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## Is the UN Human Rights Council delivering on its mandate to mainstream human rights?

✍ BY PAUL HUNT, UNIVERSITY OF ESSEX (UK); UNIVERSITY OF WAIKATO (NEW ZEALAND) /

📅 AUGUST 24, 2015 /

■ BEYOND THE COUNCIL ([HTTP://WWW.UNIVERSAL-RIGHTS.ORG/CATEGORY/BLOG/BEYOND-THE-COUNCIL/](http://www.universal-rights.org/category/blog/beyond-the-council/)), ■ BLOG ([HTTP://WWW.UNIVERSAL-RIGHTS.ORG/CATEGORY/BLOG/](http://www.universal-rights.org/category/blog/)), ■ INTERNATIONAL HUMAN RIGHTS INSTITUTIONS, MECHANISMS AND PROCESSES ([HTTP://WWW.UNIVERSAL-RIGHTS.ORG/CATEGORY/BLOG/INTERNATIONAL-HUMAN-RIGHTS-INSTITUTIONS-MECHANISMS-AND-PROCESSES-BLOGS/](http://www.universal-rights.org/category/blog/international-human-rights-institutions-mechanisms-and-processes-blogs/))

(<http://www.universal-rights.org/wp-content/uploads/2015/08/Paul-Hunt.png>)When UN Secretary-General Kofi Annan spoke for the last time to the Commission on Human Rights he emphasised that “the era of declaration is now giving way, as it should, to an era of implementation.”[1] In the past, human rights implementation was often narrowly understood to mean passing a law and securing a favourable judicial decision. Of course, laws and court decisions are very important. But, in the twenty-first century, human rights





implementation has a much richer meaning. It refers to a process by which human rights shape policies, programmes, projects and other interventions, so that human rights are delivered, on the ground, in communities, services and institutions. This meaning of implementation includes, but goes beyond, laws and

judicial decisions. When the Secretary-General addressed the Commission in 2005, he was highlighting this broader sense of implementation. He was emphasising that the Commission and Council were moving from a focus on drafting more standards towards making the existing standards real, practical, operational and meaningful to all. Crucially, it is impossible to implement human rights without mainstreaming them into law, policy and practice. Mainstreaming is the pre-condition of implementation. In short, Kofi Annan's "era of implementation" is also the era of mainstreaming.

This crucial insight is captured in the UN General Assembly resolution establishing the Council.[2] The Council's principal mandate is set out in paragraph 3 and it has two limbs. The Council is mandated to "address situations of violations of human rights" and "promote the effective coordination and mainstreaming of human rights within the United Nations system".[3] Neither limb has priority. Both are equally important. In other words, human rights mainstreaming is one of the Council's core mandated functions. This is a major departure because human rights mainstreaming was not a priority in the Commission's mandate.

Human rights mainstreaming has different dimensions, for example, there is mainstreaming within the UN and also governments. Although these twin dimensions require different approaches, they are closely related. States control UN agencies, funds and programmes ('agencies') and so there can be no meaningful mainstreaming in agencies without a green light from states. But states are unlikely to give a green light to effective mainstreaming in agencies unless there is some understanding of mainstreaming within partner ministries in capitals, such as education, housing and health. In other words, meaningful mainstreaming within UN agencies depends upon some familiarity with human rights mainstreaming in national ministries.







(<https://www.flickr.com/photos/unisgeneva/8519369222/in/photolist-bziSiv-bziRQD-bmoZvo-bmoZxE-bziRRZ-kGecbT-kGfGgI-kGeaZK-bmoZVW-bmoZx9-kGdzpz-kGebKc-kGdBsn-kGfKJC-kGdFwV-kGegk4-kGdGsc-kGfPQ3-kGefGF-kGfRnm-kGencp-kGdGXF-kGdDPB-dYJhEv-dYJhXX-dYPZnQ-kGGCFB-dYPZFS-dYJhMr-dYPZEF-dYPZtS-dYJhUx-dYJhRX-dYPZGQ-dYJi5R-dYPZMj-dYPZuW-dYPZym-dYPZmd-kGG61V-kGGDwK-kGfTKY-kGfS3E-kGekbv-kGem5z-kGdK7F-kGdCFe-kGdDfv-dYJi4p-kGGCYR>)

PANEL ON MAINSTREAMING, HELD DURING THE 22ND SESSION OF THE HRC (2013). PHOTO BY JEAN-MARC FERRÉ (SOME RIGHTS RESERVED).

