



Human Rights Council: New Approaches to Addressing Human Rights Situations

The new Human Rights Council (“HRC” or “Council”) was created in order to strengthen protection for the victims of human rights violations worldwide. The Council’s ability to succeed in that mission will depend on the development of a more effective approach to consideration of human rights situations in particular countries. This paper proposes a mechanism for the Human Rights Council to consider such situations with three key elements: (1) a multi-level system which allows for a graduated response to human rights situations; (2) a flexible approach with many entry points for discussion of such situations; and (3) a full range of options to respond to human rights violations. With this paper, Human Rights Watch seeks to contribute to a continuing dialogue on this issue in which positions will evolve, including our own.

Lessons Learned from the Commission on Human Rights

There is near universal agreement that the approach to country situations at the Commission on Human Rights was significantly flawed, although there are very different views on what the problems were and how they should be fixed. Some have argued that the selection of countries for consideration was overly political, and called for an elimination of considering country situations on that basis. Others have pointed out that all of the countries considered by the Commission merited discussion, but that the Commission did fail to take on other situations that were equally worthy of attention; in other words, that the problem was not that the Commission considered too many countries, but that it considered too few.

Despite concerns over the Commission’s approach to considering country situations, there is no doubt that country discussions contributed to improvements of human

rights conditions on many occasions. The Commission's resolutions have mobilized public opinion, contributed to policy change, and provided encouragement for human rights victims at both a national and global level. Resolutions by the Commission, especially those including decisions to appoint experts to report on the human rights situation, have played a crucial role in calling attention to human rights abuses and improving protection of human rights. In country situations as diverse as Chile, Cambodia, and the former Yugoslavia, the attention of the Commission and the reporting by independent experts has enhanced human rights protection.

In addition, the work of the Commission on Human Rights illustrates how some of the most effective country resolutions were those which were never adopted. Time after time, the threat of a resolution served the important purpose of getting otherwise intransigent governments to take significant steps to addressing human rights violations. For example, discussions over a resolution on Nepal at last year's Commission session were a significant factor in obtaining Nepal's agreement to the deployment of a country-wide monitoring mission by the Office of the High Commissioner for Human Rights (OHCHR). In many other instances, the possibility of consideration by an upcoming Commission session has pushed governments to take steps to address concerns that might be raised about their human rights records, for example through the release of detainees.

Finding the Right Remedy

Accordingly, the question should not be whether the HRC will look at human rights situations in countries—as it must given the mandate set forth in General Assembly resolution 60/251—but rather how it should undertake those discussions. For the Council to improve on the Commission's practice, it should develop a more versatile system for consideration of human rights situations that distinguishes between several broad categories of situations. This system should also provide for escalating levels of Council interaction to allow for a situation to be addressed through more vigorous interventions in cases where a state does not cooperate or progress is not made. Such a system would also allow the HRC to fulfill the suggestion by states that there be more room for constructive dialogue within the HRC, rather than simply condemnation.

The starting point for discussion of human rights situations within the new Council is Resolution 60/251, which provides at least five bases for consideration of country situations. The resolution provides that the Council “should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon” (OP 3). The Council is required by this paragraph to look at situations of gross and systematic violations. In addition, the use of the word “including” makes it clear that the Council must also look at other “situations of violations of human rights.” Furthermore, the Council is required to look at situations involving the promotion of human rights education and learning, as well as advisory services, technical assistance, and capacity-building (OP 5 (a)); situations where the Council can promote the full implementation of human rights obligations undertaken by States (OP 5 (d)); and situations involving the prevention of human rights violations and response to human rights emergencies (OP 5 (f)).

As this list illustrates, there are a number of potential bases for discussion of human rights situations in particular countries at the Council. The strength of the Council’s work will depend on the “toolbox” of options it has available to address the wide variety of human rights situations it will consider. While some states have argued that country resolutions should be eliminated, the full range of tools—from technical assistance to resolutions—is needed for the Council to be effective.

