



LUCIA NADER

International Relations Coordinator at Conectas Human Rights (www.conectas.org) and Executive Secretary of the Brazilian Committee of Human Rights and Foreign Policy. She holds a Bachelor's degree in International Relations from the Catholic University of São Paulo – PUC/SP (Brazil) and a postgraduate degree in Political Science, with a major in International Organizations, from the Paris Institute of Political Studies - Sciences Po/Paris (France).

Address: Conectas Human Rights
Rua Pamplona n. 1197, casa 4
01405030 São Paulo – SP Brasil
Email: lucia.nader@conectas.org
www.conectas.org

ABSTRACT

The UN Human Rights Council (HRC) in June 2007 completed its first year of activities having defined its principal institutional characteristics and its operating mechanisms. In this article, I propose to trace a brief history of this first year of the Council's activities and suggest some forms of action that can be taken by non-governmental organizations.

RESUMO

O Conselho de Direitos Humanos da ONU (CDH) completou, em junho de 2007, seu primeiro ano de trabalho com a definição de suas principais características institucionais e seus mecanismos de funcionamento. Neste artigo, pretende-se traçar um breve histórico desse primeiro ano de atividades do Conselho e sugerir algumas formas de ação por parte de organizações não governamentais.

RESUMEN

El Consejo de Derechos Humanos de la ONU (CDH) cumplió, en junio de 2007, su primer año de trabajo con la definición de sus principales características institucionales y sus mecanismos de funcionamiento. En este artículo se pretende trazar una breve memoria de este primer año de actividades del Consejo y sugerir algunas formas de acción de las organizaciones no gubernamentales.

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KEYWORDS

Human Rights Council – UN – NGOs – Commission on Human Rights



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THE ROLE OF NGOs IN THE UN HUMAN RIGHTS COUNCIL¹

Lucia Nader

“No society can develop without peace and security. No State can be secure if its people are condemned to poverty without hope. And no nation can be secure or prosperous for long if the basic rights of its citizens are not protected.”

Kofi Annan²

Introduction

In April 2006, the UN General Assembly approved the creation of the Human Rights Council (Council or HRC), making this body responsible for promoting universal respect for the protection of human rights and fundamental freedoms. The same document that breathes life into the HRC emphasizes that peace, development and human rights constitute the three pillars of the United Nations system. It also recognizes that the work of the new Human Rights Council should be guided by the principles of universality, impartiality, objectivity and non-selectivity – in a clear reference to the criticisms leveled against the Commission on Human Rights (Commission), the body that preceded it.

In the former Commission, Non-Governmental Organizations (NGOs) played an active and important role. There is no doubt that participation by NGOs in the new Council will continue to be essential, bringing to its attention local situations of human rights violations and monitoring the positions taken by its Member States. Neither is there any doubt that a stronger participation by NGOs from developing nations – the so-called Global South

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– will grow increasingly more necessary given, among other factors, the geographic composition of the HRC.

I propose, therefore, in this article: (1) to trace a brief history of this first year of the Council's activities; (2) to put into context the importance NGO participation; and (3) to suggest some forms of action that can be taken by these organizations in the leading international body for the promotion and protection of human rights. In the third part of this article, the information has been compiled into tables, in an attempt to make it easier to read and to demonstrate that participation by NGOs in the Human Rights Council should be ongoing, both at the HRC headquarters in Geneva and with the governments at the capitals of their own countries.

Review of the Human Rights Council's first year of activities

The UN Human Rights Council completed its first year of activities in June 2007, during its fifth session. Established by UN General Assembly Resolution 60/251,³ the HRC replaced the sexagenarian Commission on Human Rights that was grappling at the time with a serious credibility crisis, accused by Non-Governmental Organizations and States of selectivity and excessive politicization in dealing with human rights violations around the world.

The HRC is today the principal international body for the promotion and protection of human rights; it is responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in fair and equal manner”.⁴

The new body is comprised of 47 Member States elected by the General Assembly for a period of three years, respecting the following geographic distribution: 13 African States, 13 Asian States, 8 Latin American and Caribbean 13 Asian States, 6 Eastern European States and 7 Western European and other States.

