



Geneva 12<sup>th</sup> October, 2010

Excellency,

The European Union commends you for your ongoing efforts to identify the modalities of a constructive, transparent and all inclusive process. We have taken note of your suggestion to provide inputs for the first meeting of the Open-ended intergovernmental working group by 15 October 2010, in order to facilitate the preparations for the discussion.

The EU joint team in Geneva is happy to share with you an outline of its approach and priorities for the review of the work and functioning of the Human Rights Council. We look forward to continuing our efforts to further develop options with all stakeholders and elaborating joint positions where possible.

This paper will be shared with all missions in Geneva. You are welcome to post it on the website you have foreseen for the documents related to the review of the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

**John Clarke**

Chargé d'Affaires  
Permanent Delegation of the European  
Union to the International Organisations  
in Geneva

**Alex Van Meeuwen**

Ambassador  
Extraordinary and Plenipotentiary  
Permanent Representative of Belgium to the United  
Nations Office  
and other Specialized Institutions in Geneva

H.E. Ambassador Sihasak Phuangketkeow,  
President of the Human Rights Council

Fax nr. 022/917.04.90.



## EU CONTRIBUTION FOR THE FIRST SESSION OF THE OEWG

### 1. Introduction

The EU looks forward to engaging with all stakeholders in constructive discussions during the first meeting of the Open Ended Intergovernmental Working group on the review of the Council (25-29 October).

Following the request of the President of the Human Rights Council, the EU submits a written contribution with its analysis and approach to the review of the work and functioning of the Council. In doing so, we wish to contribute to ensuring transparency and creating an atmosphere of mutual trust. The EU stands ready to further clarify its analysis and ambitions, and looks forward to develop options with all stakeholders and elaborate joint positions where possible. We hope for transparency and coordination between the two review processes in Geneva and New York when the latter begins in earnest.

The EU attaches great importance to the review of the Human Rights Council. The 2011 review process should contribute to improving the Council's ability to systematically implement all aspects of its mandate, by addressing concrete gaps and short coming in any aspect of its work and functioning.

### 2. **The Council's ability to systematically implement all aspects of its mandate and suggestions to improve the Council's work and functioning.**

2.1 Experience so far demonstrates that the main challenge for the Council lays in its ability to uphold and ensure the **implementation** of existing international norms and standards. The work of the Council should be more action-orientated and enable systematic **follow-up** to discussions or initiatives taken by the Council.

2.2 The Council was often not able to comply with its mandate to address urgent and chronic situations of violations of human rights, including gross and systematic violations, in a timely and adequate manner and make recommendations thereon. This has had a negative impact on the Council's credibility. Monitoring and addressing **urgent and chronic human rights issues and situations** is essential to prevent further escalating or additional violations. The EU would like to see the Human Rights Council play a more active role as an **early warning and preventive mechanism**.

Several aspects of the Council's work and functioning relate to this element of the Council's mandate. Overall, the Council's ability to detect and address emerging, escalating or chronic human rights situations should be improved. As such, in addition to the valuable role of the special procedures system, the complaints procedure and the UPR, the EU looks forward to reflect on ways to give a voice to the UNSG and his relevant representatives.

Ways should be considered to further improve the Councils ability to convene at any moment to consider urgent human rights situations. The Council should make more systematic use of its entire toolbox of mechanisms (thematic or country open-ended briefings, presidential statements), and develop new mechanisms to address urgent and chronic human rights situations. The modalities for interaction and dialogue, including on reports following country visits, should be improved.

Overall, the credibility and the effectiveness of the Council in this domain depend on the timely and objective information the Council has at hand and the willingness of States to cooperate with existing mechanisms. The Council should preserve the integrity of mechanisms it has at its disposal to provide this objective information, not least the special procedures.

2.3. Another important element of the Council's mandate is to serve as a forum for dialogue on all human rights. The range of mechanisms of the Council offers States and other stakeholders an opportunity to engage in a dialogue on the promotion and protection of human rights in a cooperative spirit in various formats and fora. Practice has shown however that there is room to improve certain modalities, creating an **environment conducive to genuine dialogue and interaction**. To this end, we should reflect on the agenda and programme of work of the Council, including expanded time for interactive dialogues with special procedures and the consideration of the outcome reports of the UPR working group session as well as the need to have individual dialogues with each of the special procedures. The Council should also build on the established practice of organizing half-a-day or one day open-ended panels and discussions. The outcome of these meetings should then feed into the regular work of the Council.

