



## **Human Rights Council retreat: Cooperation and dialogue at the Human Rights Council**

### **I. Cooperation and dialogue**

On 1 and 2 September 2016, OHCHR and the Presidency of the Human Rights Council (HRC) hosted a two-day retreat in Évian-les-Bains, France, on cooperation and dialogue at the HRC. The retreat brought together around 60 participants, including Permanent representatives of Member States of the Council, representatives of regional and political groups, as well as representatives of Special Procedures and civil society, to brainstorm regarding three topics, namely:

- 1. Working methods of the HRC**
- 2. 3<sup>rd</sup> cycle of the Universal Periodic Review**
- 3. Impact on the ground, including through capacity-building support**

The retreat aimed to provide an optimal atmosphere for constructive and comprehensive exchange against the background of the commemoration of the 10<sup>th</sup> anniversary of the HRC. The meeting was held under the Chatham House rule.

At the opening of the retreat, the president of the HRC, H.E. Mr CHOI Kyonglim of the Republic of Korea, explained the purpose of the gathering: to allow all stakeholders to engage in frank and open discussions, away from the formal setting of Room XX, about important challenges facing the UN's human rights pillar.

The main theme of the retreat was to improve cooperation and dialogue at the HRC, and thus improve the body's ability and capacity to deliver on its mandate. General Assembly resolution 60/251, establishing the HRC, recognized that: 'the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings.' With operative paragraph 4 of resolution 60/251, States furthermore decided that 'the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.'

The importance attributed to these principles in General Assembly resolution 60/251 and in the HRC's institution-building package (IBP) reflect an important political truth of the UN's human rights system: that the Council and its mechanisms work best and deliver the most tangible results when States engage with them in a spirit of 'cooperation and genuine dialogue.' Where States lack the political will to do so, the Council has recourse to other tools foreseen in resolution 60/251. But where States are committed to working with the international community to improve the on-the-ground enjoyment of human rights, then it is beholden on the Council and its mechanisms to provide space for, encourage and support cooperation and dialogue.

What that means in practice is suggested by other relevant provisions of resolution 60/251. For example, the resolutions makes clear that the Council shall: 'promote...technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned,' 'act as a forum for dialogue on thematic issues,' 'promote the full implementation of human rights obligations undertaken by

States,' 'undertake a universal periodic review...[that] shall be a cooperative mechanism, based on an interactive dialogue.' 'contribute, through dialogue and cooperation, towards the prevention of human rights violations,' and 'work in close cooperation in the field of human rights with governments, regional organizations, national human rights institutions and civil society.'

In other words, meaningful dialogue and effective cooperation is a core part of, and is essential to, many of the key aspects of the Council's work, including: the delivery of capacity-building and technical support; the sharing of good practice, challenges and solutions in the area of implementation; thematic debate and norm-setting; ensuring that the Universal Periodic Review (UPR) leads to tangible human rights improvements (impact) on-the-ground; and the prevention of human rights crises.

## **II. Working methods of the HRC**

Since the Council's establishment, there has been a significant increase in the breadth of the body's work and output. For example, in 2008 the Council adopted 76 texts, while in 2014 it adopted 112 (2015 saw a drop in the number of texts – see below – though in 2016 the Council's output appears to again be increasing). These trends have important budgetary implications. For example, the record number of texts adopted in 2014 came with associated new costs (not already covered by the regular budget) of 19 million US\$ – also the highest in the Council's history.

The work of the Council's mechanisms has also increased dramatically. Under the UPR, the human rights performance of every single UN member state has been reviewed, while the Special Procedures mechanism now encompasses 56 mandates, each reporting to the Council (and many also to the Third Committee of the GA) on an annual basis. The number of panel debates has grown dramatically (the March 2016 session alone saw 10 panels), as have the number of side events (with over 600 held in 2015). Finally, OHCHR has been asked to compile and submit an increasing number of reports (the Council considered 213 reports in 2015).

These numbers are reflective of State and civil society enthusiasm for the Council and its work, but they also raise a number of important questions about the capacity, effectiveness and delivery of the international human rights system.

It is important to recall that improving efficiency should not be seen as an end in itself. Rather, it should be seen as a necessary part of wider efforts to build a Council that is more relevant, more effective, and better able to fulfill its mandate as set down in GA resolution 60/251.

Increasing awareness of these issues and a realization that the quantitative expansion of the Council's work may be unsustainable and may come at the expense of effectiveness and impact, have led the past two Presidents of the Council, H.E. Mr. Joachim Ruecker of Germany and H.E. Mr. CHOI Kyonglim, to prioritize efforts to improve the efficiency and manageability of the Council's methods of work.

Notwithstanding such efforts, the first two sessions of 2016 demonstrate that further work is needed and that all stakeholders, including States and NGOs, should continue to support the efforts of the 2016 Bureau to improve methods of work in line with GA resolution 60/251 and Council resolutions 5/1 and 16/21. For example, during the 31<sup>st</sup> session in March, the Council adopted 40 texts and held 10 panel debates (compared with 37 texts and 6 panel debates one year earlier); while at the 32<sup>nd</sup> session in June/July, 34 texts were adopted and 6 panels held (compared to 26 texts and 4 panels at the 29<sup>th</sup> session).

