



Human Rights Council: No More Business as Usual

Introduction

The Human Rights Council (HRC) will meet for the first time on June 19, 2006 in Geneva. Its creation is a landmark for the promotion and protection of human rights. Human rights defenders around the world—and the victims of human rights violations—will now look to this body to provide real and effective leadership.

Expectations are high. The credibility deficit of the Commission on Human Rights (CHR), especially in its later years, created a demand for a body that is principled, credible, objective, firm in its dealings with governments, and timely in its response.

The HRC cannot be business as usual. It cannot return to the same kind of tired and discredited horse-trading around resolutions as was so often seen in its predecessor. Nor will human rights activists be satisfied with a series of recommendations and proposals that are never followed up and thus provide no basis for action. It is vital that—beginning with the first session—the Council respond effectively to human rights violations.

The fact that the HRC is to meet no less than three times a year is already a major step forward that will allow for more timely response to developing human rights situations. The “responsibility to protect,” endorsed in recent months by both the General Assembly (G.A.) and the Security Council, provides an extremely important imperative for the HRC: ensuring a timely and effective response to deteriorating human rights situations such that other, more drastic measures are not required to save lives and ease suffering.

While there was widespread agreement in the General Assembly that the highly politicized debate over country resolutions was rendering the former CHR dysfunctional, there was much less agreement over the solution. The good news is the new Council will have more tools to address various human rights situations. The first

Council will be particularly important in developing the “universal periodic review,” and also for establishing a tradition of sound judgment in choosing among the various means available to address different human rights situations.

In this brief initial paper, Human Rights Watch seeks to contribute to the ongoing discussions about how the Council should function and develop its work. We recognize that this is a continuing dialogue in which positions will evolve, including our own. The first year of the Council will be one of transition, but also a unique occasion to build a principal human rights organ that delivers results in the short, medium, and long term. This paper primarily focuses on the universal periodic review, country situations, and the review of special procedures. It does not focus on the structure or agenda of the first Council session in June 2006.

Principal Recommendations

- The new system of universal periodic review should be based on information developed by an independent session rapporteur, carried out in sessions additional to the minimum ten weeks called for in the G.A. resolution, and result in an outcome document including conclusions and recommendations;
- The HRC should maintain the system developed by the CHR of country resolutions and country rapporteurs. However, the system of Item 9 and Item 19 resolutions should be replaced by one agenda item entitled “country situations”;
- The HRC should be ready, where necessary, to call for the establishment of in-country human rights offices to monitor and report on abuses, and to recommend that other parts of the U.N. system—including the Security Council, the Office of the High Commissioner for Human Rights (OHCHR), and U.N. agencies on the ground—take effective action to address abuses of human rights;
- The review of the special procedures should aim at strengthening the system; all mandates due to expire in 2006 should be renewed for one year while the review is carried out;

- The OHCHR should be guaranteed the necessary resources to be able to provide effective support to the HRC and its various procedures and mechanisms.

Universal Periodic Review

One of the most important innovations of the new HRC will be 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 G.A. resolution creating the HRC provides the basic guidelines for the UPR: universality, objectivity, cooperation, interactivity.¹

Human Rights Watch believes that if the UPR is to be meaningful, the HRC should devote at least one half-day session per country, and if it is to be timely, states should come up for UPR at least once every five years. This means that the HRC would have to review an average of almost forty countries per year, the equivalent of twenty working days. The UPR should be carried out in sessions additional to the minimum ten weeks called for in the G.A. resolution.

As set out in G.A. resolution, members of the HRC must be reviewed during their term of membership. Because the terms of the initial members will be staggered, those with the shortest terms should be reviewed first in order to complete their reviews during their abbreviated term of membership.

¹ "Council will ... Undertake a universal periodic review, based on objective and reliable information, of the fulfillment 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; the review shall 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; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session" (General Assembly resolution 60/251, adopted on March 15, 2006).