Indeed, resolutions themselves may be used by the Council in a variety of ways. The Council may want to adopt resolutions to recognize innovative approaches undertaken by a government or call for support of human rights-related programs. At the same time, the HRC will at times need to discuss and take action regarding human rights situations where governmental actions or failures are at issue. For example, the HRC must be able to respond should governments fail to cooperate with it, for example by excluding its special rapporteurs or failing to implement their recommendations. In addition, the threat of a response by the Council, including the possibility of a resolution, is itself an important lever which can be used by the Council to further human rights protection. While states may differ about when the HRC should use which tools, it would be hugely destructive to the HRC’s work to take away any of the options it now has to respond to human rights situations.

Relationship to Other Approaches

Of course, the Universal Periodic Review (UPR) process will itself provide a thorough look at the human rights situation in each country. It is also widely accepted by governments that one outcome of UPR may be a decision that the human rights situation in a particular country should be addressed within an HRC session immediately following or at periodic intervals after the review, or in a special session. Some states have questioned whether it would be necessary to raise human rights situations outside of these types of “referrals” from the UPR process.

The answer to that question must be yes, for two reasons. First, the universal review is “periodic.” Under the systems of UPR being discussed, it could be as long as five years before some states are addressed under that process. The new Council will not be credible if it waits that long to consider the many serious human rights situations that demand its attention worldwide. Second, human rights situations are exceedingly changeable—new crises can develop overnight, governments can change, and once-stable situations can suddenly deteriorate. Of course, special sessions may be called by the HRC to respond in the most urgent situations, but there must be the ability to take up situations that have changed or deteriorated within the HRC’s regular program of work as well.

Nor can efforts by the Third Committee of the General Assembly eliminate the need for discussions of country situations in the Council. While the Third Committee can and should continue to play an important role in discussing human rights situations, the HRC is the UN institution specifically mandated to address human rights, and its responsibilities explicitly include addressing human rights situations. It would be inappropriate for the Council to somehow cede this portion of its mandate to the Third Committee. In addition, the Third Committee meets only once a year, for approximately eight weeks. Given that constraint, the Third Committee would not be in a position to respond to evolving human rights situations or urgent issues.

Starting Discussions of Human Rights Situations

Human rights situations may be raised in the Human Rights Council in several different ways. Some of the possibilities include:

- 1) Situations where there is an existing special procedures mandate;
- 2) Situations mentioned by the High Commissioner for Human Rights (UNHCHR) in her report to the HRC, including countries in which the OHCHR has a monitoring presence;
- 3) Situations where one or more HRC members have suggested the need for discussion;
- 4) Situations raised by the Security Council, the General Assembly, or other UN intergovernmental bodies, and those suggested for discussion by UN agencies or special procedures; and
- 5) Situations suggested for discussion as a result of Universal Periodic Review.

The length of discussion, type of discussion, and potential outcomes could vary based on how situations arise.

Employing a Multi-Level Approach

The approach to addressing human rights situations should also allow for different levels of interaction, depending on the urgency and severity of the situation, and the outcomes of previous HRC discussions. For example, a particular situation could first be raised at the HRC as an item for “initial discussion.” The threshold for such a discussion should be low—any member should be able to raise a situation that it thinks would benefit from discussion within the Council—and the discussion itself would be relatively short. The idea of such an initial look would be to explore whether further discussions on this situation would be helpful and, if so, what type of follow up would be most useful.

In addition, rather than having all discussions at the HRC focus on adoption of a resolution, situations could be subject to “preliminary consideration” with a view

only towards a “outcome document” that would raise questions or make recommendations, on the understanding that the subject would again be discussed at the next meeting of the HRC. Whether the situation would be subject to more intensive consideration would then depend on the involved government’s response and the development of the situation in the intervening period.

