

EXPERTISE IN THE HUMAN RIGHTS COUNCIL

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ABBREVIATIONS

Advisory Committee Commission	the Human Rights Council Advisory Committee the United Nations Commission on Human Rights, abolished in 2006
Council	the United Nations Human Rights Council, established in 2006 to replace the Commission
ECOSOC	the United Nations Economic and Social Council
NGOs	non-governmental organisations
NHRIs	national human rights institutions
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations
UNOG	United Nations Office in Geneva
UPR	Universal Periodic Review

1 INTRODUCTION

In March 2006 the United Nations General Assembly established the Human Rights Council to replace the Commission on Human Rights as the United Nations' principal human rights body. The Commission had had a long and often successful life spanning 60 years, during which it had taken international human rights law from almost nothing to the extensive, comprehensive body of law we have today. But for several years before its demise the Commission had been the subject of intense criticism - from all sides - and for quite irreconcilable reasons. Those who wanted a strong UN human rights mechanism criticised it for its ineffectiveness. Those who opposed resolute international action criticised it for being too strong and too involved in country specific situations. As there was no agreement about what was wrong with the Commission, there was little prospect that there would be consensus around what should replace it.

Responding to the criticism of the Commission, the General Assembly laid down certain principles for the new Council's activities.

... the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.¹

There is an unavoidable implication here that the Commission had not respected the principles of 'universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation'. These principles became the new framework by which the Council and its work should be judged.

Four years later the Council is at risk of failing the test set for it by the General Assembly.

There need be no concern about the principle of universality: the Council's new Universal Periodic Review (UPR) is well on its way towards completing a review of the human rights performance of every UN Member State without exception, over a four year cycle. On the whole the UPR has shaped up as the most successful part of the Council's operations, although it has some significant shortcomings.

The achievement with regard to the other principles is far less positive, however. Outside the UPR, the Council has not always honoured the principles of 'impartiality, objectivity and non-selectivity'. Some States with serious human rights issues entirely escape from scrutiny of their performance outside the UPR. Some of these States even win the Council's accolades in the face of serious human rights violations. Other States receive disproportionate attention. Four Special Procedures country mandates have been ended,

¹ General Assembly Resolution 60/251 para 4.

even in the face of continuing human rights problems, and no new country mandates have been established, even though situations of gross human rights violation have arisen.²

The principle of ‘constructive international dialogue and cooperation’ is also in jeopardy. The Commission was criticised for its factionalism with frequent block voting by regional groups and little sign of inter-regional ‘dialogue and cooperation’. The situation in the Council is probably worse. Although the majority of resolutions and decisions are still adopted without a vote, the minority that are voted on reveal the same divisions within the Council, along regional and political lines.³ There have been a few examples of inter-regional cooperation in certain resolutions and decisions but hardly any of these have been on controversial issues. There are also important issues of human rights that are not even proposed for Council action because of the internal divisions and politicisation.⁴ On the other hand certain important issues receive disproportionate attention and are misused by some States for reasons that sometimes have nothing to do with human rights – or in ways that are contrary to international human rights law.

Hopes for a new era of international collaboration in promoting and protecting human rights through the Council have proved to be unfounded. Apart from the UPR the Council has been at least as partial, political, selective and confrontational as its predecessor.

Perhaps this is inevitable. The Council is a political body. It is made up of States whose representatives act on the instructions and in the interests of their Governments. It is not made up of human rights experts who act on the basis of international human rights law and knowledge and experience of human rights violations. Indeed, one of the deficiencies of the Council is precisely that it has very limited access to human rights expertise and it does not make good use of the expertise to which it does have access.

The expertise required is human rights expertise based on formal academic qualifications and actual human rights experience. States’ delegations in Geneva have diplomats identified as ‘experts’, as distinct from the Ambassadors who head the missions. These diplomatic experts, however, rarely have either formal qualifications or actual experience in human rights. They are more accurately described as specialists than experts, in that they specialise in the work in and around the human rights multilateral machinery in Geneva during the period of their posting in Geneva. Diplomatic missions in Geneva have many diplomats who specialise in the Council’s work for a three or four year period

² The Council ended the mandates on Belarus, Cuba, Democratic Republic of Congo and Liberia.

³ For example, at its 12th session in September 2009, the Council adopted 28 resolutions and 3 decisions (apart from the consensus decisions on the reports of the UPR), of which four resolutions and one decision were voted on.

⁴ Human rights and sexual orientation is a good example. A resolution was proposed by Brazil at the 59th session of the Commission on Human Rights in 2003. It was subjected first to a no action motion and then, when that failed, to so many amendments that the Commission was simply unable to deal with it. It was stood over to the following 60th session of the Commission in 2004 but Brazil did not pursue it. There has been no further attempt to have the Commission or the Council consider a resolution on this issue, though the issue itself has been the subject of very large numbers of statements every year and every session since 2003.

but few ‘human rights experts’. That is one reason why the Council has engaged in debates and adopted resolutions that fail to express or reflect international human rights law.

There may be several strategies to overcome the deficiencies of the Council. One important strategy would be to increase the Council’s access to human rights expertise and improve its use of that expertise. This paper discusses that strategy. The focus throughout is on important areas in which increased access to expertise and better use of expertise could improve the Council’s work significantly, consistent with the principles laid down in the General Assembly’s resolution.

The next section of this paper provides a brief introduction to the kinds of expertise available to the Council. Section 3 proposes changes considered critical to the effective functioning of the Council’s prominent mechanisms and procedures. Section 4 offers reflections on other areas of the Council’s work – its mechanisms and processes – to which expertise makes important contributions.

The relevant Council documents on its processes and procedures are Resolution 5/1 (the ‘Institution Building Package’) of 18 June 2007, Decision 6/102 of 27 September 2007, Presidential Statement 8/PRST/1 of 9 April 2008 and Presidential Statement 8/PRST/2 of 18 June 2008. In this paper these four documents are referred to collectively as the Council’s ‘institution building texts’. Resolution 5/2, the Code of Conduct for Special Procedures mandate holders, can also be considered part of the institution building texts.

The changes recommended in this paper do not require re-opening the institution building texts. In most cases they can be achieved through changes in practice alone. In a few cases they will need to be incorporated into a new Council document that complements rather than alters the institution building texts, as those texts themselves supplement and build upon each other. The paper indicates how each recommended change can be achieved.

2 EXPERTISE AVAILABLE TO THE COUNCIL

A. Types of expertise

The Council has access to two quite different types of expertise which can be loosely categorised as internal expertise and external expertise.

Internal expertise is the expertise of persons appointed, directly or indirectly, by the Council to mechanisms and bodies established by the Council, including

- the Human Rights Council Advisory Committee
- the Complaint Procedure
- the Special Procedures
- the Expert Mechanism on the Rights of Indigenous Peoples
- the Task Force or Working Group on the Right to Development.

External expertise is the expertise brought into the Council by outside agencies and actors, including individuals, not appointed by the Council, although there may be an accreditation process. The General Assembly specifically endorsed the participation of ‘the [UN] specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations’ when it established the Council.⁵ These external organisations and individuals include

- non-governmental organisations (NGOs)⁶
- national human rights institutions (NHRIs)⁷
- the Office of the United Nations High Commissioner for Human Rights (OHCHR)
- human rights treaty monitoring bodies
- UN mechanisms, bodies and specialised agencies, including the United Nations Development Programme, the International Labor Organization, the United Nations Children’s Fund, the World Bank, the International Monetary Fund, the World Trade Organization, the UN Food and Agricultural Organization, the World Health Organization, the World Food Programme, UN-Habitat, the United Nations Economic, Social and Cultural Organization, and so on
- academics and experts on indigenous peoples, minorities, children, international humanitarian law, and so on
- anti-poverty groups
- community based organisations

⁵ General Assembly resolution 60/251 para 11.

⁶ NGOs are accredited through the Economic and Social Council: [Economic and Social Council resolution 1996/31](#) of 25 July 1996. Some academic institutes may be able to be accredited as NGOs but there is no separate accreditation system for organisations or individuals wishing to participate as experts and not as NGOs.

⁷ NHRIs are accredited by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights and those with A status, indicating full compliance with the international standards for NHRIs, the Paris Principles, can participate fully as observers.

- intergovernmental organisations
- international development agencies
- peasants' and farmers' organisations and their national and international associations
- regional banks and other financial institutions
- regional economic commissions
- regional organisations and mechanisms in the field of human rights
- business organisations
- trade unions and associations of workers
- voluntary organisations
- youth associations.

The Council has a duty to ensure the 'most effective contribution' to its work by 'the [UN] specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations'.⁸ Accordingly each of the Council's mechanisms, to varying degrees, provides for the participation and contribution of external expertise and often for the participation and contribution of internal expertise. In addition to the mechanisms listed above, these include

- the UPR
- the Social Forum
- the Forum on Minority Issues
- regular and special sessions of the Council
- open-ended and standard-setting working groups of the Council
- Council panel discussions
- specific consultations on draft resolutions, organised outside the Council's sessions.

This paper does not deal with all mechanisms and areas of expert activity. Rather, it focuses on those which are most important for the effectiveness of the work of the Council.

B. General comments on expertise

This study of the Council's access to and use of expertise in specific areas of its work has identified three general conclusions.

(i) Generally inadequate use of expertise

Expertise is important to all the Council's mechanisms and processes and it could be enhanced in all of them. Overall the Council's use of expertise is currently quite inadequate. There is an especially serious deficiency of both internal and external expertise in the Council's 'State-driven' mechanisms, that is, the UPR and the Complaint

⁸ General Assembly resolution 60/251 para 11 and Human Rights Council resolution 5/1 section VII Rules of Procedure Rule 7.

Procedure. In addition, there are procedures and practices that seek to limit, inhibit and control the expertise that is available, for example, in the Special Procedures and the Advisory Committee.

(ii) *Inconsistent and inefficient use of expertise*

The Council is inconsistent in its use of human rights expertise. It places large demands on some sources of expertise, including the Special Procedures, while under-employing or even marginalising other sources of available expertise, such as the contributions of external experts.

