



“The Human Rights Council at 10 – improving relevance, strengthening impact: Strengthening the Council’s relevance and impact on-the-ground”

Informal draft report

Policy Dialogue

Permanent Mission of Thailand, Thursday 19th February

The informal policy dialogue at the Permanent Mission of Thailand was the second of three such meetings designed to consider how to strengthen the Council as it heads towards the 10th anniversary of its establishment and to feed into a retreat to be organised in May by Norway and Switzerland. Participants (states, OHCHR, UNDP, NHRIs and NGOs - from all regions) focused on the question of how to improve the Council’s relevance and impact on-the-ground, especially by moving to bridge the long-standing ‘implementation gap’ – the gap between the norms and recommendations generated in Geneva, and the human rights reality at national and local levels.

Introduction

In 2006, member states took a significant step in strengthening human rights as one of the three pillars of the United Nations and established (with General Assembly resolution 60/251) the Human Rights Council as the UN's apex human rights body.

Since then the Council has grown significantly in confidence and stature, positioning itself as a relevant and influential political body in the multilateral arena. It has registered important achievements at both a thematic and a country-specific level. Regarding the former, the Council has continued international efforts to shape and set universal norms, both for economic, social and cultural rights, and civil and political rights. Regarding the latter, landmark steps have been taken such as the Council’s robust response to the human rights situation in Libya in 2010, which included suspending the country’s Council membership, and its efforts to establish accountability for violations in Syria and North Korea through the establishment of Commissions of Inquiry.

Established Council mechanisms, especially Special Procedures, have continued to expand in scope and sophistication, while a new mechanism – the Universal Periodic Review (UPR) – has seen the human rights record of every single UN member state scrutinised, thereby strengthening universality, inclusivity and dialogue.

While recognising these and other achievements, it is important to note that there are also areas where the Council has fallen short of its mandate and objectives, as set by UN heads of state and the GA. For example, the body has been criticised for focusing too heavily on general thematic issues and debate, while dealing with human rights violations and situations in a sometimes selective and politicised manner. Other critics point to deficiencies in the domestic implementation of resolutions, decisions and recommendations made by the Council and its mechanisms.



As the Council looks towards its 10th anniversary in 2016, it is important for stakeholders to be aware of the body's achievements but also to work together, through dialogue and cooperation, to address shortcomings. The Council remains a young body and the first decade of its existence – its 'formative years' – will make a major contribution towards determining its future relevance, effectiveness and impact. Like those policymakers who steered the adoption of resolution 60/251, the Council's institution-building package, and the outcome of the body's five-year review, the current generation of diplomats, NGO representatives and other stakeholders bear an important responsibility to use the milestone of the Council's 10th anniversary as an opportunity to step back and make an honest appraisal of the nascent body's achievements and challenges, and identify new and innovative solutions to equip it to better meet those challenges in the decades to come.

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General Assembly resolution 60/251 sets the Council's mandate and objectives, most notably: to promote universal respect for the protection and promotion of all human rights for all, without distinction of any kind and in a fair and equal manner (paragraph 2); and to address situations of violations of human rights, including gross and systematic violations (paragraph 3).

Resolution 60/251 also decided that the Council would: promote human rights mainstreaming across the UN system; promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of state concerned; promote the full implementation of human rights obligations undertaken by states; undertake a Universal Periodic Review (UPR) with the full involvement of the country concerned and with consideration given to its capacity-building needs; and work in close cooperation in the field of human rights with governments, regional organisations, national human rights institutions and civil society.

In terms of methods of work, resolution 60/251 made clear that the work of the Council should be guided by the principles of universality, impartiality, objectivity, non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights.

The implementation gap

The elaboration of a comprehensive global code of human rights norms has been one of the major success stories of the Council and its predecessor, the Commission on Human Rights. However, promoting state compliance with those norms has consistently proved more difficult. To address this challenge, the Council uses a variety of tools including resolutions (e.g. on 'national policies and human rights', and on 'technical cooperation and capacity-building'), panel discussions and, most importantly, mechanisms that promote compliance through political suasion, transparency, technical assistance, capacity building and cooperation. The most prominent of these are the Universal Periodic Review (UPR) and the Special Procedures. These Council mechanisms in turn complement the work of the UN Treaty Body system.

