



A Conservative Policy Report for the United Nations Human Rights Council Review

**Submission for the Secretary of State for
Foreign and Commonwealth Affairs**

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Conservative Party Human Rights Commission

United Nations Human Rights Council Review

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UNA-UK was pleased to have been consulted by the Conservative Party Human Rights Commission when it was preparing this report. The 2011 review of the UN Human Rights Council will be an important occasion, and this report will be a valuable contribution to the shaping of Britain's position in these negotiations. Like other NGOs committed to the cause of human rights, UNA-UK will be making its own input to that process.

Lord Hannay of Chiswick, Chair, UNA-UK

EXECUTIVE SUMMARY

The United Nations occupies a crucial role within the international community. It is a unique platform for countries to come together to negotiate agreements on peace, development and human rights issues, promote understanding or ask for help. Given the complexity and at times sensitivity of its role, regular reviews of its work and performance are vital, particularly of the bodies which comprise the UN.

In 2007 the Conservative Party Human Rights Commission (CPHRC) wrote a report on UN reform. One of the key recommendations was on improving the performance of the newly-established UN Human Rights Council (HRC). Three years later, the Council is going through its first review process, it has held 15 regular sessions and 13 special sessions on pressing human rights issues but politicisation and controversy continue to blight its work. Given these developments and with a new UK government in place, a more in-depth inquiry into the upcoming HRC review was needed.

The HRC is in the fifth year of its existence since replacing the former UN Commission on Human Rights. It was established as a subsidiary body of the General Assembly with the hope that it may become a principal organ of the UN.¹ Freedom House states that, “although its predecessor, the UN Commission on Human Rights, was a largely discredited body by the time it was disbanded, its legacy in establishing universal norms for human rights remains highly significant. The Commission and its first major accomplishment, the adoption of the Universal Declaration of Human Rights (UDHR), paved the way for the subsequent development of charters, covenants, and mechanisms which require member states to commit to some level of respect for the human rights of their own citizens.”² As mandated by the resolution establishing the Council, it is currently going through a two-stage review process. From October 2010, a working group consisting of members of the Human Rights Council will begin reviewing the functioning of the Council. In spring 2011, the General Assembly will consider the status of the HRC within the UN system, including addressing the question of whether it should become one of the UN’s principal organs.

The HRC has come under much scrutiny and criticism, but it remains the primary forum in which human rights issues are debated at the UN. Therefore, the CPHRC strongly urges the UK government to play a lead role in the UNHRC review. The UK has already played a significant role in furthering human rights in the multilateral arena. In addition to ratifying a raft of UN and European human rights treaties, and promoting human rights bilaterally and through the European Union, G8, OSCE, Commonwealth, Council of Europe and the World Bank, the UK was a key player in the founding of the HRC. It has pledged to work in partnership with the UNHRC to promote human rights and make the Council as effective as possible.³ British lawyers helped to draft the Universal Declaration of Human Rights and the European

¹ Maran Turner, Freedom Now, Position Paper: Review of the United Nations Human Rights Council, page 2

² Freedom House, page 2, http://www.freedomhouse.org/uploads/special_report/84.pdf

³ United Nations Human Rights Council, Universal Periodic Review, UK <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G08/112/65/PDF/G0811265.pdf?OpenElement>, pages 5;7;19;20

Convention on Human Rights (ECHR), and the UK was one of the first countries to sign the ECHR.

The UK has welcomed all UN Special Procedures and seeks continued co-operation with UN human rights mechanisms. Given the extent of the humanitarian and financial pledges (outlined in the UK's Universal Periodic Review (UPR) report to the HRC on 6 March 2008) the UK should play a lead role in the process of reform for the upcoming HRC review 2011.

As part of this CPHRC inquiry, testimony was heard and reports submitted by a variety of organizations and individuals including Amnesty International, Human Rights Watch, United Nations Association of the UK, Christian Solidarity Worldwide, Freedom Now, Freedom House, Reporters Sans Frontières, Sir Desmond de Silva QC, International Lawyer and former United Nations Chief War Crimes Prosecutor in Sierra Leone, Sir Nigel Rodney KBE, Professor of Law and Chair of the Human Rights Centre, University of Essex and a member of the UN Human Rights Committee, Richard Gowan, Senior Fellow for the European Council on Foreign Relations and Foreign and Commonwealth Office officials. An international collaboration on ideas and opinions followed and is now presented in the following report to encourage the UK government not only to lead on reforming the mechanisms and framework of the UNHRC, but also to reclaim the underlying vision for the HRC: human rights for all and the protection of the most vulnerable from the most serious of violations.

