

II. THE UN HUMAN RIGHTS COUNCIL

This section deals with the newly founded Human Rights Council (HRC) which was established by General Assembly resolution A/RES/60/251 of 15 March 2006. The resolution was approved by 170 Member States. Three countries abstained (Belarus, Venezuela, Iran), whereas Israel, Marshall Islands and Palau joined the United States in voting against the resolution. The following section III describes the work of the so-called UN treaty bodies in the field of human rights as well as procedures developed by them.

The new Council which is an intergovernmental body is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all; it replaces the Commission on Human Rights which had lost credibility primarily because of the presence of Member States with poor human rights records and the increasing tendency of politicization.

Kofi Annan, former UN Secretary-general, criticized in his follow-up to the outcome of the Millennium Summit that “States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others” (para. 182). He therefore suggested that Member States

- should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council,
- need to decide if they want the Human Rights Council to be a principal organ of the UN or a subsidiary body of the General Assembly;
- should decide whether its members would be elected directly by the General Assembly by a two-thirds majority of members present and voting.

After intensive political negotiations the General Assembly created in March 2006 the new Council which differs from its predecessor in status, composition and duration of membership, election criteria and procedures, and number and duration of sessions (for details see chart 4)

The HRC is a subsidiary body of the General Assembly and meets as a quasi-standing body. It comprises 47 Member States which are elected by the General Assembly “directly and individually by secret ballot by the majority of the members of the General Assembly” (A/RES/60/251, para. 7). The membership is based on equitable geographical distribution on the following basis: Africa 13 seats, Asia 13, Eastern Europe six, Latin America and the Caribbean eight, Western Europe and Other States seven. The members of the Council serve for a period of three years; after two consecutive terms members are not eligible for immediate re-election. When electing members of the Council, “Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto” (para. 8).

By a two-thirds majority of the members present and voting, the General Assembly may suspend the rights of membership in the Council of a member that commits gross and systematic violations of human rights.

The Council meets for at least ten weeks a year, spread over three regular

sessions including a main session. Special sessions at the request of a Council member and with the support of one third of the Council membership are possible. Since July 2006, the Human Rights Council held 13 special sessions (on the Palestine territories, Lebanon, Myanmar, Dem. Rep. of the Congo, Haiti and specific issues such as the food crisis and the global economic crisis).

Among the Council's new elements are the Universal Periodic Review, the Advisory Committee, and the revised Complaints Procedure mechanism. The HRC also continues to work closely with the UN Special Procedures which were established by the former Commission on Human Rights and assumed by the Council.

Universal Periodic Review

The Universal Periodic Review (UPR) is a new mechanism which involves the review of the human rights records of all 192 UN Member States once every four years. It is regarded as the most innovative element of the reform process. According to UN Secretary-General Ban Ki-moon, the UPR "has great potential to promote and protect human rights in the darkest corners of the world". Each country's situation will be examined during a three-hour debate. The UPR takes place in Geneva in the Working Group of the UPR, composed of the 47 Member States of the Human Rights Council, and takes the form of an interactive dialogue held between the State concerned and the Member and Observer States of the Human Rights Council. The Working Group sessions are structured in the following way: (1) presentation by the Member State concerned (30 minutes), (2) questions and answers (two hours), and (3) closing comments by the Member State concerned and the President of the Council.

The Working Group meets in three two-week sessions each year and reviews 16 Member States at each session – a total of 48 Member States each year. On 21 September 2007, the Council adopted a calendar detailing the order in which the 192 Member States of the UN will be considered during the first four-year cycle of the UPR mechanism.

The UPR provides the opportunity for each Member State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. The fact that equal treatment for every country is ensured is a unique feature of this mechanism.

According to the terms and procedures set out, all Member States of the Human Rights Council will be reviewed while they sit at the Council, and the initial members of the Council were first. The review will be carried out by a working group composed of members of the Human Rights Council that will meet three times per year for two weeks and will be facilitated by groups of three State members of the Council elected by lot which will act as rapporteurs (or "troikas") appointed by the Human Rights Council.