These mechanisms have grown in both scale and sophistication over the past twenty years. The UPR, established as a new mechanism of the Council in 2006, has overseen the peer review of the human rights records of all UN member states and is now conducting a 'second cycle' to assess progress. The Special Procedures have evolved from an *ad hoc* mechanism established to address human rights violations in apartheid South Africa into a comprehensive system able to address a wide range of country-specific and thematic human rights issues. Today there are over fifty Special



Procedure mandates and around 75 mandate-holders. The Treaty Body system has likewise witnessed exponential growth over recent years. Since 2004, the system has doubled in size with the creation of four new Treaty Bodies, and there has been a corresponding increase in experts from 74 in 2000 to 172 today. This growth in the size and scope of the human rights mechanisms has had a corresponding impact on the number of conclusions and recommendations they produce. Each year, a country that is engaged with the UN human rights system can expect to receive hundreds of recommendations from the different mechanisms, often in the same areas of concern, i.e. overlapping.

There is no question that the mechanisms and their recommendations can have a profound positive impact on the promotion and protection of human rights in specific cases. This impact has been further strengthened by the complementary and mutually reinforcing (but distinct) nature of the mechanisms and their outputs (including recommendations).

Yet, as participants in the first Glion Human Rights Dialogue (Glion I) noted in 2014: ‘The promise and potential of the human rights pillar are not always matched by its on-the-ground relevance and impact. For those people whose rights are being down-trodden and who look to the international community for support and protection, the UN human rights machinery can often seem remote and inaccessible, and the comprehensive global code of human rights norms can seem but a collection of words with little meaning in the real world.’

Strengthening relevance and impact should therefore be a key contemporary priority for states in the Human Rights Council, as the body looks towards its 10th anniversary in 2016, as well as for other relevant bodies and organisations such as OHCHR, UNDP, IPU, ICJ, the International Coordinating Committee of NHRIs, and global civil society. Indeed, across all these stakeholder groups, there is an increasingly strong focus on how to support and improve domestic implementation. For example, OHCHR is working to help states strengthen national follow-up processes by, *inter alia*, supporting the creation and/or strengthening of standing national inter-institutional mechanisms on reporting and follow-up; supporting such structures in drafting national implementation plans; and providing expert support for the completion of actions contained in those plans (e.g. strengthening NHRIs).

National-level implementation structures and processes: sharing challenges, experiences and good practices

It was noted that, from the perspective of states, when one considers the 112 resolutions and other texts adopted by the Council in 2013 (60% of which call on states to take a particular action), the increasingly high number of UPR recommendations (for example, the 2012 UPR of Indonesia saw the country receive and accept 150 recommendations), the general thematic recommendations of Special Procedures, and the country-specific recommendations of both Special Procedures and Treaty Bodies: ‘there is a jungle of recommendations out there.’

For state delegations at the Council, especially LDCs and SIDS, it is becoming more and more challenging to manage and process (‘collate, analyse and transmit them to capitals in a useful way’) resolutions and all the various recommendations generated by the Council and its mechanisms (and by Treaty Bodies). It was noted, for example, that based on anecdotal evidence, it seems that very few (if any) delegations analyse and assess all resolutions and recommendations. Rather, they focus on those they consider to be a priority. Many delegations simply forward all resolutions and recommendations to their capital with only minimal accompanying analysis or comment. Delegations recognise that this reduces the likelihood that capitals will be able to act upon the



recommendations. In this regard, one participant noted that ‘when states fail to implement on-the-ground and comply with their human rights obligations...it is not always because of a lack of political will, but sometimes due to a lack of capacity and resources.’

A positive development over recent years is that there is now much more focus, in Geneva and at national-level, on what happens to recommendations once they arrive in capital. Different states have developed different ‘national implementing structures’ to manage and process recommendations, ensure they are disseminated to the relevant parts of government or the state, and follow-up on and coordinate implementation. There are different models and certainly no ‘one size fits all.’ OHCHR is currently undertaking a detailed study of national mechanisms on reporting and follow-up, as well as documenting practices from the development and implementation of national human rights action plans. So far, it has been recorded that 30-40 states have established dedicated ‘national reporting structures’ for human rights. Half of those structures also monitor implementation of recommendations or of a national human rights action plan. Examples were also shared whereby states are developing on-line platforms/databases to share recommendations with relevant line ministries and parts of the state, and to receive feedback on their implementation

As regards national plans of action on human rights, it was said that they should be considered as ‘a living document,’ to be constantly updated and adjusted to take account of UN-level recommendations. One participant explained that: ‘It is not about implementing all recommendations from the international mechanisms, it is about implementing our own national plan, to which international recommendations can make a contribution.’ Participants noted that national action plans are sometimes accompanied by implementing committees (sometimes chaired by the foreign ministries, sometimes by law ministries). In the case of federal systems, there may also be implementing committees at regional level.

