



The Human Rights Council and its Special Procedures, From Criticism to Hope

Information Update for FAS' Networks
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From the UN Commission for Human Rights to the Human Rights Council

On the 15th March 2006, the General Assembly, during its 72nd plenary meeting, adopted the Resolution 60/251, establishing the Human Rights Council as one of its subsidiary organs in replacement of the Commission for Human Rights, after 60 years of existence. The 47-nation UN Human Rights Council is replacing the former 53-country Commission and is now a subsidiary organ of the General Assembly, rather than of the Economic and Social Council (ECOSOC).

1. The Commission

Special Homage to Eleanor Roosevelt

Eleanor Roosevelt served as a United States delegate to the United Nations General Assembly from 1945 to 1951. In 1946 she was elected chairman of the UN's Human Rights Commission. She helped draft the UN Universal Declaration of Human Rights. In 1961 she returned to the General Assembly. Later in 1961 President John F. Kennedy appointed her head of the Commission on the Status of Women¹.

The Commission on Human Rights was intended to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms or mandates) as well as on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates).

But the Commission was not as effective as desired, mainly because of the presence of human rights violators and the politicization of the body. During the following years until its extinction, the UNCHR became increasingly discredited: several of its member countries themselves had dubious human rights records, including states whose representatives have been elected to chair the commission. Moreover, it was argued that the Commission did not engage in constructive discussion of human rights issues, but was a forum for politically selective finger-pointing and criticism. The desire of states with problematic human rights records to be elected to the Commission was viewed largely as a way to defend themselves from such attacks.

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<http://www.lucidcafe.com/library/95oct/roosevel.html>



2. The Human Rights Council

Its stated purpose is to address human rights violations. Each member nation of the Council must be approved individually and directly by a majority (96 of 191) of the members of the General Assembly, in a secret ballot. Council members serve a three-year term and the membership is limited to two consecutive terms. All UN members will eventually have rights record reviewed (There will be Periodic Reviews of members and any state accused of systematic human rights violations could be suspended by a two-thirds vote of the Assembly.)

2.1 Composition

The Council has the same geographic distribution of seats as the General Assembly. This composition raises the overall percentage of African, East European and Asian members, regions with mixed records on human rights and gives the Organization of Islamic Conference greater influence².

The 47 seats in the Council are distributed among the UN's regional groups as follows: 13 for Africa, 13 for Asia, 6 for Eastern Europe, 8 for Latin America and the Caribbean, and 7 for the Western European and Others Group. The successful candidates among African States are: Algeria, Cameroon, Djibouti, Gabon, Ghana, Mali, Mauritius, Morocco, Nigeria, Senegal, South Africa, Tunisia and Zambia.

2.2 Mechanisms

Meetings

The Council will meet no less than 10 weeks per year in no fewer than three sessions. This is an improvement over the Commission's once a year meeting. The Council also explicitly has the ability to convene special sessions when needed to address urgent situations, with the support of one-third of the Council members. This provision was designed to enable the body to respond quickly to developing human rights crises.

Universal Periodic Review (UPR) and Review of Mandates

Two important processes are in development at the Council at this time:

² From: <http://www.state.gov/p/io/rls/rm/71839.htm>



- The establishment of a new Universal Periodic Review (UPR) mechanism that will ensure that all 191 Member States of the United Nations, starting with the members of the Council itself, will have their records examined in order to improve human rights conditions worldwide. All states must be held accountable for their shortcomings.
- What to hope for regarding the UPR:

 - Independent expertise is the best guarantee against the inter State pressures.
 - The evaluation must be depoliticized and include in its entirety the existing and "technical" information from the Special Rapporteurs, independent NGOs or other independent mechanisms.
 - The evaluation must be public and transparent, another guarantee against arbitrary drifts and undue pressures, so that each State publicly assumes the positions it takes during debates.
- The review of all mandates, mechanisms, functions and responsibilities of the previous commission in order to improve and rationalize them and define other aspects of the Council's work, such as the system of Special Procedures.³

Special Procedures of the Human Rights Council

"Special procedures" is the name given to the various procedures and mechanisms established by the former United Nations Commission on Human Rights and continued by the Human Rights Council to examine, monitor, and report on human rights violations in specific countries or examine global human rights issues. Special procedures can be either individuals (called "Special Rapporteurs", "Special Representatives" or "Independent Experts") who are leading experts in a particular area of human rights, or working groups usually composed of five members.