In addition to the report the State concerned, recommendations from the special procedures (see below) and from the human rights treaty bodies (see section III) as well as information from other sources, such as NGOs and NHRIs will be considered as elements for the review. The final outcome of the

UPR will consist of recommendations to be implemented primarily by the State concerned. The report contains both recommendations which are accepted by the Member State concerned and those which are not. For the time being, no concrete follow-up mechanism such as the appointment of a follow-up rapporteur is foreseen. Therefore, it will be difficult to measure at least the effectiveness of the recommendations accepted.

To be more precise, it should be mentioned that the UPR process is based on three documents:

- (a) information prepared by the State concerned, for instance, in the form of a national report, on the basis of General Guidelines adopted by the Human Rights Council at its sixth session, and any other information considered relevant by the State concerned (the written presentation shall not exceed 20 pages);
- (b) a compilation prepared by OHCHR of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents (the text shall not exceed 10 pages); and
- (c) additional, credible and reliable information provided by other relevant stake-holders (such as NHRIs, NGOs, human rights defenders) to the UPR. OHCHR will prepare a summary of such information which shall not exceed 10 pages. Stakeholders are encouraged to consult with one another at the national level; joint submissions by a large number of them are encouraged.

The UPR mechanism is conducted on the basis of public documents. Therefore, the mechanism does not provide for confidentiality. Submissions, as originally received, will be made available on-line on OHCHR's website.

Human Rights Council Advisory Committee

The Human Rights Council Advisory Committee (CAC) which is composed of 18 experts replaces the former Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights. It has been established to function as a think-tank for the Council (see chart 5). Its work should be founded mainly on studies and research-based, implementation-oriented advice and be undertaken only at the request of the Council. The Committee shall not adopt any resolutions or decisions. However, it may propose to the Council, within its mandate, suggestions which could enhance its procedural efficiency as well as further research activities. In other words: unlike its predecessor, it cannot act on its own initiative.

The members of the Advisory Committee are elected by the Council, in secret ballot, from a list of candidates. Due consideration should be given to gender balance and appropriate representation of different civilizations and legal systems. The geographical distribution is as follows: five members each from Africa and Asia, three members each from Latin America and the Caribbean, and Western Europe and Other States, two members from Eastern Europe. The members shall serve for a period of three years and can be re-elected once.

The Committee will convene up to two sessions for a maximum of ten working days per year with the possibility of additional sessions to be held on an ad hoc basis if approved by the Council. Its inaugural session took place from 4 to 15 August 2008 in Geneva.

Complaint Procedure

On 18 June 2007, the Human Rights Council adopted Resolution 5/1 to establish a Complaint Procedure to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. The procedure is very similar to the procedure of the Commission on Human Rights based on ECOSOC resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000; it is to be victims-oriented and conducted in a timely manner. It retains its confidential nature, with a view to enhancing cooperation with the State concerned. The procedure will ensure that also the complainant is informed of the proceedings at the key stages of the review. Despite its name, the Complaint Procedure as set up by the Council is not an instrument to address violations of human rights in individual cases (see chart 6).

Two distinct working groups are established to examine complaints (“communications”) received: the Working Group on Communications (WGC) and the Working Group on Situations (WGS). Both Working Groups shall work on the basis of consensus. Otherwise, decisions shall be taken by simple majority of the votes.

The WGC consists of the five independent and highly qualified experts designated by the Advisory Committee from among its members and geographically representative of five regions. The experts serve for three years (mandate renewable once). They meet in closed session twice a year for a period of five working days and shall determine whether a complaint alone or in combination with other complaints deserves further investigation. If this is the case, the WGC passes the complaint to the WGS. Manifestly ill-founded and anonymous communications are screened out by the Chair of the WGC, together with the Secretariat, based on the admissibility criteria. All other communications will be transmitted to the State concerned to obtain the views on the allegations of violations (see chart 6).

The WGS consists of five Council members appointed by the respective regional groups for a term of one year and meets in closed session twice a year for a period of five working days. Each member’s term is renewable once, provided the State concerned is a Council member. The WGS reports to the Human Rights Council about the complaints received from the WGC as well as the replies received from the States concerned and makes recommendations about the course of action the Human Rights Council should take if consistent patterns of gross violations of human rights and fundamental freedoms are identified.

As mentioned above, the Complaint Procedure is confidential so that cooperation with the State concerned is enhanced. However, the WGS can recommend that the Council considers a country situation in public.