### ***Efficiency and effectiveness***

Commenting on these challenges, participants at the HRC retreat noted that general awareness of the inefficiency of current working methods has been brought into even sharper relief by the UN Director-General's recent letter to the President of the Council pointing out that the work of the HRC cannot be sustained or supported at current levels. Moreover, thanks to last year's Berlin retreat, the Glion Human Rights Dialogue, and now the Human Rights Council retreat in Evian, States have a good sense of

what the solutions are. What is now missing is action – the political will to start showing self-restraint, to biennialise resolutions, to stop convening new panels (especially full day panels). Others agreed and recalled that there was broad consensus during the 2015 Berlin retreat on many solutions as well as the principles that should guide States when taking steps to improve efficiency and working methods.

A number of participants, while acknowledging the importance of working methods, said this was more of a symptom than a cause of problems: ‘we need a more precise diagnosis.’ According to these participants, the HRC’s working methods are precisely set down in chapter VI of the IBP and do not leave much room for maneuver. So if States want to look at efficiency and rationalization, the question becomes: ‘what did the IBP leave at our discretion?’ Moreover, as part of any effort to rationalize the HRC’s work, trust needs to be rebuilt (‘without trust, then technical fixes will not work’).

Others agreed, and said this point might be best characterized as changing/improving the ‘working culture’ of the HRC. For example, over the past year there has been a big jump in the number of votes, and in the number of so-called ‘hostile amendments.’ It was suggested that States place a self-imposed cap on these types of amendment. Another participant said that many (or most) statements are ‘pre-planned’ – reducing the chances of real debate, (others agreed, but said that so long as sessions are webcast, this is unlikely to change); and that when making statements, States should be less defensive and more ‘self-critical.’ A further suggestion was for delegations to make better use of the weeks *before* the start of a session, to engage in informal dialogue with concerned delegations (e.g. in the case of country-specific or hybrid resolutions), with the main sponsors of initiatives, with all other States, and with NGOs.

There was a proposal, during the retreat, to establish an annual ‘voluntary pledging platform,’ convened under the authority of the President of the HRC, that would allow States to commit to, or express an interest in, taking steps to rationalize the HRC’s workload. For example, States might pledge to biennialise resolutions; change full day panels into half day panels; use intersessional work formats instead of panels; improve, merge or discontinue thematic mandates; promote cross-regional statements instead of national statements; etc. According to one speaker, proposals for such a platform have been submitted to the President. Others expressed support, in principle, for a majority (perhaps 80%) of the ‘technical fix’ proposals put forward by the HRC Vice President for the EEG, and suggested that the President could take these forward through open informal consultations leading, perhaps, to a PRST. Some speakers referred to these changes as ‘housekeeping.’

A number of speakers also expressed support for greater use of intersessional work formats. Mention was made, in this regard, of Paraguay and Brazil’s initiative to hold a discussion on UPR recommendation implementation during a UPR Working Group meeting, and Denmark’s initiative to hold an intersessional seminar on the domestic implementation of the Convention against Torture. Others, while agreeing in principle, drew attention to the limited human resources of small delegations.

A participant noted that the proliferation of resolutions and panels is partly caused by a lack of transparency and predictability. The improved voluntary calendar of resolutions is a positive step forward in that regard, but it would be useful to also have a published list of future panels (with the maximum number of panels per session clearly marked).

### ***Genuine dialogue and meaningful cooperation***

A number of speakers re-emphasized the point that the aim of the exercise is not to reduce the workload of the HRC for the sake of it – rather it is to free up space on the Council’s agenda to focus on things like: genuine dialogue and debate; cooperation; follow-up on implementation; capacity-building; urgent debates; and prevention. In other words, the aim is to make the Council more relevant, credible and effective.

Regarding genuine dialogue and debate, participants at the retreat acknowledged that current HRC interactive dialogues are ‘not optimal.’ This is a frustrating situation for States, NGOs and (perhaps especially) for Special Procedures mandate-holders, who want a meaningful dialogue with States. That

said, it was emphasized that the default response to such frustration should not be a knee-jerk exercise in rationalizing mandates (it was noted by one participant that the UN has tried to ‘review, rationalize, and improve’ mandates a number of times in the past, and it has never really worked). Other options should also be considered such as holding more substantive interactive dialogues outside Room XX. Here it was pointed out that the HRC has not made use of the possibility of establishing ‘committees’ of the HRC, that might then report back into the HRC plenary. There could, for example, be a committee to hold interactive dialogues with Special Procedures. The mandate holders could then bring a summary of those more detailed discussions back to plenary. Another option would be for States to submit advanced questions to Special Procedures to make presentations and dialogues more specific. To facilitate such an effort, Special Procedures could inform States of their long-term plans for the mandate (i.e. what reports they intend to submit over the next three years). Others supported these ideas, but reiterated that it remains important for the HRC to put in place a system to review and, if appropriate, merge or discontinue mandates. In this regard, the idea of ‘automatic sunset clauses’ (e.g. after two 3 year mandates) was put forward to avoid the current situation of default automatic renewal; though this idea was not supported by others. Another idea was to discuss mandate rationalization and improvement in the context of a wider annual or biennial ‘voluntary pledging platform’ (see above). This would have the benefit of reflecting the reality of the HRC: i.e. that there are various inter-related reasons for the body’s increasingly heavy agenda (more resolutions, more panels, more statements, more mandates), and that it would be wrong to look at each of these in isolation.