Based in Geneva (Switzerland), the HRC must schedule no fewer than three ordinary sessions per year and it is also able to hold special sessions whenever necessary. In its first year, the HRC held five ordinary sessions and four special sessions to address the human rights situations in Palestine, Lebanon and Darfur. In addition, the Council also adopted: the International Convention for the Protection of all Persons from Enforced Disappearance⁵ and the draft of the Declaration on the Rights of Indigenous Peoples.⁶ Work also began on a draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Nevertheless, the primary focus of the HRC in these first twelve months

was its own institution-building. According to Res. 60/251, the Human Rights Council had a year starting from its first session⁷ to “assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights [...]”.⁸

The HRC approved, in its fifth session, Resolution 5/1,⁹ the result of intense and tumultuous negotiations. The document sets out the principal characteristics of its agenda and program of work, methods of work and rules of procedure, universal periodic review mechanism,¹⁰ special procedures, advisory committee and complaint procedure.

In light of the intense negotiations and the clashes that took place during the institution-building phase, it is clear that the Human Rights Council is not immune to the problems that undermined the credibility of its predecessor. Indeed, there are signs that excessive politicization and the prevalence of interests other than the promotion and protection of human rights in the positions taken by Member States may well have been inherited from the Commission on Human Rights.

Importance of the contribution of NGOs to the success of the new body

It is widely recognized that the active participation of NGOs in the former Commission on Human Rights was instrumental in the creation of international instruments, the approval of resolutions, the realization of studies and the creation of special procedures, among other things.¹¹ Article 71 of the UN Charter authorizes the action of NGOs and makes the Economic and Social Council (ECOSOC) responsible for regulating this participation. In this context, ECOSOC Resolution 1996/31¹² defines the principles and rights concerning formal participation by NGOs, its principal regulatory instrument being the concession of consultative status for civil society organizations.¹³

In the new Human Rights Council, the participation of NGOs is expressly guaranteed in Res. 60/251: “[...] the participation of and consultation with observers, including [...] national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 [...] and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities”.¹⁴

So far, NGOs have played an important role in the institution-building process of the HRC. In its first year, 284 NGOs participated in Council sessions, slightly less than in the former Commission.¹⁵

The role of NGOs in the Council is considered important to bring

to its attention the reality in places where human rights violations are occurring and to contribute their own particular expertise. Furthermore, it is vitally important for NGOs to keep track on the positions taken by HRC Member States and observers, with a view to influencing them whenever necessary.

More participation by NGOs from the Global South is vital not only because most of the major fundamental rights violations occur in these countries, but also because the geographic composition of the HRC gives them numerical superiority. Together, African and Asian nations hold 26 seats on the Council, that is, more than 55% of the total. Adding the 8 countries from Latin America and the Caribbean, this figure rises to 72%. Many of these countries question the legitimacy of the action and the credibility of the information issued by NGOs that are not from their respective countries or regions.

However, NGOs from the Global South represent today just 33% of the 3050 NGOs that enjoy consultative status with ECOSOC¹⁶ and can, therefore, participate fully in the Council sessions.

There are countless challenges facing NGOs' participation, foremost among them: (1) the difficult process of obtaining consultative status for those that do not already have it; (2) the high financial costs and the unavailability of staff to participate in the sessions in Geneva; (3) the lack of familiarity with the workings and procedure in the HRC; (4) the lack of access to information, including language barriers; and (5) the difficulty deriving any tangible benefits from this participation in the day-to-day work in their countries of origin.

Given these challenges, it is important to develop innovative forms of action. For example, the permanent engagement of NGOs from the Global South with their own governments at home is essential. All major foreign policy issues are decided on a national level, primarily in the Foreign Relations Ministries, including the positions to be taken by each country's diplomatic missions and delegations in the Human Rights Council. It is imperative, then, for NGOs to call on their respective governments for more transparency and formal mechanisms to participate in the preparation and implementation of the guidelines that will govern their actions in the HRC.

It is also crucial for NGOs to coordinate strategies and develop joint initiatives for combined action within the HRC, both in Geneva and at home, to strengthen individual actions, maximize resources and share experiences.

There is no doubt that responsibility for the success of the HRC lies squarely with the countries that comprise the new body. Resolution 60/251 determines that the status of the Council within the hierarchy of the UN will be reviewed in 2011 and that it may become one of its principal bodies, on a

par with the Security Council and the Economic and Social Council. Such a change in structure would, more than just being symbolic, demonstrate the interdependence between human rights, development and peace. This review will doubtless be a good indicator for evaluating the first five years' work of the Council, which by then must prove itself effective in combating human rights violations, wherever they may occur.

