VISION 2021

What is the General Assembly's 2021-2026 review, and how might the Human Rights Council usefully contribute?

Policy brief
January 2019

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève

UNIVERSAL RIGHTS GROUP

INTRODUCTION

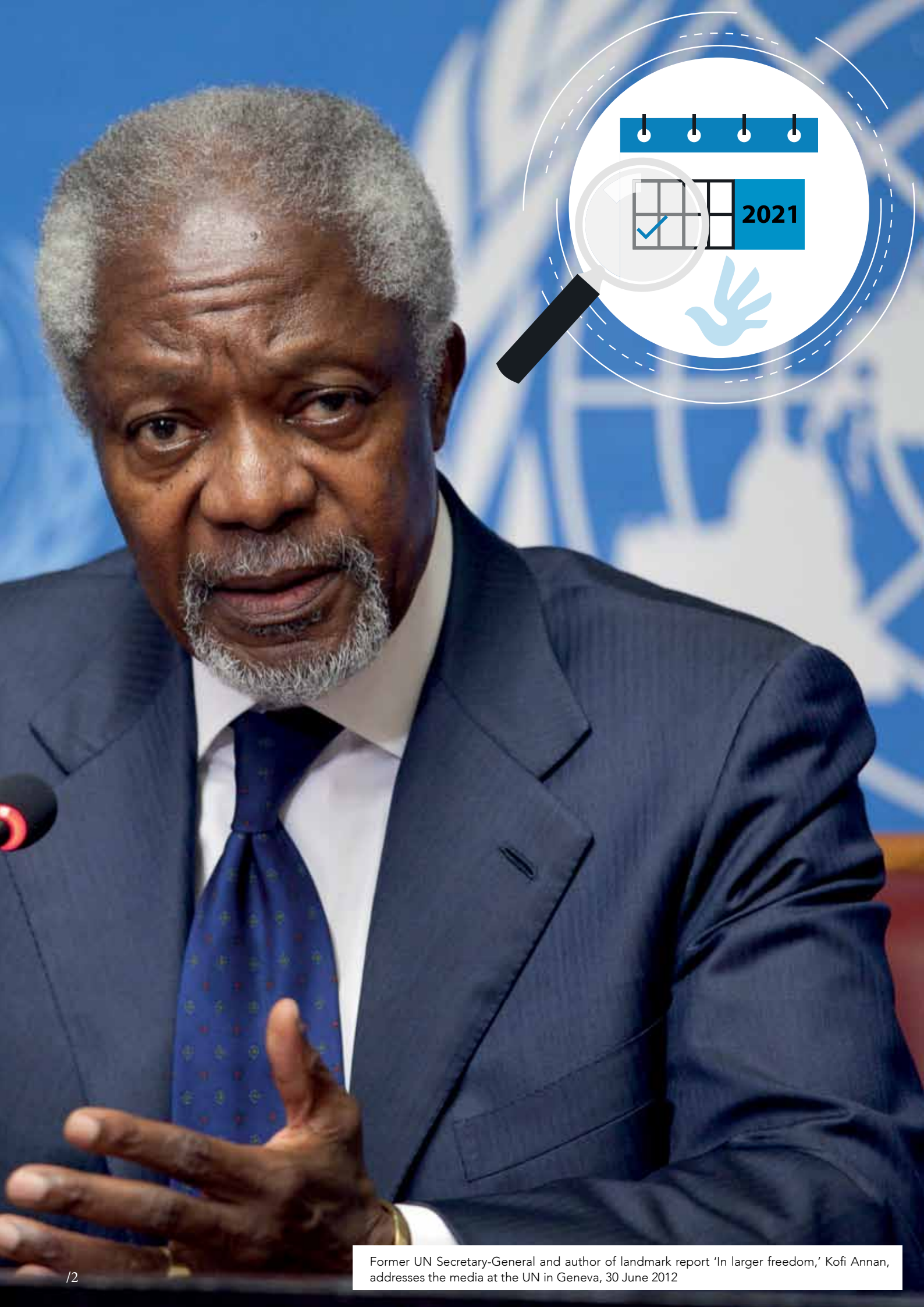
Between 2021 and 2026, the General Assembly (GA) is scheduled to consider the question of the status of the Human Rights Council (Council), i.e. whether it should remain a subsidiary body or become a main body of the United Nations (UN).