The vital importance of hearing independent, objective, non-State voices at the HRC was repeatedly raised. According to one participant, the dynamic role of civil society in Geneva is ‘the pride of the HRC, its what makes us different from any other UN organization.’ It is important to ensure that the increasing number of national statements during HRC sessions does not ‘crowd out’ civil society voices, especially the voices of victims of human rights violations.

Another participant raised the point that the HRC should make better use of existing time and resources, before looking at new opportunities. For example, the HRC is allocated one full day of meeting time for organizational meetings, yet only uses half of that. This could be used for other purposes, such as briefings by the High Commissioner. General debates (which take up around one third of HRC time) could also be used in better ways, perhaps by focusing on implementation, as could the expertise of the Advisory Committee (a resource that ‘we are not really utilizing.’) It was also noted that UPR adoption is seen by many as a ‘dead time’ at the HRC, when States ‘catch up on other work.’ This is a missed opportunity. It was argued that current proposals to move adoption to the end of regular sessions would not make any difference. Perhaps therefore they should be moved to ‘special plenaries’ either immediately before a regular session, or at the end of a UPR Working Group?

In terms of follow-up and implementation, a number of participants called for space to be found on the HRC’s agenda for States to share experience and good practice vis-à-vis the implementation of UN human rights recommendations. This could perhaps be done by theme, with an emphasis on achievement, challenges and solutions. Others agreed, and said that as part of such an effort, the HRC should ‘rethink and reset’ item 10. Item 10 should become a place to ‘make requests and match those requests to offers of support.’

Similarly, according to some speakers, the Council should free up space to hold more urgent debates, and to focus on preventing violations of human rights. That is partly a problem of definition, but it is also an issue of putting in place a coherent prevention strategy covering early warning (making better use of NGOs, Special Procedures), having a platform where the High Commissioner and Special Procedures can provide information in real-time (including through informal briefings), considering more Special Sessions and urgent debates on prevention, and develop criteria to guide when the HRC should act (thereby avoiding selectivity).

### **III. Third cycle of the UPR**

That idea that the establishment and conduct of the UPR has been a success story for the Council has become an article of faith for policymakers in Geneva and in national capitals. The UPR is now regularly referred to as ‘the jewel in the crown’ of the UN human rights system, an accolade originally used to describe the Special Procedures.

In January 2016, the new President of the Council, Ambassador CHOI Kyong-Lim of the Republic of Korea, announced that he would use his presidency to, *inter alia*, consult with States on what changes – if any – should be brought to the UPR mechanism ahead of the commencement of the third cycle (due to start in April-May 2017).

Yet, despite the almost universal admiration for the UPR, those consultations are not straightforward. Some States believe that the mechanism’s success means that it should be left untouched. They contend that the UPR, as set by the IBP and the Council’s five-year review, is a finely balanced compromise and that any tinkering, especially any moves to undermine the peer review nature of the mechanism, would risk reducing support and country engagement.

Others agree that the broad parameters of the UPR should remain unchanged, and that nothing should be done that might risk undermining universal participation and early signs of the mechanism’s effectiveness. However, they also worry that the UPR may be ‘losing steam,’ and that now is the time to introduce limited but important modifications to the way it operates.

Occupying a possible ‘middle ground,’ some States and NGOs argue that while there are some changes and improvements that should be brought ahead of the third cycle, those improvements can be made *within* the existing institutional framework of the UPR (as provided by resolutions 5/1 and 16/21) through better practice. Indeed, some argue that certain changes that might be made would help bring the UPR back to the original principles and modalities of the mechanism as set down in the IBP. Such changes should focus on strengthened implementation and improved reporting.

### ***Implementation***

If the first two cycles saw recommendations emerge as the principal currency of the UPR, then it is the implementation (or not) of those recommendations by States that will ultimately determine the value of the mechanism.

According to HRC resolution 5/1, UPR **recommendations can either be supported or noted**. Yet over the course of the first two cycles, other responses such as ‘partially accepted,’ ‘accepted in principle,’ ‘already implemented,’ and ‘not relevant’ have become commonplace.

Participants at the HRC retreat broadly agreed with the principle that States under review (SURs) should take a clear position on recommendations received, in line with Council resolution 5/1 (i.e. recommendations should either be supported or noted). Notwithstanding, it was pointed out that taking a clear position can be difficult in the case of ‘compound’ recommendations (i.e. a recommendation that include a number of sub-recommendations), because the SUR may have different positions on each of those sub-points; and is also difficult in the case of vague recommendations.