Non-Governmental Organizations will be responsible for monitoring and pressuring States to place the protection of human rights and human dignity above any other interests. It is not too early to assert that NGOs have a lot of work ahead of them and that their engagement with the HRC is now more necessary than ever. This article proposes to contribute to the success of the initiatives taken by these organizations.

Principal characteristics of the HRC, innovations in relation to the Commission on Human Rights, challenges for its success and forms of NGO action

What follows is a description of the main characteristics of the Human Rights Council, the innovations in relation to the former Commission on Human Rights, some of the challenges the Council will face and suggestions for concrete forms of action by Non-Governmental Organizations in this new body.

It is worth pointing out that the suggestions on how NGOs can engage with the Human Rights Council are not limited to the strategies permitted only for NGOs that have consultative status with ECOSOC. These suggestions also place little importance on the distance between NGOs and the Council's headquarters in Geneva.

The information contained in the following tables draws on General Assembly Resolution A/RES/60/251 and Human Rights Council Resolution A/HRC/5/1, as well as articles and reports on the topic that have been published to date.¹⁷ There are in all seven tables, in the following order:

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- 4) Universal Periodic Review Mechanism - page 17
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- 7) Complaint Procedure - page 22

1) Election and membership

The electoral process is considered one of the major differences of the Human Rights Council in relation to the former Commission on Human Rights, since members are elected by the UN General Assembly and criteria have been included for presenting candidatures. Furthermore, the possibility exists in the Council to suspend the mandates of members that commit systematic human rights violations. The new composition of the HRC is also quite innovative, giving African and Asian countries a proportionally superior numerical force than they held in the Commission.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new	Forms of action by NGOs
Membership	<p>The Council is comprised of 47 countries¹⁸ and any UN member state can be a candidate</p> <p>Geographic composition: 13 countries from Africa, 13 from Asia, 6 from Eastern Europe, 8 from Latin America and the Caribbean and 7 from Western Europe and Others Countries¹⁹</p>	<p>Number of Member States is lower than the 53 members of the former Commission</p> <p>African and Asian countries have 26 seats on the HRC, 55% of the total. This comfortable majority gives them the power to influence the agenda and the priorities to be addressed by the Council, as well as the numerical advantage to approve, or not, resolutions</p>	<p>As a result of the new composition, the relationship between African and Asian countries and other countries is likely to be different</p>	<p>Monitor and, if necessary, influence the positions taken by HRC countries and observers, particularly those from the African and Asian groups, remembering that each group selects a country as a representative, so working closely with that country becomes all the more essential. It is important to highlight that the action of African and Asian NGOs is extremely important because many of the countries from these groups question the role of NGOs that are not from their own countries or regions</p>
Criteria for candidature	<p>There are two criteria:</p> <ol style="list-style-type: none"> 1. The State must contribute to the promotion and protection of human rights; 2. Each State must make a voluntarily and public commitment, presenting a document that justifies its candidature and spells out its intentions for the Council (Voluntary Pledge and Commitment) 	<p>Criteria for candidature are considered one of the principal innovations of the HRC, in particular the need to publicly present a justification for their candidature and to spell out their intentions for the Council</p>	<p>Difficulty gauging the contribution of each country to the promotion and protection of human rights</p> <p>Lack of definitiveness about the voluntary commitments, making it difficult to check whether or not they are being fulfilled</p>	<p>Pressure the country candidates for their voluntary commitments to contain definitive responsibilities to be fulfilled during their mandates so they can, as a result, be monitored by civil society²⁰</p>

Election and membership

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new	Forms of action by NGOs
Elections	Member countries are elected by the UN General Assembly, in a secret ballot by an absolute majority (at least 97 of the 192 votes)	Elections held directly by the General Assembly have more credibility and legitimacy than those that were held by members of ECOSOC for the former Commission	Importance of having competitive elections, with more candidates than available positions, so only the best candidates are actually elected	Promote joint campaigns and initiatives to support or oppose given candidates, depending on their human rights records and potential commitment to the HRC, with the objective of influencing the votes of countries in the General Assembly
Commitment	The elected countries must make a commitment to: 1. Uphold and promote the highest standards in the promotion and protection of human rights 2. Cooperate with the work of the HRC 3. Be reviewed by the Universal Periodic Review Mechanism during their mandates	The mandatory review by the Universal Review Mechanism during the mandate becomes a "cost of membership" ²¹ to the Council	The credibility of the HRC is closely linked to the quality and the effective participation of its members ²²	Monitor the positions taken by all States on the HRC to determine their commitment to the success of the Council, with a view to influencing them whenever necessary
Mandate	Mandate of 3 years with the possibility of 1 consecutive reelection The General Assembly can suspend the mandate of any country that commits systematic human rights violations - by a two-thirds majority of members present and voting	In the former Commission, there were no limits on consecutive reelections, nor the possibility of suspending mandates	The two-thirds majority required to suspend a mandate makes this prerogative of the General Assembly, in practice, difficult to apply ²³	Work together with the UN General Assembly to consider the suspension of a mandate whenever necessary

