

‘Promoting Human Rights and Fundamental Freedoms for All’: Australia’s Engagement with the UN Human Rights Council



Issue

The work, functioning and status of the United Nations Human Rights Council will be reviewed by both the Council itself and the UN General Assembly in 2011. Coincidentally, Australia will participate in the Council’s Universal Periodic Review process from early- to mid-2011.

Both of these occasions provide an opportunity for Australia to engage with the Council in an active, constructive and principled manner and to promote, protect and enhance human rights on the ground.

Opportunity and Imperative for Action

The Human Rights Council was established in 2006 as a subsidiary organ of the General Assembly¹ with a mandate to “promote universal respect for the protection of all human rights and fundamental freedoms for all”.²

The Council is intended to be the main multilateral body for the global promotion and protection of human rights and is empowered and tasked to:

- prevent and address human rights violations;³
- promote human rights education and dialogue;⁴
- contribute to the development of international human rights law;⁵
- review and promote the full implementation of States’ human rights obligations;⁶ and
- promote human rights mainstreaming and coordination within the UN.⁷

Almost five years after its establishment, it is clear that the Council needs to be reinvigorated and strengthened if it is to fulfil its important mandate. To this end, it is imperative that states such as Australia, together with national human rights institutions (NHRIs) and non-government organisations (NGOs), participate in the Council, and contribute to the Council’s review, in an active, constructive and principled manner. The aim of such engagement must be that the Council becomes more effective in promoting and protecting human rights on the ground.

Australia has a longstanding commitment to the universal enjoyment of human rights and a proud bipartisan history in the development of international human rights law and institutions.⁸ This paper outlines concrete proposals for how Australia should contribute to strengthening the work and functioning of the Human Rights Council, both through:

- (a) direct engagement with the Human Rights Council and its various mechanisms; and
- (b) proactive participation and leadership in the review of the Human Rights Council.

Recommendations for Action – Australia’s Engagement with the Human Rights Council

1. Australia should take a proactive, progressive and principled approach to the Human Rights Council, whether as an observer state or member of the Council. As a “principled advocate of human rights for all”,⁹ Australia must lead by example in its engagement with and support of the work and functioning of the Human Rights Council. This includes an increased level of engagement, at the Ambassadorial level, with the work and functioning of the Council. Australia, together with other like-minded states, must also direct efforts toward countering the

- increasing attempts by the human rights “spoilers” to criticise and undermine the operation and effectiveness of the Council.
2. Australia should seek election as a member of the Human Rights Council. Membership of the Council would enable Australia to participate more fully in the Council's work to fulfil its mandate to promote and protect human rights throughout the world. In support of its nomination for membership, Australia should also make voluntary pledges that demonstrate its commitment to uphold the highest standards in the promotion and protection of human rights.
 3. Australia should ensure that its involvement in the Universal Periodic Review process, including both its review of other states as well as its own upcoming review in January 2011, is principled, fair and robust. The Government delegation for the UPR of Australia should be led by the Prime Minister or a senior cabinet Minister, such as the Attorney-General or the Minister for Foreign Affairs. Australia should be positively consider and articulate clear responses on each of the UPR recommendations that are adopted by the Human Rights Council. Further, Australia should develop a clear process and plan of action to implement the recommendations and to monitor, measure and enhance the realisation of human rights on the ground.

Recommendations for Action – 2011 Review of the Human Rights Council

Discussions have already begun on the format and modalities for undertaking the reviews of the Human Rights Council's work and functioning. These preparations include initiatives being undertaken by member states,¹⁰ the President of the Council,¹¹ the UN General Assembly and other key stakeholders, such as NHRIs and NGOs.

There are two important upcoming opportunities for Australia to contribute to the review of the Human Rights Council:

- (a) a meeting of an open-ended working group established by the Human Rights Council to discuss its work and functioning has been scheduled for 25-29 October 2010. Written contributions to the working group are due by 1 October; and
- (b) a second meeting of the working group will take place in the first half of 2011 to consider and negotiate concrete proposals to further improve the work and functioning of the Council. At this meeting, an Outcome Document will be produced, which will be adopted by the Human Rights Council at its 17th session in June 2011.