Thus, participants agreed there is a joint responsibility for both the recommending State and the SUR to, on the one hand, present high quality and specific recommendations, and, on the other hand, to take a clear position on those recommendations (either support or note). Regarding the quality of recommendations, participants noted the importance of basing recommendations on a thorough understanding of the situation in, and the needs of, the SUR; of avoiding ‘bilateral issues;’ and of ensuring proposals are *SMART* (especially specific – i.e. not compound recommendations – and realistic) and *useful* to the SUR. In this context, one proposal was to develop guidelines for recommendations States. Regarding the responsibilities of SURs, it was suggested that the issue of responding to recommendations would be made much easier if all SURs would agree to allow troikas to ‘automatically split’ compound recommendations.

During the discussions, it was also noted that, while sticking to the binary options of either ‘support’ or ‘noted,’ SURs do have the possibility of providing more nuanced responses *under* the overall response of ‘noted.’

One particularly positive impact of the UPR is that it has given impetus to the development of increasingly sophisticated **national mechanisms to coordinate the implementation of accepted recommendations, and to report back to the State’s international partners.**

During the HRC retreat, participants heard about a number of positive examples of the establishment and development of standing national coordination and reporting structures/platforms. While recognizing that there is no ‘one size fits all’ solution, participants agreed that these streamlined structures can significantly strengthen implementation and help reduce the international reporting burden. Both in terms of implementation and reporting, it was noted that these structures help ensure the mobilization of the entire ‘State’ rather than just the government, by engaging parliamentarians, judges, NGOs and NHRIs in the process.

The importance of effective implementation plans (with clustering and prioritization of recommendations being State-led) and the proper use of indicators was also highlighted by some participants. In this context, the importance of establishing links between the SDGs and UPR (and other human rights) recommendations was flagged. Attention was drawn to work being done by OHCHR to develop national IT database tools that automatically download and cluster all recommendations from the UN human rights mechanisms (via a link with the Universal Human Rights Index), and link reporting on the implementation and impact of those recommendations (i.e. via indicators) to reporting under the 2030 Sustainable Development Agenda.

A number of participants underscored the importance of strengthening expert or third party assessments of levels of national implementation; as the current UPR reporting process is heavily weighted towards State self-assessment. It was argued that no State should oppose this, as it is a question of objectively measuring the domestic implementation of accepted recommendations.

There was general consensus that many developing States require improved **capacity-building and technical support** to effectively pursue the implementation of UPR recommendations. As a starting point in bringing such improvements, participants emphasized the need for developing SURs to more clearly and explicitly present their needs and requests. It was also suggested that, if States could agree to change the format of UPR adoption in plenary, it could allow for a more focused discussion on the SUR’s implementation plan, and thus offer a space to match capacity-building requests with pledges of international support.

A number of participants highlighted the importance of identifying and showcasing ‘national good practice’ with implementation and impact. This could take place during Council plenaries, inter-sessionally or during UPR Working Group sessions. It was suggested that, as part of such an effort, OHCHR could provide a ‘clearing house’ in collating and disseminating good practice and lessons learnt. The importance of ‘South-South’ cooperation and exchange in support of implementation was also flagged by a number of participants.

### ***Reporting***

The second and subsequent cycles of the UPR should focus, *inter alia*, on implementation of accepted recommendations from previous cycles. This key *raison d’être* is reflected in the outcome of the Council’s five-year review and in relevant guidelines.

A review of the second cycle suggests that States have indeed made progress in changing the format of national UPR reports to focus on levels of implementation. Civil society, however, has largely failed to adapt, despite the outcome of the Council’s five-year review, which encouraged ‘other relevant

stakeholders to include in their contributions information on the follow-up to the preceding review.’ UN compilation reports have also, by and large, failed to adapt to the demands of the second and subsequent cycles.

Another lesson from the first two cycles is that the quality of national reports is heavily dependent on the quality and inclusiveness of national consultation processes. Without inclusive national consultation processes and without effective alternative or ‘shadow’ reports on State implementation, the international community and the general public will be denied access to an balanced, objective picture of State implementation. This might eventually undermine the credibility of the UPR process.

During the HRC retreat, participants underscored the cyclical and ongoing nature of the UPR. It is not enough to receive recommendations, put the outcome report on a shelf, then 4-5 years later take it down and prepare the next national report. It was suggested that mid-term reports are useful as they help emphasize this continuity. In addition to mid-term reports, there was a proposal that States should report back to the Council, one year after their review, on progress with five ‘key’ recommendations. Other participants noted that the Council could make better use of item 6, to follow-up on the implementation of UPR recommendations, request or offer capacity-building support, etc.

There was again a suggestion that, through better reporting, the Council should engage in more discussions on ‘good practice’ or ‘impact’ case studies, to recognize achievements and progress, and to learn lessons from State experience.

### ***Working methods of the UPR Working Group***

UPR Working Group interactive dialogues should be an invaluable opportunity for a frank exchange between States on their human rights situations and on progress with the implementation of past recommendations – a place for questions and answers, constructive criticism, peer-to-peer advice, and recommendation. Unfortunately, there are doubts as to whether they are living up to this billing.

Participants acknowledged such doubts, and recognized that Working Group meetings should be more interactive and less ‘routine’ or ‘repetitive.’ There was a sense that improving interactivity and debate was important to make the exercise useful for the SUR, and also to maintain high-level political interest in the process. One concrete proposal to improve the quality of debate was to make better use of ‘advance questions’ or even ‘advance lists of issues’ ahead of Working Group sessions. These would be focused on how the SUR had progressed with the implementation of key clusters of recommendations from the previous cycle.