2) Agenda and program of work

The agenda defines the items to be addressed by the Human Rights Council in its ordinary sessions and that are, therefore, incorporated into the Council's program of work both for the whole year and for each individual session.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Principles	The agenda should be based on the principles of: universality, impartiality, objectivity and non-selectivity, constructive dialogue and co-operation, predictability, flexibility and transparency, accountability, balance, inclusiveness/ comprehensiveness, gender perspective and implementation and follow-up of decisions	The agenda of the Commission did not define the principles it should be based on	The annual calendar, as well as the agenda and program of work for each session, should be broadly publicized and predictable enough to enable those outside Geneva, including NGOs, to plan to weigh in on and/or participate in the sessions	Monitor the information released about the agenda and the program of work for the sessions on the HRC extranet ²⁴
Items	Comprised of 10 items: (1) Organizational and procedural matters; (2) Annual report of the UN High Commissioner for Human Rights and reports of the OHCHR and the Secretary General; (3) Promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development; (4) Human rights situations that require the Council's attention; (5) Human rights bodies and mechanisms; (6) Universal Periodic Review; (7) Human rights situation in Palestine and other occupied Arab territories; (8) Follow-up and implementation of the Vienna Declaration and Program of Action; (9) Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Program of Action; (10) Technical assistance and capacity building	The agenda is shorter, simpler and more concise than the Commission's, ²⁵ although general enough for human rights issues and topics to be addressed It does not separate Civil and Political Rights from Economic, Social and Cultural Rights	The agenda continues to contain a specific item on the "Human rights situation in Palestine and other occupied Arab territories" (item 7), which, in itself, demonstrates the selectivity and politicization inherited from the former Commission Country resolutions ought to be adopted throughout the whole agenda and not just in the item "Human rights situations that require the Council's attention" (item 4). Otherwise, there is a risk of excessive politicization of the agenda, just like in the former Commission ²⁶	Work together with foreign relations ministries, delegations in Geneva, the bureau and the secretariat of the Council to include on the agenda or dedicate more time to priority issues and situations. Also, request information on the positions that countries plan to take on each item, with a view to influencing them if necessary

3) *Methods of work and rules of procedure*

These define the general functioning of the Council's ordinary and special sessions, other possible types of meetings and the quorum for approving resolutions, among other things.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Ordinary and special sessions	<p>At least 3 ordinary sessions should be held per year, including one main session,²⁷ for a minimum total of 10 weeks of work</p> <p>Special sessions may be held whenever necessary, at the request of a member of the Council and with the support of one third of the Member States</p> <p>Both ordinary and special sessions should be public, unless otherwise decided, and permit the participation of NGOs with consultative status</p>	<p>An increase in the number of ordinary annual sessions to 3, while in the Commission there was only one</p> <p>It is easier to convene special sessions, which will probably develop into an important mechanism for addressing situations in specific countries²⁸</p>	<p>The increase in the number of ordinary sessions presents a challenge for the participation of NGOs from outside Geneva, since it will involve additional costs and staff availability</p> <p>Guarantee effective dialogue between States and NGOs before and during the sessions</p>	<p>Forms of action by NGOs</p> <p>Keep track on the sessions via internet transmission,²⁹ through the information posted on the website of the UN High Commissioner for Human Rights and the HRC extranet, in addition to the information released by NGOs that participate in the sessions</p> <p>Monitor and attempt to influence the positions taken by countries during the sessions – through the proper authorities at home or through the delegations in Geneva</p> <p>Influence Member States to request, whenever necessary, special sessions to be scheduled, convincing them of the importance and urgency of dealing with a given human rights issue or situation</p> <p>Furthermore, NGOs with consultative status may:</p> <ol style="list-style-type: none"> 1. Submit written statements for official review during the sessions, besides circulating other documents during the sessions 2. Attend the sessions³⁰ and make oral presentations³¹ 3. Schedule side-events during the sessions to discuss specific issues and situations of human rights violations 4. Organize informal meetings with delegations during the sessions 5. Call press conferences to publicize the results of the session