Although the GA has not formally requested the Council to conduct a review of its work and functioning in advance of this 2021-2026 review, there is a growing sense among delegations in Geneva that the Council should provide a contribution.

The present document, developed by the Universal Rights Group (URG) as part of a project supported by the Federal Department of Foreign Affairs of Switzerland, provides background information on the 2021-2026 review as well as thoughts on how the Council, as the UN's key political body responsible for the promotion and protection of human rights, might contribute to that review.

In particular, the document considers the possible benefits of a process of reflection or self-assessment (i.e. of the degree to which the Council is fulfilling its mandate as set down in GA resolution 60/251), as a key contribution to the GA's deliberations. The document furthermore offers ideas on ways to shape a possible process of reflection or self-assessment, as well as on key questions that might be covered.

United States signs the United Nations Charter, 26 June 1945



Former UN Secretary-General and author of landmark report 'In larger freedom,' Kofi Annan, addresses the media at the UN in Geneva, 30 June 2012

BUILDING A STRONG AND EQUAL HUMAN RIGHTS PILLAR

The idea that 'all human beings are born free and equal in dignity and rights'[1] may have found its most eloquent expression in the 1948 Universal Declaration of Human Rights. However it is also – at a more practical, everyday level – the founding premise of modern society, the fundamental basis of democratic government, and a prerequisite for sustainable development that truly aspires to 'leave no one behind.'

Yet the central importance of human rights was never adequately reflected in the institutional architecture built in the aftermath of the Second World War to underpin international security, dignity and prosperity. Although the United Nations Charter places human rights in a position of prominence, as one of the three pillars of the Organisation, States decided to establish the Commission on Human Rights (Commission) as a subsidiary body of the Economic and Social Council (ECOSOC) - rather than as a principal organ of the UN.

At the 2005 World Summit, UN Member States decided to strengthen the human rights pillar by creating the Human Rights Council in replacement of the Commission.

This decision was taken on the basis of proposals contained in a landmark report of the-then UN Secretary-General Kofi Annan: 'In larger freedom: towards development, security and human rights for all.'[2] The report highlighted the need to 'restore the balance' of the UN by strengthening its human rights pillar. The Secretary-General argued that human rights, 'the promotion of which has been one of the purposes of the Organization from its beginnings,' required 'more effective operational structures.' He thus proposed 'a far-reaching overhaul and upgrading of our existing human rights machinery,' including by 'replac[ing] the Commission on Human Rights with a smaller standing Human Rights Council.' This 'would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations.' The report left it to Member States to decide whether 'they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly.'[3]

At the conclusion of the Summit, the GA adopted resolution 60/1 endorsing the meeting's outcome. This included a commitment to create a Human Rights Council '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.'[4]

In March 2006, the GA adopted resolution 60/251 formally establishing the Council as a subsidiary organ of the GA. With this resolution, States decided that 'the Assembly shall review the status of the Council within five years.'[5] The GA also called upon the Council to 'review its work and functioning five years after its establishment and report to the General Assembly.'[6]

One year after it met for the first time, in June 2007, the Council adopted resolution 5/1 on 'Institution-building of the UN Human Rights Council.'[7] The resolution's annex defined the body's institution-building package (IBP), containing the rules for the functioning of the Council and its mechanisms.

In March 2011, after completing the review of its work and functioning as requested in GA resolution 60/251, the Council adopted resolution 16/21.'[8] Subsequently, the GA recognised this outcome in resolution 65/281 and decided to maintain the status of the Council as a subsidiary body. It further decided 'to consider again the question of whether to maintain this status […] at a time no sooner than ten years [i.e. 2021] and no later than fifteen years' [i.e. 2026][9]. On this occasion however, the GA did not request the Council to conduct a (further) review of its work and functioning.