(iii) *Inaccessibility to certain external expertise*

There are issues relating not only to the Council's use of expertise but also to its access to expertise and the accessibility of expertise. This paper addresses these issues through the various institution building texts of the Council and its procedures and practices over its first four years. However, there are also broader questions of actual accessibility: the Council's insufficient use of technology, its unwillingness to facilitate access for the external expertise of marginalised groups, especially poor people, and the general physical inaccessibility of most UN buildings for many persons with disabilities. These broader issues of accessibility are important and deserve to be pursued, but it is beyond the scope of this paper to do that here.

3 KEY AREAS REQUIRING MORE EXPERTISE FOR THE COUNCIL

This section examines the availability of expertise to the Council, and the Council's efficacy in putting such expertise to use. It also introduces proposals considered critical to the effective functioning of the Council.

A. Universal Periodic Review

The UPR is the most innovative mechanism in the Council. It certainly fulfils the principle of universality but it has suffered from the demands it places on delegations and the obvious lack of expertise among delegation members in relation to human rights law and the human rights situation in specific countries.

Expert contributions in the form of written information provided to the UPR constitute the basis of reviews. However, this information is not provided directly to the Working Group but through summaries prepared by OHCHR. The reports of the Special Procedures mandate holders (internal expertise) and the reports of treaty monitoring bodies and 'other relevant United Nations documents' (external expertise) are compiled by OHCHR in a 10 page document.⁹ OHCHR also prepares a 10 page compilation of 'credible and reliable information provided by other relevant stakeholders', that is, by NHRIs, NGOs, academics and others (external expertise).¹⁰

The Council has made no provision for the direct contribution of expertise into UPR oral examinations. This conflicts with a number of the UPR's principles and objectives, which promote the sharing of best practice among States and other stakeholders,¹¹ the 'full cooperation and engagement' of States with other human rights bodies and OHCHR,¹² complementarity between the UPR and other human rights mechanisms,¹³ and the participation of all relevant stakeholders, including NGOs and NHRIs.¹⁴

The Council will complete the first four-year cycle of the UPR at the end of 2011. The second cycle should incorporate additions to the current procedure to ensure a higher level of expertise in the interactive dialogue and in the conclusions and recommendations. That can be accomplished by addressing the following: the role of the Troikas, the composition of the Troikas, the composition of State delegations, and the roles of specialised agencies, NHRIs, NGOs, OHCHR, the Special Procedures and the human rights treaty bodies. The second cycle should also provide for expert assistance to States in implementing UPR recommendations. This section discusses each of these in turn.

⁹ Resolution 5/1 para 15(b).

¹⁰ Resolution 5/1 para 15(c).

¹¹ Resolution 5/1 para 4(d).

¹² Resolution 5/1 para 4(f).

¹³ Resolution 5/1 para 3(f).

¹⁴ Resolution 5/1 para 3(m).

(a) *Role of Troikas*

The Council's institution building texts provide that the Council's conduct of the each UPR examination will be assisted by a Troika of representatives of three States from different regions chosen by lot from among Council members.¹⁵ The texts assign three roles to the Troika:

1. transmit, through the secretariat, questions and issues from member and observer States to the State under review¹⁶
2. cluster questions and issues for the interactive dialogue¹⁷ and
3. prepare the report of the Working Group, with the assistance of the secretariat.¹⁸

These three roles give the Troika the opportunity to ensure the most fruitful interactive dialogue and the most useful report and recommendations. It seems, however, that in practice Troikas have not been especially active in seizing and utilising the roles assigned to them.

In clustering questions and issues for the interactive dialogue, the Troika could shape the dialogue itself so that the best use is made of the three hour period. To date States contribute to the dialogue on a 'first come first served' basis. Those who subscribe first on the speakers' list speak first, regardless of what they want to ask or recommend. The dialogue involves seemingly random and arbitrary questioning, often with the result that the State under review avoids answering some important questions and other important questions are not even asked.

Clustering questions and issues would enable a far more focused dialogue with a fairer representation of views. This would ensure that the most critical human rights issues were raised and discussed. It would also focus attention on recommendations to address the issues of principal concern. It would contribute to making the review more constructive and far less political.

As part of its responsibility for preparing the report, the Troika could structure the document thematically, according to the significance of issues raised in the earlier dialogue and the preparatory documentation. Reports to date have dealt chronologically with State contributions in the interactive dialogue and so they provide no organised analysis of the situation and no sense of priority among the issues and recommendations. The Troika could take steps to ensure a more structured report that is more helpful to the State under review and gives a better sense of the weight attached by delegations to the various issues raised and the recommendations. The Troika could take the Universal Declaration of Human Rights as a way to organise the order of issues in the interactive dialogue and the report.

¹⁵ Resolution 5/1 para 18(d).

¹⁶ Presidential Statement 8/PRST/1 para 1.

¹⁷ Presidential Statement 8/PRST/1 para 3.

¹⁸ Presidential Statement 8/PRST/1 para 9.

Troikas could be more active and more effective under the existing institution building texts, through a change of practice. It is open to Troikas to undertake their responsibilities in a more organised and active way.

Proposal 1

In undertaking the roles allocated to them by the Council's institution building texts, Troikas could be more active in

- **clustering issues and questions so that the interactive dialogue is more focused and**
- **preparing the reports in a more structured format that enables the principal issues to be identified, prioritised and addressed.**

(b) Composition of the Troikas

The institution building texts do not specify who the three Troika members should be, leaving the choice to the individual States represented on each Troika. States have the opportunity to appoint human rights experts, including experts on the country under review, to the Troika but they have not taken this opportunity to date. The roles of the Troika lend themselves to expert involvement, rather than the involvement of diplomats who usually act in State interests. The appointment of experts would bring greater knowledge, both of human rights law and of the human rights situation in the country under review, to the UPR examination and enable better priority setting and better reporting and recommendations.

The inclusion of experts can be effected through a change of practice. It is open to individual States under the existing institution building texts to appoint experts as their representatives on Troikas.

Proposal 2

States could be encouraged to appoint experts as their representatives on Troikas. A special roster of experts for this purpose could be established and maintained. States need not choose experts only from their own countries. A list of experts available to assist the UPR could be compiled for the consideration of States appointing to Troikas.

(c) Composition of State delegations

Both Member States of the Council and observer States can participate fully in the interactive dialogue in the UPR Working Group. They have complete discretion in appointing members to their delegations for the dialogue but, in practice, their delegations are made up of diplomats rather than experts in human rights law or on the human rights situations in the States under review. They are able to appoint academics, jurists and other human rights experts as their representatives should they wish to do so – but they do not. Appointing experts would not detract from the UPR as ‘an

intergovernmental process, United Nations Member-driven', as the institution building texts provide,¹⁹ but it would increase the knowledge brought into the review and therefore the quality of the discussions and the results.

The inclusion of experts in State delegations can be effected through a change of practice and does not require any addition to the existing institution building texts.

Proposal 3

States could include in their delegations to the UPR Working Group experts in human rights law and on the human rights situations in States under review.

(d) Role of specialised agencies and programmes

The UN, its specialised agencies and programmes often operate field offices in a State. Sometimes they even supplement the national or local government, for example, in transitional societies and through peacekeeping missions. The international community, often through the UN but also through the African Union or some other intergovernmental entity, will entrust one or more intergovernmental programmes with the very important role of improving the situation in a particular State in a specific area, such as justice, migration, health or education. These agencies have significant expertise in relation to the States in which they operate. They could include the World Health Organization, the United Nations Development Programme, the United Nations Children's Fund, the Food and Agriculture Organization, the United Nations High Commissioner for Refugees and the United Nations Economic, Social and Cultural Organization. Their experience is currently underexploited.

Proposal 4

Specialised agencies and programmes could be enabled and encouraged to play an active role in the UPR review of States in which they work or in relation to which they have expertise.

(e) Role of national human rights institutions

An NHRI is an official state institution established under local law to promote and protect human rights within the territory of the State. It plays important roles in the domestic implementation of international human rights obligations. As a state institution, it is subject to the law but otherwise independent of the executive and legislative branches of government. It typically has powers of investigation that exceed those of NGOs. It is able to speak independently and authoritatively on the human rights situation within the State. Because of its legal mandate and specialisation it has greater expertise than governmental officials in knowing and understanding the human rights situation in the State.

¹⁹ Resolution 5/1 para 3(d).

The institution building texts provide that an NHRI that complies with the international standards for such institutions, the Paris Principles, may attend the UPR Working Group when its State is under review, but the texts do not provide for the NHRI's participation in the interactive dialogue.²⁰ NHRIs with A status accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights can participate actively in the plenary session of the Council, under the ordinary procedural rules of the Council,²¹ when the report of the UPR Working Group is adopted, but by then, the conclusions and recommendations have been drafted and approved by the Working Group. Participation in the interactive dialogue by the NHRI of the State under review would bring very significant knowledge and expertise to the dialogue.

An NHRI could however participate actively if the State under review allocated some of its time to the institution. The institution building texts provide the State under review with one hour of the three hours of the interactive dialogue.²² The texts do not determine how the State uses that time. The State could allocate some of its time to its NHRI to comment on the issues raised in the dialogue, including by the State under review, and to respond to questions asked by States. This would require only a change in practice, not any addition to the institution building texts.

Additionally or alternatively, a supplement to the institution building texts could provide for an NHRI of the State under review to contribute its expertise to the interactive dialogue by allocating to the NHRI a part, perhaps 10 to 15 minutes, of the three hour period for the dialogue. This would avoid the State under review having to give up part of its 60 minutes to the NHRI.

Proposal 5

An NHRI of a State under review could be enabled to contribute its expertise to the interactive dialogue in the UPR Working Group either by the State itself allocating part of its time to the NHRI or by the allocation of a specific period to the NHRI through supplementing the institution building texts.

(f) Role of non-governmental organisations

NGOs also have expertise that can contribute to the interactive dialogue. The institution building texts recognise this by providing that documentation for the UPR should include 'reliable and objective information from other relevant stakeholders'.²³ National NGOs of the State under review have expertise through their work on the ground there. International NGOs bring an additional perspective through their research and analysis, based on local networks and on local and international experts. Both categories of NGO already assist the UPR with written information but they could also add to the quality of

²⁰ Resolution 5/1 para 18(c).