This blog post outlines how the Council, in accordance with its mandate, can strengthen its contribution to human rights mainstreaming “within the United Nations system”. Inevitably, however, some of the discussion refers to human rights mainstreaming within governments because, without an appreciation of mainstreaming in a range of ministries, there can be no effective mainstreaming within UN agencies. The different dimensions of mainstreaming will become increasingly important as we approach the Sustainable Development Goals (SDGs).

### Is the Council delivering its mainstreaming mandate?

In 2007, the Council adopted an institution-building package which laid the foundations for its work, as well as the work of its mechanisms, especially the Universal Periodic Review (UPR), Special Procedures and the Confidential Complaints Procedure.[4] Remarkably, this important document does not even mention the Council’s mainstreaming mandate. In 2011, the Council conducted a five-year review of its work, implicitly recognised that it was not discharging its mainstreaming mandate, and agreed to hold a half-day high-level panel once a year on mainstreaming.[5] For the most part these annual panels of three hours have been disappointing. The participation of UN agencies in the Council is thin. Some Council resolutions allude to mainstreaming, but the language tends to be formulaic.





(<http://www.universal-rights.org/wp-content/uploads/2015/08/Panel.png>)

BETWEEN SEPTEMBER-DECEMBER, 2014, THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION HELD A PUBLIC INQUIRY TO STRENGTHEN THE MAINSTREAMING OF HUMAN RIGHTS IN EMERGENCY HEALTHCARE. PHOTO COURTESY OF PACEMAKER PRESS INTERNATIONAL.

However, the Council has taken some important steps towards mainstreaming, for example it adopted technical guidance on maternal mortality and morbidity (2012),<sup>[6]</sup> as well as technical guidance on under-five mortality (2014).<sup>[7]</sup> Both sets of guidance are major contributions towards human rights mainstreaming in health. Nonetheless, according to reliable commentators, the Council's mainstreaming record is *weaker* than the Commission's.<sup>[8]</sup> This is extraordinary because, as we have seen, the Commission did not prioritise mainstreaming, while the Council's mandate does.

Do Special Procedures promote mainstreaming? Yes, but their contribution is limited by their role as accountability mechanisms. When serving as UN Special Rapporteur on the right to the highest attainable standard of health ('right to health'), I urged agencies and states to mainstream health-rights into their policies, programmes and relevant interventions. However, a Special Procedure is an accountability mechanism and this requires it to remain at arm-length from states so that, if necessary, it can report to the Council (and the world) that a government's health or other policies are inconsistent with international human rights standards. The promotion of mainstreaming demands a different sort of relationship with states; it requires a closer, more collaborative partnership. So a Special Procedure can help to promote mainstreaming, but only to a limited degree. Something more is needed.

Does UPR promote mainstreaming? Here it is important to distinguish between civil and political rights, and economic, social and cultural rights (ESCR). In many countries, ministries of justice and the interior are responsible for the implementation of civil and political rights. These ministries are usually responsible for law and order, detention, trials and issues around the rights to expression, assembly and association. Civil and political rights are often, to some degree, mainstreamed within these ministries. Of course, their mainstreaming and implementation is often problematic, but at least civil and political rights are already familiar to many ministries of justice and the interior. Moreover, the Council often engages with



these ministries' representatives. During UPR, countries under review are often represented by politicians, policy-makers and lawyers from these ministries. In short, the Council routinely engages with those responsible for civil and political rights and, in this way, helps to further mainstream and implement those rights.