II THE '2021 REVIEW'

The absence in GA resolution 65/281 of an explicit request for the Council to conduct a review of its work and functioning has led to questions, especially among delegations in Geneva, as to whether any preparation and/or contribution to the 2021-2026 review is necessary or desirable.

These questions have been discussed *inter alia* at the fifth Glion Human Rights Dialogue (Glion V) in May 2018, and during the Human Rights Council President's retreat in October 2018.

The discussions to-date suggest a broad acknowledgment that the 2021-2026 review is unlikely to result in any change to the Council's status (not least because any 'upgrade' would mean amending the UN Charter). Despite this, and while there is an understanding that the Council has not been formally asked to provide any input, there is a widely-held view that 'Geneva' should conduct some form of reflection or self-assessment of its work, and share the outcome with the GA ahead of the 2021-2026 review.

Participants at Glion V offered two main reasons for this. First, in order for the GA to assess whether a change to the Council's status is either necessary or desirable, it would need - as a basic starting point - access to expert practitioner information on the Council and its work. That expertise resides in Geneva. Second, there is a growing sense that the Council (and the wider UN human rights pillar) experiences an 'image problem' in New York, where the subject of human rights has become politically sensitive. In light of this, it is important for stakeholders in Geneva to provide considered information to the GA.

The growing sense that the Council should provide an expert contribution to the 2021-2026 review has led to the consideration of further questions, including the following:

WHAT WOULD BE THE LEGAL BASIS OF ANY PROCESS OF REFLECTION OR SELF-ASSESSMENT?

Even though GA resolution 65/281 does not formally ask the Council to conduct a process of reflection or self-assessment, participants at Glion V saw no reason why States could not initiate one. Nor, it was thought, is there anything to prevent the Council from transmitting the conclusions of such a process to the GA for the latter's consideration. Indeed, the GA would likely welcome such a contribution, as it would help delegations consider, in an informed way, whether a change to the Council's status would be necessary or desirable.

WHAT SHOULD THE PROCESS OF REFLECTION OR SELF-ASSESSMENT LOOK LIKE AND HOW SHOULD IT BE CONDUCTED?

For the moment, there is no consensus view as to what a process of reflection or self-assessment by the Council should look like. Nevertheless, many are clear it should not be an institutional reform exercise like that undertaken in 2011 (i.e. premised on supplementing or modifying the Council's IBP).

Instead, it was argued that a more realistic and useful contribution to the 2021-2026 review might take the form of a process of reflection or self-assessment, premised on examining the degree to which the Council is fulfilling its mandate. It should seek to identify achievements and best practices, shortfalls and reasons for those shortfalls, and opportunities for improvement.

WHO SHOULD CONDUCT THE PROCESS OF REFLECTION OR SELF-ASSESSMENT?

Some have argued that any pre-2021 process of reflection or self-assessment in Geneva must be intergovernmental in nature, led by ambassadorial co-facilitators. Others have suggested that it could be led by the High Commissioner for Human Rights or by the Secretary-General, based on wide consultations with States and other stakeholders. A third option could be to combine both these options. In any case, the results could then be shared with the GA as a helpful contribution to its 2021-2026 review.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III POSSIBLE KEY AREAS TO BE COVERED BY ANY 'GENEVA' PROCESS OF REFLECTION OR SELF-ASSESSMENT

Any process of reflection or self-assessment should be constructive and premised on informing improvements, within the parameters set by GA resolution 60/251 and the Council's IBP, as supplemented by the five-year review outcome. It should not be seen or used as an opportunity to question/renegotiate the Council's mandate or its existing institutional foundations.

Below, the URG provides initial information, ideas and questions relevant to some of the areas (i.e. different aspects of the Council's mandate) that might be covered by a process of reflection or self-assessment. The list is non-exhaustive, and is merely intended to provide a sense of some of the issues that might be addressed.