Methods of work and rules of procedure

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Other types of meeting	<p>1. Meetings for reports and/or informal consultations on potential resolutions or decisions</p> <p>2. Open-ended informal meetings - convened by the president of the HRC to discuss the agenda of the sessions, provide information on proposed resolutions, etc</p> <p>3. Organizational meetings – held both at the start of each HRC working year to elect the president and vice presidents and also before each session to address various matters</p> <p>4. Debates, seminars, working groups and round tables – that can occur and are defined on a case-by-case basis</p>	<p>Provisions for meetings and informal consultations that may be attended by different actors, including NGOs</p>	<p>Difficulty for NGOs outside Geneva to participate and obtain information (it is worth noting here the efforts of the secretariat³² of the Council to lend publicity to these meetings and release the information resulting from them)</p>	<p>NGOs with consultative status may participate in the various meetings and open-ended informal consultations that precede or occur during the sessions, as well as those that take place between one session and the next. Participation in the organizational meetings is essential to obtain relevant information on the program of work and issues and situations that will be addressed in each session</p>
Adoption of documents	<p>In addition to resolutions and decisions, the HRC can adopt recommendations, conclusions, summary of the discussions and statements of the president</p> <p>The quorum for approving resolutions or any other decision of the HRC is the simple majority of members present and voting</p>		<p>Consolidation of a Council that is driven by results and the effective implementation of the recommendations, not just by the number of resolutions it approves</p> <p>Curb the prevalence of voting in regional blocks and interest groups, which are normally politically motivated, rather than voting based on an analysis of the merits of the proposed action³³</p>	<p>Attempt to identify and, if necessary, influence the position (vote) of each country on a given resolution</p> <p>After the vote, draw attention to the votes considered “problematic”, calling on the countries to justify their positions</p> <p>Observe and monitor the effective implementation of the recommendations contained in the resolutions, in the special procedures reports or in any other decision of the HRC</p>

4) *Universal Periodic Review Mechanism*

Mechanism created by General Assembly Resolution 60/251³⁴ that determines that all UN member states (universally) will periodically undergo a review process. The objective of the review is to determine the fulfillment by States of their international human rights obligations and commitments. It is considered the most innovative instrument of the Human Rights Council given the universality of coverage and the intention to combat the selectivity and double standards in responding human rights violations that existed in the Commission on Human Rights. The Council's Member States undergo a review during their mandates and the review cycle lasts 4 years, meaning that 48 countries will be reviewed each year.

Since it is an entirely new mechanism, the table below does not contain a column on the innovations in relation to the former Commission on Human Rights.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Challenges for the success of the new body	Forms of action by NGOs
Objectives	<ol style="list-style-type: none"> 1. Improve the human rights situation on the ground 2. Determine the fulfillment by States of their obligations and commitments³⁵ 3. Enhance the State's capacity and offer technical assistance 4. Share best practices among States and other stakeholders 5. Provide support for cooperation in the promotion and protection of human rights 6. Encourage full cooperation and engagement with the HRC, other human rights bodies and the UN High Commissioner for Human Rights 	<p>Actually improve the human rights situation on the ground, not just be a process of accountability by the country under review</p> <p>Difficulty measuring fulfillment by States of their human rights obligations³⁶</p> <p>The Review Mechanism cannot in any way compromise the ability of the Council to use other mechanisms to respond to gross and systematic human rights violations³⁷</p>	<p>During the report preparation process, NGOs can question their States about how they intend to improve the human rights situation on a national level and about how the periodic review mechanism will contribute to this</p>
Information to be considered	<ol style="list-style-type: none"> 1. Report prepared by the State under review, through a broad consultation process with all relevant national stakeholders, including NGOs, and observing the general guidelines – 20 pages 2. Information prepared by the UN High Commissioner for Human Rights: (1) A compilation of the information contained in the reports of treaty bodies, special procedures and others - 10 pages (2) A summary of the information presented by NGOs, National Human Rights Institutions and other relevant stakeholders – 10 pages 	<p>Quality and definitiveness of the information presented by the State</p> <p>Effective participation by NGOs on a national level and limitations for submitting information to the UN High Commissioner for Human Rights relating to language, specific format, number of pages and access to the High Commissioner</p> <p>Increased fragmentation of the UN human rights protection system, since the Treaty Committees have no formal role in the review mechanism³⁸</p>	<p>Accompany nationally the preparation of the official report to be presented by the State</p> <p>Submit relevant information to be considered by the UN High Commissioner for Human Rights for the document on information presented by civil society</p>

