordination Committee of the Special Procedures (2007): A Note by the Special Procedures' Coordination Committee in Response to the Discussion on a Code of Conduct and Annex: Possible Elements of a Code of Conduct. Geneva.

Heinz, Wolfgang S., and Theodor Rathgeber (2010): Assessment of the Current Stage of the HRC Review Debate. Discussion paper presented to the Berlin Conference 14-15 October.

Human Rights Council (2006): Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled »Human Rights Council«. Intersessional Open-ended Intergovernmental Working Group on the Implementation of Operative Paragraph 6 of General Assembly Resolution 60/251 Established Pursuant to Human Rights Council Decision 1/104. A/HRC/3/CRP. 2, Geneva.

——— (2007): Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled »Human Rights Council«. Second Session of the Intersessional Open-ended Intergovernmental Working Group on the Implementation of Operative Paragraph 6 of General Assembly Resolution 60/251 Established Pursuant to Human Rights Council Decision 1/104. A/HRC/3/CRP. 4, Geneva.

——— (2009): Organizational and Procedural Matters, Resolution Adopted by the Human Rights Council, 12/1. Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council. A/HRC/RES/12/1, Geneva, 12 October.

McMahon, Edward R. (2010a): Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council. University of Vermont. July.

——— (2010b): Proposals for Reforming the Universal Periodic Review. Discussion paper presented to the Berlin Conference 14-15 October.

——— (2010c): Analysis of Recommendations of the Universal Periodic Review, Sessions I-VI. Discussion paper presented to the Berlin Conference 14-15 October.

OHCHR (2005): Rationalisation of the Work of the Commission. Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights. E/CN.4/2006/116. Geneva.

——— (2007): Discussion paper on interaction between National Human Rights Institutions and Special Procedures. Geneva.

——— (2010a): United Nations Special Procedures. Facts and Figures 2009. Geneva.

——— (2010b): Note by the OHCHR on recent practices in follow-up to Special Procedures' activities. Geneva.

Special Rapporteurs (2007): Special Procedures and Regional Human Rights Systems: Areas for Strengthening Cooperation. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Geneva.

Special Procedures (2008): Manual of Operations of the Special Procedures of the Human Rights Council. Geneva.

——— (2009): Special Procedures' Follow-up Activities. Geneva.

UNGA (2006): Resolution Adopted by the General Assembly 60/251, Human Rights Council, 72nd Plenary Meeting, 15 March 2006; A/RES/60/251, New York, 3 April 2006.

UPR-Info (2010): Analytical Assessment of the Universal Periodic Review 2008-2010. Geneva.

Zoller, Adrien-Claude (2010): The Contribution of the »Sub-organs« of the Human Rights Council and the Role of the Office of the High Commissioner for Human Rights (OHCHR). Perspectives from the Regions. Geneva. Discussion paper presented to the Berlin Conference 14-15 October.

Further references and non-papers available via HRC Extranet

Algeria (2010): Outcome of the Retreat of Algiers on the review of the work and functioning of the Human Rights Council. Sheraton Hotel Club des Pins Resort and Towers, Algiers. 19-21 February.

Human Rights Watch (2010): Curing the Selectivity Syndrome. The 2011 Review of the Human Rights Council. New York, June.

Joint NGO Letter (2010): Proposal on the Structure for the 2011 Review of the Human Rights Council's Work and Functioning. Geneva, 6 May.

Joint NGO Paper (2010): 10 Principles to Guide a Successful Outcome of the Review of the UN Human Rights Council as It Relates to the Special Procedures. Geneva

Kemileva, Kamelia, Benjamin Lee, Claire Mahon, Chris Sidoti, Andrew Clapham, and Geneva Academy of International Humanitarian Law and Human Rights (eds.) (2010): Expertise in the Human Rights Council. A policy paper prepared under the auspices of the Geneva Academy of International Humanitarian Law and Human Rights. Geneva, June.

Letter of HRC President (2010): Geneva, 15 June.

Mexico and France (2009): Reflection Group on the Strengthening of the Human Rights Council First Working Session; Mexico City, 29-30 October. Preliminary report under the responsibility of the co-chairs, November.

——— (2010a): Reflection Group on the Strengthening of the Human Rights Council, Second Meeting, Paris, 25-26 January. 29-30 October. Preliminary report under the responsibility of the co-chairs, February.

——— (2010b): Reflection Group on the Strengthening of the Human Rights Council, Fourth Meeting. Seoul, 14-16 July.

Mexico, France, and Morocco (2010): Reflection Group on the Strengthening of the Human Rights Council, Third Meeting. Rabat Document, Rabat, 27-28 May.

NAM Letter (2010): Geneva, 6 and 22 June.

OHCHR (2010): Non-paper on HRC Review. Geneva, October.



Report on Wilton Park Conference WP1013 (2010): Reviewing the Work and Functioning of the Human Rights Council: What Are the Priority Issues? 14-16 January. February.

Russian Federation (2010): Non-paper on Modalities of the Review of the Human Rights Council. 18 May.

Switzerland (2010a): Open-Ended Seminar on the Review of the Human Rights Council. Summary report under the responsibility of the Chair. Montreux. 20 April.

——— (2010b): Switzerland's Views on the Process and Modalities of the Human Rights Council Review. Geneva, May.



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