1. ADDRESSING SITUATIONS OF VIOLATIONS OF HUMAN RIGHTS

(OP3, GA RES. 60/251)

GA resolution 60/251 calls on the Council to 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.'[10] It also makes clear that 'the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.'[11]

The Council has advanced this mandate in a number of ways, including through: the adoption of resolutions expressing the international community's position on situations of concern; the establishment and renewal of mechanisms mandated to investigate and report on violations (e.g. country-specific Special Procedures, Commissions of Inquiry, fact-finding missions, International Impartial and Independent Mechanisms); the maintenance of a Complaint Procedure; and the convening of Special Sessions or Urgent Debates.

Regarding **resolutions** and other texts (i.e. decisions and presidential statements), around 170[12] (just under 15%) of the nearly 1,150 texts adopted by the Council between 2006 and September 2018 have addressed serious human rights violations in country-specific situations (under agenda items 2, 4 and 7). These have focused on around 17 situations of violations around the world, including seven in Africa, three in Asia, four in the Middle East,[13] two in Latin America and one in Eastern Europe.

Turning to the mechanisms of the Council, the number of **country-specific Special Procedures** mandates has remained relatively stable (around ten mandates) since 2006. However, relative to the total number of all Special Procedures, the proportion of country-specific mandates has been in steady decline (this decline began in 1997). Today, eleven out of 55 Special Procedures mandates (20%) are focused on country situations.[14] Of those, seven are Special Rapporteurs with mandates primarily focused on monitoring and reporting on violations (the other four are Independent Experts, with mandates primarily focused on identifying the technical

assistance and capacity-building needs of States – see section 6 below). Notwithstanding, it is important to note that thematic Special Procedures (see section 4 below), though not established with the primary purpose of addressing situations of violations, do usually include protection functions as part of their mandates (e.g. they may receive and act upon individual communications regarding alleged violations).

While the number of country-specific Special Procedures has remained stable, another type of country-specific mechanism has expanded: **Commissions of Inquiry** (COIs) and **fact-finding missions** (FFMs). These mechanisms are composed of three experts and, while they undertake many of the same tasks as country-specific Special Procedures, they are perceived to have a stronger focus on investigation and securing accountability. During the time of the former Commission (between 1979 and 2006), States established just five COIs. In contrast, between the Council's creation in 2006 and the end of 2017, States established 27 COIs or FFMs.

In a new and potentially important development, in September 2018 the Council established a new type of mechanism: an **International, Impartial and Independent Mechanism** (IIIM) for Myanmar. This mechanism, which builds on the GA's decision to establish an IIIM for Syria in 2016, is mandated to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals.

One of the few channels through which victims, human rights defenders and NGOs can provide information on violations directly to the UN is the Council's **Complaint Procedure** (CP). On the basis of complaints received by rights-holders, the CP is mandated to: identify and address 'consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.'[15] There is no available data on the total number of complaints received or actively considered by the CP. However, between 2007 and 2018, the CP identified eleven situations (across eight countries) that may reveal a consistent pattern of gross human rights violations and brought them to the attention of the full Council. Of those eleven situations, a tangible outcome seems to have been reached in four cases (in three countries). The other seven cases were discontinued, with no further information made publicly available.

Since 2006, members of the Council have convened 28 **Special Sessions.** Among them, two have addressed thematic concerns, namely the food crisis in 2008 and the financial crisis in 2009. The rest have addressed country situations, in particular human rights violations in Palestine and other occupied Arab territories (8), Syria (5), African States (7), and Asian States (3). Moreover, two sessions tackled the issue of violent extremism in specific national contexts (Boko Haram and Islamic State) and one considered the Council's support for the recovery process in Haiti after the 2010 earthquake.