Universal Periodic Review Mechanism

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Challenges for the success of the new body	Forms of action by NGOs
Process of the review	<p>The review will be conducted in a Working Group comprised of 47 members of the Council in 3 specific annual sessions. Each State may decide on the composition of its delegation.</p> <p>Stages of the Review/Interactive Dialogue: (1) State presents its report; (2) Questions and commentary by HRC members; (3) Answers by the State under review; (4) Presentation of final document with recommendations; (5) Time for comments from the States and/or answers to new questions; (6) Comments by other stakeholders, including NGOs; (7) Adoption of the final document by the plenary of the Council</p>	<p>Since it is an “inter-governmental process” without the participation of independent experts, there is a risk of it being a superficial process with little information from the country under review and little exposure³⁹</p> <p>During the interactive dialogue, participation by NGOs is limited to the stage prior to the approval of the final document, meaning that they cannot pose questions or make a substantive contribution to the recommendations that are included in this document</p>	<p>Urge countries to include independent experts in their delegations for the review in the Working Group</p> <p>NGOs with consultative status may attend the review sessions</p> <p>Participation by NGOs from the same country and/or region as the State under review will be fundamental in this process</p>
Final document	<p>This report will be prepared with the assistance of rapporteurs appointed by 3 States selected by drawing lots, serving in their personal capacity. The State under review may veto one of the rapporteurs and request that one of the three is from its own regional group. A rapporteur may be excused from participation in a specific review process, being replaced by another candidate</p> <p>The final document will be approved in a Council plenary, with conclusions and/or recommendations and voluntary commitments, if any. The recommendations will be split into two categories: consensual (accepted by the State) and non consensual</p>	<p>The system of choosing the rapporteurs may open the door to the politicization of the review mechanism</p> <p>The provision for 2 levels of recommendations – those accepted and those not accepted by the State – weakens the authority of the HRC and may undermine their implementation</p>	<p>Devise strategies to influence the quality of the recommendations, among them releasing to the media the information presented by the States,⁴⁰ in the hope that the publicity will have an effect on the quality of the presentation and the final document</p>
Implementation of the recommendations	<ol style="list-style-type: none"> 1. The State is primarily responsible for implementing the recommendations/decisions 2. The next review cycle should consider the previous recommendations/decisions 3. The international community will help implement the recommendations/decisions, in consultation with the State concerned 4. The HRC may address, when necessary, cases of persistent non-cooperation with the review 	<p>Importance of the quality of the recommendations and of keeping track of their effective implementation on a national level</p> <p>The absence of concrete follow-up mechanisms makes it even more crucial for the Council, in the subsequent review, to insist on progress implementing the previous recommendations⁴¹</p>	<p>Observe and monitor, on a national level, the effective implementation of the recommendations, requesting information from the State and using innovative accountability methods, such as, for instance, the holding of public hearings by parliament</p> <p>Urge the HRC to conduct an ongoing follow-up of the recommendations made to the State and for these to serve as the basis for the subsequent review</p>

5) *Special procedures*

This is the mechanism whereby special representatives and rapporteurs, independent experts and working groups examine, monitor and prepare reports on the situation of human rights: (1) in specific countries (country mandates) or (2) on specific issues (thematic mandates).⁴² During the institution-building process, special procedures were one of the most controversial topics, with questions raised about the need for their existence and an attempt to weaken this system by various member states.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Criteria for Eligibility	<p>1. Technical and objective criteria: non-accumulation of functions/mandates in the UN, a tenure of no more than 6 years for any mandate and a restriction on holding a position in government or any other organization in their country of origin that could cause a conflict of interest</p> <p>2. General criteria: expertise, experience in the field of the mandate, independence, impartiality, personal integrity and objectivity</p>	The definition of technical and objective criteria for the eligibility of special procedures mandate-holders	Despite progress identifying criteria, the atmosphere of hostility from countries that object to country mandates lead us to believe that it will be very difficult for new mandates to be created ⁴³	
Appointment process	<p>1. Public list prepared by the UN High Commissioner for Human Rights containing names of eligible experts nominated by governments, regional groups, international organizations, NGOs, other human rights bodies and individuals</p> <p>2. List sent to the Consultative Group, consisting of one person from each of the 5 regional groups, which selects eligible candidates for the vacancies and submits the new list to the president of the HRC</p> <p>3. From the recommendations of the Consultative Group, the president identifies a candidate for each vacancy</p> <p>4. Candidates are submitted to approval by the Council plenary</p>	The entire appointment process is new, particularly the preparation of the public list by the UN High Commissioner for Human Rights and the creation of the Consultative Group	The composition of the Consultative Group could lead to the politicization of the selection process by regional groups ⁴⁴	Recommend candidates for special procedure mandates to the UN High Commissioner for Human Rights and permanently accompany the public list prepared by this office