²¹ Resolution 5/1 section VII Rule 7.

²² Presidential Statement 8/PRST/1 para 7.

²³ Resolution 5/1 para 15(c).

the interactive dialogue and the report's conclusions and recommendations if they were able to participate more actively in the process on specific issues.

The institution building texts provide that accredited NGOs can attend the UPR Working Group.²⁴ The texts do not specifically prohibit their active participation in the dialogue but neither do they provide for it. Like A status NHRIs, accredited NGOs can participate actively in the plenary session of the Council, under the ordinary procedural rules of the Council,²⁵ when the report of the UPR Working Group is adopted but by then the conclusions and recommendations have been drafted and approved by the Working Group. The NGOs cannot influence the content of the report but only support or criticise what is already in it.

NGOs can be provided with increased opportunities to contribute to the process at an earlier stage. One useful addition would be for the Troika facilitating the review of a State to hold an informal briefing with NGOs before the interactive dialogue, perhaps during a lunchbreak during the Working Group session at which the State is to be reviewed. Human rights treaty bodies hold these kinds of informal briefings with NGOs and find them very valuable in preparing for and conducting the examination of a State's report. The institution building texts would not need to be supplemented to enable this.

Proposal 6

The role of NGOs in the UPR could be enhanced, for example, by the Troika holding informal briefings with NGOs before the interactive dialogue in the Working Group.

(g) *Role of the OHCHR*

The institution building texts provide for a very substantive role for OHCHR throughout the work of the Council. However, OHCHR seems to have adopted a role that is far more secretarial and far less substantive than some anticipated.²⁶ It has specific functions in relation to the UPR, especially in the preparation of compilations of documents.²⁷ However, it could also be far more active in providing its expertise to the Troika and the review. Its network of field offices gives it a great quantity of information and analysis of its own about States under review but little of that seems to find its way into the UPR. Either directly through the High Commissioner or indirectly through the President of the Council, more substantive OHCHR information and analysis should be provided to the UPR.

²⁴ Resolution 5/1 para 18(c).

²⁵ Resolution 5/1 section VII Rule 7.

²⁶ This is discussed generally later in this paper in relation to the Council's work as a whole.

²⁷ Resolution 5/1 para 15(b) and (c).

Proposal 7

OHCHR could play a more substantive, expert role in providing its own independent information and analysis to the UPR (for example through a fourth initial report, starting during the second cycle of the UPR).

(h) Role of Special Procedures in the UPR process

The Special Procedures are mechanisms of the Council itself. The mandates are established by the Council and the appointment of mandate holders is approved by the Council. The Special Procedures are part of the Council's internal expertise and as such ought to be central to the UPR process.

The institution building texts recognise the important role of the Special Procedures. The texts provide that one of the compilations prepared by OHCHR for each review includes the reports from the Special Procedures.²⁸ That compilation informs the work of the Working Group, enabling States to raise issues and concerns of the Special Procedures in the interactive dialogue.

The only means by which Special Procedures assist the actual review however is indirect, through the compilation. They are not represented in the Working Group dialogues. Increased opportunities for Special Procedures to contribute to the UPR could be of benefit to the UPR. They could provide advice on draft reports of the Working Group, drawing attention to gaps and weaknesses. In particular they could comment on references in the UPR reports to their own reports, correcting any misunderstandings if necessary and adding additional comments if appropriate.

The institution building texts do not provide for any contribution by Special Procedures except through the written summary compiled by OHCHR, even though the Special Procedures are Council mechanisms. However, the texts do not prevent additional contribution. A helpful supplement to the current contribution would be a process by which reports adopted by the UPR Working Group are provided to Special Procedures mandate holders for their information and comment. The President of the Council could provide a copy of the report to each Special Procedure mandate holder who has presented a report on that State during the preceding five years or is in the process of preparing one.

Because the institution building texts are silent on additional contribution from Special Procedures, informal arrangements could also be made to provide the experts with draft reports immediately after the UPR Working Group session and then distribute any comments they may have before the plenary session in which the report will be adopted.

²⁸ Resolution 5/1 para 15(b).

Proposal 8

The institution building texts could be supplemented by formal arrangements for the President of the Council to provide copies of the UPR reports to relevant Special Procedures mandate holders immediately after each Working Group session for their review and comment and for the President to distribute their comments before the plenary session of the Council at which the reports are to be adopted.

(i) Role of treaty bodies in the UPR process

The position of the human rights treaty bodies in the UPR process is similar to that of the Special Procedures mandate holders. The institution building texts recognise their important role and provide that the OHCHR compilation also includes the reports from the human rights treaty bodies.²⁹ However, no other role for the treaty bodies is provided.

The treaty bodies are external to the Council, part of its external expertise. Treaty bodies are not mechanisms of the Council and are not accountable to the Council. However, as with the Special Procedures, increased opportunities for treaty bodies' contribution to the UPR could be of benefit to the UPR. They should be able to contribute along the same lines proposed for the Special Procedures.

Proposal 9

The institution building texts could be supplemented by formal arrangements for the President of the Council to provide copies of the UPR reports to treaty bodies immediately after each Working Group session for their review and comment and for the President to distribute their comments before the plenary session of the Council at which the report is to be adopted.

(j) Expertise to assist implementation

The institution building texts foreshadow assistance to States in the implementation of the recommendations and conclusions of the UPR. This assistance relates specifically to 'capacity-building and technical assistance' but it could also extend more broadly.³⁰ The Council could provide an expert to work with each State on implementation, including in assisting with accessing assistance for capacity-building, and to keep the Council informed about progress with implementation.

If the Troika members for the review of a particular State are experts, one of them could be selected as the implementation expert for that State. Otherwise, an expert could be selected from a list of eligible candidates who are willing and able to provide advice and

²⁹ Resolution 5/1 para 15(b).

³⁰ Resolution 5/1 para 36.

assistance.³¹ The expert would be appointed by the President of the Council in consultation with the State under review and the Troika. The expert would be expected to submit an annual report on implementation to the Council.

Proposal 10

On the completion of the review of a State under the UPR, the President of the Council, in consultation with the State under review and the Troika for that State's review, could appoint an expert to assist that State over the following four years with implementation of the UPR recommendations and conclusions. The expert could provide an annual report on implementation to the Council.

B. Special Procedures

The system of Special Procedures developed under the Commission was acknowledged to be the Commission's most effective mechanism. The system was carried forward into the Council when it was established. At the ceremony to inaugurate the Council the then UN Secretary-General described the Special Procedures as 'the frontline troops to whom we look to protect human rights, and to give us early warning of violations'.³² They work in a voluntary, unpaid capacity, usually while still in full time or part time employment.

The Council makes comprehensive use of the expertise of Special Procedures mandate holders, not only in their own mandate area, but in other Council processes and mechanisms as well. This section has so far discussed how the UPR uses their reports as information for its reviews. In addition the Council Working Groups, panel events, special sessions, fact-finding missions and the subsidiary bodies of the Council can all involve the direct participation of mandate holders.

There are clear benefits in maximising the availability of the Special Procedures' expertise to the Council. However, the responsibilities of the mandate holders already place great demands on their limited time and resources. They themselves are unpaid and OHCHR is able to provide them with only very limited support for their work. It is also difficult to ask them to contribute more when so many States refuse to cooperate with them. The great majority of communications sent to States by mandate holders (68%) go unanswered³³ and only 67 of 192 States have issued standing invitations to the Special Procedures.³⁴

³¹ The list could be part of the Global Pool of Experts proposed in section 5.

³² Kofi Annan Secretary General Address to the Human Rights Council 19 June 2006 p 6.

³³ OHCHR *United Nations Special Procedures Facts and Figures 2009* Geneva 2009 p 7.

³⁴ Refer <<http://www2.ohchr.org/english/bodies/chr/special/invitations.htm>>.

(a) *Process of selection and appointment of Special Procedures mandate holders*

At the Commission mandate holders were appointed by the Chair of the Commission, following whatever consultation he or she decided to undertake. This was seen as a personal responsibility of the Chair and a personal prerogative. Chairs of the Commission took the responsibility seriously and the standard of appointments was generally very high. However, the process lacked transparency. When the Council was established many States were determined to make the process more transparent but also to give themselves a far greater role in the appointments. Attempts to have the mandate holders individually elected were unsuccessful but agreement was reached on a new process with greater State involvement. The new process is more transparent than the old. It remains to be seen whether it is more effective.

The new process has four steps:

- Governments, regional groups of States, international organisations, NHRIs, NGOs, other human rights bodies and individuals can nominate candidates for appointment
- OHCHR establishes and maintains a public list of eligible candidates
- a Consultative Group, consisting of a member of each of the five regional groups, proposes to the President of the Council a list of candidates with ‘the highest qualifications’, chosen from the public list except in extraordinary circumstances
- the President, after broad consultation, identifies an appropriate candidate for each vacancy and presents to the Council a list of persons for appointment, for the Council’s approval.³⁵

(b) *The public eligibility list*

The institution building texts envisage that the public list of candidates for mandates should be a frequently updated list of highly qualified experts. There is an implication that well qualified candidates should be actively sought out for the list. The list is to be a public list of ‘eligible candidates’ maintained by OHCHR, implying that OHCHR has an active role in screening nominations so as to include on the list only those candidates considered to be eligible.³⁶ However, the practice has been otherwise. OHCHR does not seem to play any particular role. It merely registers, without any selection or assessment, whomever is nominated. There is no statement of eligibility against the criteria established by the Council.³⁷

This paper proposes the establishment of a new Global Pool of Experts (as a successor of the current “public list”), under the President of the Council, in the area of human rights.³⁸ Establishment of that Pool would enable these issues of concern to be addressed. However, even in the absence of that Pool, responsibility for the current public list of

³⁵ Resolution 5/1 section II.A.

³⁶ Resolution 5/1 para 43.

³⁷ Resolution 5/1 para 39 and 41 and Decision 6/102 section II.