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

- Has the Council effectively addressed situations of violations of human rights around the world, including gross and systematic violations?
- Has the discharge of the Council's mandate in this regard been consistent with the principles of 'universality, impartiality, objectivity and non-selectivity'?
- Have the Council and its mechanisms been able to secure accountability for violations, especially gross and systematic violations?
- What are the exact differences between the objectives, methods of work, and delivery of country-specific Special Procedures and COIs/FFMs? Are there certain situations wherein one or the other would be more appropriate?

Chair of the Commission on Human Rights in South Sudan, Yasmin Sooka, speaking with widows at the Kario refugee camp, 10 December 2018

UN Secretary-General António Guterres briefing the international media in Geneva, 3 August 2012

• Has the CP proved to be an effective mechanism for translating complaints from rights-holders around the world into Council action to address 'consistent patterns of gross and reliably attested violations of all human rights'?

• Have Special Sessions been an effective means of responding to urgent situations?

• Have the Council and its mechanisms been able to secure the cooperation of countries and regional partners concerned? Is this important?

• For those situations that have been addressed, have the Council and its mechanisms been able to effectively contribute to the protection of people's human rights in the countries concerned, and to a reduction in violations?

2. PREVENTING HUMAN RIGHTS VIOLATIONS AND RESPONDING PROMPTLY TO HUMAN RIGHTS EMERGENCIES

(OP5F, GA RES. 60/251)

The tools employed by the Council to fulfil its mandate under OP3 of GA resolution 60/251 (see section 1 above) are, broadly speaking, reactive in nature. Resolutions seek to draw global attention to human rights violations in the country concerned, and to express the international community's concern and/or condemnation; while Special Procedures and COIs seek to investigate serious patterns of violations and report back to the Council in order to eventually secure accountability and justice for the victims.

However, by the time a situation is addressed by the Council, it has usually reached such a level of seriousness that the capacity of the Council to halt or secure accountability for violations may be much reduced.

This has led many States, in line with the priorities of the UN Secretary-General Antonio Guterres, to call for a greater focus on preventing rather than reacting to serious human rights violations and crises.

According to OP5f of GA resolution 60/251, the Council shall 'contribute, through dialogue and cooperation, towards the prevention of human rights violations' and respond promptly to human rights emergencies.'[16] Accordingly, the Council should support States in building domestic human rights resilience, especially through technical assistance and capacity-building support aimed at strengthening compliance with international human rights obligations and commitments. The Council should also be able to receive and rapidly analyse early-warning information about emerging patterns of violations, in order to engage with the country and region concerned to avert a widening or deepening of the crisis.

In June 2018, the Council adopted resolution 38/18, which seeks to begin a process to fully operationalize this prevention mandate. In doing so, the Council should 'work effectively with all pillars of the UN system on the prevention of human rights violations, with a view to strengthening system-wide coherence and contributing to sustaining peace and the implementation of the Sustainable Development Goals.'[17]

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

• To what extent has the Council fulfilled its prevention mandate since 2006?

• Is the UN Secretary-General's assertion that the Council and other relevant bodies of the UN have spent 'far more time and resources […] responding to crises than to preventing them,' warranted?[18]

• Have there been attempts to move towards a more prevention-orientated paradigm at the Council? If so, how have those attempts fared?

• Does a more prevention-oriented paradigm require merely a change in 'mind-set' among States, or does it also require new methods of work, processes and mechanisms?

• How to ensure that the Council's work on prevention is coordinated with the other two pillars of the UN?

3. UNDERTAKE A UNIVERSAL PERIODIC REVIEW

(OP5E, GA RES. 60/251)

One of the principal innovations of the Council at the time of its establishment was the creation, through OP5e of GA resolution 60/251, of a new type of mechanism: the Universal Periodic Review (UPR). The UPR was designed to respond to allegations of selectivity and politicisation in the UN human rights system by subjecting each and every UN Member State to a regular review, by its peers (i.e. other States), of 'the fulfilment [of its] human rights obligations and commitments.' The UPR is 'a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs.'[19]

According to the IBP, the UPR should, *inter alia*, contribute to: the improvement of the human rights situation on the ground; the fulfilment of the State's human rights obligations and commitments; the assessment of positive developments and challenges faced by the State; and the enhancement of the State's capacity in consultation with, and with the consent of, the State concerned.[20]

The UPR mechanism is currently engaged in its third cycle of State reviews. Thus far the mechanism has enjoyed a 100% participation rate.