The bar of expectation – and the Council's performance – must be raised without compromise. Despite the inevitable imperfections that emerge during the work of an intergovernmental forum on human rights policy, the aspiration to be true to core principles should remain constant. Without such idealism as a starting point, the voices and needs of those suffering human rights violations would never be heard. International human rights policy-making, however, must be practical and considered while resting on the foundation of profundity.

The Commission's HRC inquiry examined what policy options the UK's Coalition Government should consider for the HRC review. The CPHRC has put forward eight recommendations on fundamental areas needing reform: Institution Building Package (IBP), Special Procedures, Special Procedures: Working Groups, Universal Periodic Review (UPR), Membership and Elections, Bloc Voting, Agenda Item Setting and Agenda Item Number Seven. The CPHRC has endeavoured to write a report that enhances all fundamental mechanisms of the Council to, ultimately, strengthen the UN's only inter-governmental body.⁴

⁴Maran Turner, Freedom Now, Position Paper: Review of the United Nations Human Rights Council, page 1

RECOMMENDATIONS

1) Institution Building Package (IBP):

The two UNHRC Working Groups (on Communications and on Situations) should fulfil their important mandate, namely to “examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.”⁵ An environment must be created where the two Working Groups work together to promote fundamental humanitarian principles.

As found in the IBP, Working Group on Communications, paragraph C.1.91; “the Human Rights Council Advisory Committee shall appoint five of its members, one from each Regional Group, with due consideration to gender balance, to constitute the Working Group on Communications.”⁶

- The CPHRC recommends that the Working Group on Communications should consist of five independent and highly qualified experts in all Regional Groups: Africa, Asia, Latin America and the Caribbean, Eastern Europe, Western Europe and Others. Experts would be appointed by the HRC Advisory Committee.⁷ (The Advisory Committee is a UN body made up of 18 experts, endorsed by all Member States of the UN, which functions as a think-tank for the HRC.)⁸ In the IBP, paragraph C.1.92/93 acknowledges the need for independent expertise. Instead of independent expertise being implemented only in the cases of absence (paragraph C.1.92) or as a secondary function (paragraph C.1.93), the Regional Members should consist of permanent independent experts all the time to avoid politics and ensure highly qualified expertise and impartiality.

As found in the IBP, paragraph C.2 Working Group on Situations, paragraph C.2.96; “each Regional Group shall appoint a representative of a member State of the Council, with due consideration to gender balance, to serve on the Working Group on Situations. Members shall be appointed for one year. Their mandate may be renewed once, if the State concerned is a member of the Council.”⁹

- The CPHRC recommends that the Working Group on Situations should consist of five independent representatives of all five Regional Groups that are HRC member States, as stated in the IBP, paragraph C.2.96/97. The representatives, however, should be independent and highly qualified experts. Recommendations on regional representatives can be put forward by each Regional Group of the Council; however, one representative per region should

⁵United Nations Human Rights Council, Institution- Building Package; II Special Procedures, paragraph C.89; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

⁶United Nations Human Rights Council, Institution- Building Package, paragraph C.1.91; p.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

⁷United Nations Human Rights Council, Institution- Building Package, paragraph C.1.92; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

⁸United Nations Human Rights Council, Institution- Building Package, III, paragraph 65 Human Rights Advisory Committee ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

⁹United Nations Human Rights Council, Institution- Building Package, paragraph C.2.96; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

be appointed, and the mandate renewed after one year, by the Advisory Committee. Regional representation that is selected independently will help to avoid politics and ensure highly qualified expertise, while maintaining the personal insight that representatives from the Regional Groups bring to the Working Group.

- A third Working Group should be established to organise and support the enormous work load that stems from the two Working Groups, Special Procedures (SPWG3 discussed on pages 5-6 of the report) and Universal Periodic Review (UPRWG3 discussed on page 8 of the report). The third group should have one Chief of Staff, appointed by the Advisory Committee, who will oversee a secretariat consisting of eight units, one head of each unit, with a small staff per unit. The eight units under the third Working Group's secretariat should consist of the following: a watch force on potential human rights violations, specific case violations, examination of completed special rapporteur reports, follow up reports, the issuing of mandates, support to mandate holders, examination and follow up of mandates rejected to be answered and an examining group that liaises and works with NGOs, civil society groups and organisations for practical on-the-ground needs and action.