Special procedures

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Mandates and cooperation of the States	<p>Duration of the mandates: 3 years for thematic mandates and one year for country mandates</p> <p>According to Resolution 60/251, all current mandates will be reviewed⁴⁵</p>	<p>Prior definition of country and thematic mandate durations</p> <p>Preparation and approval of the Code of Conduct – CoC,⁴⁶ proposed by the African Group, containing a set of rules on working methods and standards of conduct for special procedures mandate-holders, particularly during missions to the countries</p>	<p>Guarantee that the Code of Conduct does not affect the independence or effectiveness of the work of the mandate-holders</p> <p>Assure that the review of the mandates is not politicized and takes into account the real need for the existence of the special procedures</p> <p>Diminish the refusal to cooperate by States that, in many cases, do not respond to the communiqués they are sent by the mandate-holders or do not permit the entry of the mandate-holders into their territories</p>	<p>Submit requests to mandate-holders for them to visit given countries or to work on a specific issue</p> <p>Organize and/or participate in meetings between mandate-holders and civil society during missions to the countries</p> <p>Pressure States to extend open invitations to all mandate-holders, accepting <i>a priori</i> visits to the country, and to respond to their requests for information</p>
Presentation of reports	<p>The presentation of the reports prepared by the special procedures occurs during the Council sessions, in a stage known as interactive dialogue</p>	<p>This interactive dialogue already existed in the Commission. However, some positive innovations can be observed in the Council, such as the allocation of 1 full hour for the presentation of the reports by each rapporteur and the participation by NGOs after each presentation, which appears to have improved the level of participation by Member States in these stages⁴⁷</p>	<p>Assure the quality of the interactive dialogues, in terms of both the level of participation and their outcomes</p>	<p>Keep track on the release of reports by special rapporteurs, which occurs before the sessions in which they will be presented</p> <p>Observe and monitor the effective implementation of the recommendations contained in the reports prepared by special rapporteurs</p> <p>In addition, NGOs with consultative status can participate in the interactive dialogues</p>

6) Human Rights Council Advisory Committee

This committee is a subsidiary body of the Human Rights Council that replaces the former Sub-Commission on the Promotion and Protection Human Rights (Sub-Commission). Its job is to provide advice on thematic issues of interest to the Council.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Function	<p>To provide expertise to the HRC in the manner and form requested by it, focusing on studies and research-based advice</p> <p>It cannot adopt decisions or resolutions, but it can recommend that the HRC address a given issue in more depth</p>	<p>Very little innovation, continuing with the tendency to weaken the mandate of the Sub-Commission that began in 2000</p>	<p>A fairly unpurposeful function, limited to thematic issues</p> <p>The Committee cannot act on its own initiative, which severely undermines its power to initiate studies and identify trends and gaps in human rights, among other things⁴⁸</p>	<p>Make suggestions to HRC Member States on issues to be addressed by the Advisory Committee</p>
Criteria for candidature, election and composition	<p>Comprised of 18 independent experts serving in their personal capacity, and respecting the following geographic distribution: 5 African States, 5 Asian States, 2 Eastern European States, 3 Western European and other States and 3 Latin American and Caribbean States</p> <p>A 3-year mandate with the possibility of re-election only once</p> <p>Criteria for nomination and election: 1. Technical and objective criteria 2. Individuals cannot be elected who: (1) hold positions in government or in an organization that could cause a conflict of interests and (2) who accumulate other functions in the UN</p> <p>They are elected by the HRC from a list prepared by the secretariat.</p> <p>Any UN member state, in consultation with National Human Rights Institutions and NGOs, can propose candidates for this list</p>	<p>A lower number of experts than the 26 members of the Sub-Commission</p> <p>Limitation placed on the duration of the mandate</p> <p>Existence and publicity of technical and objective criteria for nominating candidates and electing the experts</p>	<p>Assure the independence and quality/expertise of the members</p>	<p>On a national level, propose to the State the names of candidates and independent experts and express support or opposition for candidates being considered by the State, based on the criteria for nomination and election</p>
Sessions	<p>It will hold 2 sessions for a maximum of 10 working days per year</p> <p>Additional sessions may be scheduled and working groups created with the approval of the Council</p> <p>It should interact continually with States, National Human Rights Institutions and NGOs, which may participate in the sessions</p>	<p>It will hold 2 sessions per year, compared to the former Sub-Commission's single annual session.</p> <p>However, the Sub-Commission met for 3 weeks – more than the 10 days per year authorized for the new Advisory Committee</p>	<p>"To maximize the time that is available and to focus discussions, the Advisory Committee will need to organize its time well and develop a clear agenda for its sessions well in advance to enable NGOs to plan their participation"⁴⁹</p> <p>An uncertain future for existing working groups and a lack of clarity about the eventual creation of new groups</p>	<p>NGOs with consultative status can participate in the sessions and working groups of the Advisory Committee⁵⁰</p>