Analysis of information

In order to fulfill the criteria of proceeding based on objective and reliable information as called for by the G.A. 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 peacebuilding missions and OHCHR field presences;
- OHCHR further prepares summaries of available reports on the country from domestic, regional, and international nongovernmental and intergovernmental organizations.

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 organizations;
- 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.

As a result of the UPR, the session rapporteur, or the HRC, may recommend that a country rapporteur be appointed for the state concerned, who would then operate in a similar fashion to the current country-specific mechanisms. Because each country will only be subject to UPR once every five years, the decision to establish or to terminate a country-specific mechanism should also be within the province of the HRC acting outside of the UPR system (see below).

Country Situations

The Justification for Country Resolutions

The introduction of the Universal Periodic Review paves the way for a more comprehensive assessment of the human rights performance of all U.N. member states. However, the Council will need to retain an effective tool in cases of gross, systematic, and/or sudden and severe violations of human rights.

Adoption of a country resolution by the Commission on Human Rights and now by the HRC is the most definitive method developed by the international community to call attention to the violation of human rights by a government. Such resolutions have usually been part a cumulative process of heightening scrutiny within a combination of multilateral pressures on a state to improve its human rights performance. In some cases, country resolutions have helped forge an international consensus that the government in question violates human rights, given legitimacy and protection to beleaguered national human rights activists, and focused on particular steps that the government needs to take to satisfy the international community. (This last impact could be enhanced if country resolutions established “benchmarks” by which a government’s performance could be judged in subsequent sessions.) This has been exemplified in the past, including in the early days of the CHR’s scrutiny of country situations, notably in the cases of Chile, South Africa, Guatemala, Argentina, Turkmenistan, and Myanmar.

The failure of the CHR to address urgent country situations sends a powerful message to governments that they can violate human rights with impunity. The failure to adopt resolutions on Iraq in 1988 and 1989, Chechnya in 2002, 2003, and 2004, Darfur in 2004, and Uzbekistan in 2005 emboldened human rights violators, undermined overall efforts by the international community to effectively address human rights violations in these countries, and profoundly discredited the Commission.

Resolutions addressing violations of human rights in specific countries must thus remain a central aspect of the new Human Rights Council's work. Indeed, one of the few specifications for the new Council that was prescribed in the 2005 World Summit Outcome² and reiterated in the resolution creating the new Council³ provides that "the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon." Suggestions to impose restrictions on country-specific resolutions, including a proposed two-thirds supermajority requirement, were firmly rejected by member states in the negotiations and were not included in the final resolution.

The old system of "Item 9" resolutions ("Question of the violation of human rights and fundamental freedoms in any part of the world") and "Item 19" resolutions ("Advisory services and technical cooperation in the field of human rights") should be replaced by one agenda item, entitled "country situations." All country situations should be addressed under this single agenda item. Establishing a separate agenda item for any one country would smack of the politicization and selectivity criticized by many member states during the negotiations.

While the system of examining country situations has been rightly criticized in the past for over-politicization, the new composition and ethos of the HRC, plus the existence of the UPR, should go some way towards diminishing this. All states should thus retain the right to sponsor country-specific resolutions at such time and manner as they deem appropriate, but the more frequent meeting schedule and the universal review procedure expand the range of options available to the Council.

In some cases, the more frequent meeting schedule will allow member states sponsoring country-specific resolutions, and nongovernmental organizations supporting such resolutions, to initially address many situations through a resolution that makes recommendations to the government involved and may include the provision of capacity building services. If those recommendations are not implemented, however, and the state does not take other measures adequate to correct the human rights concerns identified in the resolution, the Council would need to move on to adopt stronger resolutions addressing the situation.

² General Assembly resolution 60/1, para. 159.

³ General Assembly resolution 60/251, para. 3.

The Interplay between UPR and Country Resolutions

Some states view UPR as a substitute for country-specific resolutions. It may be in some instances, but not in many others. The amount of time before the next scheduled periodic review, and the urgency and gravity of the human rights situation in a country, will be factors for Council members to consider in deciding whether to adopt a country-specific resolution or await the next periodic review.