2) Special Procedures:

The following are recommendations that put into place clear, practical and mandatory steps that any UN related Special Procedures mechanism should have, and that could help transform the work of the Council.

- The UK should urge that country mandates are protected. A system of fair judgement should be put into practise. Only when a country has addressed the human rights violations that led to the establishment of a mandate, should the mandate be reviewed and discontinued if appropriate.

Along with the above recommendations, the CPHRC suggests specific changes to the IBP, section II: Selection and Appointment of Mandate-Holders.

As found in the IBP, paragraph II.A.49; “at the beginning of the annual cycle of the Council, Regional Groups would be invited to appoint a member of the consultative group, who serve in his/her personal capacity. The Group will be assisted by the Office of the High Commissioner for Human Rights.”¹⁰

The third Working Group should oversee the writing and issuing of mandates. The group would consist of five highly qualified human rights experts representing the Five Regions. Selection of the five experts will be made by the Advisory Committee. The mandate-holder should be given a specific outline of what is to be upheld in terms of country mandates and what is to be expected, a specific template of requirements to meet from countries issued mandates; and principles governing acceptance or non-acceptance of a mandate. If the mandate is accepted, then the country must allow the mandate holder to enter the country, and must assist fully in investigating the human rights violations in question. In accordance with such

¹⁰United Nations Human Rights Council, Institution- Building Package, II Special Procedures, paragraph A.39; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

expectations, the mandate holder is obliged to act and report impartially, professionally and responsibly in accordance with the terms of an elected mandate-holder under paragraphs II.A.46 and II. A.51 of the IBP.

If a mandate issued to a country is not accepted, then the country rejecting the mandate must be obligated, within six months, to report back on the reasons for its rejection. A session of evidence should be held if found to be necessary by the mandate-holder and Consultative Group.

The objective is the impartial and professional investigation of the human rights violations that have been brought to the attention of the HRC under a country-specific mandate.

As found in the IBP, paragraph II.B.54: “The review, rationalization and improvements of mandates, as well as the creation of new ones, must be guided by the principles of universality, impartiality, objectivity and non-selectivity as well as constructive international dialogue and cooperation. The aim is to enhance, promote and protect all human rights, including civil, political, economic, social and cultural rights, and the right to development.”¹¹

Mandate holders must uphold the highest standards while promoting the enhancement of human rights. The country for which the mandate has been established should act in accordance with “enhancing the promotion and protection of all human rights” and must co-operate when a mandate is issued and be held accountable. A precise protocol should be created which requires a country in question, and the mandate holder, to answer all questions and follow all procedures according to the requirements of the mandate. There should be two procedures: one for mandates which are accepted, and the other for mandates which are not accepted. If a country accepts a mandate then the country should come under an HRC code of conduct, setting out the obligations and accountability measures that allow the mandate holder into the country within the year without any obstruction or procrastination. If the country receiving the mandate refuses the mandate order, then the country must state why, within the year, answering a template of clear and precise HRC questions for mandates which are rejected.

3) Special Procedures: Working Groups

To maintain the most pivotal and impartial mechanism of the HRC, and ensure that the Council works to its fullest potential, funding for the Working Groups and mandates of individual Special Procedures should continue to be independent of the HRC. The HRC should be granted sufficient funds to allow for a fully supported Working Group staff. A third Working Group, as already stated, would greatly help with the workload.

The Special Procedures third Working Group should be funded separately from the HRC, autonomous to regional and individual country politics and persuasion while maintaining its position in relation to the Council.

¹¹ United Nations Human Rights Council, Institution- Building Package; II Special Procedures, paragraph A.39; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

4) Universal Periodic Review

The UK must lead by example as a country which was among the first group of states to be reviewed by the UPR, as well as its unique role as a Permanent Member of the Security Council and within the Commonwealth and European Union (EU).