But the situation in relation to ESCR is sharply different. By way of illustration, consider the right to health. In my experience, most ministries of justice and the interior have no understanding of the right to health whatsoever. It is unusual for individuals with health expertise to participate in UPR. So it is extremely difficult for UPR to promote mainstreaming of the right to health with credibility or authority. Dr Flavia Bustreo, WHO Assistant Director-General, recently observed: *"from the right to health perspective the UPR mechanism has been of very limited utility because the discussion ... is always focused on civil and political rights"*.<sup>[9]</sup>

In summary, UPR is well placed to promote the mainstreaming of civil and political rights, but not the mainstreaming of ESCR.



(<http://www.universal-rights.org/wp-content/uploads/2015/08/Between-September-December-2014-the-Northern-Ireland-Human-Rights-Commission-held-a-public-inquiry-to-strengthen-the-mainstreaming-of-human-rights-in-emergency-healthcare..png>)

NORTHERN IRELAND HUMAN RIGHTS COMMISSION PUBLIC INQUIRY INTO EMERGENCY CARE. IMAGE COURTESY OF PACEMAKER PRESS INTERNATIONAL.

### Human rights mainstreaming elsewhere in the United Nations

Initiatives beyond the Council also promote human rights mainstreaming in the UN. Within the secretariat, mainstreaming is led by OHCHR through six work streams. Chaired by OHCHR, the UN Development Group's Human Rights Working Group seeks to accelerate human rights mainstreaming within the UN's development work.<sup>[10]</sup> Several UN agencies have units to advance human rights within their organisations, such as the Gender, Equity





and Rights team recently established within the WHO.[11] These – and other – mainstreaming initiatives play a very important role. However, two points require emphasis.

First, some of these initiatives focus on human rights mainstreaming in *development* and this will certainly be reinforced by the launch of the SDGs. Of course, such a focus is important, but the Council's mainstreaming mandate is not confined to development. When serving as Special Rapporteur, and as a member of the UN Committee on Economic, Social and Cultural Rights, it was crystal clear that human rights mainstreaming is a challenge for all countries, including high-income countries. If mainstreaming focuses on development, high-income countries largely escape attention. This is bad for human rights in those countries and it is also unfair on other states. One reason why the Council replaced the Commission was to eliminate country selectivity. If human rights mainstreaming focuses on development, this is selectivity by the back door.

Second, the Council is the UN's apex political body with specific responsibility for the promotion of human rights mainstreaming. Although OHCHR and others are doing excellent work, human rights mainstreaming lacks *political* leadership. In 2006, the General Assembly gave the Council the historic role of providing political leadership for human rights mainstreaming. We are still waiting.

### **What's to be done?**

The Council inherited working methods that are designed for its *accountability* mandate. UPR strengthened the Council's capacity to deliver this mandate. But these working methods for accountability are not designed for, and cannot deliver, the Council's new *mainstreaming* mandate.

Years ago, the Commission on Human Rights had to imagine working methods for accountability. It took a long time, but eventually the Commission established the Confidential Complaints Procedure and Special Procedures. Today, the Council has to imagine and establish effective working methods to deliver its core mainstreaming mandate. Whatever form it might take, the Council needs a supportive, collaborative process with five features:

1. Out-reach to UN agencies' governing bodies and senior management i.e. the process cannot be confined to the Palais des Nations;
2. Led by two or three senior Ambassadors on behalf of the Council;
3. Include two or three senior national policy-makers, such as a minister of education, housing or health;
4. Co-opt two or three independent experts;
5. Have continuity so it can support UN agencies as they devise and rollout appropriate ways to mainstream human rights in their organisations.

By way of illustration, one approach might be an inter-sessional Human Rights Council Mainstreaming Working Group with these five features. If invited, the Working Group would attend a UN agency, such as one of its governing bodies, report on developments in the Council which relate to the agency's work, and also learn about the agency's



mainstreaming achievements, challenges and next steps. In this way, the Working Group would discuss, and provide very welcome support to, the human rights mainstreaming units which several UN agencies have already established. Because agencies have universal membership, this approach is consistent with the Council's principle of non-selectivity.[12]

The Working Group's composition could be adjusted depending upon the agency in question. For example, if invited to discuss mainstreaming with the WHO Executive Board, or World Health Assembly, the Working Group might wish to include one or two ministers of health among its membership. If invited to discuss with a governing body of FAO, the Working Group might adjust its composition.