³ The General Assembly decided that the Council should undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensured universality of coverage and equal treatment with respect to all States. The resolution said the review should be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs. The Council was asked to develop the modalities and necessary time allocation for the Universal Periodic Review mechanism within one year after the holding of its first session in June 2006. In resolution 60/251, the General Assembly also decided that the Council should assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of Special Procedures, Expert Advice and a Complaints Procedure. It said the Council should complete this review within one year. The Special Procedures include the Special Rapporteurs, Independent Experts, Working Groups and other bodies. The Expert Advice Body will replace the Sub-Commission for the Promotion and Protection of Human Rights, which held its last session last year. And the Complaints Procedure will replace the so-called 1503 procedures under which situations of violations of human rights are reviewed behind closed doors. From: <http://www.ohchr.org/english/press/hrc/kit/HRC06001E.FINAL.pdf>



Various activities can be undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation, and engaging in promotional activities. The special mechanisms are categorised according to thematic mandates and country mandates.⁴

Special Rapporteur and Thematic and Country Mandates

Special Rapporteur is a title given to individuals who bear a specific mandate from the former UN Commission on Human Rights to investigate, monitor and recommend solutions to human rights problems. They are also called "Special Procedures". Appointed by the UN Secretary General, these experts are "of high moral character and recognized competence in the field of human rights." They act independently of governments. They do not receive any financial compensation for their work, but they receive personnel and logistical support from the Office of the United Nations High Commissioner for Human Rights⁵. Some of these experts are called Special Representatives or Independent Experts. Special Rapporteurs often conduct fact-finding missions to countries to investigate allegations of human rights violations. They can only visit countries that have agreed to invite them.

Aside from fact-finding missions, Rapporteurs regularly assess and verify complaints from alleged victims of human rights violations. Once a complaint is verified as legitimate, an urgent letter or appeal is sent to the government that has allegedly committed the violation.

Currently, there are 37 Special Rapporteurs, Special Representatives and Independent Experts. Following are the Special Rapporteurs regarding Africa and gender issues:

Country mandates for Africa

- Burundi - Akich Okola, Independent Expert on Human Rights (2005-2006)
- Democratic Republic of the Congo - Titinga Frédéric Pacere, Independent Expert on human rights (2005-2006)
- Liberia - Charlotte Abaka, Independent Expert on human rights (2003-2006)
- Somalia - Ghanim Alnajjar, Independent Expert on human rights (2005-2006)
- Sudan - Sima Samar, Special Rapporteur on human rights (2005-2006)

Thematic mandates related to gender

⁴ For more information on the special procedures:

<http://www.ohchr.org/english/bodies/chr/special/index.htm> and <http://www.ishr.ch/hrm/council/>

⁵ The Human Rights Council is separate and distinct from the OHCHR. However, the Council will rely - as did the Commission - on the OHCHR to do the actual fieldwork needed to protect and promote human rights around the world.



- Violence against Women - Yakin Ertürk (2003-2006)

2.3 Role and place of NGOs in HRC

The GA resolution provides for the participation of and consultation of observers, which includes NGOs. However, some questions already raised by NGOs include: What role will NGOs play in the universal periodic review? How will NGO networking and interaction be affected by three separate sessions, rather than one main session? What role should NGOs have in the Council's review of the Commission's special procedures? How can communication be improved between the secretariat and NGOs?⁶

Recommendations for NGOs

NGOs must actively engage in the election process and the development of the Council's procedures. They must advocate for the best of the Commission to be retained and strengthened – its standard-setting, special procedures, complaints procedure, and the “robust presence of civil society”. They must constructively engage with the Council in creating procedures that will best protect against politicisation, most effectively scrutinise State practice, and improve on the implementation of international human rights instruments.

After participating in its creation, NGOs remain unclear about the role they will play in the Human Rights Council. They hope to retain at least the same level of active participation they enjoyed with the Human Rights Commission, and ensure NGO involvement at the various steps of the newly-created Universal Periodic Review process. As the Council now holds no less than three sessions a year, NGOs with smaller budgets, particularly those from developing countries, will encounter problems with maintaining a presence in Geneva⁷.

Conclusion

“However, the success of the Council is not assured. Many States appear determined to ensure that the Council that emerges from the institution-building processes is as weak and ineffectual as possible. These developments may have long-term consequences for the participation of civil society in the work of the Council and its mechanisms.”

NGOs should be “focusing on enhancing their capacity to participate in the work of the Council and contribute to and shape its institution-building processes by providing

⁶ Article from Human Rights Features: “The Human Rights Council, Will it turn norms into reality?”
<http://www.hrdc.net/sahrdc/hrfeatures/HRF139.htm>

⁷ <http://www.globalpolicy.org/ngos/ngo-un/hrcindex.htm>



information on all key developments and discussions, strategic advice and coordination, and other services to facilitate their effective participation. FAS will also engage in its own advocacy on strategic issues during the Council sessions, including advocating for strengthened systems for the protection of human rights, such as the system of Special Procedures and the Universal Periodic Review mechanism”⁸.

Summary

Positive elements:

- longer sessions spread out more evenly throughout the year (at least ten weeks instead of six in the case of the CHR) which will allow for continued follow-up of human rights in the world;
- more flexible procedures for convening emergency sessions, which will mean the Council can react quicker in the event of a serious situation;
- the possibility of adopting recommendations and sending them to the rest of the UN system;
- more stringent rules for membership, which will strengthen the Council’s legitimacy;
- enhanced institutional status (being attached to the General Assembly rather than ECOSOC).

Criticisms

To go further: Article from Human Rights Features: “The Human Rights Council, Will it turn norms into reality?” <http://www.hrdc.net/sahrdc/hrfeatures/HRF139.htm>

⁸ From the “Briefing Note on ISHR initiative to support NGO participation in the 4th session of the UN Human Rights Council” 2007. <http://www.ishr.ch>