- The UK should urge that a mechanism is put into place which enables the Universal Periodic Review (UPR) to have a mandatory framework that commits all HRC member states to replying to mandates and having to state “yes” or “no”. The yes/no protocol would follow a precise and organised outline of questions that would come under review in four years time when the UPR committee meets. The yes/no mandatory protocol would create an organised and fair approach to the UPR, by holding all states on the Council accountable to what has or has not been agreed. At the moment, states do not have to reply which creates an ambiguous and disorganised UPR system allowing for mass human rights violations to go unrecognised and unresolved. Such vague irresolution is unacceptable for a UN inter-governmental body devoted strictly to the promotion of human rights.
- The UK should consider ratifying the following outstanding human rights treaties: International Convention for the Protection of All Persons from Enforced Disappearance¹² and the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, Part IV National Preventive Mechanism, Article 22.¹³
- Improve public scrutiny and awareness of the review, making NGOs and civil society organisations aware of the UPR review process and providing the web link to all UPR reports on the UNHRC web site.
- A follow up process which involves NGOs to measure any progress made, along with the submission of a progress report.

The UPR mechanism should put into place a template of mandatory questions for all states being reviewed, and a judiciary style code of conduct that does not allow interruption or disruption by states under UPR or by the overseeing body during questions and statements. In return, countries under scrutiny will be given an equal amount of time to address what concerns have been raised. Such a code of conduct, made mandatory, will ensure that full and fair representation is made by both the questioners and states under review. The UPR should then come to conclusions and make recommendations. According to Sir Nigel Rodley, KBE, “the UPR does not usually come to any conclusions or make recommendations (there are a few exceptions) on how a country could strengthen its human rights record; unlike the UN treaty bodies, which come to conclusions on what to do.” The following could set the protocol:

¹²United Nations Association, UK, Position Paper on UN Human Rights Council Review and eight points of reform made by CPHRC, page 3, web link to International Convention for the Protection of All Persons from Enforced Disappearance; <http://www2.ohchr.org/english/law/pdf/disappearance-convention.pdf>

¹³ Sir Nigel Rodley, KBE; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; <http://www2.ohchr.org/english/law/cat-one.htm>

- A template of questions to be asked at every UPR and to every state under review.
- A mandatory code of conduct that allows for questions (including the template mentioned above) to be asked and statements read within an allotted time frame without interruption and disruption from states under review, or states overseeing UPR.
- A mandatory code of conduct that allows for states under review to respond to all questions, without interruption and disruption, and also mandatory that the template of questions are answered first.
- If a state disagrees with any recommendations, then the state is obligated to explain why and to suggest alternatives.
- Recommendations to states must be made fairly, coherently and relevant to each state under review.
- A follow up team would be one of the primary functions of Working Group 3, Unit 8, the Examining Group. The follow-up team would utilise the international and national NGOs and civil society groups. The involvement of national NGOs and civil society groups would help enforce a culture of accountability and counter the perception that the recommendations are not shared by national actors. The UN Development Programme (UNDP) could be a very good starting point for on the ground and practical frameworks encouraging change. A comprehensive follow up report would be produced within two years after each individual states' UPR and how recommendations are being implemented. The follow up mechanism should include recommendations that are not accepted, what has been implemented instead and, if no recommendations have been accepted or implemented, then an explanation of why.

5) Membership Criteria and Elections:

A way to eliminate the Council becoming a political stage for human rights offenders is to reduce membership and have a small group of Senior Members drawn from all five geographic regions that meet an exemplary but realistic human rights standard; as stated in the UN General Assembly (GA) Resolution 60/251. A state should, “(a) uphold the highest standards in the promotion and protection of human rights and (b) fully cooperate with the Council.” Rotating membership would be larger, and for countries making progress. The aim of a two tiered system would be to create competition. Countries that meet the high standard requirements become a Senior Member; however, in order to maintain a Senior seat, countries must continue to set an example and meet all requirements. If requirements are not met, than Senior Members forfeit their seats. Senior Members will be reviewed by the UPR and have received highly commended reports. An international committee made up of human rights academics and experts, representing all Five Regions, will select Senior Members.