Both working groups shall, to the greatest extent possible, work on the basis of

consensus. In the absence of consensus, decisions shall be taken by simple majority of votes.

A complaint is admissible, which means accepted for examination, if

- its object is consistent with the UN Charter, the Universal Declaration of Human Rights and other applicable human rights instruments;
- it has no manifestly political motivation;
- it contains a factual description of the alleged violations, including the rights which are alleged to be violated;
- it is not exclusively based on mass media reports; and
- the domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

Complaints should be addressed to:

Human Rights Council and Treaty Division
Complaint Procedure
OHCHR – UNOG
CH – 1211 Geneva 10
Switzerland
Fax: xx 41-22 9179011
E-mail: CP@ohchr.org

Forum on Minority Issues

The Forum on Minority Issues has been established by the Human Rights Council in September 2007 (Resolution A/HRC/RES/6/15). The Forum is intended to provide a platform for promoting dialogue and cooperation of all relevant stakeholders on issues pertaining to persons belonging to national or ethnic, religious and linguistic minorities. It shall identify and analyze best practices, challenges, opportunities and initiatives for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (see General Assembly Resolution A/RES/47/135 of 18 December 1992).

The Forum meets once a year for two working days allocated to thematic discussions; the Independent Expert on minority issues shall guide its work, prepare its annual meetings, and report to the Human Rights Council.

The Forum is open to the participation of Member States, UN mechanisms, bodies and Specialized Agencies, funds and programmes, regional organizations and mechanisms in the field of human rights as well as to NHRIs and other national bodies, academics and NGOs.

The Forum's inaugural session was held in Geneva in December 2008 and focused on Minorities and Right to Education. The second session which took place in November 2009 focused on Minorities and Effective Political Participation.

Secretariat for the Forum on Minority Issues:

minorityforum@ohchr.org

Social Forum

The Social Forum serves as a unique space for interactive dialogue between the UN human rights machinery and Member States, global and regional inter-governmental organizations, NGOs and the private sector on issues linked with the national and international environment needed for the promotion of the enjoyment of human rights by all. The Social Forum was originally an initiative of the former Sub-Commission on the Promotion and Protection of Human Rights which was the main subsidiary body of the Commission on Human Rights. The idea of a Social Forum had been discussed since 1997 in response to concerns about the effects of the globalization process on the enjoyment of economic, social and cultural rights. The Human Rights Council decided in its resolution A/HRC/RES/6/13 of 28 September 2007 to preserve the Social Forum.

Compared with its predecessor, the renewed Social Forum has a number of distinguishing attributes:

- it is not linked to the Advisory Committee, which replaced the former Sub-Commission of the Commission on Human Rights, but to the Human Rights Council;
- its Chairperson is no longer a member of the Advisory Committee, but a government representative from the Human Rights Council;
- it meets annually for three instead of two working days;
- four mandate holders of thematic procedures (in particular the Independent Expert on the question of human rights and extreme poverty and the Independent Expert on human rights and international solidarity) assist the Chairperson as resource persons; and
- the OHCHR is asked to present a detailed background contribution for the Social Forum dialogue and debates.

Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples is a new mechanism created by the HRC as a subsidiary expert mechanism with a specific mandate (see chart 5).

The Expert Mechanism will provide thematic expertise focusing mainly on studies and research-based advice; it may suggest proposals to the HRC for consideration and approval.

NGO Participation

The participation of NGOs in the Human Rights Council is based on the same arrangements and practices observed by its predecessor, the Commission on Human Rights. This means that their participation in the regular and special sessions of the HRC – as well as the sessions of the Working Group on the Universal Periodic Review described above – is limited to NGOs enjoying

consultative status with ECOSOC. They are allowed to attend the review session without the right to ask questions. However, they can contribute with “general comments” before the adoption of the report.

Special Procedures

The former Commission on Human Rights established a number of mechanisms assumed by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or on specific human rights themes in all parts of the world (“non-treaty-based mechanisms”). Those mechanisms are called “special procedures” which are normally entrusted to individuals (called “Special Rapporteur”, “Special Representative of the Secretary-General” or “Independent Representative”) who are independent human rights experts or working groups usually composed of five members (one from each region). These experts are not paid and serve in their individual capacity for a maximum of six years (for country mandates six one-year terms and for thematic mandates two three-years terms).