³⁸ See section 5.

eligible candidates could be transferred from OHCHR to the President of the Council who, through the Council secretariat, could play an active role in developing and maintaining the list by seeking out eligible candidates.

Proposal 11

The President of the Council could take responsibility for the development and maintenance of the public list of eligible candidates for possible appointment to Special Procedures mandates, actively seeking out highly qualified experts for inclusion on the list. Only candidates assessed against the criteria adopted by the Council would be eligible to be included on the public list.

(c) Composition of the Consultative Group

The composition of the Consultative Group is problematic in ensuring appropriate expertise for these important positions. Its members are Geneva based representatives of States, although they are supposed to ‘act in their personal capacity’.³⁹ States could appoint human rights experts if they wished, as with the Troika for the UPR, but to date none has done so. So far all members appointed to the Consultative Group have been diplomats and therefore they can be assumed to be more reliant on State direction or at least State interests. As a result, even when the Consultative Group has not been highly politicised in its operations, it has lacked human rights expertise and the required time to examine the applications thoroughly.

The Consultative Group would certainly be more expert if States exercised their option of appointing experts as their representatives on the Consultative Group. This requires no more than a change in practice. Alternatively, the State representatives could be replaced by an expert from each region appointed by the regional group. Thus, the Consultative Group, and therefore the selection process, would benefit from the addition of non-State members who can bring into the deliberations of the Group wider expertise and experience in human rights work. This could be effected through supplementing the institution building texts.

Proposal 12

States could be encouraged to appoint experts as their representatives on the Consultative Group. Alternatively, the State representative from each of the five regions could be replaced by an expert appointed by the regional group. To increase its expertise and experience and therefore its effectiveness, the Consultative Group could be enlarged by the inclusion of three additional members, the High Commissioner for Human Rights, the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and a suitably qualified person

³⁹ Resolution 5/1 para 46.

selected by the High Commissioner for Human Rights from accredited NGOs.

(d) Support and guidance for Special Procedures mandate holders

During the Council's institution building year, there were many discussions about providing support, advice and guidance to Special Procedures mandate holders. There was general recognition that some mandate holders, when appointed, may not have sufficient knowledge of their roles and responsibilities or of the Council's expectations of them. At times these discussions seemed to be directed towards constraining the mandate holders in the independent performance of their functions.

Among its institution building texts the Council adopted a Code of Conduct for Special Procedures mandate holders.⁴⁰ The Code of Conduct includes among its purposes 'strengthen[ing] the capacity of mandate-holders to exercise their functions whilst enhancing their moral authority and credibility'.⁴¹ It sought to 'spell out, complete and increase the visibility of the rules and principles governing the behaviour of mandate-holders'.⁴² The President of the Council can convey to the Council any information brought to his or her attention concerning cases of persistent non-compliance of a mandate holder with the Code of Conduct.⁴³ No such information has been conveyed to the Council to date although some requests from States regarding the SPs' behavior have been successfully treated by the President, in cooperation with the Coordination Committee.

The Special Procedures mandate holders themselves recognise their need for guidance and advice. In August 2008 they adopted a *Manual of Operations of the Special Procedures of the Human Rights Council* 'to provide guidance to the mandate-holders'.⁴⁴ The Manual had originally been drafted in 1999 and it was 'revised to ensure consonance with the provisions of the Code of Conduct', among other things, in 2007-08.

Mandate holders also have a Coordination Committee to assist them in coordinating their work and to act as a bridge with the President of the Council, the OHCHR, the broader international human rights framework and civil society.⁴⁵ They are committed to self regulation as a professional group.⁴⁶ The Coordination Committee has been authorised to play a role in this. It has established an Internal Advisory Procedure, to 'provide a

⁴⁰ Resolution 5/2 of 18 June 2007.

⁴¹ Resolution 5/2 preambular para 12.

⁴² Resolution 5/2 preambular para 14.

⁴³ Presidential Statement 8/PRST/2 'Terms of office of special procedures mandate-holders' 18 June 2008 para 3.

⁴⁴ See www2.ohchr.org/english/bodies/chr/special/docs/Manual_August_FINAL_2008.doc.

⁴⁵ The Coordination Committee was established in 2005. see www2.ohchr.org/english/bodies/chr/special/ccspecialprocedures.htm.

⁴⁶ *A Note by the Special Procedures' Coordination Committee in Response to Discussions on a Code of Conduct* 13 April 2007 p 3.

standing mechanism for continuous consideration of the practices and working methods of the Special Procedures'.⁴⁷

Clearly a Special Procedures mandate holder may require training in his or her responsibilities and functions, guidance in his or her work, advice when difficulties arise and possibly feedback from peers when a complaint is made of inappropriate conduct. The Coordination Committee is well placed to undertake these functions and, in part, has done so.

Proposal 13

The Coordination Committee of Special Procedures could take greater responsibility for ensuring that opportunities and procedures are provided for training, guiding and advising mandate holders on their responsibilities and functions and, where necessary, for feedback in relation to any concerns as to their conduct.

(e) Code of Conduct for States

During the Council's institution building year, when there were discussions about a Code of Conduct for Special Procedures mandate holders, proposals were also raised for a Code of Conduct for States, to govern their conduct in relation to mandate holders. These proposals were not taken forward during that year but have been raised again on several occasions since.⁴⁸

The framework for the Special Procedures is incomplete in the absence of a Code of Conduct for States. It has become a serious impediment to the work of Special Procedures and to the Council's access to and use of their expertise. The Council has

urge[d] all States to cooperate with, and assist, the special procedures in the performance of their tasks and to provide all information in a timely manner, as well as respond to communications transmitted to them by the special procedures without undue delay.⁴⁹

However, there is no specific detailed statement of the obligation of States to cooperate with the mandate holders. A Code of Conduct for States should provide for the cooperation of States in accepting and arranging visits by mandate holders, in considering and, where appropriate, implementing recommendations of mandate holders and in responding to communications from mandate holders. More generally it should require that States show courtesy and respect to mandate holders in their dealings with them,

⁴⁷ *Internal Advisory Procedure to Review Practices and Working Methods* Coordination Committee of Special Procedures 25 June 2008 available at www2.ohchr.org/english/bodies/chr/special/annual_meetings/docs/InternalAdvisoryProcedure.doc.

⁴⁸ For example, during the discussion on resolution 11/11 in June 2009. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment endorsed the proposal again in his final presentation to the Council on 8 March 2010.

⁴⁹ Resolution 5/2 para 1.

including at the sessions of the Council. These provisions would fill a gap in the current institutional framework of the Council, complementing the Code of Conduct for mandate holders. They would enhance the independence of the mandate holders and so increase the Council's access to and use of their expertise. They would also indicate to States under review in the UPR and States standing for election to the Council, the nature of the 'commitments' expected of them.⁵⁰

A Code of Conduct for States could be adopted as a supplement to the institution building texts.

Proposal 14

The Council could adopt a Code of Conduct for States to complement the Code of Conduct for Special Procedure mandate holders.

C. Human Rights Council Advisory Committee

The Human Rights Council Advisory Committee was established as the Council's 'think tank'.⁵¹ The Advisory Committee therefore should be a crucial source of general expertise available to the Council. It is comprised of 18 independent experts who are nominated by States and elected by the Council. Its meetings are open to the participation of Council Member and observer States, specialised agencies, intergovernmental organisations, NHRIs and NGOs.⁵²

The Advisory Committee works at the Council's direction, delivering studies and research-based advice on thematic issues 'in a manner and form' requested by the Council.⁵³ Requests to date have included:

- the elaboration of a draft declaration on human rights education and training⁵⁴
- recommendations on possible measures to enhance the realisation of the right to food⁵⁵
- contributions toward the implementation of the 'promotion of a democratic and equitable international order'⁵⁶
- a study on best practices relating to the question of missing persons⁵⁷

⁵⁰ One of the bases for the UPR is the 'voluntary pledges and commitments made by States': resolution 5/1 para 1(d). States nominating for election to the Council are encouraged to make 'voluntary pledges and commitments' in relation to the promotion and protection of human rights: General Assembly resolution 60/251 para 8.

⁵¹ Resolution 5/1 para 65.

⁵² Resolution 5/1 para 83.

⁵³ Resolution 5/1 para 75-78.

⁵⁴ Resolution 6/10 of 28 September 2007.

⁵⁵ Resolution 7/14 of 27 March 2008 para 34.

⁵⁶ Resolution 8/5 of 18 June 2008.

⁵⁷ Resolution 7/28 of 28 March 2008.

- a draft set of principles on guidelines for the elimination of discrimination associated with leprosy⁵⁸
- initiatives addressing civilians in armed conflict,⁵⁹ the rights of elderly persons, human rights and international solidarity, and the rights of people to peace
- a study on discrimination in the context of the right to food.⁶⁰

The Advisory Committee is also charged with mainstreaming a gender perspective and the human rights of persons with disabilities throughout the Council's work.⁶¹

The institution building texts and Council practice have placed significant limitations on the expertise that the Advisory Committee can provide to the Council.

First, the Advisory Committee cannot initiate its own work or adopt resolutions or decisions. This reduces its ability to apply its expertise to emerging, contemporary and emergency issues and situations that may escape the Council's attention or that may not enjoy consensus within the Council.⁶² However, the Advisory Committee can submit research proposals to the Council for consideration.⁶³ This function is not well recognised and is little utilised. Increasing expertise on the Advisory Committee may enhance its capacity to prepare and submit these research proposals.

Second, the Council has adopted the practice of issuing 'guidelines' to the Advisory Committee with its substantive requests. While useful in providing guidance on requests, this practice restricts the ability of the Advisory Committee to offer the best advice it can in the best way it can. It assumes that the Council has the requisite expertise to develop appropriate frameworks for research into and study of key human rights issues.

(a) *Eligibility criteria*

The Advisory Committee is charged with providing the Council with expert advice on a broad range of thematic issues. Accordingly the Advisory Committee should possess the range of expertise required for providing such advice.

The institution building texts set 'technical and objective requirements' for the appointment of candidates to the Advisory Committee but those requirements are very general:

- recognised competence and experience in the field of human rights
- high moral standing

⁵⁸ Resolution 8/13 of 18 June 2008.