Australia's proactive, principled and progressive approach to engagement with the Council should be extended to the role that Australia plays throughout the review of the Human Rights Council. During the review process, Australia should advocate for the concrete proposals outlined below to strengthen the Council.

Focus of the 2011 Review of the Human Rights Council

4. The 2011 review should focus on the effectiveness and impact of the Human Rights Council in implementing the mandate given to it by the General Assembly in *Resolution 60/251*. In this context, the purpose of the review should be to improve the ways in which the Human Rights Council can respond to and address human rights situations around the world. As such, the review's focus should not be about renegotiating the Human Rights Council's institution-building package (*Resolutions 5/1 and 5/2*). The Council already has the mandate and

- foundation that it needs to respond to human rights situations. Accordingly, the focus of the review should be on how the Council can *better* function to fulfil its mandate.¹²
5. The process for the review of the Human Rights Council must be transparent and inclusive. It must enable all stakeholders to make effective and meaningful contributions to the review of the Council, including NHRIs and NGOs. NGOs played a crucial role in the development and negotiation of the Council's institution-building package. Australia should endeavour to ensure that NGOs and NHRIs are afforded the opportunity to actively and substantively participate in and contribute to the 2011 review process.¹³

Responding to all Human Rights Situations of Concern

6. One of the criticisms of the operation of the Human Rights Council is its selective response to situations of human rights concern. The 2011 review process must identify ways to ensure that the Council's attention is directed to all human rights situations that require a response. One way in which this could be done is by providing independent institutions, officials and experts with the ability to "trigger" consideration by the Council of a particular human rights situation.¹⁴ Appropriate institutions to perform this role might include the President of the Human Rights Council, the Security Council, the High Commissioner for Human Rights and/or a group of the Council's Special Procedures acting jointly. Creating independent triggers for the consideration of situations by the Human Rights Council would ensure broader coverage of situations that receive the Council's attention and lessen the selectivity or "politicisation" of the Council's engagement in particular situations.
7. Australia should also support calls to "expand and diversify the toolbox" available to the Council to respond to and address situations of human rights concern, including through the appointment of regional Special Procedures (that is, working groups of independent experts for each of the five regions), and flexible, strategic responses such as fact-finding missions, "briefing sessions", "soliciting pledges", Presidential statements, and conducting hearings with victims of human rights violations.¹⁵

Strengthening the Membership of the Human Rights Council

8. Australia should publicly commit to advocating for principled and genuinely-contested elections for the Human Rights Council and supporting only those candidates whose human rights records and election pledges meet the membership requirements set forth in Resolution 60/251. A strong and effective membership of the Human Rights Council requires that elections are open and competitive. The process for membership of the Human Rights Council should therefore be one that is transparent and based on the human rights record of states being a key criterion for membership. The primary considerations for membership of the Council should include:
- (a) the extent to which a state demonstrates cooperation with the Human Rights Council and the Special Procedures;
 - (b) the voluntary pledges and commitments made by the state; and
 - (c) their efforts and effectiveness in follow up and implementing recommendations of the UPR and UN treaty bodies.
9. Australia should support reform that requires the Office of the High Commissioner for Human Rights to publish an annual report that provides information on Council members' cooperation

- with Council procedures, including whether members have issued a standing invitation to Special Procedures and their record of response to correspondence with Special Procedures.
10. Australia should also consult with human rights NGOs and NHRIs in evaluating human rights records, pledges and candidacies.¹⁶