Crucially, the Working Group would complement and support the technical expertise on mainstreaming already provided by OHCHR and the secretariat in other agencies. In this way, the Council would begin to provide the political leadership for mainstreaming which the General Assembly called for in 2006.

## Conclusion

Human rights mainstreaming is complex and politically sensitive and its promotion requires a range of measures. Special Procedures and UPR have a limited contribution to make. An annual three hour panel – or, as some have suggested, a 'roundtable' with a video-link to New York – may have a modest role to play. But these measures are not remotely adequate. Ten years ago, the Council was mandated to promote human rights mainstreaming but it has not yet devised working methods enabling it to discharge this responsibility. Just as the Commission imagined and devised accountability mechanisms, the Council must imagine and devise ways to promote human rights mainstreaming. Accountability and mainstreaming are both extremely important. There is evidence that human rights mainstreaming helps states achieve improvements for individuals and communities.[13] Effective mainstreaming can help states avoid embarrassment before accountability bodies.

Sometimes I am told the Council has 'no appetite' for new arrangements to advance mainstreaming. If so, it has no appetite to fulfil its mandate. In recent months, the Council has established two new thematic mandates (albinism and privacy) and it now has over 40 thematic Special Procedures with the primary task of holding states accountable. As we stand on the threshold of the SDGs, the Council must take its core mandate seriously and establish a purposive, practical, targeted and sustained process, which collaboratively engages with UN agencies' governing bodies and staff, with a view to the promotion of human rights mainstreaming. Without this, the Council will discharge neither its core mainstreaming mandate, nor its responsibility to treat civil, political, economic, social and cultural rights "in a fair and equal manner, on the same footing, and with the same emphasis." [14]

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Featured Image: Towards mainstreaming: Pillar Mazzetti , Peruvian Minister of Health, launches a national mobilisation on health rights and responsibilities (Photo: Frisancho –





CARE Peru)

## Notes

[1] Secretary-General's Address to the UN Commission on Human Rights, Geneva, 7<sup>th</sup> April, 2005.

[2] A/RES/60/251.

[3] A/RES/60/251, para 3.

[4] A/HRC/RES/5/1.

[5] A/RES/65/281, paras 42-44.

[6] [http://www2.ohchr.org/english/issues/women/docs/A.HRC.21.22\\_en.pdf](http://www2.ohchr.org/english/issues/women/docs/A.HRC.21.22_en.pdf)  
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[7] <http://www.ohchr.org/Documents/Issues/Children/TechnicalGuidance/TechnicalGuidancereport.pdf> (<http://www.ohchr.org/Documents/Issues/Children/TechnicalGuidance/TechnicalGuidancereport.pdf>).

[8] Informal report, Policy dialogue on 24<sup>th</sup> April, 2015, URG, penultimate page.

[9] University of Essex seminar 'Making human rights happen', Geneva, 11<sup>th</sup> March, 2015, Questions and Answers, <https://soundcloud.com/uniofessex/making-human-rights-happen>  
(<https://soundcloud.com/uniofessex/making-human-rights-happen>).

[10] <https://undg.org/home/undg-mechanisms/undg-hrm/> (<https://undg.org/home/undg-mechanisms/undg-hrm/>).

[11] <http://www.who.int/gender-equity-rights/about/en/> (<http://www.who.int/gender-equity-rights/about/en/>).

[12] A/HRC/RES/5/1, V. Agenda and Framework for the Programme of Work, A. Principles.

[13] F. Bustreo and others, *Women's and Children's Health: Evidence of Impact of Human Rights*, WHO, 2013, [http://apps.who.int/iris/bitstream/10665/84203/1/9789241505420\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/84203/1/9789241505420_eng.pdf)  
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[14] Vienna Declaration and Programme of Action, 25<sup>th</sup> June, 1993.


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
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