⁵⁹ Resolution 9/9 of 18 September 2008.

⁶⁰ Resolution 10/12 of 26 March 2009 para 36.

⁶¹ Resolutions 6/30 of 14 December 2007 and 7/9 of 27 March 2008.

⁶² The Council's implementation of the Advisory Committee's findings and recommendations is also in issue. At its 9th regular session, for instance, the Council decided to postpone its consideration of Advisory Committee proposals.

⁶³ Resolution 5/1 para 77.

- independence and impartiality.⁶⁴

The guidelines for determining ‘competence and experience’ cover

- academic studies in the field of human rights or related areas and/or experience and exposure to leadership roles in the human rights field at the national, regional, or international level
- substantial experience (at least five years) and personal contributions in the field of human rights
- knowledge of the UN system and of institutional mandates and policies related to the work in the area of human rights, as well as knowledge of international human rights instruments, norms, disciplines, with familiarity with different legal systems and civilisations preferable
- proficiency in at least one of the UN’s official languages
- availability of time to fulfil the work of the Advisory Committee in an effective manner, both to attend its sessions and to carry out mandated activities between sessions.⁶⁵

These provisions do not require any particular categories of expertise either for individuals or for the Advisory Committee as a whole. They also fail to set the bar high enough – candidates need only have ‘at least five years’ of experience in the field of human rights to qualify for election and no specialised knowledge is required.

The eligibility criteria should be enhanced through supplementing the institution building texts so as to ensure not only that members of the Advisory Committee have the relevant qualifications and experience but also that the Advisory Committee as a whole enjoys the full required range of complementary sets of expertise.

Proposal 15

To ensure that the Advisory Committee has a full range of human rights expertise, including a spread of different areas of human rights law and experience, the eligibility criteria for members could be extended to include

- **general expertise in international human rights law**
- **specialist expertise in different areas of international human rights law**
- **forensic and investigative expertise**
- **expert knowledge of and experience in human rights situations in various countries.**

For this purpose, a list of eligible candidates, with specific knowledge and expertise in the required fields, should be established and maintained. This could be part of the Global Pool of Experts under the President of the Council.⁶⁶

⁶⁴ Resolution 5/1 para 67.

⁶⁵ Decision 6/102 section III.A.

(b) Appointment process

Advisory Committee members are elected individually by the Council. This process is problematic for several reasons. One is that it is contrary to the requirement that Committee members be independent and impartial, as it requires candidates to secure the endorsement of States from their own region and the votes of Council Members, both of which are highly political processes. The other problem is that it leads inevitably to selection of members on an individual basis, which makes it impossible to ensure the mix of expertise that the Advisory Committee requires. The only way a suitable mix can be ensured is for members to be selected as a group with the individual members of the group being balanced to provide the range of expertise required.

A better approach is the one the Council has adopted for the selection of mandate holders for Special Procedures and for members of the Expert Mechanism on the Rights of Indigenous Peoples.⁶⁷ That approach would ensure both the independence of the individual members of the Advisory Committee and the required range of expertise among the Advisory Committee members collectively, while maintaining Council responsibility for appointment. As with the Special Procedures and the Expert Mechanism on the Rights of Indigenous Peoples, a list of eligible candidates for appointment to the Advisory Committee could be developed and maintained. This list could be part of the Global Pool of Experts proposed in section 5. The Consultative Group, re-constituted along the lines proposed in this paper, could make recommendations to the President of the Council on highly qualified candidates from the list, ensuring gender and regional balance and indicating their individual areas of expertise and experience.⁶⁸ After broad consultation with States, regional groups, and all other relevant stakeholders, the President of the Council could recommend to the Council for appointment to the Advisory Committee a list of persons who individually are highly qualified and collectively ensure the appropriate balances and expertise and experience. The Council would then consider and approve the list.

Changes proposed to the method of appointing members of the Advisory Committee would require adding to the institution building texts.

Proposal 16

Members of the Advisory Council could be appointed through the Council's approval of a list prepared by the President of the Council following recommendations of the Consultative Group. The President would be required to consult with States, regional groups, and all other relevant stakeholders before proposing persons for appointment.

⁶⁶ See section 5.

⁶⁷ Resolution 5/1 para 39-53 for Special Procedures mandate holders and Resolution 6/36 of 14 December 2007, incorporating by reference resolution 5/1 para 39-53, for members of the Expert Mechanism on the Rights of Indigenous Peoples.

⁶⁸ Changes to the composition of this Consultative Group are proposed in the discussion of Special Procedures in this paper.

D. Complaint Procedure

The Complaint Procedure enables the Council to ‘address consistent patterns of gross and reliably attested violation of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances’.⁶⁹ A communication alleging a pattern of violation can be transmitted by ‘a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including [NGOs] ... claiming to have direct and reliable knowledge of the violations concerned’.⁷⁰ The procedure has an internal expert component and a political component. The Working Group on Communications is made up of five independent experts appointed from the Advisory Committee, one of whom is appointed Chairperson of the Working Group. The Working Group on Situations is made up of the representatives of five Member States of the Council.

(a) Working Group on Communications

The Working Group on Communications determines the admissibility of communications and assesses their merits. Its members play an important role as the only expert participants in the Complaint Procedure but their role is limited to threshold questions and issues. They determine whether communications reveal a consistent pattern of gross violations of ‘all human rights and fundamental freedoms occurring in any part of the world and under any circumstances’.⁷¹ The Working Group can ensure the dismissal of any communication it considers inadmissible or lacking in merit, but it cannot ensure that action is taken on a communication that it considers meritorious. Resolution 5/1 requires that the Working Group’s decisions are ‘based on a rigorous application of the admissibility criteria and duly justified’.⁷²

The confidential nature of the procedure prevents a detailed assessment of the Working Group’s performance. However, it is clear that the process requires members to assess factual situations for their compliance with international human rights standards, as well as with the international obligations of the States subject to communications, expertise that is not necessarily held by members of the Advisory Committee. It could be more appropriate for a separate group of independent experts to be appointed to the Working Group on Communications. These appointments could be made by the President of the Council, with the approval of the Council, from a list provided by the Consultative Group re-constituted as recommended above. The list could be drawn from the Global Pool of Experts proposed in section 5. Particular emphasis would be placed on ensuring that, collectively, members of the Working Group have general expertise in international human rights law. Further, this process would allow for the appointment of a broader range of qualified candidates, including members of NHRIs.

⁶⁹ Resolution 5/1 para 94.

⁷⁰ Resolution 5/1 para 87(d).

⁷¹ Resolution 5/1 para 85.

⁷² Resolution 5/1 para 95.

The appointment of independent experts specific to the Working Group could relieve Advisory Committee members of their additional responsibilities under the Complaint Procedure. It would be consistent with the Council's policy that individuals should not accumulate human rights functions.⁷³ It could also introduce greater efficiency to the Working Group on Communications for two reasons: first, appointed experts would have no competing obligations under other Council mechanisms; second, this specialised expert group could ensure that the Working Group develops more consistent working methods and thereby meet its obligation 'to the greatest extent possible, [to] work on the basis of consensus'.⁷⁴

These changes could be made by supplementing the institution building texts.

Proposal 17

Members of the Working Group on Communications could no longer be drawn from the Advisory Committee but rather be constituted as a separate group of independent experts appointed by the President, with the approval of the Council, from a list of eligible candidates submitted by the Consultative Group re-constituted along the lines proposed above. Gradually, this Working Group could also assume the functions of the Working Group on Situations. Alternatively, the two WGs could sit together for a week and go through all the communications.

(b) *Access to external expertise*

External expertise is only available to the Complaint Procedure at the very beginning of its process, when a communication is lodged. The institution building texts acknowledge the 'quasi-judicial competence' of NHRIs in serving as an 'effective means of addressing individual human rights violations' but they do not provide NHRIs with any formal role in the procedure.⁷⁵

Proposal 18

Members of NHRIs could be considered, among a broader range of qualified candidates, for appointment to the Working Group on Communications.

E. Fact-finding missions

Fact-finding missions and commissions of inquiry are tools available to the Council to prevent and address gross and systematic violations of human rights. They have been

⁷³ See resolution 5/1 para 44 in relation to Special Procedures mandate holders and para 69 in relation to members of the Human Rights Council Advisory Committee. This position is reiterated in Decision 6/102 section III.D.

⁷⁴ Resolution 5/1 para 90.

⁷⁵ Resolution 5/1 para 88.

used by the Council on several occasions when an independent investigation is considered necessary.⁷⁶ The mission is undertaken by eminent experts who carry out the investigation, usually including a field visit, and then report to the Council on the mission's findings and recommendations. Invariably where the Council appoints a fact-finding mission the situation requires an urgent response and the fact-finding mission needs to be put together quickly. It has proven difficult to identify and mobilise persons with the requisite expertise at short notice.

The current procedure for the appointment of Special Procedure mandate holders provides for the Consultative Group to give a list of highly qualified nominees to the President of the Council and for the President to develop the final list for approval by the Council. It is not recommended that these steps be applied in the case of members of fact-finding missions. These missions, by their very nature, have to be mobilised urgently and their members appointed as quickly as possible. The President should be authorised to appoint members to the missions personally, following such limited consultation as the President deems necessary. Eligible persons, available for immediate deployment, could be appropriately identified in the Global Pool of Experts proposed in section 5.

The process recommended here would allow for the expedient appointment and deployment of experts to emergency situations and would be in keeping with the Council's obligation to 'contribute ... towards the prevention of human rights violations and [to] respond promptly to human rights emergencies'.⁷⁷ It could be implemented simply and immediately, upon the initiative of the President, as there are no current provisions in the institution building texts regulating the appointment of experts to fact-finding missions. If thought desirable, the process could be formalised by a Presidential Statement to the Council.

Fact-finding missions and commissions of inquiry are of little practical benefit where they are prevented from accessing the country or region that they are mandated to investigate⁷⁸, or where the Council fails to endorse or implement recommendations emanating from such investigations. The engagement of experienced experts in the missions adds impartiality to their recommendations. They cannot be easily dismissed as political choices.