Pre-prepared statements by reviewing States, delivered without consideration of the 3 UPR reports, or of the SUR’s response to advance questions, were discouraged.

The issue of reprisals against those who travel to Geneva for Working Group meetings was raised. This must be addressed more effectively and more systematically.

### ***Recommendations to States under Review***

Over the course of the first two cycles, the UPR mechanism witnessed a rapid increase in the number of recommendations extended to each SUR: from an average of 27 per SUR during the first session to an average of over 200 by the seventeenth session. However, this increase seems to have been mainly driven by an increase in the number of recommending States (i.e., strengthened universality), a development that should – in principle – be welcomed.

The rise in the number of recommendations appears to be leveling off; nevertheless, the large number of recommendations currently provided to (and that must be managed by) SURs is still problematic, especially for Small State delegations.

To address this issue, in 2011 the Council decided that recommendations to be included in the outcome of the review (i.e. to be adopted by the Working Group) should first ‘be clustered thematically with the full involvement and consent of the SUR and the States that made the recommendations.’ In practice, this highly time-consuming coordination exercise is undertaken by the troika, with support from OHCHR. Unfortunately, at present the troika and secretariat have only 48 hours – from the end of the interactive dialogue to the adoption of the outcome by the Working Group – to prepare the report (including accurately clustered recommendations).

Reflecting on these issues, some participants at the HRC retreat expressed concern over the large number of recommendations they receive. It was suggested that reviewing States still need to show greater restraint in presenting recommendations. Others, however, said that, so long as recommendations are effectively clustered, the actual number of concrete suggestions and issues covered is not that large. There was a comprehensive discussion on how to provide the troika with more flexibility to cluster recommendations – so as to help the SUR by keeping the UPR exercise manageable. One suggestion was to allow the troika to automatically cluster substantively identical recommendations, especially recommendations calling for the ratification of treaties. It was pointed out that the first reviews of the new cycle will set an important precedent in this regard.

Participants also recognize the importance of improving the quality and relevance of recommendations (see above).

### ***Adoption in the HRC***

From the time of the establishment of the HRC, States considered it important for the final UPR outcome to be adopted by the full Council in plenary session. Notwithstanding, by the time of final adoption, the outcome is *de facto* already decided, raising questions about the ‘value-added’ (beyond providing the only forum in which NGOs and NHRIs can speak) of the exercise.

There was acknowledgement, at the HRC retreat, that there is significant room for improvement with regard to plenary adoption. There was some support for the idea of focusing the debate, at the time of adoption, more explicitly on the implementation plans and technical support. There was less agreement as to how, concretely, to change adoption – should, for example, it be moved to the end of regular sessions, immediately before regular sessions, or to the end of UPR Working Group meetings, (the latter two options would require the convening of special Council plenary sessions)?

After the adoption of a UPR outcome by the Council, it was proposed that the High Commissioner should write a letter to the SUR’s head of delegation, identifying key clusters of recommendations and priorities for action for the next four years.

## **IV. Impact on the ground, including through capacity-building support**

There is growing interest at the HRC in the evolution of so-called national follow-up and reporting structures/mechanisms: the national processes, action plans, strategies and mechanisms (there is no ‘one size fits all’) that are being established around the world to translate international recommendations into better national laws and practices.

Participants at the HRC retreat heard that OHCHR has recently completed a multi-year survey of such structures/mechanisms, which looks at emerging patterns and good practices. Moreover, in September 2015, the Council adopted resolution 30/25 on ‘promoting international cooperation to support national human rights follow-up systems and processes,’ which both captures and furthers international interest in national implementation, coordination and reporting structures.

Participants repeatedly welcomed moves towards single streamlined national implementation and reporting arrangements. According to speakers: ‘these help States ensure coherence between national priorities and UN human rights recommendations,’ and also help to ‘keep reporting burdens manageable.’

A number of participants at the HRC retreat drew attention to the importance of engaging parliaments, judges, NGOs and NHRIs in the process of implementation. This means that standing national coordination and reporting structures should be inclusive and should fully involve these stakeholders in both implementation and reporting. Other participants, while not disagreeing on this point, said that contacts between parliaments, judiciaries and the HRC should take place *indirectly*, through the concerned State.

A number of participants highlighted the central importance of ‘national ownership’ of implementation, which is primarily the responsibility of States. States are also best placed to make it happen, as they understand national challenges and priorities. One participant warned that ‘there is a fine line between measurement of implementation and external monitoring of human rights.’

### ***Impact indicators***

Even where there is evidence (e.g. information in a Special Procedures follow-up report, or in a second cycle UPR report) that a State has taken steps to implement a certain UN human rights recommendation, that does not mean that the HRC and its mechanisms have necessarily had a *measurable impact* on the on-the-ground enjoyment of human rights. This in-turn raises an important question: what are ‘implementation’ and ‘impact’ and how can they be measured?