Special procedures are an integral part of the UN human rights system. Various activities can be undertaken; among others, the following activities are carried out:

- country missions in which the experts meet with local authorities, NGOs, human rights defenders, NHRIs, and other stakeholders and visit relevant facilities, such as prisons and detention centres (as of September 2009, 65 countries have issued “standing invitations”, which means that they are, in principle, prepared to receive a visit from any of the special procedures mandate holders);
- sending communications (urgent appeals or letters of allegations) to the government concerned requesting the national authorities to respond to the allegations and to take corrective action (in 2008, a total of 911 communications were sent to governments in 118 countries);
- issuing public statements and press releases calling on the governments concerned to stop human rights violations;
- identifying trends or emerging issues of human rights violations to be analyzed in the annual reports of the experts;
- submitting annual reports to the Human Rights Council in which individual cases of human rights violations, trends and emerging issues are described.

In order to fulfil their tasks successfully, the special procedure mandate holders depend on close cooperation with NGOs and other stake-holders. They need specific information which depends on the following criteria: the reliability of the source and the credibility of information received and the details provided.

The following minimum information must be provided for all special procedures:

- identification of the alleged victim(s);
- identification of the alleged perpetrations of the violation;

- identification of the person(s) or organization(s) submitting the communication (this information will be kept confidential);
- date and place of the incident;
- a detailed description of the circumstances of the incident in which the alleged violation occurred.

Communications should not be based solely on media reports nor contain abusive language or be obviously politically motivated. To facilitate the consideration of reported violations, questionnaires relating to the following nine mandates are available on the website of the Office of the UNHCHR:

- Working Group on arbitrary detention;
- Working Group on enforced or involuntary disappearances;
- Working Group on the use of mercenaries;
- Special Rapporteur on extrajudicial, summary or arbitrary executions;
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Special Rapporteur on the sale of children, child prostitution and child pornography;
- Special Rapporteur on the question of torture;
- Special Rapporteur on violence against women, its causes and consequences;
- Special Representative of the Secretary-General on human rights defenders.

Since June 2006, the Human Rights Council started an institution-building process which also included a review of the special procedures system conducted throughout 2007 and 2008. As a result, all thematic mandates have been extended and some new ones established.

With the exception of Belarus, Cuba, the Democratic Republic of the Congo and Liberia, all other country mandates have been also extended. As of 1 November 2009, the following eight country mandates exist (in brackets: year of being established): Burundi (2004), Cambodia (1993), Democratic People's Republic of Korea (2004), Haiti (1995), Myanmar (1992), Palestinian territories occupied since 1967 (1993), Somalia (1993), and Sudan (2009).

In addition, the following thematic mandates exist:

- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (2000),
- Working Group on people of African descent (2002),
- Working Group on arbitrary detention (1991),
- Special Rapporteur on the sale of children, child prostitution and child pornography (1990),
- Independent Expert in the field of cultural rights (2009)

- Special Rapporteur on the right to education (1998),
- Working Group on enforced or involuntary disappearances (1980),
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1982),
- Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights (2000),
- Independent Expert on the question of human rights and extreme poverty (1998),
- Special Rapporteur on the right to food (2000),
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (1993),
- Special Rapporteur on freedom of religion or belief (1986),
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2002),
- Special Rapporteur on the situation of human rights defenders (2000),
- Special Rapporteur on the independence of judges and lawyers (1994),
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (2001),
- Representative of the Secretary-General on the human rights of internally displaced persons (2004),
- Independent Expert on human rights and international solidarity (2005),
- Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (2005),
- Special Rapporteur on the human rights of migrants (1999),
- Independent Expert on minority issues (2005),
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1993),
- Special Rapporteur on contemporary forms of slavery, including its causes and consequences (2007),
- Independent Expert on human rights and international solidarity (2005)
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2005),
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (1985),
- Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1995),
- Special Rapporteur on trafficking in persons, especially in women and children (2004),

- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (2005),
- Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (2008),
- Special Rapporteur on violence against women, its causes and consequences (1994).

