

8 The Human Rights Council (formerly the Commission on Human Rights)

The Commission on Human Rights was created in 1946 (and replaced by the Human Rights Council in 2006) by the General Assembly to foster international mechanisms aiming at the protection of human rights. The Commission was composed of 53 members, elected by the Economic and Social Council for a period of three years.

Procedures evolved over the years to strengthen the Commission's mandate – including Special Rapporteurs and Special Representatives. However, over the last years of the Commission, it increasingly came under criticism for its double standards and selectivity in the treatment of country situations and failure to address severe human rights violations occurring in many countries. The election of States with extremely poor human rights records as members of the Commission weakened its credibility. Furthermore, its institutional culture, which was characterized by excessive politicization, regional alliances, and block voting, and the use of procedural devices to prevent debate on proposed action against countries and on controversial issues weakened its functioning and ability to react to important human rights situations and fulfil its mandate.

As a result, the Council has a number of new features, such as longer and more frequent meetings, the ability to report directly to the General Assembly, a requirement to periodically review all States instead of a selected few, and a better election process, that provide greater opportunities for it to be a stronger and more effective mechanism than the Commission.

One of the most important innovations of the new HRC is the **Universal Periodic Review** (UPR) of governments' human rights records. All countries are subject to review under this process which will be a major step away from the selectivity that so often afflicted the Commission on Human Rights in the identification of countries to be scrutinized.

The order to fulfil the criteria of proceeding based on objective and reliable information as called for by the GA resolution, the UPR should begin with the assembly of information by professional staff and human rights experts:

- The date of the UPR for each State is set well in advance to facilitate the participation of interested parties; the HRC bureau appoints an independent expert, selected from a roster prepared by the Office of the High Commissioner, as session rapporteur for each State who carries out a full visit to that State and who prepares a background note on the human rights situation in the State;
- The Office of the High Commissioner prepares a summary of U.N. reports on the country concerned, drawn from the reports of the special procedures, treaty-monitoring bodies, and, where appropriate, peacekeeping and peace-building missions and OHCHR field presences;
- OHCHR further prepares summaries of available reports on the country from domestic, regional, and international non-governmental and inter-governmental organisations.

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Finally, based on all of the materials assembled, the session rapporteur prepares written questions for the State sufficiently in advance of the scheduled review session so the state can respond in full and members of the HRC can review the State's response.

The next phase of the review should be a cooperative mechanism providing the interactive dialogue contemplated in the HRC resolution.

- The State concerned makes a presentation of its record of fulfilling its human rights obligations and the challenges it faces in doing so. It answers the questions prepared by the session rapporteur;
- Presentations are made by national human rights institutions (if any), regional mechanisms (if any), and nongovernmental organisations;
- The State responds to the comments made and questions posed by others.

Each UPR should have an outcome document, including conclusions and recommendations. After the session is over, the session rapporteur should prepare a statement on the human rights situation with particular emphasis on recommendations and on proposals for remedying human rights problems identified in the review, including building state capacity, and obtaining outside assistance for doing so. That statement is reviewed, debated, and adopted at a subsequent session of the HRC.

This text is adapted from Human Rights Watch web page at

<http://hrw.org/backgrounder/un/un0506/3.htm>

More information available on the **UN Office of the High Commissioner for Human Rights'** website

<http://www.ohchr.org/english/bodies/chr/index.htm>

On 15 March, 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council. On 27 March, 2006, the Commission on Human Rights concluded its 62nd and final session when the Human Rights Council took up special Procedures adopted within the Commission on Human Rights, and some rules were changed. One of the most important is that the General Assembly can, by a majority of two-third of votes, declare a country, which committed gross violations of human rights, ineligible for membership at the Human Rights Council.

Unlike the Commission that met once a year, the HRC meets for a minimum of three sessions for a total of no less than ten weeks per year, with the ability to convene additional sessions at the request of any member and supported by one third of the membership of the Council.