A template to ensure impartial and thorough questions and fair Senior Members selection could be based on a Freedom House style of report card, where countries are ranked as free, partially free and not free. Such research will be based on overall analysis on the following surveys; Freedom in the World, Freedom of the Press, Worldwide Press Freedom Index (Reporters Sans Frontières), International Research and Exchanges Board (IREX), Africa Media Barometer (AMB) and voting records based on analysis and vital votes at the General Assembly.¹⁴ Senior Members will continue to be reviewed annually (even more so as leading examples). Senior Members will be asked to step down if no longer meeting the report card criteria, a system that on the whole is consistent and works very well. The Centre for International Media Assistance (CIMA) and Annenberg School, University of Pennsylvania report (2010) evaluated the three freedom index gurus: Freedom House, RSF and IREX. “In the end, there is practically no-one (save perhaps officials in thin-skinned governments) who wishes that the three organisations would end their freedom rankings. In the absence of the ideal, universal, unbiased, statistically flawless index, great numbers of people all over the world rely on the existing ones for a great variety of uses and do so in the belief that the data is solid. Moehler of the Annenberg School offers this summary; despite widespread concerns over the social science credibility of the media freedom studies, ‘they are almost always in the ballpark of being accurate.’”¹⁵

Rotating members will be given the opportunity to participate in Council sessions, and to raise concerns. Rotating members, however, will not be allowed to vote like Senior Members, nor will they have the same status as Senior Members and will rotate every two years. Rotating states will be encouraged to strengthen human rights records with the aim of meeting the criteria to be elected to Senior Membership. Both Senior and Rotating Members will be reviewed at the end of every HRC year.

6) Bloc Party Politics:

Following the same thread as election reform, States that qualify as Senior Members must maintain the UPR standard, which will be reflected in the voting and overall agenda items and resolutions put forward. Rotating members would be obliged to do the same which would be a deciding factor in influencing whether the state became a Senior Member or not. A state can be asked to forfeit the right as a Senior Member if the UPR found a pattern of voting, resolution making and agenda item setting that has supported, or made no attempt to act against, human rights offences.

7) Agenda Item Setting:

The following recommendations are to establish fair and accurate examination of all states committing human rights violations. Agenda item setting follows in two parts, giving specific attention to Agenda Item Seven (I7).

- Protocols and rules of procedure should be put into place that allocate equal amount of time over equally pressing human rights concerns; for example,

¹⁴EXPERT EVALUATION OF CANDIDATES TO THE UN HUMAN RIGHTS COUNCIL FOR THE TERM 2010-2013 JOINT REPORT BY FREEDOM HOUSE and UN WATCH PRESENTED AT UNITED NATIONS HEADQUARTERS, New York, May 4, 2010, page 2, http://freedomhouse.org/uploads/special_report/91.pdf

¹⁵Evaluating the Evaluators, Media Freedom Indexes and What They Measure. Centre for International Media Assistance, http://cima.ned.org/sites/default/files/CIMA-Evaluating_the_Evaluators_Report.pdf page 42

Burma, North Korea, Sudan, Iran, Afghanistan and the Democratic Republic of the Congo (DRC) are to name just a few countries with acutely critical human rights violations.

- Country-specific items should be reviewed and voted upon each year, and if there are critically acute circumstances, then they should be raised at every HRC session; three sessions per year.
- Split Agenda Item Three (I3) into five regional subheadings. The Occupied Palestinian Territories (OPT) – see next section – would still be raised but there would be better geographical representation of human rights concerns.

8) Agenda Item Seven:

The human rights situation in the Occupied Palestinian Territories (OPT) is, at present, of great concern due to the maritime and land blockades into Gaza. But having a standing item on the region on the HRC agenda, and just one standing item under which all other situations are considered, is disproportionate. The following recommendations for Agenda Item Seven (I7) are ideas to help reduce the apparent biased and politicised use of I7 within the Council and remain true to its core value: human needs.

- Collapse I7 and Agenda Item Ten (I10) technical assistance, into one new item.
- Offer to the OIC and Israel that either the blockades be removed, or the blockades remain but with verification that all aid and humanitarian goods get into Gaza without any obstruction, along with an agreement for both the OIC (OPT) and Israel to counter terrorism. If either of these steps are accepted and implemented, then I7 can be gradually removed from the agenda as a permanent item of concern. Furthermore, I7 should be raised at only one session out of three, monitored for improvements in respect to eventually being removed as a permanent agenda item and under a new protocol that will even out the time frame on country-specific reviews.
- Keep I7, but broaden the item to specifically target critically acute country-specific violations with equal amount of time and attention. Along with the OPT, North Korea, Sudan, Iran and Burma are a few examples of critically acute countries. Agenda Item Four (I4) should then be reserved for country-specific violations that are of critical concern, but not acute. A precise definition of states which are considered critically acute and those considered to be critical will have to be shaped to avoid confusion and reduce the politicisation.
- Funding for the mechanism of agenda item setting must be from a source independent from states and regions sitting on the Council. This will ensure a fair and even approach to all items, particularly county-specific ones, on the agenda