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

• Are the national reports of States, a key foundation of the UPR process, being compiled 'through a broad consultation process at the national level with all relevant stakeholders'?[21] Do they present an accurate and balanced picture of national human rights situations?

• Are States consistently implementing UPR recommendations? Is the UPR mechanism succeeding in its primary objective of improving the enjoyment of human rights on the ground?

• Has the way States participate in the UPR (e.g. how they make recommendations to the State-under-review) evolved over the cycles?

• Do States take sufficient account of the UN system report and the 'other stakeholders' report (including the views of civil society) when making recommendations to the State-under-review?

• Does the absence of independent non-governmental voices (e.g. national human rights institutions, national civil society actors) during the interactive dialogue affect the quality and objectivity of the debate? Does this have any consequences for public confidence in, and the credibility of, the UPR process?

• Does the UPR, as envisioned in the IBP, 'complement and not duplicate other human rights mechanisms'?[22]

4. MAINTAIN A SYSTEM OF SPECIAL PROCEDURES

(OP6, GA RES. 60/251)

GA resolution 60/251 requested the Council to 'assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures […]'[23]

In June 2006, the Council decided to extend all mandates, mechanisms, functions and responsibilities

UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, presents a report to the 38th session of the Human Rights Council, 27 June 2018


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of the Commission for one year.[24] This included the Commission's 40 Special Procedures mandates (29 thematic and 11 country-specific mandates). At the same time, States convened a number of open-ended intergovernmental working groups to negotiate and agree what would become the Council's IBP. One of those working groups was specifically dedicated to the review, rationalisation and improvement (RRI) of mandates.

The outcome of these negotiations, encapsulated in Council resolution 5/1 (presenting the IBP), included modifications to the Special Procedures appointment process, a statement on the issue of cooperation/non-cooperation, and a decision that the RRI of mandates 'would take place in the context of the negotiations of the relevant resolutions.'[25]

On the last point, the IBP offered guidance to States, stating that the RRI of each mandate should 'focus on the relevance, scope and content of the mandates,' with 'any decision to streamline, merge or possibly discontinue mandates [guided] by the need for improvement of the enjoyment and protection of human rights.'[26] Moreover, each mandate should 'offer a clear prospect of an increased level of human rights protection and promotion,' while 'avoid[ing] unnecessary duplication.'[27]

Today, the Special Procedures mechanism comprises 55 separate mandates (44 thematic and eleven country-specific) and continues to grow.[28] Since the creation of the first Special Procedures mandates over fifty years ago, no thematic Special Procedures mandate has ever been discontinued, and only once have mandates been merged (the mandates on structural adjustment policies and on foreign debt were merged in 2000 as the result of a Commission review of its mechanisms). Meanwhile, new thematic mandates are added each year.

Notwithstanding, since the creation of the Council mandate-holders themselves have driven a number of improvements to the way in which the Special Procedures system operates. Those changes have sought, *inter alia*, to improve coordination between mandates, improve professionalism and address complaints, make the mechanism more accessible and responsive to civil society, strengthen follow-up on implementation, and measure and communicate on-the-ground progress/impact.

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

- Has the Council effectively reviewed and, where necessary, improved and rationalised Special Procedures mandates, as per GA resolution 60/251?
- Is there a need to further and/or more systematically review, rationalize and improve Special Procedures mandates?
- Do Special Procedures mandates coordinate with each other and act as a single coherent system?
- Do States adequately cooperate with Special Procedures? If not, how can this situation be addressed and improved?
- How effective are the different aspects of Special Procedures mandates (i.e. country missions, periodic reports, communications) in driving on-the-ground improvements in the enjoyment of human rights?
- Are Special Procedures effectively following-up on, and measuring the impact of, the implementation of their recommendations?
- Do States and Special Procedures have enough time and space during Council sessions to engage one another in constructive 'interactive dialogues'?
- What are the advantages and disadvantages of the practice of reporting annually to both the Council and the GA's Third Committee?