The responsibilities of the Council, as set out in the General Assembly Resolution, are to:

- Undertake a Universal Periodic Review (UPR), based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States;
- Address situations of violations of human rights, including gross and systematic violations, and make recommendations;
- Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;
- Serve as a forum for dialogue on thematic issues on all human rights;
- Make recommendations with regard to the promotion and protection of human rights;
- Make recommendations to the General Assembly for the further development of international law

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in the field of human rights;

- Work in close cooperation in the field of human rights with governments, regional organisations, NHRIs, and civil society;
- Assume the role and responsibilities of the Commission relating to the work of the Office of the United Nations High Commissioner for Human Rights;
- Promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;
- Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;
- Promote human rights education and learning as well as advisory services, technical assistance, and capacity-building, to be provided in consultation with and with the consent of the States concerned;
- Promote the effective coordination and the mainstreaming of human rights within the UN system.

<http://www.ohchr.org/english/bodies/hrcouncil/>

Further information on the **Human Rights Council**

The former Commission on Human Rights was supported by the Office of the High Commissioner for Human Rights (OHCHR) in the initiatives taken in the field of HIV/AIDS - providing information and assisting the reports of the Secretary-General to the Commission on progress made by States to combat the epidemic. The Commission adopted two resolutions on a regular basis: a bi-annual one dealing with the protection of human rights in the context of HIV/AIDS, and an annual one on access to medication.

Resolution 2005/84 is the most recent one dealing with human rights and HIV/AIDS. The resolution emphasizes the importance of the protection and observance of human rights for all ***“as to reduce the vulnerability to HIV/AIDS, to prevent AIDS/HIV-related discrimination and stigma and to reduce the impact of HIV/AIDS”***

The full text of the Commission on Human Rights resolution 2005/84 is reproduced in **Core document 17**

http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-84.doc

The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) Human Rights Resolution 2005/84

With respect to discrimination against people living with HIV/AIDS the Commission recalls by the resolution that:

HIV-related stigma and discrimination are major obstacles to an effective HIV/AIDS response and that discrimination on the basis of HIV or AIDS status, actual or presumed, is prohibited by existing international human rights law, and that the term “or other status” in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS

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Furthermore the Commission urges States:

to ensure that their laws, policies and practices, including workplace policies and practices, respect human rights in the context of HIV/AIDS and promote effective programmes for the prevention and treatment of HIV/AIDS and the prohibition of HIV-related discrimination, including through voluntary testing and counselling, education, media and awareness-raising campaigns, improved and equitable access to high-quality goods and health care, particularly to safe and effective medication, assistance to educate people infected with and affected by HIV/AIDS about their rights and to assist them in realizing their rights

Concerning sexual and reproductive health and rights, the Commission, in paragraph 6, urges States to:

Integrate sexual and reproductive health programs and the promotion and protection of reproductive rights, [...], as strong and robust components of their national strategies on HIV/AIDS, and stresses that women have the right to have control over and to decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

Although the resolution does not explicitly mention LGBT people, it refers to vulnerable groups in soliciting:

Comments from governments, United Nations organs, programmes and specialized agencies and international and non-governmental organisations on the steps they have taken to promote and implement, where applicable, programmes to address the urgent HIV-related human rights of women, children and vulnerable groups in the context of prevention, care and access to treatment [...]

The resolution 2005/23 on access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria, calls States to adopt national policies which would promote:

The accessibility and affordability for all without discrimination, including the most vulnerable or socially disadvantaged groups of the population, as well as infants and children, of pharmaceutical products or medical technologies used to treat and/or prevent pandemics such as HIV/AIDS, tuberculosis, malaria or the most common opportunistic infections that accompany them

Furthermore the Commission adopted the resolution 2003/28 by which it calls, in paragraph 3, upon States:

To guarantee that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health will be exercised without discrimination of any kind.

to pay special attention to the situation of vulnerable groups, including by the adoption of positive measures, in order to safeguard the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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and also in **paragraph 5**:

to protect and promote sexual and reproductive health as integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.28](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.28).

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The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Commission on Human Rights **resolution 2003/28**