Finally, situations could also be subject to “consideration” by the HRC, meaning that more substantial discussions would be held and resolutions may be tabled. The HRC would not carry forward the Commission’s distinction between consideration of technical assistance in some situations (Item 19) and situations more generally (Item 9), as technical assistance and cooperation should be part of discussions throughout the Council’s work. Following discussion and consideration of a particular country situation, the HRC should ensure follow up based on the widest range of potential outcomes which could include: agreements on technical assistance, a decision to send a letter to the involved state, submission of commitments by the state involved as to steps it will take to address the situation, findings and recommendations (adopted by consensus) including steps for follow up, a Chair’s statement, or a resolution, and referral to other bodies for action including the Security Council.

The principle is that these options would include both positive measures designed to reinforce and encourage good practices, as well as criticisms of current practices and measures that are intended to act as a deterrent to further abuses through increasing political attention and public pressure on the government concerned. If a resolution is tabled, it could be held for additional discussion at an upcoming meeting of the HRC, should the government involved engage in a cooperative manner and make commitments about the steps it will take to address the situation. If the situation on the ground continues to worsen and the government concerned fails to show good faith in cooperation, a special session of the HRC could be convened.

Inclusion of Situations in the Program of Work

If the suggestions made above are implemented, the HRC will require a program of work that creates broad categories of work, and allows for frequent follow-up discussions. The program of work could potentially have an item for “Human Rights Situations,” which includes five segments. Three of those segments would cover the multi-level approach discussed above, with one segment for initial discussions, one for preliminary consideration, and one for consideration of situations. A fourth segment should be included which would address newly-arising or urgent issues. Finally, as a fifth part of the human rights situations item, the Council should have a segment on “continuing discussions.” Situations that have been under consideration by the Council could be moved to the “continuing discussions” segment when the situation has shown improvement but further monitoring is required.

The key procedural question then would be how to determine which situations are addressed within each segment, and how situations can be raised. The HRC’s current program of work, including work carried over from the Commission, provides a useful matrix for answering those questions. Whatever approach is adopted, it must reflect the wide diversity of human rights situations, and respond flexibly to the needs of each situation.

For example, while some situations would be first addressed in the segment on “initial discussions,” others because of their severity would need to be subject to “consideration” by the Council immediately. Where a mandate already exists for a particular country situation, that situation is already under discussion, and each of those situations should be included in the segment for “consideration of human rights situations.” The UNHCHR should also be able to add situations for immediate discussion to the “consideration of human rights situations” segment by noting the severity of the situation and specifically recommending that it be put “under consideration” by the Council. Both the General Assembly and the Security Council should be able to add to the situations under “consideration” by the HRC by requesting that the HRC address a situation.

Human rights situations about which the UNHCHR expresses concern in her report that are not “under consideration” in accordance with the above criteria should automatically be included in the “initial discussion” segment, as should situations suggested by other UN mechanisms or agencies. Once the UPR is underway, it should be able to recommend that a situation be taken up by the HRC under any of the three types of discussion, as well as to suggest when such discussions should commence.

In addition, individual members of the HRC should be able to suggest situations for “initial discussion.” A larger number of HRC members (possibly five) should be able to put a subject immediately for discussion within the “preliminary consideration” segment, and a yet larger number of HRC members (possibly ten) should be able to put a situation into the segment for “consideration of human rights situations.”

Topics for discussion in the newly-arising or urgent issues segment should be set through suggestions of the UNHCHR, the Chair, or a small number of states (possibly three). As the newly-arising issues may warrant substantial discussion, these subjects should be handled at the beginning of a session. This would allow topics that are considered in the newly-arising issues segment to be discussed further in subsequent segments, if necessary.

Summary of Recommendations

The Human Rights Council’s consideration of country situations should include the following three elements:

- A multi-level system that allows for differing situations to be treated differently, provides for ratcheting up consideration of situations where improvements do not occur or there is a failure to cooperate, and ensures effective follow-up on discussions;
- A flexible approach under which situations can be raised for discussion in a variety of ways and which includes multiple entry points into the system for consideration of country situations; and

- A full range of options to respond to human rights situations, including both positive, reinforcing measures (for example, technical assistance) and warnings or critical approaches designed to encourage change and respond to non-cooperation (for example, statements or resolutions).

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