

REVIEW OF THE WORK AND FUNCTIONING OF THE HUMAN RIGHTS COUNCIL

Final Report by the Facilitator on *Agenda and Framework for Programme of Work* to the President, Human Rights Council

As Facilitator on the cluster of issues on *Agenda and Framework for Programme of Work* in the context of the review of its own work and functioning by the Human Rights Council, I have the honour in submitting the following report to the President of the Council. In doing so, I am grateful for the trust and confidence reposed in me by the President and the Council to facilitate discussions on this cluster of issues. Indeed, I am also deeply grateful for the sustained engagement and constructive participation of all delegations and civil society, the guidance and support from the President, fellow-Facilitators and Co-ordinator, and the assistance provided by the Secretariat of the Council. I would particularly like to put on record my appreciation for the flexibility and sense of pragmatism displayed by all the delegations to make the review process a meaningful and constructive exercise. The following report reflects my understanding of the positions expressed by various stakeholders after four rounds of informal consultations on the subject¹.

02. On the issue of Agenda, the broad issue is whether to maintain the agenda as it is currently stated in the Council's Institution-Building (IB) text contained in resolution 5/1, or to consider modifying it through a merger of some items, or their deletion, expansion or addition. This is a highly sensitive and emotive issue on which there is, at the moment, a wide and polarised divergence of views. Given the polarizing nature of the debate on the issue of Agenda and its potential to jeopardize progress on other issues of the Council review, it is the Facilitator's considered recommendation that these issues are best left for the future and the *status quo* be maintained during the current Council review.

03. On the issue of Programme of Work, there are two broad elements that can be addressed during the current Council review:

- a) One, the *calendar of sessions* – their number, duration, timing and location; and
- b) Two, improving predictability and manageability of the *workload*, including from the viewpoint of small and medium-sized delegations.

04. On the element of *calendar* of sessions, there is, in the Facilitator's view, a strong convergence of opinions. There is, at the moment, a very broad support for the following three sub-elements of the calendar:

¹ Held on 24 November 2010, 29 November 2010, 2 December 2010 and 19 January 2011.

- a) Have only two main regular sessions of the Council;
- b) Separate the adoption of UPR working group reports from the regular Council session(s); and,
- c) Have the adoption of UPR working group reports in short plenary meetings of the Council that are appended to the three regular UPR working group sessions every year.

05. On the element of *number and duration* of main regular sessions, there appears to be a convergence towards two sessions of four weeks each.

06. On the element of *timing*, while there is a broad convergence of views on the need to have adequately spaced two sessions in a year that are about six months apart, different views have been expressed on the desirability of having these two sessions in March and September, or in January and June respectively. The delegations that have expressed a preference for sessions in January and June have done so mainly on account of difficulties posed by the need to cover the UN General Assembly (UNGA)/Third Committee meetings in New York that start in late September or early October every year. Another reason presented pertains to the difficulties posed by the existing procedures with regard to financial approvals by the UN General Assembly for resolutions with Programme Budget Implications (PBI) adopted by the Council in its September session. On the other hand, many other delegations, especially small and medium-sized delegations and those located in the Southern Hemisphere, prefer that the two sessions be held in March and September on account of onerous demands placed due to WHO/ILO/ECOSOC and other meetings in Geneva in June-July, as also the different calendar of holidays in the Southern Hemisphere. In addition, the Secretariat has repeatedly underscored the difficulties of preparing documents in all languages in time for sessions in January and June, as also of getting adequate rooms for consultations in June owing to demands by WHO/ILO/ECOSOC and other meetings. The Secretariat has also informed that progress has been made in September 2010 regarding exceptional financial approvals by the UN General Assembly for Council resolutions with PBIs adopted in the September session. A number of delegations favouring the sessions in March and September hold the view that this would also minimize the 'protection-gap', which, according to them, would arise if the sessions were held in March and June, leaving a period of almost nine months without a main/regular session. On the basis of the consultations held so far, the Facilitator feels that the overwhelming sentiment appears to favour the two sessions in March and September. It may be noted that there is also a related consideration of equitable spacing of the three UPR sessions – an issue that is being handled by the Facilitator on UPR. Another related issue is the timing of the appointment of the Bureau to enable the Council President to present a report to the UN General Assembly on the entire Council cycle under his/her stewardship – an issue that also raises the bigger issue of the desirability of aligning the Council cycle with

the calendar year with its concomitant short-term costs that is being explored by the Coordinator on the Council review issues with New York.

07. On the element of *location*, there have been some suggestions to explore the possibility of holding some Council sessions outside Geneva. On the other hand, some delegations have expressed their preference to maintain status quo. However, given the practical constraints regarding logistics and resources, and the additional financial implications, there appears to be convergence among the delegations to continue holding the Council sessions in Geneva for the moment.