5. PROMOTE THE FULL IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS UNDERTAKEN BY STATES

(OP5D, OP12, GA RES. 60/251)

In his last address to the Commission on Human Rights in April 2005, UN Secretary-General, Kofi Annan, set out his vision for the future:

'The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms – the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation.'[29]

These words reflected growing international concern at the widening 'implementation gap' – the difference between human rights obligations and commitments set down at UN-level, and their actual implementation at national-level.

Consequently, GA resolution 60/251 mandated the Council to 'promote the full implementation of human rights obligations undertaken by States.'[30] It also decided that the work of the Council should be 'results-oriented, [and] allow for subsequent follow-up discussions to recommendations and their implementation.'[31]

Based on this mandate, States, OHCHR, independent experts and civil society have begun to build a new global human rights 'implementation agenda.'

A keystone of this agenda is the creation, in a number of countries, of dedicated 'national mechanisms for implementation, reporting and follow-up' (NMIRFs). These mechanisms, usually established by government statute, are able to receive and manage (for example, through a central national database) the numerous recommendations provided to a given State by UN human rights mechanisms (i.e. Treaty Bodies, Special Procedures and UPR), as well as – in some cases – regional mechanisms. NMIRFs then work to coordinate the implementation of (clustered) recommendations across the different branches of the State, measure the impact of reforms on the enjoyment of human rights, and streamline national reporting back to the UN mechanisms. In some countries, NMIRFs also support the realisation of and reporting on the Sustainable Development Goals (SDGs) and targets.

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

- Is the volume of recommendations directed towards States, by the Council's mechanisms, the Treaty Bodies, and relevant regional mechanisms, manageable? What measures (i.e. clustering) can help?
- Can technology play a role in helping States manage, coordinate the implementation of, and streamline reporting on, this wealth of UN information and guidance?
- Are the Council and its mechanisms systematically following-up to promote, support and measure progress?
- Is there sufficient space in the Council's programme of work for States to report back on progress with implementation, on challenges faced and on good practice?
- How might the Council and its mechanisms better measure and showcase implementation 'success stories' and human rights progress?
- How to ensure that all 'implementation partners' at national level (e.g. parliamentarians, judges and lawyers, NHRIs and NGOs) are sufficiently engaged and involved in the implementation of recommendations?
- Do the Council and its mechanisms have a role to play in supporting the quantitative and qualitative evolution of NMIRFs?

Meeting of the Parliament of the United Kingdom - national parliaments play a key role in the domestic implementation of international human rights obligations and commitments

Official from the UN Office of the High Commissioner for Human Rights working with internally displaced persons (IDPs) at a camp near Sittwe, Myanmar, 2018

6. DELIVERY OF HUMAN RIGHTS TECHNICAL ASSISTANCE AND CAPACITY-BUILDING SUPPORT

(PP10, OP5A, GA RES. 60/251)

GA resolution 60/251 recognises the primary responsibility of States to promote and protect human rights. At the same time, it recognises the important role of the Council and the wider UN in 'strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings.'[32]

Consequently, OP5a of GA resolution 60/251 mandates the Council to '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 Member States concerned.'[33]

Twelve years after the Council's establishment, some critics have questioned the degree to which the Council has been able to deliver on this mandate. They point out that nearly all of the Council's work in the area of technical assistance and capacity-building (under agenda item 10) has been focused on providing support (usually through the establishment of Independent Expert mandates) to a small number of particularly fragile or at-risk developing countries (e.g. States in post-conflict situations). Moreover, according to critics, these Experts are generally tasked with assessing a country's capacity-building needs, rather than actually responding to those needs. Other critics have also expressed concern that item 10 is increasingly being used to address situations that should be more correctly dealt with under item 4 (i.e. situations characterised by grave and systematic human rights violations).