Questions arose about the level of involvement of NHRIs, NGOs, parliaments, and judiciaries with such national implementing structures. From the discussion, it seems that formal implementing structures rarely engage civil society and other branches of government in a systematic way, though they are sometimes consulted (for example during the development of national action plans). Participants repeatedly underlined the importance of more inclusive national implementing structures that formally, through recognized and explicit processes, consult with NGOs, NHRIs, parliaments (when not formally part of the national structure) and judges and lawyers, and that also engage closely with UN Country Teams and (where appropriate) development partners.

Participants agreed that the importance of involving judges and lawyers, and parliaments, is clear.

With regard to judges, it was noted that ‘the UN has repeatedly recognised the special role that national legal actors have to play in national implementation.’ Judges ‘frequently use Council outputs, in the form of ‘standards’, to help interpret domestic constitutional provisions’, and Treaty Body outputs, for example, to interpret ordinary laws, ‘or as a benchmark for evaluating government policies or practices in administrative law.’

Similarly, parliaments must necessarily play a key role in national implementation – transforming international obligations into national law. Many UN recommendations require either new legislation or changes to existing laws, and that requires engagement with parliaments. Importantly, participants noted that parliaments must be involved throughout the process – for example, they should have the opportunity to feed into the UPR and Treaty Body reporting procedures, as well as have a role in implementing any outcome. Parliaments also play a role in ‘strengthening national human rights architectures through budget allocations to NHRIs,



ombudsmen and other human rights related bodies.’ The role of parliaments in promoting human rights has been codified, it was noted, in the Belgrade Principles and regularly recognised in relevant Council resolutions.

Some participants noted that the involvement of stakeholder groups like judges and lawyers, NHRIs or parliaments, while extremely important, should be carefully calibrated to respect their independence and not to blur lines between the Executive and other branches of government.

Participants noted that it is important to both strengthen existing implementing structures (for example, securing deeper ‘buy-in’ from relevant line ministries ‘which sometime see international human rights as purely a matter for the foreign ministry,’ and by involving NHRIs, civil society, parliaments and judiciaries in a systematic way), and exchange and disseminate good practice in order to create more.

OHCHR support for the implementation of recommendations: ‘upstream’ (promoting synergies between the mechanisms, collating and enhancing the availability/accessibility of recommendations), and ‘downstream’ (local capacity-building and technical cooperation)

It is increasingly appreciated that the real test of mechanisms like UPR, Special Procedures and Treaty Bodies ‘is the degree to which recommendations are being implemented and are leading to real changes on the ground.’

‘Upstream’

It was noted that there is no hierarchy of recommendations just like there is no hierarchy of mechanisms. OHCHR, for example, aims to encourage states to implement recommendations from all the mechanisms, and doesn’t prioritise one over the other. Indeed, recommendations from the three main mechanisms are complementary. UPR draws heavily on Special Procedures and Treaty Body recommendations, while Treaty Bodies and Special Procedures increasingly refer to UPR outputs. OHCHR’s human rights index seeks to leverage these complementarities.

A participant noted that another advantage of leveraging the complementary nature of recommendations is that one quickly realises the number of clustered issues is actually not so overwhelming. While it is true that many recommendations are not measurable, actionable, realisable and time-bound, better clustering helps focus-in on the main areas of importance for a given country. That in turn helps show a state what it needs to do to bring its national laws and practices into line with international norms.

As such, it was argued that we shouldn’t become too obsessed with the number of recommendations produced by the UN human rights system, but should rather focus on creating the space, whether in Geneva or in capitals, for more systematic clustering. For example, if, in the UPR working group, more time could be set aside prior to the finalisation of the listing of recommendations (currently 48 hours), objective criteria might be applied, with the involvement of the reporting state, to cluster substantively similar recommendations under a single number.

Others recalled the importance of using the second and future cycles of UPR to focus on how past recommendations have been implemented, and what impact they have had on the ground. National reports should emphasise this information, and recommending states should reflect on how past recommendations have been implemented, when developing future recommendations.