In recent years, the UN, led by OHCHR, has done considerable work to develop a system of human rights indicators to measure compliance and implementation and to monitor domestic human rights trends. This work draws a distinction between ‘output indicators’ and ‘impact indicators.’ The former refers to evidence of a State having taken steps, in line with a UPR or Special Procedures recommendation to, for example, amend a certain piece of legislation linked to the right to safe drinking water, or to conduct torture prevention training within the police force. The latter then takes the analysis one step further and seeks to measure the degree to which these policy steps have resulted in improvements in the enjoyment of the right to water (e.g. more people linked to the mains water supply), or in reductions in incidences of torture.

During the HRC retreat, a number of participants drew attention to the benefits of developing national systems of indicators, and to the importance of OHCHR support in that regard. This is vital ‘to allow us to measure impact, and to enhance the credibility of the HRC.’

### ***Follow-up***

There was wide agreement during the retreat that there is insufficient follow-up, during regular Council sessions, on the implementation of human rights recommendations, and little space for meaningful dialogue between States and Council mechanisms on questions of cooperation and implementation.

These weaknesses have not gone unrecognized. Special Procedures mandate-holders, for example, are actively discussing ways to strengthen follow-up, and have begun to present an annual report to the Council, which highlights levels of cooperation and good practice examples of implementation. Mandate-holders have also begun to collate good practice examples of impact. These exercises were strongly supported by participants at the HRC retreat.

Some States have, likewise, used item 5 to present information on progress with the implementation of Special Procedures recommendations, and item 10 to request relevant capacity-building support. Other States have tabled resolutions requesting OHCHR to convene inter-sessional seminars to exchange national experience and practice on implementation (e.g. resolution 31/31). Some NGOs have proposed that item 6 be used as a space for regular follow-up on accepted UPR recommendations.

Participants at Evian drew attention to the importance of the further strengthening of follow-up by the human rights pillar's 'implementation mechanisms.' It was pointed out that cooperation with Special Procedures should be incentivized, and non-cooperation brought to the attention of the HRC. For UPR, it was suggested that 'subsequent cycles' of the UPR and not being used, as was expected, to follow-up on earlier recommendations. This means that 'the return on the investment made' with UPR is decreasing.

### ***Exchanging good practice / showcasing achievement***

Over the ten years of its existence, the HRC has been regularly criticized for its tendency to focus on 'bad practice' (i.e. the violation of human rights, and situations of concern) while failing to provide a space or platform for States and other stakeholders to share 'good practice' experiences, challenges and obstacles to progress, and identify and learn from achievements. According to two participants: 'the HRC is too often seen as a place for sharing bad news and criticism' and 'has never provided a space for the sharing of good practices and experience.' Another agreed: 'the HRC has a tendency to focus on the negative, rather than to allow discussions on challenges and learn from others about different ways to overcome those challenges.'

Participants at the HRC retreat agreed that the Council should find space on its agenda to act as a platform 'for the exchange of good practice and the showcasing of national implementation.' However, they pointed out that the key question is: how to do this in practice? The time allocation during interactive dialogues with Special Procedures, or during general debates under item 10, is clearly insufficient for such a purpose. One proposal was to create inter-sessional platforms – some called them 'Communities of Practice' - devoted to implementation and impact (e.g. roundtables, seminars, workshops). These could focus, each time, on a different theme, and seek to bring national level 'practitioners' to explain challenges and achievements. These forums could also be held regionally, to help break the 'Geneva bubble.' Others agreed: 'technical level discussions would be better organized at regional level, to ensure full participation of sectoral experts.' According to one person: 'the Council would benefit enormously by bringing discussions to a more technical level.'

Another proposal was to create an online platform or exchange, managed by OHCHR, through which States, NGOs, NHRIs, parliaments, could share case studies, useful tools, lessons learnt, etc.

A number of participants underscored the importance of involving national and local civil society organizations in such discussions (whether in Geneva or regionally). NHRIs, as a 'bridge between NGOs and governments,' likewise have an important role to play.

### ***Capacity-building and technical cooperation***

GA resolution 60/251 makes clear that a core competence of the HRC is to 'promote...technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned.' With the adoption of the IBP, States members of the Council decided to dedicate a single agenda item (item 10) to fulfilling this importance mandate. Yet ten years later, some have expressed doubts as to the effectiveness of the Council's work under item 10.

In line with the Council's expected methods of work (as outlined in GA resolution 60/251), item 10 should provide an inclusive platform for developing countries to engage in a 'genuine...results orientated' dialogue on challenges faced, a space where they can request relevant technical and capacity-building support, and a space where relevant parts of the UN and the wider international community can extend offers of support in order to 'promote the full implementation of human rights obligations undertaken by States.'

However, some participants at the HRC retreat expressed doubts as to whether item 10, as it is today, is 'fit for purpose.' Others said item 10 'is becoming increasingly politicized.'

Among the ideas put forward to improve the situation, it was suggested that ‘item 10 be used to share concrete experiences with technical cooperation programs...It might be interesting, for example, to hear what OHCHR regional offices can offer in terms of capacity-building support and how States and NGOs can access such programs.’ One participant suggested that the Council’s politicized atmosphere means that States should take the issue of capacity-building outside of Room XX, and organize annual inter-sessional ‘needs-pledges’ platforms. Another called on the Council to lead on the development of technical assistance ‘toolkits’ that would leverage new technology to help States with implementation. Another proposal was to provide particular tailored support to Small States, including SIDS and LDCs. It was noted that the Trust Fund for LDCs and SIDS has helped increase participation of Small States in the UN human rights system, but more needs to be done to help them with implementation.