08. To enhance the interactive nature of dialogues, there is a virtually unanimous support, at the moment, to de-cluster the Interactive Dialogues with special procedures mandate holders. At the same time, there is also a strong preference to maintain the other two principal elements of the *Programme of Work*, namely the General Debates and Panel Discussions. This, however, is easier said than done, given that we have to, within the overall time constraint, cater for 46 interactive dialogues; 2 full-day and 2 half-day mandated annual panels along with the flexibility to cater for a few more; and general debates, apart from the high-level segment and the confidential complaint procedure. In fact, it is impossible to have an eight-week *Programme of Work* that not only de-clusters all the interactive dialogues, but also maintains General Debates and Panels Discussions in their present form. Accordingly, with the help of the Secretariat, and after hearing from the delegations on the need to make some trade-offs among the duration of de-clustered interactive dialogues, General debates and Panel Discussions, a proposed draft *Programme of Work* has been worked out, and is attached as Annexure-1. This *Programme* provides for 46 de-clustered interactive dialogues of 2 hours each spread over two sessions per year; individual general debates while taking into account the actual Council experience in recent sessions with regard to them; and mandated annual panels (*two full-day panels and two half-day panels*) with provision for two more panels per year. The *Programme* has also provided for some flexibility. This is an important point in view of the practical constraints of time loss during technical changeovers for 2-hour de-clustered Interactive Dialogues, and the requirement of an adequate flexibility that it necessitates in any programme. Accordingly, this *Programme* is a slight variation of the scenario for which delegations had expressed their preference during the informal consultation. Also, during the informal consultations, some delegations had suggested that, in view of the tight time constraints posed by de-clustered interactive dialogues, the possibility of reducing the duration of such dialogues to 1.5 hours each should be explored. We have explored this option with the Secretariat and feel that it might be impractical and actually end up creating a new problem of speakers list. Hence, the suggested *Programme* proposes a duration of 2 hours for each de-clustered interactive dialogue, which is also the *maximum* duration that seems feasible under the circumstances. It may also be noted that the earlier

scenarios presented during informal consultations had not provided for general debates under agenda item 6 in the main sessions. In view of the views expressed during these consultations, this has been restored. In addition, while the draft proposed *Programme* provides a template for programme elements, the Facilitator is working with the Secretariat to assign a specific place to interactive dialogues with each particular special procedure mandate holder in the *Programme of Work* so as to have a predictability that would suit both the Council and the mandate holders. The Facilitator hopes to be able to provide the details of this annual programme during or after the next session of the open-ended Inter-Government Working Group on the Council review.

09. A number of suggestions had been made during the consultations for holding specific panels during the sessions of the Council. For example, there have been suggestions to hold a panel discussion with heads of UN Agencies at the beginning of the session, immediately after the high-level segment, towards mainstreaming of human rights across the UN system; another one on 'best practices'; and a third one on reprisals and intimidation against those who co-operate with special procedures. This is, by no means, an exhaustive list. The Facilitator has refrained from incorporating any of these in the scenario presented here, as it was felt that any or all of them would require specific decisions by the Council itself, after due deliberation, and can subsequently be adjusted against space provided for additional panels per year.

10. The Facilitator cannot emphasise enough the tight time-constraints imposed by the desire to have de-clustered interactive dialogues while maintaining General debates and Panel Discussions in their present form. Accordingly, it is strongly recommended that the Council consider reducing the time limit for speakers in the interactive dialogues and general debates on a suitable, appropriate and acceptable pro rata basis, including having the same speaking time-limits for both member and observer states. It is also strongly recommended that the Council consider rationalizing the interactive dialogues with special procedures mandates and panel discussions in some manner, including by limiting each panel to a half-day duration and reducing the annually recurring panels on same themes, or considering their biennialisation or triennialisation. However, these are issues which fall outside the mandate of the Facilitator.

11. Finally, it is important to bear in mind that the Council's preference to shift to two main sessions of eight weeks per year implies that the Council can utilize the remaining two weeks for appending to the three UPR sessions every year. In practical terms, it would mean that each UPR session (*which is of ten working days at present*) can now have, approximately, an additional three working days. While the utilization of this time is the subject for the Facilitator on UPR, the Council should be mindful that the reworking of *Programme of Work* implies a maximum limit of about 13 working days on each UPR

session; in other words, three extra days over and above the existing ten days per session. Anything beyond this would, in the view of this Facilitator, amount to additional workload on the Council, something which we were repeatedly exhorted to avoid; in fact, during the consultations, delegations had repeatedly called for reducing the workload, especially for small and medium-sized delegations.

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