Further, peer review assumes good faith on the part of the government under review in complying with treaty obligations and other human rights commitments voluntarily assumed. Such peer review without the possibility of a country resolution is inadequate in cases in which violations are the result, as they often are, of willful government misconduct. Indications of bad faith by the government involved—e.g. deliberate governmental misconduct that violates human rights, or a refusal to implement Council resolutions—will augur for the adoption of a country-specific resolution.

Finally, the periodic review process may itself demonstrate the need for a country-specific resolution, either because the government involved has not implemented the recommendations of the review or otherwise improved the human rights issues identified, or because deliberate governmental misconduct is identified in the review.

Country-Specific Mandates

The CHR system of creating country-specific mandates (“special representatives,” “special rapporteurs,” and “experts”) allowed it to maintain an ongoing scrutiny of situations of concern. The rapporteur system, in particular, permits greater possibilities for monitoring progress, setting benchmarks, engaging in dialogue with the government, and evaluating the implementation of recommendations.

Where there is a country rapporteur, he or she could also serve as the session rapporteur for the UPR of that country.

In some particularly grave situations, having a country rapporteur undertake one or two missions of a couple of weeks duration each year is manifestly inadequate to deal with abuses, and consideration might be given to full-time rapporteurs as well as the greater use of in-country human rights offices to monitor and report on abuses. Such offices, in places such as Cambodia, Colombia, and Nepal, have made important contributions to the protection and promotion of human rights.

With three sessions a year, the HRC should have the opportunity to establish more in-depth briefings and interactive dialogues with the special rapporteurs to enable more serious consideration and more careful responses to the problems identified.

In country situations that are also on the agenda of the Security Council, more systematic arrangements should be put in place to ensure briefings of the Security Council by the special rapporteurs since human rights problems so often lay at the heart of the peace and security questions being considered.

Convening Additional or Emergency Sessions

A prime feature of the new Council is its ability to address serious human rights situations more expeditiously, both because it will meet at least three times a year, and because special or emergency sessions must be called on the request of only one-third of the membership. Inherent in the concept of the “responsibility to protect,” which has recently been endorsed by both the General Assembly and the Security Council, is the need for an early response to deteriorating human rights situations before they become grave enough to warrant more extreme measures by the international community.

It is vital that the Council make use of this element of the resolution in a principled and objective way. Addressing human rights crises or deteriorating human rights situations in a timely fashion is an essential measure that can both save lives and prevent the worsening of political crises that so often occurs when unchecked human rights violations and ongoing impunity lead to downward spirals of violence and abuse.

Examples of recent human rights situations that demanded an urgent and effective response from the international community and which would provide extremely strong reasons for convening an additional emergency session by the HRC include the escalating violence in Darfur in 2004, the Andijan massacre in Uzbekistan in May 2005 and its fallout, and the wide scale forced evictions in Zimbabwe in 2005.

Review of Special Procedures

The system of special procedures is one of the most positive features that the HRC inherits from its predecessor, the Commission on Human Rights. These special procedures are the backbone of the nascent Council. There are currently over forty rapporteurs, representatives, experts, and working groups covering countries and thematic concerns such as torture, violence against women, arbitrary detention, and the right to health. Their role is to provide independent, expert advice to the HRC in dealing

with human rights issues around the world. This includes seeking and receiving information on allegations of human rights violations, transmitting communications to relevant governments and seeking clarification on allegations, carrying out fact finding missions, responding to emergencies, providing legal analyses, and issuing country-specific and thematic recommendations.