Others, however, questioned whether the necessary ‘transformation’ of item 10 could be done without a formal decision of Member States.

Participants at the HRC retreat heard that much of OHCHR’s technical assistance work is focused on supporting States with the implementation of obligations, commitments and recommendations. Over the past ten years, ‘OHCHR has taken a range of steps to strengthen this support, and improve the fulfillment of its mandate provided by resolution 48/141.’ In 2006, OHCHR had only 37 field presences; today that number of 60, with a total extra budgetary cost of over 75 million US\$. OHCHR work plans in these countries focus on implementing international norms in law and in practice. In this sense, ‘the move to national coordination mechanisms for integrated implementation and reporting is extremely important and welcome.’ All OHCHR field presences are now focused on helping States strengthen these national coordination and reporting structures, and identifying ‘good practice’ or ‘impact’ case studies. ‘Some of these case studies were collated in two OHCHR publications issued in June 2016.’

The High Commissioner’s ‘Change Initiative’ is an important part of this effort to strengthen on the ground support to States, as is OHCHR’s increased local-level cooperation with UN Resident Coordinators and its related partnerships with UNDP, UNICEF, UN Women, ILO, etc. As part of these partnerships, human rights recommendations are fed into relevant national programming to ensure follow-up within the mandate of each organization. UNDAFs are the primary national-level tool for achieving this – ‘the principle planning tool for UNCTs to support national development priorities while respecting the principle of national ownership.’ It was noted that moves to improve UN wide coherence and coordination to better support the implementation of UPR, Special Procedures and Treaty Body recommendations now has high level political support – ‘the UN’s Policy Committee recently adopted an important decision in this regard.’

Notwithstanding these important steps, there was an acknowledgement that the UN should make further improvements in order to ‘deliver as one’ – including by better aligning human rights recommendations with UN national-level development policy, and by ensuring better human rights mainstreaming into the delivery of, and reporting under, the 2030 Sustainable Development Agenda. It was pointed out that the UN should help States design and put in place comprehensive systems of implementation, in order to advance the integrated realization of all important global agendas (human rights, SDGs, Paris Agreement on climate change). As the High Commissioner has noted: the 2030 Agenda is a practical, structured roadmap for investing in human rights.

A number of participants drew attention to the resource constraints faced by OHCHR, and the drag this places on its ability to support States with on the ground implementation. To illustrate this point, it was noted that for 2016, 215 million US\$ in extra-budgetary support was sought for OHCHR field operations, but only around 125 million US\$ is likely to be received. ‘This has real implications for on the ground delivery and impact.’ For example, ‘Honduras requested an OHCHR country office four years ago, and yet it has taken until now to make it happen.’ Also, OHCHR received 28 requests for the deployment of Human Rights Advisors in the last three years, but has only been able to respond favorably to 19 of them. Another called on OHCHR to present annual information to the Council ‘on requests for assistance compared to available resources and actual assistance delivered.’ Another suggested that there is also an

issue with State awareness of what kinds of OHCHR assistance programs are available. It was proposed that ‘OHCHR should establish a public database of technical cooperation programs like UNCTAD does.’

## V. Conclusions

At the closing of the retreat, the president of the HRC, H.E. Mr CHOI Kyonglim, and the Director of OHCHR’s Human Rights Council and Treaty Mechanisms Division, Mr Adam Abdelmoula, offered some concluding remarks.

It was noted that 2016 is an important year for the Council as it celebrates its 10th anniversary. All eyes are, quite rightly, turning to examine its performance and impact over the past decade, in order to provide an analytical basis for looking to the future. In international relations, one decade is not a long time. And yet, in this time, the importance of the Council has become unquestionable, and that is a major success in itself. Yet more, of course, needs to be done; and strengthened cooperation and dialogue (and, by extension, improved effectiveness) should lie at the heart of future progress. The HRC retreat provided an important opportunity to consider such issues, to understand different positions and to identify possible areas of convergence.

Continued reflections on how to improve methods of work are obviously needed. It is self-evident that the ‘staggering increase’ in the HRC’s workload is not sustainable. Perhaps most importantly, the increasingly crowded agenda makes it increasingly difficult for the HRC to respond to human rights issues in a meaningful way. With this in mind, the HRC clearly needs to find ways to ‘streamline mandates and de-clutter regular sessions.’

It is clear that there are differing views about how to do this. While recognizing and respecting those differences, it is important nonetheless that steps are taken. ‘We have arrived at the point where we can no longer say that we will not change. Within the next 6 months, we must identify and put in place concrete, tangible solutions to the issue of reducing the number of Council meetings.’

The HRC is also feeling the effects of shrinking resources. UN regular budgetary appropriations for human rights have not kept pace with increases in the number of mandates. While there is no magic recipe for addressing this situation, it will need further work in New York (e.g. Fifth Committee) and in Geneva (improvements in efficiency).

