



JOINT CIVIL SOCIETY PAPER

Strengthening the Human Rights Council at 10

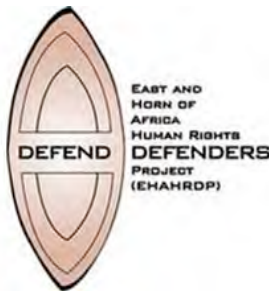
This joint civil society paper has been prepared by 20 leading international, national and regional non-governmental organisations, on the occasion of the United Nations Human Rights Council's 10th Anniversary.

For further information on this publication, please contact Michael Ineichen at the International Service for Human Rights: m.ineichen@ishr.ch. or R. Iniyan Ilango, Asian Forum for Human Rights and Development (FORUM-ASIA): iniyan@forum-asia.org

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STRENGTHENING THE HUMAN RIGHTS COUNCIL AT 10

The UN Human Rights Council (the HRC), established in 2006, has a vital role to play in preventing, addressing, remedying and securing accountability for human rights violations, and in contributing to the promotion, protection and realisation of human rights on the ground.

As the HRC enters its 10th anniversary year, this civil society paper details a number of short- and medium-term steps that would enhance its ability to better fulfil its role. Any healthy and functional body should be open to exploring opportunities for self-improvement on a continuing basis.

The 10th anniversary should be not only an occasion for celebrating the achievements of the HRC, but primarily to critically reflect on its shortcomings, and to enhance its impact and effectiveness. It is imperative that civil society is able to participate and contribute fully and substantively to both formal and informal discussions in this regard.

The impact and achievements of the HRC 10 years in should be measured against its mandate, including:

“that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

that the Council should address situations of violations of human rights, including gross and systematic violations.”¹

The following proposals would contribute to moving towards a **vision of a Council where:**

1. Its outputs have a direct and positive impact on the behaviour of States and non-State actors with regard to human rights,
2. Serious human rights situations and violations are addressed in a timely, substantive and principled manner;
3. A diversity of civil society representatives and human rights defenders (HRDs) have a safe and central role in the Council’s work, and are able to contribute substantively and influentially to this work; and
4. There is greater adherence to HRC membership standards, including in relation to cooperation with the HRC and its mechanisms, and ‘upholding the highest standards of human rights’ at home, internationally and at the HRC itself.

1. GA Resolution 60/251, OPs 2 and 3.

KEY PROPOSALS TO IMPROVE THE EFFECTIVENESS OF THE HRC

The proposals in this paper are not intended as a comprehensive blueprint for reform of the Human Rights Council, nor do they aim to launch a formal process of institutional review.

Rather, this paper sets out a range of short- and medium-term proposals that might help, if taken on board, to gradually turn the HRC into a more accessible, inclusive, efficient, influential, protective and effective human rights body. Some of the proposals will require the collaboration and possibly active decisions by HRC members, while most can be adopted through changes in practice.

A. Enhancing membership standards and adherence thereto

The HRC's founding document, *General Assembly Resolution 60/251*, sets out criteria for membership, namely that members of the Council are expected to *uphold the highest standards in and protection of human rights*, and to *fully cooperate with the Council*.

In electing members to the HRC, *Resolution 60/251* requires the Member States of the General Assembly to take into account the candidates' *contribution to the protection of human rights*. However, even these basic standards are currently not fulfilled.

In order to enhance membership standards and adherence thereto, the following steps should be taken:

1. Members of the General Assembly, as States electing the members of the HRC, should develop and adhere to an 'electing members pledge.' This informal pledge would commit co-sponsors to not trade votes for elections to human rights bodies, and contain a set of criteria that would guide their voting during HRC elections. Such criteria should include whether candidate States have...
 - a. ...demonstrated a good faith commitment and progress in the promotion, protection and fulfilment of civil, political, economic, social and cultural rights;
 - b. ...established an effective national implementation and follow-up mechanism, developed in collaboration with and including the participation of civil society, in relation to human rights treaties to which the State is already party, and committed to undertaking relevant national consultation, legislation or executive processes to expeditiously ratify those human rights treaties to which the State is not already a party;
 - c. ...fully and substantively cooperated with the HRC and its mechanisms and the UN human rights treaty bodies. This would include responding to Special Procedures' communications substantively and on time, issuing a standing invitation to Special Procedures, responding promptly and positively to visit requests and cooperating fully with country missions, and reporting to the treaty bodies in a timely and constructive manner; and
 - d. ...conducted open, transparent and genuine national consultations with civil society and the public on the content of States' overall aspirations and pledges for their term of HRC membership.
2. Candidate standards should be progressively enhanced, through the submission of clear, transparent and timely pledges by all candidate States, by participating in a public pledging event in New York and by organising a public pledging event in their country. Candidates' pledges should:
 - a. Be informed by a national consultation process (see 1(d) above);
 - b. Set out steps for the State to improve its respect for human rights and its cooperation with the Council;
 - c. Set out the standards that will guide the States' term as HRC member, such as criteria for a

member to lead or support action to address situations of human rights violations (see C.I. on trigger mechanisms below);

- d. identify ways by which the State intends to uphold the “highest standards of human rights”;² and,
- e. If elected, addressing all human rights situations on their merit, rather than on the basis of political, economic, military or other extraneous interests.