Proposal 19

Under the authority of the President, a list of suitable highly qualified and experienced experts, prepared to undertake fact-finding missions on short notice, could be established and maintained. The list could include experts

⁷⁶ For example, the fact-finding mission to Beit Hanoun in Gaza after Israeli military action in November 2006, headed by Archbishop Desmond Tutu (resolution S3-1 of 15 November 2006 para 7); the high level mission to Darfur, led by Jody Williams (resolution S4-101 of 13 December 2006 para 4); the fact-finding mission to Gaza, after the Israeli military action of January 2009, headed by Richard Goldstone (resolution S-9/1 of 12 January 2009 para 14).

⁷⁷ General Assembly Resolution 60/251 para 5(f).

⁷⁸ For instance, the High-Level Fact-Finding Mission to Beit Hanoun, and the High-Level Mission on the situation of human rights in Darfur.

with a range of expertise, and teams could be combined to ensure all necessary expertise is included.

F. High Commissioner for Human Rights

(a) *The High Commissioner's advice to the Council*

The Review of the Council is not related to the functioning of the High Commissioner for Human Rights and her Office. The High Commissioner has a status independent of the Council and a specific mandate from the General Assembly.⁷⁹

However, as the specialised UN entity for human rights, the High Commissioner receives various substantive requests from the Council, including requests to undertake studies, prepare reports, conduct consultations, and organise seminars and panels. She is expected to give substantive support to the work of the UPR, Special Procedures, subsidiary bodies of the Council and ad hoc fact-finding missions. This list is not exhaustive. The High Commissioner and her Office are the substantive human rights experts in and for the entire UN system.

At the same time, in addition to these substantive roles, the High Commissioner, through her Office, is expected to provide administrative and logistical support services to the Council, the Special Procedures, the Council's subsidiary bodies, and other bodies. There can be tensions between various functions of the OHCHR.

The review of the Council's operations should seek to enhance the Council's access to and use of the expertise of the High Commissioner for Human Rights and her Office by reinforcing their substantive role. The most important contribution the High Commissioner can make to the Council is the provision of expertise in the Council's processes and through the Council's mechanisms. To date the High Commissioner has been able to make an annual report to the Council at its main session in March and, in addition, provide an update at each other regular session of the Council. She provides reports on specific issues or situations at the request of the Council and on her own initiative. She and her staff also participate in the Council's debates. These functions are central to her role. They are based in her unequalled access to:

- human rights information and analysis through her own field staff, active in all regions and in many individual States
- expertise in human rights law
- the enormous information banks of the UN system, distributed through its many agencies working internationally, regionally and locally.

Additionally the High Commissioner contributes from her own personal expertise and experience gained through many years of human rights work.

⁷⁹ General Assembly Resolution 48/141.

Proposal 20

Consistent with the position of the High Commissioner for Human Rights and her Office as the pre-eminent human rights experts in the UN system, the Council's access to the expertise of both could be enhanced. The Council could continue its practice of receiving a report or an update from the High Commissioner at every regular session. In addition the High Commissioner could continue to provide the Council with her expert opinion and advice whenever she considers that that would be of benefit to the Council's work in promoting and protecting human rights. The Council should welcome the advice of the High Commissioner and her Office and encourage the High Commissioner and her Office to participate actively in its deliberations.

OHCHR could be more forthright and more active in fulfilling its expert role. In furtherance of its independent mandate from the General Assembly and its legal separation from the Council, it should be frank in offering advice in human rights issues.

(b) The secretariat to service the Council

The provision of independent information and advice is one of the two distinct roles of the High Commissioner and her Office in relation to the Council. The other role is the provision of secretariat services for the work of the Council and its various mechanisms, at regular and special sessions of the Council and meetings of its Advisory Committee, forums and working groups, including the UPR Working Group. Tensions may arise in undertaking these roles. It is very difficult for the High Commissioner to be both the Council's principal advisor and the service provider on whom it is dependent for its work. As service provider she must be neutral as to the various groups and factions that are at play within the Council context. As advisor, she must be an unequivocal human rights advocate with positions and views that must be communicated to the Council and argued within the Council, even at the risk of being embroiled in the politics of the Council's debates.

The potential for tension between these two roles could result in either or both being compromised. The ability of the secretariat to be accepted as functioning neutrally could be threatened if the High Commissioner and the Office are actively and critically involved in the substance of the Council's work. On the other hand the concern to be accepted as functioning neutrally could blunt the edge of the reports and advice the High Commissioner offers on any matter or situation, thereby depriving the Council of the High Commissioner's expertise.

The capacity of the High Commissioner to provide expertise to the Council could be enhanced if the secretariat function were separated from the High Commissioner's Office. Most aspects of the function are purely technical and logistical, including the function of conference servicing already undertaken in Geneva by a section of the United Nations Office in Geneva (UNOG) itself, the Division of Conference Management. In

2009, for example, UNOG serviced 9, 923 international meetings, providing 52,819 accreditation badges and 220,056 pages of translation.⁸⁰ It is already providing extensive servicing of the Council's meetings and work. It would be appropriate for it to take over the remaining secretariat functions for the Council, providing them to the Council through the President of the Council rather than the secretariat working for the Council through the High Commissioner. This would free the High Commissioner of the servicing responsibility, allowing her to concentrate on her advisory role and responsibility and allowing the Council to call on her expertise more readily.

Transferring the secretariat responsibility could strengthen the High Commissioner's expert role in the Council. In servicing the Council the High Commissioner is subject to Council direction in a number of ways. This confuses the formal, legal relationship between the Council and the High Commissioner under the General Assembly resolution that established the position.⁸¹ That resolution provides that the High Commissioner is responsible to the UN Secretary General, not to any UN body such as the Council. Yet the Council is entitled to control the conduct of its business, including by instructing its secretariat, placing the High Commissioner in a difficult position. Transferring the servicing to UNOG would remove this ambiguity and reflect more appropriately the proper relationship between the Council and the High Commissioner.

Transferring the servicing would also be a step towards the Council's stated policy of creating an Office of the President of the Council. The role of the President has been important in ensuring the smooth functioning of the Council. Because the secretariat of the Council was not attached to the President, the first President found it necessary to establish a personal office with staff to assist him in his role. Subsequent Presidents have followed that lead but the office is small and considered to be inadequate for the needs of the President. Transferring the secretariat of the Council to UNOG would enable it to be placed more closely under the direction of the President so that in fact the President was head of the Council secretariat and the secretariat worked directly for him or her.

This change would not affect the institution building texts and would require no formal action by the Council. It could be effected through internal arrangements within the UN Secretariat.

Proposal 21

The secretariat that services the Council and its mechanisms, both internal and external, could be transferred from the OHCHR to the UNOG and placed directly under the authority of the President of the Council.

⁸⁰ Statistics from UNOG Annual Report 2009 at [www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/5A5A65221936B3FEC12576D5005BCCCA?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/5A5A65221936B3FEC12576D5005BCCCA?OpenDocument).

⁸¹ General Assembly Resolution 48/141.

G. Academic expertise

In establishing the Council, the General Assembly did not provide specifically for the contribution of academic experts. These experts have been involved on an ad hoc basis, at the invitation of the President of the Council, in panels at Council sessions and in some Council working groups and forums. However this participation has been restricted to a single event or session.

Many academics are interested in the Council and its work. Some are undertaking studies of the Council and Council mechanisms. They have no means by which they can present documents and other information directly to the Council and attend sessions of the Council and Council working groups, such as the UPR Working Group. Studies of the Council can provide insightful analysis of its functioning and proposals by which its effectiveness can be increased. An informal procedure by which individual academics can receive limited accreditation could be beneficial to the Council. It could provide individual accreditation, not institutional accreditation, so that only the small number actually undertaking the research would be enabled to contribute, not all those associated with an institution or university.

Permitting appropriate individual academic experts to attend Council sessions could be done within the existing procedures of the Council through the President's functions as presiding officer of the Council. It would not require any supplementation of the institution building texts.

Proposal 22

The President of the Council could provide accreditation for one year as observers at the Council for academic experts who are undertaking studies on the Council, including its mechanisms and its work. The accreditation could permit attendance at Council sessions, without the right to speak, and the submission of research papers for inclusion on the Council's webpage and on the Council extranet.

H. Resources for expertise

Increasing the use of expertise has implications for resources. The research for this paper has not examined the resource implications of its proposals. However, lack of resources is a permanent problem hampering the Council's access to and use of experts and the quality of expertise itself. It affects expertise in several ways:

- it prevents the extensive use of experts for panel discussions, formal consultations, special sessions and so on, thereby undermining the possibility of positive results
- it prevents the deployment of experts on fact-finding missions and to the field

- it does not allow experts to have the support and assistance they need, thereby affecting the quality and quantity of their work⁸²
- it affects the timely translation of reports and documents, which provokes serious political problems, including criticism of the expert himself or herself, even though it is beyond the power of the expert to do anything about the situation.

(a) Implementing Council decisions and innovations

Often implementation of the Council's decisions places demands on the very limited resources of OHCHR. It is not the responsibility of OHCHR to finance the Council and its decisions. That is the responsibility of the general budget of the UN, negotiated in New York and approved by the General Assembly. However, there are often expectations that OHCHR will meet the Council's financial needs when it passes a resolution or alters its methods of working. And often, it seems, OHCHR feels obliged to respond to those expectations by providing the funds. This blurs the lines between the Council and OHCHR as two independent, though related, mechanisms of the General Assembly. OHCHR should not be expected to resource any implementation of this paper's proposals or indeed other innovations in or aspects of the Council's work.

Proposal 23

The work of the Council and its activities should be funded out of the UN general budget. OHCHR should not be expected to find funds to meet the evolving demands of the Council, either in implementation of its decisions or in innovations to its procedures.

(b) Funding expert attendance at Council events

Bringing experts to the Council requires resources. The Council and its President often wish to invite experts to participate in panels and working groups but they do not have the resources to fund this participation. This has two consequences. First, they may be reluctant to invite the experts because of the lack of funds and so the Council is deprived of the contribution sought. Second, they may issue the invitation and then expect OHCHR to find the necessary resources. Neither consequence is desirable.