POSSIBLE QUESTIONS FOR ANY PRE-2021 PROCESS OF REFLECTION OR SELF-ASSESSMENT

- What are the mechanisms at the Council's disposal to actually deliver advisory services, technical assistance and capacity-building support at national level to those States that request it? Are Independent Experts a delivery mechanism for such support, or a means of assessing the human rights capacity challenges and needs of States?
- What is the process a State needs to follow if it wishes to request international technical assistance or capacity-building support via the Council?
- Are all States that so-wish able to access technical assistance and capacity building support via the Council?
- How can the provision of technical assistance and capacity-building support be linked with the implementation of recommendations received under the Council's mechanisms (UPR and Special Procedures)?
- Should the Council consider new on-the-ground delivery mechanisms?
- Is there a need to consider new processes or platforms at the Council wherein all States might voluntarily request international technical assistance and capacity-building support, as well as provide updates on progress?
- What is the relationship between technical assistance provided via the Council's agenda item 10, and assistance provided by OHCHR?
- How can the fulfilment of the Council's mandate under OP5a be linked with other potential providers of human rights capacity-building support, including UNDP and UN Country Teams, multilateral development institutions, and bilateral donors?

NOTES

1 Article 1, Universal Declaration of Human Rights

2 In larger freedom: towards development, security and human rights for all; Report of the Secretary-General, A/59/2005, 21 March 2005, pp41-46

3 *Ibid*

4 GA resolution 60/1 on '2005 World Summit Outcome,' 24 October 2005, paragraphs 157-158

5 GA resolution 60/251 on 'The Human Rights Council,' 15 March 2006, operative paragraph 1

6 *Ibid,* operative paragraph 16

7 Human Rights Council resolution 5/1 on the 'Institution-building of the UN Human Rights Council,' 18 June 2007

8 Human Rights Council resolution 16/21 on the 'Review of the work and functioning of the Human Rights Council,' 25 March 2011

9 GA resolution 65/281 on the 'Review of the Human Rights Council,' 17 June 2011

10 GA resolution 60/251, paragraph 3

11 *Ibid,* paragraph 4

12 This number only includes resolutions adopted during regular Council sessions.

13 These include around 70 resolutions on Palestine and other occupied Arab territories (i.e. Item 7) and 24 on the human rights situation in Syria

14 One further Special Rapporteur mandate, on the situation in Syria, have been established but will not become operational until the existing Commission of Inquiry on Syria concludes its work.

15 Human Rights Council resolution 5/1, 18 June 2007, paragraph 85

16 GA resolution 60/251, paragraph 5f

17 Human Rights Council resolution 38/18, paragraph 4b

18 https://news.un.org/en/story/2017/01/549122-security-council-un-chief-guterres-makes-case-new-efforts-build-and-sustain

19 GA resolution 60/251, paragraph 5e

20 Human Rights Council resolution 5/1, paragraph 4a, b, c

21 *Ibid,* paragraph 15a

22 *Ibid,* paragraph 3f

23 GA resolution 60/251, paragraph 6

24 Council decision 1/102

25 Human Rights Council resolution 5/1, paragraph 55

26 HRC resolution 5/1, paragraph 57

27 HRC resolution 5/1, *ibid,* paragraph 58a and c

28 A 55th mandate – on the situation in Syria - has been established, but is not yet operational.

29 Secretary-General's address to the UN Commission on Human Rights, 7 April 2005, available at https://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights

30 GA resolution 60/251, paragraph 5d

31 *Ibid,* paragraph 12

32 *Ibid,* preambular paragraph 10

33 *Ibid,* paragraph 5a

CREDITS

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'Vision 2021' contains the opinions, ideas and proposals of the Universal Rights Group. It has been elaborated with the kind support of Switzerland.

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