THE UN HUMAN RIGHTS COUNCIL MECHANISMS

Institution Building Package (IBP):

The IBP is the blue print of the HRC; it outlines the Universal Periodic Review (UPR), Special Procedures, Advisory Committee, the Working Groups and the protocol by which the mechanisms adhere. A firm stance tempered with some patience is required with the much needed development of the Council. The HRC is only five years into its establishment; the Council is a neophyte body. To dismantle the Council and start all over again (an idea that has been discussed) would create more harm than good. The IBP distinguishes itself enough to be the cornerstone of how the Council functions. The CPHRC recommends improving the IBP and the way it operates.

Working Groups:

The HRC has established two working groups; Working Group on Communications and Working Group on Situations. The Working Groups are an important instrument in the decision making of the HRC. In many ways, the secretariat that comprises both groups is the underlying force behind the debate and drama of the Council meetings. Improvements, however, could be made with the impartiality of the Working Groups members. The Communications Working Group can improve on what criteria are discussed at meetings and added to the Agenda Items list, and the Situations Working Group can serve in a more personal capacity while still raising human rights concerns across the Five Regions and what should be considered as agenda items.

Special Procedures:

The IBP states that “the following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: i) expertise; ii) experience in the field of the mandate; iii) independence; iv) impartiality v) personal integrity; and vi) objectivity.”¹⁶ The select few who make up mandate-holders are the UN selected special rapporteurs, who are internationally acclaimed academics or specialists in their field of study. The mandate holders (rapporteurs) are the most independent and impartial mechanism in appraising country-specific and thematic human rights issues. It is a fair and impartial system by which every country given a mandate is assessed. The UK has led by example in being amongst the first UNHRC members to come under Universal Periodic Review and have 47 states scrutinize its record on human rights. As stated in the UK UPR report, “the right to freedom under the law is the very foundation of the constitution of the United Kingdom. It has been a guiding principle in the struggles of people in the UK to limit and define the powers of the monarchs and governments.

The great historic successes in that struggle, include the signing of Magna Carta in 1215, the passage of the Bill of Rights in 1689, the Reform Acts of 1832 and 1867, and the Representation of the People Act 1928 (which gave women the right to vote on the same

¹⁶ United Nations Human Rights Council, Institution- Building Package, II Special Procedures, paragraph A.39; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

terms as men). Those victories were hard won, and have been milestones in the formations of our national identity.”¹⁷

The UPR report also established that “under the UK’s [unwritten] constitutional arrangements, the possession of rights and freedoms is an inherent part of being a member of UK society”¹⁸

It is essential that the UK government should fully support the neutral and much needed mechanism of UN rapporteurs. To date, there is nothing in the IBP that clearly defines the rules and procedures that countries should follow when approached by a mandate-holder. According to several international NGOs, some of the rapporteur reports have been blocked by not allowing the mandate holders to enter the country. A culture of game playing has become prevalent, where countries agree to the rapporteur visiting but then block the mandate through procrastination and bureaucracy. Many NGOs cited the example that the report on Sudan was blocked despite the country having the attention of the international community due to the genocide in Darfur. An EU Special Advisor for Sudan gave the example that even China and some Islamic countries showed concern, albeit for economic and political reasons, when the Sudanese government placed restrictions on NGOs providing help to the victims of the humanitarian tragedy in Darfur.