The EU stands ready to reflect on ways to address cases where States are unwilling to cooperate with the Council or even to engage in addressing human rights concerns, while underlining the importance it attaches to the Council acting to support victims of violations everywhere. Only dialogue and cooperation will allow the Council to play its role in the identification of needs for technical assistance and capacity-building, as well as possible ways to address them. Information should be shared systematically regarding the non-cooperation of States with HRC or other UN mechanisms in the field of human rights.

2.4 The Council has played a limited role in promoting coordination and the overall **mainstreaming of human rights**. There was very few or no structured interaction with UN specialized agencies or other organizations. The review process is an opportunity to improve the Council's record in this domain, including with regard to the mainstreaming of UPR recommendations that are in line with international law.

It could be considered to include a separate agenda item on the mainstreaming of human rights. Representatives of different agencies could be invited to inform the Council as to how a human rights perspective is included in their work. The Office of the High Commissioner should be invited to take part in this dialogue.

The UPR recommendations in line with international law and the responses of the State concerned should be shared with different parts of the UN system as well as regional and national human rights mechanisms. The OHCHR might be invited to assist in forwarding such recommendations and responses.

2.5 The Council will have finalized the first cycle of a **universal periodic review** by the end of 2011. The modalities of the 2nd cycle should be determined in the context of the review process, to allow all stakeholders to prepare in a timely and adequate manner. The principles that guided the first cycle should be upheld, including the principle of universality objectivity, non-selectivity and constructiveness. As of the second cycle, the focus should shift to implementation and follow-up, although the formulation of new recommendations should not be excluded. Objective and reliable information should be the basis for discussion throughout the UPR process. The role of civil society, NHRI and independent experts should be strengthened, as well as the complementarity of the UPR with other tools and mechanisms of the Council.

The EU is of the view that the current order and the foreseen periodicity of 4 years should be maintained. This will ensure equal treatment of all States. 4 years allow the Council to strike a balance between the need for both a regular and effective review process, bearing in mind the practical and financial consequences of reviewing the human rights record of 192 States. The fact that HRC members will not be reviewed during their membership (as requested in OP9 UNGA

60/251) is not seen as a major obstacle. There should be no gap between the first and the second cycle. The second cycle should start in 2012.

The three background reports as the basis for discussions should be maintained. The national report should include information on recent developments and the status of implementation of the recommendations that are in line with international law. The review might consider, however, how recommendations could be consolidated and clustered to assist the State under review. With expert advice, editorial changes might be made only with the consent of both the States under review and the State who intervened. OHCHR should be invited to prepare a report providing i) information on recent developments; ii) a clustered overview of the recommendations, iii) a compilation of available information by Treaty Bodies, special procedures a.o, and iv) an analysis of the state of implementation. The OHCHR should also be invited to continue to provide a compilation of information submitted by the civil society. In this report, a separate section should be dedicated to the information stemming from NHRI with A status.

The working group and plenary level should also be maintained for the review process, but more time should be foreseen for discussions. As a minimum, all recommendations, including those that were not pronounced during the session of the working group, should be included in the outcome report. It should be formalized when a State under Review should reply during the interactive dialogue at working group level, for example after 10 statements. This will further improve the interactive dialogue. States participating in the interactive dialogue could put forward new recommendations. These would however be limited to two, be action orientated and in line with international law. More opportunities should be created and encouragement provided for States to present an interim report.

More attention should be devoted to the adoption of the UPR report during the Council's regular session. States under Review should pronounce themselves on each recommendation, as a minimum by providing information about the Government's interpretation of them. A concrete deadline should be set for the response of the State, well in advance before the outcome report is adopted by the Council. Information about the position of the State should be available before its report is considered by the HRC. To this end the State under Review should distribute an addendum for the adoption of the outcome document clearly indicating the recommendations that it accepts and those that it rejects, along with additional information of the Government. The format of such addendum should be standardized. More opportunities should be created for States to present an interim report.

To strengthen the role of NGOs and NHRIs throughout the process more time should be allocated for these stakeholders at the time of the adoption of the UPR report. NHRI with A status should receive the floor immediately after the national delegation. States should be obliged to consult their NGO community annually in the context of the UPR process. Experts should work with the State under Review and the troika to identify those recommendations that are not in line with international law. In doing so, the outcome of subsequent UPR cycles could include a detailed timetable, including for technical assistance if necessary, for the implementation of recommendations.