The President needs access to a small discretionary fund from which he or she can bring experts to participate in particular relevant discussions in the Council or its working groups. The money could be drawn initially from the funds of OHCHR, at a level commensurate with existing funding of such expert participation, but any subsequent increases to the fund should come from the UN's general budget and not from OHCHR's budget.

⁸² This is the reason for the errors, sometimes serious, in the reports and comments of experts and mandate holders who find themselves unable to handle the huge amount of work in their mandates.

Proposal 24

The President of the Council could be provided with a small discretionary fund to enable the participation of particular experts in panels, working groups and other processes of the Council where appropriate.

4 REFLECTIONS ON OTHER FORA CONNECTED TO THE COUNCIL

Section 3 examined a number of key areas in which expertise is critical to the effective functioning of the Council and offered a number of specific proposals. This section reflects on other areas of Council work which are sometimes overlooked. They are included here for completeness but not examined in depth.

One general observation is offered in this regard before the areas are examined. The Social Forum and Forum on Minority Issues are today both chaired by State representatives, whereas they were chaired by independent experts in their previous forms under the Commission. Similarly, Council Working Groups are also often chaired by diplomats, usually the ambassador of the State that proposed the establishment of the Working Group. This raises questions as to the expertise and capacity of State representatives to chair specialist Council mechanisms. It may even serve to deter sensible suggestions for the establishment of new working groups. The success of these processes often depends on the skills of the chair. Some diplomats may be skilled in chairing negotiating meetings but this is not always the case. Even those skilled in chairing may have little expertise in the subject matter and so prove to be incapable of securing a positive result.

There is no necessity for diplomats to chair every Council process. Even where by agreement or tradition a particular State has the responsibility for selecting a chair, there is no necessity for it to select its ambassador or another of its diplomats. Mechanisms of the Council should always be chaired by the person most qualified for the various responsibilities of the position, taking into account chairing skills, negotiating skills and expertise in the particular area of human rights under consideration. The Global Pool of Experts, proposed in section 5, could be a useful means of identifying experts for consideration for this role.

A. Social Forum

Originally conceived as a 'pre-sessional forum' to meetings of the Sub-Commission on the Promotion and Protection of Human Rights, the Social Forum today is an independent Council mechanism. It serves as a forum 'for the promotion of social cohesion based on the principles of social justice, equity and solidarity ... [and] ... to address the social dimension and challenges of the ongoing globalization process'.⁸³ Its meetings are subject to Council resolution but to date it has met once each year for three days.

The Social Forum is chaired by a person appointed by the President of the Council from nominees of the regional groupings.⁸⁴ In both 2008 and 2009 the President appointed Ambassadors to this position.⁸⁵ Before the creation of the Council the Social Forum had

⁸³ Resolution 6/13 of 28 September 2007 para 3.

⁸⁴ Resolution 6/13 para 6.

⁸⁵ The ambassador of Jordan in 2008 and the ambassador of Slovenia in 2009.

been chaired by a Sub-Commission member. Further, background reports for Social Forum sessions are prepared by OHCHR.⁸⁶ Before the creation of the Council they had been prepared by Sub-Commission members.

The Social Forum invites the contributions of a broad range of external experts.⁸⁷ Its meetings involve the participation of up to four thematic Special Procedures mandate holders as ‘resource persons’.⁸⁸ The Social Forum’s changing annual themes also enable it to address topical issues and so it should be able to draw in a broader array of external experts and mandate holders.⁸⁹

The Council has been deliberate in separating members of the Advisory Committee from the Social Forum. However it has maintained duplication in the mandates of the two mechanisms. The Social Forum serves as a ‘think tank on a human rights-based approach to poverty reduction [and to] ... promote better interaction between developed and developing countries, particularly through concerted efforts to achieve poverty reduction’.⁹⁰ At the same time, the Advisory Committee has been active in developing recommendations on possible measures to enhance the realisation of the right to food⁹¹ and the ‘promotion of a democratic and equitable international order’.⁹² One way both to limit duplication and to ensure an exchange of views is to invite Advisory Committee members to participate in, and contribute to, Social Forum sessions. This would also go some way to restoring the expertise available to the Social Forum.

In addition, the Social Forum has a clear contribution to make to other Council mechanisms. For instance, the Social Forum’s work was of direct relevance to the thematic special sessions on ‘the negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices’ and the ‘impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights’.⁹³

Consideration should also be given to how effective the Council is in its use of the expertise of the Social Forum itself. In resolution 10/29 the Council merely ‘[took] note with interest of the conclusions and recommendations of the 2008 Social Forum’ and called on various actors to ‘take them into account when designing and implementing poverty-eradication programmes and strategies’.⁹⁴ The Council needs to use and

⁸⁶ Resolution 6/13 para 8.

⁸⁷ Resolution 6/13 para 10.

⁸⁸ The Council required that the independent expert on the question of human rights and extreme poverty and the independent expert on human rights and international solidarity be two of these mandate holders for the Social Forums in 2008 and 2009: Resolution 6/13 para 9 and Resolution 10/29 para 10.

⁸⁹ The 2009 Social Forum considered, among other things, the negative impacts of economic and financial crises on efforts to combat poverty.

⁹⁰ ‘Report of the 2008 Social Forum’ A/HRC/10/65 para. 96. Available at www2.ohchr.org/english/issues/poverty/sfsession2008.htm.

⁹¹ Resolution 7/14 of 27 March 2008.

⁹² Resolution 8/5 of 18 June 2008.

⁹³ The 7th Special Session, held on 22 May 2008, and the 10th Special Session on 20 February 2009, respectively.

⁹⁴ Resolution 10/29 of 27 March 2009 para 2.

implement the Social Forum's recommendations in ways that add value to its work, and which improve the situation of human rights on the ground.

B. Forum on Minority Issues

The Forum on Minority Issues provides 'a platform for promoting dialogue and cooperation on issues pertaining to persons belonging to national, ethnic, religious and linguistic minorities'.⁹⁵ Through 'identifying and analyzing best practices, challenges, opportunities and initiatives' to further implement the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Forum provides 'thematic contributions and expertise' to the work of the Independent Expert on minority issues.⁹⁶ The Independent Expert in turn guides the Forum's work and prepares its annual meetings⁹⁷ and a State representative, appointed by the President of the Council, serves as Chairperson of the Forum.⁹⁸

The Forum meets each year for two days.⁹⁹ It is open to external expertise which includes UN mechanisms, bodies and specialised agencies, funds and programs, intergovernmental organisations, regional organisations and mechanisms in the field of human rights, NHRIs and other relevant national bodies, academics and experts on minority issues, and NGOs.¹⁰⁰

C. Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples is a 'subsidiary mechanism' charged with providing the Council with thematic expertise on the rights of indigenous peoples 'in the manner and form' requested by the Council.¹⁰¹ This expertise is delivered in the form of studies and research-based advice, and seeks to avoid duplication with the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues.¹⁰²

The Expert Mechanism is composed of five independent experts, one of whom serves as Chairperson-Rapporteur. Despite the fact that the Expert Mechanism's role resembles that of the Advisory Committee, these experts are appointed on the same basis as Special Procedures mandate holders.¹⁰³

The Expert Mechanism is open to external expertise which includes UN mechanisms, bodies and specialised agencies, funds and programs, intergovernmental organisations,

⁹⁵ Resolution 6/15 of 28 September 2007 para 1.

⁹⁶ Resolution 6/15 para 1.

⁹⁷ Resolution 6/15 para 5.

⁹⁸ Resolution 6/15 para 4.

⁹⁹ Resolution 6/15 para 3.

¹⁰⁰ Resolution 6/15 para 2.

¹⁰¹ Resolution 6/36 of 14 December 2007 para 2.

¹⁰² Resolution 6/36 para 5.

¹⁰³ Resolution 6/36 para 3 incorporating by reference resolution 5/1 para 39-53.

regional organisations and mechanisms in the field of human rights, NHRIs and other relevant national bodies, academics and experts on indigenous issues, and NGOs.¹⁰⁴

D. Working Groups

The Working Groups of the Council, both standard-setting¹⁰⁵ and open-ended,¹⁰⁶ draw on a range of internal and external expertise. By way of example, the Ad Hoc Committee on the elaboration of complementary standards has sought contributions from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial Discrimination.¹⁰⁷ Further, the open-ended Working Group on the Right to Development includes a ‘task force’ comprised of five independent experts.¹⁰⁸ Not all Working Groups are so active or consultative, however. The Group of independent eminent experts on the implementation of the Durban Declaration and Programme of Action,¹⁰⁹ which is comprised of external experts, has not convened since 2005.¹¹⁰

Council Working Groups are open to the participation and contributions of external expertise which includes inter-governmental organisations, NHRIs, and NGOs in consultative status with ECOSOC.

E. Panels and consultations requested by Council decisions and resolutions

Panels and consultative meetings at regular sessions of the Council are additional platforms through which the Council addresses thematic issues. They have been introduced since the establishment of the Council, on the model of panels organised in other UN bodies such as ECOSOC, and their use has proliferated over the Council’s four cycles. They have proved to be a good way to focus attention on key issues, with significant contribution by both internal and external experts.

In practice, however, the panels and consultations have not realised their potential. They have tended to be very difficult to organise and very poorly resourced. There is little general understanding of the purpose of panels, no agreement on objectives, a tendency

¹⁰⁴ Resolution 6/36 para 9.

¹⁰⁵ For instance, the open-ended Working Group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances; the Working Group on a draft declaration on the rights of indigenous peoples; and open-ended Working Group to explore the possibility of elaborating an Optional Protocol to the Convention on the Rights of the Child.

¹⁰⁶ For instance, the Intergovernmental Working Group on the Right to Development, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, and the recently established Open-ended Intergovernmental Working Group on the review of the work and functioning of the Human Rights Council.

¹⁰⁷ Council Resolutions 1/5 and 10/31.

¹⁰⁸ Commission on Human Rights resolution 2004/7.

¹⁰⁹ Refer General Assembly Resolution 61/149, Commission Resolution 2003/30, and Council Resolution 10/31.