The HRC retreat also demonstrated, once again, strong State commitment to the UPR. Many participants underscored the importance of national implementation of recommendations, and the need to assess their impact on the ground. There was wide agreement that improved implementation and reporting, and better measurement of impact, should be priorities for the third cycle. Therefore, the challenge is now to agree on how to make this happen – ‘how to turn words into action?’

Linked with this point, recent years have revealed an important shift in the way States manage and coordinate their implementation and reporting obligations. States are increasingly interested in moving away from *ad hoc* coordination and reporting arrangements, to more standing structures that allow for an integrated approach to following up on the recommendations of all human rights mechanisms. OHCHR is working to assist States in setting up strong, streamlined national follow-up processes. These developments were warmly welcomed at the HRC retreat. Finally, the international community is moving to address the long-standing ‘implementation gap’ and is beginning to build a new implementation agenda. This shift could not be more important; after all: ‘generating real impact on the ground, improving the lives of people around the world – this is the basic premise for all of our work at the HRC.’

Securing further progress across these issues and questions will require all States, NGOs and other stakeholders to work together, in a spirit of cooperation and dialogue, and to take concrete steps, both individually and collectively, to turn words into action.



## **Annex - List of participants**

### **States Members of the Human Rights Council**

H.E. Ms. Filloreta Kodra	Albania
H.E. Mr. Shameem Ahsan	Bangladesh
H.E. Mr. Geert Muylle	Belgium
Ms. Daniela Llanos Sangüesa	Bolivia (Plurinational State of)
Ms. Sophie Mautle	Botswana
Mr. Jiang Duan	China
H.E. Mr. Luc-Joseph Okio	Congo
H.E. Ms. Anayansi Rodríguez Camejo	Cuba
H.E. Ms. María Fernanda Espinosa Garcés	Ecuador
H.E. Mr. Joaquín Alexander Maza Martelli	El Salvador
H.E. Mr. Negash Kebret Batora	Ethiopia
Mr. Thomas Wagner	France
H.E. Mr. Shalva Tsiskarashvili	Georgia
Mr. Frank Jarasch	Germany
H.E. Mr. Sammie Eddico	Ghana
H.E. Mr. Ajit Kumar	India
H.E. Mr. Triyono Wibowo	Indonesia
Mr. Daniel Kottut	Kenya
H.E. Mr. Daniar Mukashev	Kyrgyzstan
Mr. Rolands Ezergailis	Latvia
H.E. Ms. Hala Hameed	Maldives
H.E. Mr. Jorge Lomónaco	Mexico
H.E. Mr. Vaanchig Purevdorj	Mongolia
H.E. Mr. Mohamed Auajjar	Morocco
H.E. Ms. Sabine Böhlke-Möller	Namibia
H.E. Mr. Roderick van Schreven	Netherlands
Mr. Patrcik Y. Gbemudu	Nigeria
Ms. Grisselle Rodríguez	Panama
Mr. Marcial Espinola	Paraguay
H.E. Ms. Cecilia B. Rebong	Philippines
Ms. Manuela Teixeira Pinto	Portugal
H.E. Mr. Faisal Bin Abdulla Al-Henzab	Qatar
Mr. Andrey Nikiforov	Russian Federation
H.E. Mr. Faisal Bin Hassan Trad	Saudi Arabia
H.E. Mr. Vojislav Šuc	Slovenia
H.E. Ms. Nozipho Joyce Mxakato-Diseko	South Africa
H.E. Mr. Valentin Zellweger	Switzerland
Mr. Ljupcho Jivan Gjorgjinski	The former Yugoslav Republic of Macedonia
H.E. Mr. Yackoley Kokou Johnson	Togo
H.E. Mr. Julian BRAITHWAITE (1 Sept) and	United Kingdom of Great Britain and
H.E. Mr. Mark Matthews (2 Sept)	Northern Ireland
H.E. Mr. Jorge Valero	Venezuela (Bolivarian Republic of)
H.E. Mr. Nguyen Trung Thanh	Viet Nam

### **Coordinators of regional and political groups**

H.E. Mr. John Paton Quinn	Australia
H.E. Mr. Amr Ramadan	Egypt
Mr. Carl Hallergard	European Union
H.E. Mr. Giampaolo Carmelo Rizzo Alvarado	Honduras

H.E. Mr. Mohsen Naziri Asl  
H.E. Mr. Amran Mohamed Zin  
Mr. Aamar Aftab Qureshi  
H.E. Mr. Kok Jwee Foo  
H.E. Mr. Keith M. Harper

Iran (Islamic Republic of)  
Malaysia  
Pakistan  
Singapore  
United States of America

### **NGOs**

Ms. Jane Connors  
Ms. Renate Bloem

Mr. John Fisher  
Mr. Phil Lynch  
Mr. Marc Limon  
Mr. Roland Chauville

Amnesty International  
CIVICUS: World Alliance for Citizen  
Participation  
Human Rights Watch  
International Service for Human Rights  
Universal Rights Group  
UPR Info

### **Other stakeholders**

H.E. Ms. Misako Kaji  
H.E. Ms. Saja Majali  
Mr. Micheal K. Addo  
Ms. Maria Luisa Silva

Japan  
Jordan  
Special Procedures  
UNDP