Special Procedure Working Groups:

The UN Working Groups are the foundation of Special Procedures. The Working Groups maintain a level of individual and country-specific focus tempered with impartiality and expertise. The Working Groups mechanism maintains a level of bi-partisanship compared to the politics of the HRC. The Working Groups are unaffected by politics, and are among the few, if not only, impartial decision making tools of the HRC. The preservation of the Working Groups depends on how the mechanism is funded. At this point in time, funding for the Working Groups and individual Special Procedure mandates are controlled by the HRC. The Council also has the power to add or remove mandates from the different Working Groups. As noted by Freedom Now (an NGO that has worked extensively with many Special Procedure Working Groups), “the trend observed in recent years is one of overstretching the already encumbered capacity of certain offices.”¹⁹

Universal Periodic Review:

The HRC Universal Periodic Review (UPR), a peer-review mechanism, is one of the most promising new procedures in the Council. According to United Nations Association, UK (UNA-UK), “so far, all states have attended their sessions and nearly all submitted the written reports required.”²⁰ The peer review mechanism in troika style questioning, however, is not without its problems. According to NGOs and international organisations involved in the UPR working process, the quality of the questioning under the troika style system varies depending on which human rights

¹⁷United Nations Human Rights Council, Universal Periodic Review, UK <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/65/PDF/G0811265.pdf?OpenElement>, page 3

¹⁸United Nations Human Rights Council, Universal Periodic Review, UK <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/65/PDF/G0811265.pdf?OpenElement>, page 3

¹⁹Maran Turner, Freedom Now, Position Paper: Review of the United Nations Human Rights Council, page 4

²⁰ United Nations Association, UK, Position Paper on UN Human Rights Council Review and eight points of reform made by CPHRC, page 3

violations have been raised. Furthermore, the countries being questioned and their relationship to other states impacts on the quality of the questioning. On occasions UPR sessions have become an opportunity for states with serious human rights violations to support and defend one another.

The lack of specified rules and codes of conduct have allowed for the state being questioned on occasion to interrupt, dismiss or abruptly end Q&A sessions. For example, the Ambassador from Iran (a non-Council member) disrupted the review process when Iran's human rights profile was being reviewed. The Iranian Ambassador interrupted the session further when a joint statement by the US and Norway on human rights record in Iran was read out loud.

To maintain the UPR's vital and in depth human rights review of countries, an organised and specific code of conduct and practice should be put into place to avoid incidents like the Iran review and general inconsistencies with the questioning process itself.

Membership Criteria and Elections:

In the spirit under which the HRC was created, a balance between potential and quality must be struck. Representatives from the Five Regional Groups sit as members on "the world's only global body dedicated to the protection and promotion of human rights."²¹ The Council is unique in its potential to address human rights violations in every country. The Henry Jackson Society suggested that, one way of ensuring a higher quality membership criteria is by creating a two tiered membership system. Freedom House research has found that, "after the May 2010 elections, only 43 per cent of the Council's seats are now held by countries defined as 'free'."²²

Bloc Politics

Bloc Politics has been the very crux of why the HRC is viewed by many as failing and unproductive. CSW and UNA-UK have pointed out that the major factor behind the failure of the Commission on Human Rights was that states joined to protect themselves from being accused of human rights violations, or alternatively to criticize others. A similar air of hypocrisy, unfortunately, has infiltrated the Council. The Commission's focus was standard setting, while the Council's focus includes both monitoring and standard setting. "The shift towards addressing current situations and country specific mandates began in large part due to Apartheid and, although there is debate over just how much the HRC should be doing in this regard, the Council was given a firm mandate to consider and respond to situations of concern."²³ However, the firm mandate of the Council is not being followed. The same politicisation that compromised the work of the Commission is infiltrating the Council. The culture of

²¹Freedom House, page 2, http://www.freedomhouse.org/uploads/special_report/84.pdf

²²Maran Turner, Freedom Now, Position Paper: Review of the United Nations Human Rights Council, page 4; Freedom House, 2010 Human Rights Council Membership, Freedom in the World Ratings, page 1, <http://www.freedomhouse.org/images/File/HRCBreakdown2010.pdf>;

EXPERT EVALUATION OF CANDIDATES TO THE UN HUMAN RIGHTS COUNCIL FOR THE TERM 2010-2013
JOINT REPORT BY FREEDOM HOUSE and UN WATCH PRESENTED AT UNITED NATIONS HEADQUARTERS,
New York, May 4, 2010, http://freedomhouse.org/uploads/special_report/91.pdf

²³United Nations Association, UK, Position Paper on UN Human Rights Council Review and eight points of reform made by CPHRC, page 4

monitoring, standard setting and action is being superseded by countries that band together in regional blocs to put forward agenda items and vote in a way that turns a blind eye to serious human rights violations. Such a development compromises the Council's ability to be an impartial non-selective body, instead migrating into a more politicised body subsequently producing poor resolutions.