Protecting and Strengthening the Special Procedures

11. The 2011 reviews should also consider ways to enhance the operation and effectiveness of the Special Procedures of the Human Rights Council. The Special Procedures are independent and objective experts that play a critical role in the protection and promotion of human rights. Efforts by some states to criticise the role and independence of the Special Procedures and to impose restrictions on their mandates must be strongly opposed and resisted. Ways to strengthen the functioning of the Special Procedures include:
- (a) the members of the Human Rights Council giving greater consideration to and taking action on the content and recommendations contained in the reports of the Special Procedures. The Council should be more responsive to information that is provided by Special Procedures about existing or emerging situations of grave human rights violations;
 - (b) developing a Code of Conduct for states relating to the operation of and cooperation with the Special Procedures;¹⁷
 - (c) the independence and objectivity of the Special Procedures must be fully respected by members of the Human Rights Council. Mandate holders should not be subjected to intimidation or threats to their mandate by member states. Any state that disagrees with the findings or recommendations of Special Procedures should address the substance of those conclusions and not attack the mandate holders themselves;
 - (d) making issuing a standing invitation to the Special Procedures a requirement for membership of the Human Rights Council. Member states should also be required to respond within 12 months to any request by a Special Procedure for a country visit;
 - (e) the rigorous application of selection and appointment criteria to ensure that appropriately qualified individuals are appointed as mandate holders; and
 - (f) the adoption of a monitoring system to assess cooperation by states with the Special Procedures. Such a system may assist to ensure that standing invitations issued by states are enforced and that recommendations made by Special Procedures are given proper consideration by states.
12. In addition to the above proposals, Australia should also take an active role in nominating and supporting appropriately qualified candidates to be mandate holders.

Enhancing the Operation of the Universal Periodic Review

13. To date, the Universal Periodic Review (UPR) has proven to be a useful mechanism for examining country situations and highlighting human rights concerns. The UPR has significant potential to advance the protection and promotion of human rights. Despite the positive aspects of the UPR, there remain several areas where the process could be enhanced:
- (a) To date, there have been concerns that some recommendations made by states have not been consistent with international human rights standards. One way to address

these concerns might be to strengthen the role that is played by independent expert mechanisms of the UN, such as the treaty bodies, Special Procedures and the Office of the High Commissioner for Human Rights, to ensure that UPR recommendations are consistent with international human rights standards and reflect the human rights issues and priorities on the ground.¹⁸

- (b) A stronger role should be played by the troika in focusing the interactive dialogue and compiling recommendations and the outcomes document to ensure that the “principal human rights issues are identified, prioritised and addressed”.¹⁹
- (c) Recommendations contained in the final UPR report could be clustered in order to ensure that they are not duplicated and that the recommendations are consistent.
- (d) States should be required to provide clear responses on the position that they adopt with respect to each of the recommendations made by the Council. The states’ position on whether they accept or reject each of the recommendations should be indicated well ahead of the adoption of the final report.
- (e) Given the universal nature of the UPR process, all states should have equal opportunity to intervene in the review of a country. The time for discussion of each member state should therefore be lengthened to ensure the equal participation of all states. This would assist to ensure that the UPR process is genuinely universal and that there is greater opportunity for interactive dialogue.

Enhancing the Role of NHRIs and NGOs with the Human Rights Council

The Council is required to ensure “effective contribution” to its work by “national human rights institutions, as well as non-government organisations”.²⁰ Australia has been a vocal advocate for the participation of NGOs in UN mechanisms. Enhanced engagement between the Council and NGOs and NHRIs, together with better use of human rights expertise by the Council, could significantly assist the Council in fulfilling its mandate.²¹

- 14. Australia should advocate for an enhanced role for NGOs and NHRIs in the Council and its various mechanisms, including, in the context of the UPR, enabling the NHRI of a state under review to participate in the interactive dialogue and providing for “informal briefing sessions” by NGOs before the dialogue.²²
- 15. Australia should advocate for Council resolutions to be made available well in advance of the start of Council sessions. Participation in the development of Council resolutions, particularly by NGOs, would be greatly enhanced if resolutions to be discussed at Human Rights Council sessions were made available a minimum two weeks prior to the commencement of the session.