¹¹⁰ Refer Commission Resolution 2003/30 and General Assembly Resolution 59/177.

to have the least controversial panelists rather than the most expert, and no discernable result. Sometimes it seems that the idea of holding a panel or consultation is more related to adding content to a resolution or filling time in the Council's agenda than to a strong desire to achieve some positive result in human rights terms.

Yet, if properly organised, panels and consultations have the potential to give the Council access to some of the best experts in the world on key human rights questions, including on specific urgent country situations. Any proposal for a panel or consultation should be part of a well developed strategy to respond to a specific human rights issue or situation. The decision should specify the purpose, objectives and anticipated results. It should authorise OHCHR to find the experts most highly qualified on the subject. It should ensure that resources are available to bring those experts to the session.

5 CONCLUSIONS

This paper has discussed many ways in which the Council's access to and use of expertise could be increased and enhanced. It deals with expertise on a mechanism by mechanism basis, moving through the Council and its mechanisms one after another.

The recommendations fall into several broad categories that cut across individual mechanisms of the Council:

- States appointing experts to fill roles where the nature of the role involves expertise rather than representation: as members of the Troikas for the UPR, as members of their delegations in the UPR Working Group for the interactive dialogues, as their representatives on the Consultative Group for the selection process for the appointment of Special Procedures mandate holders, and as chairs of Council mechanisms
- re-constituting Council mechanisms to include experts where they are presently excluded: in Troikas for the UPR, and the Consultative Group for appointments
- widening access to external expertise, including treaty monitoring bodies, specialised agencies, NGOs and NHRIs, in the UPR Working Group and in the preparation of the UPR reports and in the Working Group on Communications of the Complaint Procedure
- widening access to internal expertise, including Special Procedures mandate holders, in the preparation of the UPR reports during the UPR Working Group process and for Special Sessions
- promoting better State engagement with expertise: a Code of Conduct for States in relation to Special Procedures and better training, guidance and advice for mandate holders
- ensuring improved selection of highly qualified experts to Council mechanisms and procedures: as Special Procedures mandate holders, as members of the Consultative Group, of UPR Troikas, of the Advisory Committee, of the Expert Mechanism on the Rights of Indigenous Peoples, of the Working Group on Communications of the Complaint Procedure, of ad hoc fact-finding missions, and as experts in Council panels and consultations.

Improving the selection of experts presents the particular difficulty of identifying sufficient highly qualified persons for consideration. The Council could establish a Global Pool of Human Rights Experts for this purpose. The Pool could be established similarly to the current public list of eligible candidates for appointment to Special Procedures mandates, with the changes to that procedure proposed in this paper. The President of the Council, through the Council secretariat, could be responsible for the establishment and maintenance of the Pool, including actively seeking highly qualified

candidates for inclusion in it. The secretariat could contact States, universities and other academic institutions, NHRIs, NGOs and other relevant stakeholders to invite nominations.

The Pool could have several divisions, indicating the eligibility and availability of candidates for particular expert roles associated with the Council. Nominees could indicate the roles for which they wished to be considered and they would be assessed against the general criteria for the Pool and the specific criteria for those roles. Only those who meet the criteria would be included in the Pool.

Proposal 25

The Council could establish a Global Pool of Human Rights Experts to identify sufficient highly qualified persons for consideration for appointment to any of the expert roles undertaken under the Council's auspices, including Special Procedures mandate holders, members of the Consultative Group, members of UPR Troikas, members of the Advisory Committee, members of the Expert Mechanism on the Rights of Indigenous Peoples, members of the Working Group on Communications of the Complaint Procedure, members of ad hoc fact-finding missions, and as experts in Council panels and consultations.

The President of the Council, through the Council secretariat, could have responsibility for developing and maintaining the Pool.

This paper canvassed widely the ways in which the Council's access to and use of expertise could be improved. Its starting point is that expertise is essential for effective work in promoting and protecting human rights. While the Council already has access to significant expertise, in particular in the Special Procedures, it could benefit from much more. The paper makes several proposals to this end. Its proposals are small, not dramatic.

The proposals are practical, achievable and inexpensive. They do not involve any re-opening of the institution building texts; on the contrary most are fully consistent with the texts, and a few merely require some supplementary decisions. Individually and collectively the proposals would add to the Council's expertise and thereby to its effectiveness.

APPENDIX

LIST OF PROPOSALS

Proposal 1

In undertaking the roles allocated to them by the Council's institution building texts, Troikas could be more active in

- clustering issues and questions so that the interactive dialogue is more focused and
- preparing the reports in a more structured format that enables the principal issues to be identified, prioritised and addressed.

Proposal 2

States could be encouraged to appoint experts as their representatives on Troikas. A special roster of experts for this purpose could be established and maintained. States need not choose experts only from their own countries. A list of experts available to assist the UPR could be compiled for the consideration of States appointing to Troikas.

Proposal 3

States could include in their delegations to the UPR Working Group experts in human rights law and on the human rights situations in States under review.

Proposal 4

Specialised agencies and programmes could be enabled and encouraged to play an active role in the UPR review of States in which they work or in relation to which they have expertise.

Proposal 5

An NHRI of a State under review could be enabled to contribute its expertise to the interactive dialogue in the UPR Working Group either by the State itself allocating part of its time to the NHRI or by the allocation of a specific period to the NHRI through supplementing the institution building texts.

Proposal 6

The role of NGOs in the UPR could be enhanced, for example, by the Troika holding informal briefings with NGOs before the interactive dialogue in the Working Group.

Proposal 7

OHCHR could play a more substantive, expert role in providing its own independent information and analysis to the UPR (for example through a fourth initial report, starting during the second cycle of the UPR).

Proposal 8

The institution building texts could be supplemented by formal arrangements for the President of the Council to provide copies of the UPR reports to relevant Special Procedures mandate holders immediately after each Working Group session for their review and comment and for the President to distribute their comments before the plenary session of the Council at which the reports are to be adopted.

Proposal 9

The institution building texts could be supplemented by formal arrangements for the President of the Council to provide copies of the UPR reports to treaty bodies immediately after each Working Group session for their review and comment and for the President to distribute their comments before the plenary session of the Council at which the report is to be adopted.

Proposal 10

On the completion of the review of a State under the UPR, the President of the Council, in consultation with the State under review and the Troika for that State's review, could appoint an expert to assist that State over the following four years with implementation of the UPR recommendations and conclusions. The expert could provide an annual report on implementation to the Council.

Proposal 11

The President of the Council could take responsibility for the development and maintenance of the public list of eligible candidates for possible appointment to Special Procedures mandates, actively seeking out highly qualified experts for inclusion on the list. Only candidates assessed against the criteria adopted by the Council would be eligible to be included on the public list.

Proposal 12

States could be encouraged to appoint experts as their representatives on the Consultative Group. Alternatively, the State representative from each of the five regions could be replaced by an expert appointed by the regional group. To increase its expertise and experience and therefore its effectiveness, the Consultative Group could be enlarged by the inclusion of three additional members, the High Commissioner for Human Rights, the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and a suitably qualified person selected by the High Commissioner for Human Rights from accredited NGOs.

Proposal 13

The Coordination Committee of Special Procedures could take greater responsibility for ensuring that opportunities and procedures are provided for training, guiding and advising mandate holders on their responsibilities and functions and, where necessary, for feedback in relation to any concerns as to their conduct.

Proposal 14

The Council could adopt a Code of Conduct for States to complement the Code of Conduct for Special Procedure mandate holders.

Proposal 15

To ensure that the Advisory Committee has a full range of human rights expertise, including a spread of different areas of human rights law and experience, the eligibility criteria for members could be extended to include:

- general expertise in international human rights law
- specialist expertise in different areas of international human rights law
- forensic and investigative expertise
- expert knowledge of and experience in human rights situations in various countries.

Proposal 16

Members of the Advisory Council could be appointed through the Council's approval of a list prepared by the President of the Council following recommendations of the Consultative Group. The President would be required to consult with States, regional groups, and all other relevant stakeholders before proposing persons for appointment.

Proposal 17

Members of the Working Group on Communications could no longer be drawn from the Advisory Committee but rather be constituted as a separate group of independent experts appointed by the President, with the approval of the Council, from a list of eligible candidates submitted by the Consultative Group re-constituted along the lines proposed above. Gradually, this Working Group could also assume the functions of the Working Group on Situations. Alternatively, the two WGs could sit together for a week and go through all the communications.

Proposal 18

Members of NHRIs could be considered, among a broader range of qualified candidates, for appointment to the Working Group on Communications.

Proposal 19

Under the authority of the President, a list of suitable highly qualified and experienced experts, prepared to undertake fact-finding missions on short notice, could be established and maintained. The list could include experts with a range of expertise, and teams could be combined to ensure all necessary expertise is included.

Proposal 20

Consistent with the position of the High Commissioner for Human Rights and her Office as the pre-eminent human rights experts in the UN system, the Council's access to the expertise of both could be enhanced. The Council could continue its practice of receiving a report or an update from the High Commissioner at every regular session. In addition the High Commissioner could continue to provide the Council with her expert opinion and advice whenever she considers that that would be of benefit to the Council's work in promoting and protecting human rights. The Council should welcome the advice of the High Commissioner and her Office and encourage the High Commissioner and her Office to participate actively in its deliberations.

OHCHR could be more forthright and more active in fulfilling its expert role. In furtherance of its independent mandate from the General Assembly and its legal separation from the Council, it should be frank in offering advice in human rights issues. The High Commissioner could make whatever structural changes to her office are necessary to enhance this use of her staff's expertise.

Proposal 21

The secretariat that services the Council and its mechanisms, both internal and external, could be transferred from OHCHR to UNOG and placed directly under the authority of the President of the Council.

Proposal 22

The President of the Council could provide accreditation for one year as observers at the Council for academic experts who are undertaking studies on the Council, including its mechanisms and its work. The accreditation could permit attendance at Council sessions, without the right to speak, and the submission of research papers for inclusion on the Council's webpage and on the Council extranet.

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The work of the Council and its activities should be funded out of the UN general budget. OHCHR should not be expected to find funds to meet the evolving demands of the Council, either in implementation of its decisions or in innovations to its procedures.

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