2.6 The system of special procedures was maintained following a review, improvement and rationalization exercise of all mandates, mechanisms, functions and responsibilities of the previous Commission on Human Rights. This exercise was concluded within one year after the Council's first session. While we see no need to repeat this exercise, the European Union is of the view that the provision of expert advice and the complaints procedure, though of vital importance to the Council's work, could be further strengthened. The **voices and concerns of victims** are hardly heard in the Council. Here too the review process should lead to improvements.

The review process should build on the improvements made to the selection and nomination process of independent experts for the special procedures system. The HRC Secretariat should

motivate its selection of candidates from the public list to the members of the consultative group. One or more independent experts should participate in the consultations of the consultative group, preferably one of the outgoing mandate-holders or the Chair of the coordinating committee. The candidates short-listed by the Secretariat should reply to a questionnaire or submit a motivation letter. The HRC President should motivate his/her choice when he/she does not follow the order suggested by the consultative group. A provision should be added to the IB Package (or a relevant resolution/ decision of the Council) stating that all those participating in the process, including in the consultations with the HRC President, should uphold the guiding principles throughout the selection and nomination process: objectivity, professionalism and independence.

More attention should be given to the work of thematic and country specific Special Procedures. The independence of the mandate holders, their ability to go to the field and establish direct contact the government and other national and regional stakeholders, make the system a unique element of the Council's tools and mechanisms. The duration of a country mandate should be brought in line with those of thematic mandates, unless the mandate holder informs the Council of significant progress warranting reconsideration of the mandate by the Council. This will enable all concerned parties to create an improved environment conducive to dialogue and cooperation. In order to be effective, all mandates should as a minimum included an element of monitoring, reporting and identifying possible needs for legal advice and assistance. Specific elements could be added in light of the particular thematic or country situation. The EU will not be able to consider proposals that would undermine the independence of the special procedures or reduce the value of their work in the Council.

The Complaints Procedure is the only "victims oriented" mechanism of the Council. The credibility of the mechanism depends on its ability to independently assess information and complaints and to act timely in a manner in line with the seriousness of the situation under consideration. The work and functioning of this mechanism should be improved during the review process if it is to contribute to the implementation of the Council's mandate. To this end, the EU looks forward to work on proposals to consider the role of the Working Group of Communications and the ability of the members of the Council to consider and possibly act upon communications that comply with the admissibility criteria. This includes reflection whether the confidentiality clause best services the needs of victims and on the current scope of violations to be considered under the Complaints Procedure.

A similar system as is used to appoint independent experts as special procedures might be considered for the Advisory Committee. The HRC secretariat could present to the Consultative Group a reasoned shortlist of candidates for the Advisory Committee from the public list. The membership criteria could be reviewed. More broadly, the review might consider whether the Advisory Committee provides for the most efficient delivery of expert advice to the Council.

2.7 As requested by the UNGA, the Council has met regularly throughout the year in a variety of fora and formats. It has scheduled no fewer than three sessions per year, including one main session, for a duration of no less than 10 weeks. The Council has de facto evolved into a permanent body. Yet, this did not allow the Council to implement all elements of its mandate and to systematically deliver results. We acknowledge that the current workload represents a challenge for many small delegations and NGOs, and might be addressed with a more streamlined programme of work.

The EU looks forward to working with all stakeholders to reflect on ways to address the Council's annual agenda and programme of work, including the options to have one session dedicated predominantly to UPR issues, and/or to spread the rest of the meeting time over the remaining two sessions or shorter sessions throughout the year. It will be important to consider ways to better connect the various strands of the work of the HRC. For the reasons outlined above, sufficient time for dialogue, follow-up and concrete action, including through panel and other open-ended meetings, should be foreseen. The programme of work should be balanced and

predictable, while leaving room for flexibility to address urgent situations. It should be considered to merge all country related items (item 4, 7 and 10), as well as current item 3, and 9. Item 9 should include all types of discrimination.

2.8. There is scope to improve the implementation of the methods of work and the day to day functioning of the Council. There is a need to ensure timely information on resolutions that will be tabled and adequate time for discussions on them. Information about PBIs should be available at least one week before action is taken on a resolution. Resolution should be more action-orientated. As mentioned above, the practice of flexible and open-ended meeting formats should be further developed.

The EU is open to reflect on ways to facilitate and improve the work of the HRC President, including through the support he receives from the HRC secretariat, the Bureau and the current "Office of the President", while bearing in mind the independent mandate of OHCHR.