The **Human Rights Law Resource Centre** is a leading national community legal centre. The Centre promotes and protects human rights and contributes to the alleviation of poverty and disadvantage in Australia.

¹ UN General Assembly, *Resolution 60/251* (2006).

² Paragraph 2 of *Resolution 60/251*.

³ Paragraphs 3 and 5(f) of *Resolution 60/251*.

⁴ Paragraphs 5(a) and (b) of *Resolution 60/251*.

⁵ Paragraphs 5(c) and (i) of *Resolution 60/251*.

⁶ Paragraphs 5(a), (d) and (e) of *Resolution 60/251*.

⁷ Paragraph 3 of *Resolution 60/251*.

⁸ The following human rights treaties were signed by a Coalition Government and subsequently ratified by a Labor Government: *International Convention on the Elimination of All Forms of Racial Discrimination*; *International Convention on the Elimination of All Forms of Discrimination against Women*; *Convention on the Rights of Persons with Disabilities*. The following treaties were signed by a Labor Government and ratified by a Coalition Government: *International Covenant on Civil and Political Rights*; *International Covenant on Economic, Social and Cultural Rights*.

⁹ Department of Foreign Affairs and Trade, *Australia: United Nations Security Council Candidate 2013-14*.

¹⁰ In February 2010, 103 member states attended an informal retreat in Algiers to discuss the work and functioning of the Human Rights Council. A report entitled the *Outcome of the Retreat of Algiers* is available at www2.ohchr.org/english/bodies/hrcouncil/docs/Seminaire_Alger.pdf. Another grouping of states, referred to as the 'Reflection Group on the Strengthening of the Human Rights Council' and comprising Argentina, Brazil, Costa Rica, France, Ghana, India, Jordan, Mexico, Morocco, Nigeria, Republic of Korea, Romania, Spain, Switzerland, Ukraine, UK, US, and representatives of the Office of the High Commissioner for Human Rights and NGOs, has met on at least four occasions: see International Service for Human Rights (2010) *2 Human Rights Monitor Quarterly* 1 at <http://www.ishr.ch/quarterly>.

¹¹ See, eg, *President's Paper on the Proposed Modalities of the Review of the Work and Functioning of the HRC* (28 July 2010).

¹² See generally Human Rights Watch, *Curing the Selectivity Syndrome* (June 2010) at www.hrw.org/en/reports/2010/06/24/curing-selectivity-syndrome-0.

¹³ Principle 1.4 of the *President's Paper on the Proposed Modalities of the Review of the Work and Functioning of the HRC* (28 July 2010) provides that the review process should be "state-led" but "inclusive", while paragraph 5(h) of General Assembly *Resolution 60/251* provides that all work of the Council should be "in close cooperation...with Governments, regional organizations, national human rights institutions and civil society".

¹⁴ See further Human Rights Watch, *Curing the Selectivity Syndrome* (June 2010) 8-11.

¹⁵ Each of these responses is proposed and substantively discussed by Human Rights Watch in *Curing the Selectivity Syndrome* (June 2010).

¹⁶ See Human Rights Watch, *Open Letter to UN Member States: Embrace Competitive Elections to Human Rights Council*, 13 August 2009.

¹⁷ Kamelia Kemileva et al, *Expertise in the Human Rights Council: A policy paper prepared under the auspices of the Geneva Academy of International Humanitarian Law and Human Rights* (2010) 23-4.

¹⁸ Kemileva et al, *Expertise in the Human Rights Council* (2010) 16-19.

¹⁹ Kemileva et al, *Expertise in the Human Rights Council* (2010) 13.

²⁰ Paragraph 11 of *Resolution 60/251* and section VII of Human Rights Council *Resolution 5/1*.

²¹ Kemileva et al, *Expertise in the Human Rights Council* (2010) 6-7.

²² Kemileva et al, *Expertise in the Human Rights Council* (2010) 15-16.