3. All regional groups should commit to running a **competitive slate** for elections. There should be no closed slates.

4. **Persistent failure by States, in particular sitting members, to cooperate with the Council** and its mechanisms should be addressed through a range of measures:³

- a. Cases of persistent non-cooperation should be raised by Special Procedures mandate holders (e.g. through the annual report of the Special Procedures), by treaty bodies (e.g. through a statement of the Meeting of Chairs), or by the High Commissioner for Human Rights.
- b. In case of persistent patterns of non-cooperation, the President of the Council and the Bureau should reach out to the State concerned to express concern and to identify ways to improve the situation. If this fails, the President of the Council should publicly raise the case before the full Council (e.g. under agenda item 5).
- c. Evidence of persistent non-cooperation should also be one of the ‘trigger’ criteria to be considered by the Council when determining which situations require its attention (item 4), and, ultimately, which Members should be considered by the General Assembly for a suspension of membership rights under the relevant provisions of *GA resolution 60/251*.

5. Council members should be **expected to engage substantively in the HRC’s work**, including by showing leadership on addressing critical human rights issues, supporting resolutions that increase the capacity of the international human rights system to monitor and hold States to account, or that progressively advance the promotion and protection of human rights. States should also actively oppose resolutions that fail to advance the protection of rights or which undermine existing standards, and oppose also procedural tactics designed to block consideration of human rights issues on their merits.

2. Including by addressing concerns raised by treaty bodies, Special Procedures and the High Commissioner, commitments to cooperate with UN Special Procedures, to implement accepted UPR recommendations and file mid-term implementation reports, ensuring that civil society organisations can conduct their work, including expressing views critical of State authorities, without undue restriction or fear of reprisal, harassment or intimidation, creating and supporting independent national human rights institutions, and working to advance the mandate of the Council.

3. Such cases can and should be dealt with within the framework provided by GA Resolution 60/251 and the Council’s institution-building package. ‘Persistent failure to cooperate’ could, for instance, mean to have failed to respond to communications in several consecutive communications reports of the Special Procedures, or to fail to respond to and investigate cases of reprisals documented in the Secretary-General’s annual report on ‘Cooperation with the UN in the field of human rights’ (the Reprisals Report’).

B. Focusing on implementation

One of the principle weaknesses of the international human rights system, including the HRC, is the lack of implementation of resolutions, recommendations and advice at the national level. At 10 years, the HRC should undertake a renewed effort to ‘close the implementation gap’, including through the following measures:

1. The HRC should call for, and States should support, a substantial increase in the **core financial resourcing** of the Special Procedures and the Office of the High Commissioner for Human Rights, both of which have a key role to play in independently monitoring, advising and reporting on States’ implementation. Where political will exists at the national level, the Special Procedures and OHCHR can also provide expert guidance and technical assistance to support implementation.
2. For selected thematic resolutions, the HRC could request an **implementation report** one year after the adoption of the resolution and before a follow-up resolution is adopted. OHCHR or the Secretary-General could compile such reports with input from States and other stakeholders, documenting and sharing good practice and challenges in implementation at the national level.⁴
3. States should draft all resolutions with a focus on implementation, including by setting clear **benchmarks** to measure progress.
4. The HRC should establish a dedicated **implementation fund**,⁵ to which States in conjunction with civil society could apply for funding for ‘implementation projects’. In order to be approved, implementation projects would have to respond to a clear standard, such as involving broad-based civil society actors, leading to sustainable institutional change and facilitating the work of national human rights defenders in contributing to the promotion and protection of the rights covered by the project.
5. The HRC could also consider the appointment of a **Special Rapporteur or Working Group of experts on implementation** that would develop the methodology (including benchmarks and indicators) and undertake independent assessment of the implementation of relevant HRC resolutions, including through facilitating the holding of inter-sessional implementation workshops to exchange good practice in implementing HRC resolutions and recommendations.

4. There are numerous precedents for the HRC or the General Assembly calling on the Secretary-General or relevant Special Procedures mandate holders to report on the implementation of resolutions in the context of their annual reports.

5. This could also be achieved by expanding the existing UPR implementation fund into a wider ‘UN human rights implementation fund’ covering recommendations from UPR, treaty bodies and Special Procedures.