Finally, participants acknowledged that the Council must find ways, where political will to implement recommendations is absent or insufficient, to leverage transparency (e.g. information on levels of implementation) and debate in the Council (during regular sessions or inter-sessionally) to promote accountability. States have the primary responsibility to implement recommendations generated by the human rights mechanisms, but the international community (the Council) should play a role in promoting such implementation and in highlighting cases where insufficient progress is being made.

'Downstream'

Turning to 'downstream' actions, participants noted that failure to implement is not always down to a lack of will – it is often down to a lack of domestic capacity and resources. In such instances, 'international cooperation, technical assistance and capacity-building...are important elements for the implementation of Council initiatives on-the-ground.'

For its part, OHCHR aims to support states through its regular technical cooperation work and support provided through its country offices. In this context, it was noted that capacity building is not a one-off activity that can be completed through a short-term mission, but rather requires long-term engagement and commitment. OHCHR offices and local presences can provide this.

Moreover, in an effort to better mainstream recommendations from the human rights mechanisms into the work of UN Country Teams (UNCTs), OHCHR now systematically sends a letter, after the adoption of a UPR report, to the relevant Resident Coordinator. The letter transmits thematically clustered recommendations and requests the Country Team to integrate them into relevant national programmes (e.g. UNDAFs). UNCTs are encouraged to do this in dialogue with the state. Ideally, this creates a UN-wide support structure parallel with existing national implementation plans.

OHCHR, especially where it has a field presence, supports this process of integration, and also carries out targeted capacity-building interventions to support states in strengthening national processes for follow-up and/or implementation. For example, OHCHR undertakes projects to:

- Support the creation/strengthening of national structures to follow-up/monitor implementation, and report back.
- Help such structures develop national human rights action plans, integrating recommendations and identifying relevant line ministries that could be responsible for implementation (also parliamentarians and judges). OHCHR also supports the engagement of NHRIs and civil society with this process.
- Support the integration of indicators into national plans, to enable better monitoring.
- Support states implement specific thematic clusters of recommendations, in areas where OHCHR has relevant expertise (e.g. strengthening NHRIs, police human rights training, development of NPMs for torture prevention).
- Support UNCTs to integrate recommendations from the mechanisms into country programmes.

Related to this, it was noted that the outcome of the Treaty Body strengthening process (GA resolution 68/268) recognises that states may have difficulties in living up to their multiple reporting obligations. The GA approved a significant capacity-building programme to 'support



states parties in building capacity to implement their treaty obligations.’ OHCHR is currently working to establish this programme. This includes working with states to establish/strengthen standing national mechanisms for reporting and follow-up (for recommendations from all mechanisms), and preparing (for Treaty Body reporting) common core documents and treaty specific reports. A key part of this and related efforts is the sharing of good practices, training and the development of tool kits.

It was also noted that the Council should enhance its own ability to support capacity-building and technical assistance (and thus promote implementation) through better use of item 10. States should find better ways to ‘use item 10 to share experiences, challenges, and information on assistance needed in the implementation of human rights obligations.’ Some participants also emphasised the importance of ‘not politicising’ item 10, but rather basing work on constructive dialogue, taking full account of the needs of the states concerned.

In this regard, it was pointed out that panel debates under item 10 should be used as a platform for sharing national experiences with implementation. For example, ‘the panel discussion on national policies and human rights presents an opportunity to discuss different worldwide experiences’ and identify practical steps to mainstream recommendations across national laws and policies.

Strengthening the involvement and contribution of UN Resident Coordinators and Country Teams, NHRIs, and local civil society

UNDP, which is present in more than 170 countries and territories and which hosts the UN Resident Coordinator system (UNRCs) – ‘the face of the UN at national/local level’ – must necessarily play a central role in promoting the domestic implementation of international human rights recommendations.

In its human rights work, UNDP is guided by its internal human rights policies and frameworks, and by directives contained in UN resolutions such as the 2005 World Summit outcome and relevant resolutions of the Council. These reaffirm the statutory commitment of UNDP to human rights and, in particular, their centrality to development and peace – the other two pillars of the UN.