Special procedures have made extremely important contributions over the years on both country-specific and thematic issues. Even the threat of the appointment of a country-specific rapporteur has sometimes encouraged states to make genuine efforts to improve their human rights records. The recommendations of the Working Group on Enforced or Involuntary Disappearances are considered to have helped bring down the number of “disappearances” in Sri Lanka in the early 1990s. The Guiding Principles on Internal Displacement developed by the special representative of the secretary-general are applied as a standard by an increasing number of states, United Nations agencies and regional organizations. The Special Rapporteur on extrajudicial, summary, or arbitrary executions has succeeded in placing the issue of “honor killings” on the international agenda. In its Deliberation No.5, which was welcomed by a number of states, the Working Group on Arbitrary Detention established criteria for determining, in coordination with the U.N. High Commissioner for Refugees, whether or not the deprivation of liberty of asylum seekers and immigrants may be arbitrary

The review of the special procedures that is contemplated in the General Assembly resolution should be the occasion for a thorough stocktaking of individual mandates in order to identify possible overlaps, but it should also review the system as a whole and identify gaps in human rights issues currently covered by existing mandates with the view to filling them. The goal of the review should, of course, be to strengthen—not weaken—the system.

There is no set formula for rationalizing the HRC’s inherited ability to receive independent information on violations of human rights, to monitor ongoing crises and formulate concrete recommendations based on independent expert advice, to afford protection and remedies to victims, and to address non-compliance. During the year ahead, HRC members must be guided by protection needs and carve out the best international response the HRC can provide through a system of special procedures; in pursuing this task, the Council must look at issues of substance and not merely at numbers.

The following areas will be central to any effective review:

- An analysis of the roles and functions of the special procedures including the type of monitoring function the HRC decides it needs. A discussion on the rationale and objectives of the special procedure system as a whole will be important;
- Coordination among the special procedures including creation of an OHCHR clearing-point for all special procedures' visits and invitations;
- Methods of work, including the need and limits of harmonization (bearing in mind the difference in nature of some mandates) and the need to issue concrete and measurable recommendations that are followed up by the HRC and by U.N. agencies in country;
- Member states' cooperation with special procedures including follow up on standing invitations and response to communications;
- Ensuring follow-up of recommendations and reporting back to the HRC;
- Outreach to U.N. agencies and others on the ground to promote the implementation of recommendations, including where appropriate, training and capacity building;
- Mainstreaming of gender and age concerns into the work of all mandates as well as attention needed for the specific protection needs of groups such as non-citizens, minorities, persons with disabilities, and victims of violations motivated by sexual orientation;
- Resources required to allow for more research and analytical support to the special procedures;
- Reporting to the HRC and interaction with members and observers including nongovernmental organizations ("interactive dialogue");
- Strengthening selection criteria and the selection process for mandate holders to emphasize independence, expertise, and demonstrated commitment to human rights.

Additionally, as this review takes place within an overall changing context, HRC members should reflect on special procedures' coordination with other mechanisms of the international human rights system including the universal periodic review and the treaty monitoring bodies.

At the review, individual mandate holders should be invited to present the specificity of their mandate, list its essential elements, best practices, obstacles, and areas for

improvements. An urgent first step should be to allocate resources to the Coordination Committee set up in 2005.

Conclusion: Towards more effective follow up and implementation

The credibility of the new HRC will depend, to a very large extent, on how its members resolve some of the issues laid out in this paper and whether decisions taken reflect real and principled commitments to human rights or the politicized machinations and deal-making that so characterized the Commission on Human Rights.

Another critical factor will be the resolve shown by the HRC to provide effective follow through on the recommendations of its various procedures and decisions set out in its own statements and resolutions.

It is vital that an effective and well-resourced mechanism be established within OHCHR to ensure that all decisions and recommendations are effectively followed up and implemented, and that there be a system of reporting back to subsequent sessions of the HRC on progress made.

Effective implementation of recommendations will require support from U.N. agencies in country to provide the training, capacity building, technical assistance, and monitoring called for in resolutions. Other recommendations will require referral to the Security Council, ECOSOC, or other bodies of the U.N. system, or of regional organizations such as the African Union, the Organization of American States, the Council of Europe, or the Organization for Security and Cooperation in Europe.

The General Assembly has provided the architecture and new tools. Members of the HRC—and all interested states—must seize this historic opportunity to shape a Council that will make full use of these tools for the advancement of human rights and protection of victims. The world is watching.