C. Enhancing ability to address contexts or country situations requiring attention

The HRC still fails to address many grave and persistent situations of human rights violations. To remedy this weakness and selectivity, the following steps should be taken:

1. Members of the HRC should develop and implement a **joint commitment** to request a special session or commence work on a situation- or country-specific initiative in situations that meet a certain threshold, or are referred to the HRC by independent actors.⁶ Such **triggers** should include:
 - a. The High Commissioner for Human Rights suggesting HRC action;
 - b. A group of four or more Special Procedures mandate holders suggesting HRC action;
 - c. Relevant regional mechanisms flagging a situation requiring the HRC's attention;⁷
 - d. The General Assembly or the Security Council flagging a situation as requiring the HRC's attention;
or
 - e. A group comprising a State's A-status NHRI, together with three or more ECOSOC-accredited NGOs, suggesting action.
2. Situation- or country-specific resolutions should – as a matter of course – be substantive, and contain an **assessment and recommendations in relation to the full spectrum of relevant human rights**, including civil, political, economic, social and cultural rights, that are being violated or at risk of being violated as a result of the situation that gave rise to the resolution.
3. In determining its response to a context or country situation requiring attention, the HRC should include adequate **benchmarks or milestones** that can serve to measure progress or regression on the ground, and help determine the continuation or cessation of HRC mandates or reporting.
4. Members of the HRC should only support situation- or country-specific resolutions that adequately, accurately and objectively reflect the **human rights situation on the ground**, and which accurately represent the capacity or willingness of the State concerned to address such violations.
5. Members should ensure that Council responses are commensurate with the **nature and severity of the situation**. This means, for example, that members should not use a technical assistance and capacity building approach to respond to situations of gross violations, particularly where there is a lack of demonstrable political will to improve the situation.
6. States should not hold the pen on resolutions concerning their own situation.
7. Consideration should be given to establishing a cross-regional, independent Working Group on situations, to bring to the Council's attention situations in each region that warrant the Council's attention in accordance with its mandate.

6. In a joint statement, a group of 18 States, including Austria, Botswana, Chile, Costa Rica, Cote d'Ivoire, France, Honduras, Maldives (delivered), Mauritius, Norway, Palestine, Peru, Slovenia, Somalia, Switzerland, Ukraine, United Kingdom and Uruguay, voluntarily committed themselves to be guided by a number of independent considerations when assessing whether a situation merits the attention of the Council, including 'whether there has been a call for action by the UN Secretary-General, the High Commissioner for Human Rights, by a group of Special Procedures, or another indication of either a chronic or urgent human rights situation; whether the State concerned has been willing to recognize that it faces particular challenges; whether the State concerned has laid down a set of proposed credible actions to respond to the situation; whether the State has been effectively engaging with Special Procedures — including allowing country visits; whether the State is facilitating or obstructing access on the part of humanitarian actors, human rights defenders and the media; whether it has been effectively cooperating with Treaty Bodies; and whether it has been constructively and transparently engaging with the Human Rights Council on the situation in question.' The statement is available at <http://bit.ly/1pjU319>.

7. This could include the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe or the OSCE.

D. Enhancing safe and effective access by civil society and HRDs

To enhance access to the HRC by HRDs, civil society and victims, and improve the impact of civil society input to its work, the following steps should be taken:

1. States must **refrain from any acts of intimidation or reprisals** related to cooperation with the HRC or its mechanisms, and ensure that any allegations are promptly and thoroughly investigated, remedies provided to victims and perpetrators held to account. The HRC President should keep the Council informed under item 5 of any unresolved allegations of reprisals, and afford an opportunity to the State concerned to provide an update on progress towards addressing the issue.
2. NGO speakers should be **interspersed with those from States** within all debates and dialogues of the HRC (e.g. alternating 10 states, 2 NGOs, etc), thereby allowing NGOs to more effectively participate in the debate and reflecting real civil society integration into the work of the Council.⁸ This is already the practice for panels, and should at a minimum be extended to interactive dialogues, enabling also greater interaction with mandate-holders and panellists.
3. **Remote participation**, for NGOs not based in Geneva, should be actively encouraged. This could be enhanced by a coordinated approach between OHCHR's regional offices and UN country teams.
4. The trend of **shrinking physical space** for NGO representatives in Room XX should be reversed, restoring or preferably increasing the number of dedicated civil society desks, which existed prior to the electronic voting system.⁹
5. NGOs and civil society should have greater freedom and space to **independently hold side events**, such as through UNOG reserving a minimum number of rooms and prime time slots for NGO side-events, and be free to promote events at the Palais des Nations, including in high-traffic areas and common spaces in the building.
6. Side events and slots for oral statements should be **confirmed with sufficient advance notice** to allow proper travel arrangements for organisations not based in Geneva.