UNRCs and UNCTs are increasingly engaged with the UN human rights mechanisms. UPR in particular is viewed as a key opportunity for joint programming (a 2011 survey by the undg Human Rights Mainstreaming Mechanism found that 59% of UNRCs saw UPR as an important opportunity for such programming). Although its efforts were rather *ad hoc* during the first cycle, UNDP is now working in a more systematic way to integrate UPR recommendations into national development planning processes and UNDAF formulation. The aim is to ensure that Geneva mechanisms like UPR are ‘joined up’ with national-level policy formulation and implementation. UPR and national development planning processes are clearly complementary. ‘Supporting overall coherence and integration of UPR recommendations in national planning and budgeting processes can ensure more effective outcomes that serve to connect and strengthen the linkages between human rights and development.’

UPR recommendations allow UNRCs and UNCTs to identify and prioritise interventions. Interestingly, even rejected recommendations can be useful – helping to understand areas where more dialogue or advocacy is needed.

UNDP also understands the importance of supporting the establishment of national implementing structures for human rights recommendations and, at the same time, of supporting NHRIs – ‘the



bridge between government and civil society’ - to act as an independent monitor of state implementation. Often using UN human rights recommendations as a basis, today more than 60 UNCTs are actively supporting state compliance with international human rights obligations through strengthening the capacity of NHRIs.

Adopting a human rights based approach (HRBA) is a basic principle of UNDP’s engagement with host states, as stipulated in its current strategic plan. In 2009, UNDG confirmed the HRBA as a programming principle for the development of UN Development Assistance Frameworks (UNDAFs) – 4-5 year agreements between UNCTs and host governments to frame cooperation for development. As of January 2015, UNDP has also operationalized its ‘Social and Environmental Standards’ – a quality control mechanism at the planning stage of all programming. According to UNDP, human rights are at the heart of those standards.

During the meeting, it was noted that other development partners, for example donor states, can also play a complementary role in promoting the engagement of developing countries with the UN human rights mechanisms and the uptake and implementation of resultant recommendations. Traditionally, donor states have understood adopting a ‘HRBA to development’ as being the integration of procedural rights (e.g. access to information, access to decision-making, non-discrimination) into bilateral development programming. However, there now appear to be moves to expand this understanding to include the integration of relevant UN human rights recommendations into programming.

In the context of crisis prevention, UNDP’s work to integrate human rights more fully into its work has been given added impetus by the Secretary-General’s ‘Human Rights Up Front’ action plan.

While noting these areas of progress, it was acknowledged that UNDP engagement with the implementation of human rights recommendations is still in its early days. Not all UNRCs clearly understand the link or the catalytic potential of such recommendations in promoting inclusive and sustainable development. Knowledge levels (and thus comfort levels) on the human rights mechanisms and their outputs need to be scaled up for all UN staff, especially those that regularly interact with states at local level. More can also be done to systemically and explicitly incorporate recommendations from UN human rights mechanisms into country-level assessments, contexts and baseline analyses, and planning documents. More can also be done to incorporate into programming, as a matter of principle, support aimed at strengthening state engagement with the UN human rights mechanisms and the wider UN human rights system.

All those who spoke during the discussion highlighted the importance of a ‘holistic approach’ to integrating UN human rights recommendations into national-level programming, an approach that involves ‘all branches of the state and other domestic stakeholders including civil society, NHRIs and the private sector.’ NHRIs and civil society, it was repeatedly noted, ‘are uniquely placed to support and encourage implementation.’ NHRIs and civil society provide an important ‘bridge’ between the international and national arenas:

- They support the local application of international standards, with full understanding of local contexts (e.g. by advising the state on implementation and regularly following up on recommendations, by reminding states of commitments made, and by holding the government to account where they fail to deliver on their promises); and
- They are trusted and legitimate partners to report to international bodies on the on-the-ground human rights situation (e.g. by monitoring and reporting to UN mechanisms).



This role has been reaffirmed by the GA in resolution 60/251, and by the Council in its IBP and the outcome of its 5-year review.

During the meeting at the Thai Mission, participants heard a number of interesting examples of the important role of NHRIs and civil society. For example, the Australian Human Rights Commission now includes, in its annual report to the Parliament, a list of all UPR and Treaty Body recommendations addressed to Australia together with an update on the status of implementation.

A number of challenges were identified that potentially constrain the power of NHRIs and civil society to promote the domestic implementation of international human rights recommendations. These include: capacity constraints; the protection of civil society space – so that they can meaningfully engage with the UN mechanisms and play a full role in promoting implementation, (linked with the former point, civil society and NHRIs must be protected from reprisals for cooperating with the UN system); and strengthening the coverage of NHRIs and active civil society across all countries and all regions.