Further information can be received from:

Special Procedure Division
 c/o OHCHR – UNOG
 8-14 Avenue de la Paix
 CH- 1211 Geneva 10
 Switzerland
 Fax: xx 41-22 9179096
 E-mail: SPDInfo@ohchr.org

The Future of the Council

As mentioned above, the General Assembly decided that the Council shall review its work and functioning in 2011. The key question is whether the Council will perform in a more effective way than its predecessor body in ensuring that UN Member States uphold human rights. Since the HRC is – as its predecessor – an intergovernmental body exercising a rigid political control over its subsidiary bodies the answer depends upon the policy action of individual Member States in the HRC. Since the UN is composed of Member States that have very different views on human rights, and as long as there is no consensus across the North-South divide in identifying and fighting human rights violations, it will be difficult to expect major progress.

Although the founding resolution mentioned “the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization”, bloc politics in the working of the Council dominated so far and led to mixed results. Also, the UPR mechanism without follow-up activities necessarily remains ineffective.

Since a further “up-grading” of the HRC as a principal UN organ implies a complex process of revising the UN Charter such an initiative is unlikely to be successful.

Therefore, it can be assumed that the work of the HRC will continue after 2011 without major organizational-institutional changes. Future success will depend very much about ways and means of overcoming bloc politics in the Council.

References

ABEBE, Alletone Mulugeta: Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council. In: Human Rights Law Review 9/1: 1-35, 2009.

ALSTON, Philip; MORGAN-FORSTER, Jason; ABRESCH, William: the Competence of the UN Human Rights Council and Its Special Procedures in Relation to Armed Conflicts: Extrajudicial Execution in the 'War on Terror'. In: The European Journal of International Law 19/1: 183-209, February 2008.

BREEN, Claire: Revitalizing the United Nations Human Rights Special Procedures Mechanisms as a Means of Achieving and Maintaining International Peace and Security. In: Max Planck Yearbook of United Nations Law 12: 177-203, 2008.

CALLEJON, Claire: Developments at the Human Rights Council in 2007: A Reflection of its Ambivalence. In: Human Rights Law Review 8(2): 323-342, 2008.

NIFOSI, Ingrid: The UN Special Procedures in the Field of Human Rights. Antwerpen-Oxford: Intersentia, 2005, XV, 179.

RAMCHARAN, Bertrand G.: The Protection Roles of UN Human Rights Special Procedures. Leiden / Boston: Martinus Nijhoff, 2008, X, 2/3.

SEN, Puma; VINCENT, Monica (Ed): Universal Periodic Review of Human Rights. Towards best Practice. London: Commonwealth Secretariat, 2009, IX, 138.

SWEENEY, Gareth; SAITO, Yusi: An NGO Assessment of the New Mechanisms of the UN Human Rights Council. In: Human Rights Law Review 9/2: 203-223, 2009.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Human Rights Council. New York: UN, 2009, 9 (GAOR Sixty-fourth session. Supplement No. 53 (A/64/53/Add.1)).

The report of the twelfth special session (15 and 16 October 2009) deals with the human rights situation in the Occupied Palestinian Territory, including East Jerusalem.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Human Rights Council. New York: UN, 2009, 171 (GAOR Sixty-fourth session. Supplement No. 53 (A/64/53)).

The report contains the resolutions and decisions adopted by the HRC at its 10th-11th session and at its 8th-11th special session.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Human Rights Council. New York: UN, 2008, 257 (GAOR Sixty-third session. Supplement No. 53 (A/63/53)).

The publication contains the resolutions and decisions adopted by the Council at its 6th-8th session and at its 5th-7th special session, as well as the President's statements adopted by the Council of its 6th and 8th session.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Human Rights Council. New York: UN, 2008, 51 (GAOR Sixty-third session. Supplement No. 53 (A/63/53/Add.1)).

The report covers the outcomes of the 9th session (resolutions, decisions and President's statements).

E-Resources

Universal Periodic Review (UPR):

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

Human Rights Complaints Procedure:

<http://www2.ohchr.org/english/bodies/chr/complaints.htm>

Forum on Minority Issues:

<http://www2.ohchr.org/english/bodies/hrcouncil/minority/forum.htm>

How to submit communications concerning special procedures:

<http://www2.ohchr.org/english/bodies/chr/special/communications.htm>