8. Note that in an 'interoffice memorandum' of June 2006, the ASG for Legal Affairs indicated that while resolution 60/251 sets the minimum participation rights for civil society (as being those observed by the Commission on Human Rights), the view of the Legal Adviser is that 'the Human Rights Council should enhance that participation in order to ensure their "most effective contribution" to its work'. Interspersing NGO speakers with States would not require a formal change in the Council's rules of procedure, but rather would be an evolution of the practice consistent with 60/251 and the above interpretation of the OLA view.

9. Since August 2013, the number of assigned NGO seats was reduced from 22 to 2, representing a reduction in physical space for NGOs of more than 90% in 2.5 years.

E. Ensuring lasting benefit from the Universal Periodic Review (UPR)

The Universal Periodic Review is one of the HRC's innovations and after two cycles has emerged as one of the key drivers and rallying points for civil society engagement with the UN human rights system and at the national level. However, with its emphasis on the State under review, the peer nature of the review and the heavy workloads on reviewing States, it risks degenerating into a purely notional or 'ritualistic' review.

Better quality control, more expertise, and more independent, credible information about implementation (or lack thereof) are needed to ensure more lasting benefits from the UPR process. The following steps could contribute to this:

1. Reviewing States should **enhance the seniority and level of expertise** of their representation in the Working Group, thereby giving additional weight to their recommendations.
2. The compilation report of UN sources, produced by OHCHR, should contain an assessment of the **level of implementation of prior recommendations** accepted, and thus serve as an independent opinion on progress of implementation, including by soliciting and compiling the views of all relevant stakeholders. The assessment should also cover noted recommendations. This could take the form of a separate report, based on information sourced from UN country teams, Special Procedures, treaty bodies, civil society and NHRIs and bilateral partners of the State under review. The compilation report should also contain, for each State, information on HRC resolutions co-sponsored and the steps taken to implement HRC resolutions (see point B.2, under implementation above).
3. All stakeholders (including States, civil society and UN mechanisms) should ensure that their reports in future UPR cycles contain information on **levels of implementation** of prior recommendations, in addition to new information about the situation on the ground.

F. Workload of the HRC

The **programme of work** of the HRC should be made more sustainable, which would increase the quality of its work and would lead to more predictability:

1. The programme of work of HRC sessions should be rearranged so as to ensure that dialogues and debates relevant to resolutions to be considered for the current session are moved towards the beginning of the program of work for the session.¹⁰
2. For each week of the HRC programme of work there could be one 'waiting' day, which could be used for informal negotiations and side events. This would mean that for a three-week session, the programme of work would be suspended every Thursday (for example), and thus the session would last three days longer, without increasing the number of working days.
3. The adoption of UPR outcome reports could be moved to a specially convened HRC plenary session immediately after the subsequent UPR Working Group meeting. This would free up time on the Council's regular session agenda.
4. States should continue their efforts, in cooperation/coordination with the President and the HRC calendar of initiatives, to biennialise and triennialise relevant thematic resolutions.

10. This could include moving the UPR and all of the Panel debates to the end of the programme of work, and would ensure that debates that impact - or should impact - on resolutions being negotiated actually take place at a moment when they can influence those resolutions (note: currently, much of item 10, which includes several reports on country situations, is discussed in the last week, immediately prior to the adoption of resolutions when resolutions are mostly agreed upon, and thus the impact of the debate is very limited).

G. Strengthening the HRC President and Bureau

1. The Secretary-General should create the position of an **independent legal counsel** in Geneva who would be at the ready disposal of the President (and Vice-Presidents) on the podium to advise on legal questions arising in the work of the HRC, including during meetings.
2. Consistent with their moral and legal duty to prevent and respond to acts of intimidation or reprisals against those cooperating with the HRC or its mechanisms, the President and Bureau of the HRC should **develop and consistently implement a comprehensive policy on intimidation and reprisals**. This policy should ensure any alleged acts of intimidation or reprisal are thoroughly investigated, remedies provided to victims, and perpetrators held to account, through effective processes that are accessible and transparent to complainants, States and civil society. Such a policy should be elaborated in a consultative process involving civil society and experts. The President and Bureau should maintain a clear and accessible record of correspondence relating to allegations of intimidation or reprisals brought to the President's attention, and provide the Council with regular updates on the status of such allegations.

H. Enhancing the status of the Human Rights Council

1. States, and in particular members of the HRC, should work towards elevating the HRC to a **principal organ of the UN**, including by consistently making human rights a central pillar of their foreign policy.

The key benefits of repositioning the Human Rights Council a primary organ of the UN would be: promoting and mainstreaming human rights as a genuine and equal pillar within the UN system; enhancing the status of the Council in such a way as to enhance its political influence and capacity to fulfil its mandate; and clarifying and entrenching its institutional autonomy.



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