There are grave violations that take place in countries which are protected in blocs, and it is an absurdity to have some of the world's most notorious human rights offenders as members of the only UN inter-governmental body addressing human rights. The same notorious human rights offenders will defend themselves. It is the psychology of a government (ultimately a nation) with which the Council is contending. Such change will not happen overnight. Fundamental change must take place from within the ruling elite. Richard Cockett, Africa Editor for *The Economist* and author of *Sudan: Darfur and the Failure of the Africa State* commented, "unless there is a governing class interested in helping its country and people, all the billions of dollars and work of NGOs will not help."

It is unrealistic to expect that bloc voting will be prevented with the regional distribution in which the Council is made up, and it is unrealistic to expect change to the allocated number of seats per region to reflect the geographic make-up of the UN; Asia and Africa having the majority of seats and Western European and Other Groups (WEOG), Latin America and Caribbean states having the least. NGO lobbying as well as partnerships with cross-bloc resolutions have been encouraged and does take place. It is unrealistic, however, to change bloc voting within the present day HRC election framework. For example, the Organisation for Islamic Countries (OIC) as a bloc has come under much criticism, mostly by WEOG, in putting forward votes, mandates and funding to manipulate voting and item agendas to protect states accused of significant human rights violations. In retaliation, however, WEOG votes in bloc style as well. A partial remedy to the problem, however, would be the influence of NGO lobbying groups and joint cross-region effort, which is already taking shape.

Agenda Item Setting:

At the core of the HRC's pivotal role is the setting of agenda items concerning the human rights violations of the countries in question. Agenda item setting is also the cause of great contention for the Council. It is used to manipulate or block agendas that negate what the Council's mandate states, namely that "the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without discussion of any kind and in a fair and equal manner."²⁴

There are many country-specific human rights violations that are not raised prominently or strongly enough, such as the grave offences taking place in North Korea, Iran and Burma, to name but a few. Such countries should be high on the country-specific Agenda Item Four (I4) during the Council's sessions; however, the plight of the people within such countries receives far less attention than needed. There has been great concern over the lack of impartiality over permanent Agenda Item Seven (I7), Israel and the Occupied Palestinian Territories (OPT), while other

²⁴United Nations Assembly Resolution 60/251: Human Rights Council, 2006

states that systematically violate human rights are largely ignored by the Council. There is no denying that the conflict and grave humanitarian violations connected to I7 will continue to be of concern, until a two state resolution is found. It is questionable, however, that I7 should remain as a permanent agenda item for every single HRC meeting to the exclusion of other states' grave human rights violations. Such an additional bias may in part be due the allocation of seats within the Council when the HRC was established and the seats were divided over the Regional Groups: (13 African states, 13 Asian states, 8 Latin American and Caribbean states, 7 Western European and other states, 6 Eastern European states). This created a de facto majority for groups such as the OIC states, the non-aligned movement and the League of Arab states. In various alliances, such groups can reach the majorities needed for the calling of a Special Session (1/3 majority), which allows them to vote for or against resolutions. This has led to the agenda of the HRC being determined mostly by Arab/Muslim states. A clear and fair framework for agenda item setting must be put into place that prevents a monopoly of one Agenda Item, and allows for equally pressing agenda items of concern to be examined and voted on with an equal amount of attention.

The UK should seek support for the reformation of Agenda Item Seven (I7) from members of the OIC, especially those more inclined to negotiate on the reformation of I7. It is essential that, when seeking support and raising the issue of I7, context is considered. Country-specific agenda setting should reflect intelligent, well researched and humanitarian understanding of the threats at large for both Israel and the OPT, and the men, women and children that are the primary victims of such conflict.

CONCLUSIONS

The Coalition Government has the opportunity and potential for new political maturity and insightful international leadership. As a Permanent Five (P5) member of the Security Council, the UK wields much political influence within the United Nations. The UK's influence extends multilaterally between North America, Europe and the Commonwealth.

The UK is the only government, to date, initiating such specific attention to the reformation of the Council. As a leading member of many of the world's organisations, including the UN Security Council, the EU, NATO, the G8 and the Commonwealth, the UK is in a unique position to lead the world in action to tackle widespread and systematic violations of fundamental human rights. As the Foreign Secretary William Hague has stated repeatedly, "human rights should be at the heart of Conservative foreign policy."