7) Complaint procedure⁵¹

Procedure through which individuals and NGOs can file complains of systematic human rights violations⁵² that occur in any part of the world and under any circumstances.

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Criteria for Admissibility	The communication of complaints of systematic human rights violations should: (1) Not have manifestly political motivations; (2) Contain a factual description, including which rights are being violated; (3) Not use abusive language; (4) Be submitted by the victim or a group representing/defending the victim; (5) Not be exclusively based on reports disseminated by the media; (6) Not be a case that is already being dealt with by UN bodies or special procedures, or a regional human rights system and (7) Only be presented when all domestic remedies have either been exhausted or proven ineffective	The Commission did not accept complaints if, given their scope, they could be dealt with by any of the special procedures or by any complaints mechanism established by a treaty ratified by the State ⁵³		Present complaints of systematic human rights violations. ⁵⁴ The country being accused does not need to have ratified human rights treaties
Process prior to engaging the HRC	Complaints must be examined by 2 Working Groups: 1 st - Working Group on Communications (WGC): it decides on the admissibility of the complaint. It consists of 5 independent experts, one from each regional group, appointed by the HRC Advisory Committee. If the communication is deemed admissible, it will be forwarded to the second working group 2 nd - Working Group on Situations (WGS): it can present the HRC with a report on the situation or decide to dismiss the case. It consists of 5 representatives appointed by HRC Member States, one from each of the 5 regional groups, who serve in their personal capacity The Working Groups should meet at least twice a year for at least 5 working days each time	More meetings held by the 2 Working Groups that need to present justifications for their decisions	Rebuild the credibility of the procedure, which was damaged in the final years of the Commission, when it faced major problems ⁵⁵ : (1) Difficulty obtaining information from States; (2) Double standards in the treatment of countries; (3) Sluggishness of the process, from communication to treatment by the Council; (4) Resolution 1503, although revised, proved to be inadequate on numerous occasions	Monitor the process by the Advisory Council of appointing the 5 members of the Working Group on Communications

Complaint procedure

	Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1	Innovations in relation to the former Commission	Challenges for the success of the new body	Forms of action by NGOs
Confidentiality, secrecy and information	<p>The entire process is confidential, unless the HRC decides otherwise following a recommendation by the WGS.</p> <p>The complainant may request that its identity remain in secret and shall be informed when: (1) the communication is registered by the complaint procedure; (2) the communication is deemed inadmissible by the WGC or forwarded to the WGS; (3) the communication is kept pending by one of the Working Groups and (4) the case is dismissed by the HRC, indicating the end of the process</p> <p>The State being accused should be kept informed in the aforementioned stages 2, 3 and 4</p>	<p>The complainant must be kept informed during the entire process and they may request that their identity be kept secret</p>	<p>Maintaining confidentiality will hamper, among other things, the action of NGOs</p>	<p>Make sure that the provision to keep the complainant informed throughout the process is upheld</p>
Role of the HRC	<p>The Council should consider the situations submitted by the WGS at least once a year and may take the following measures:</p> <ol style="list-style-type: none"> 1. Dismiss the case without taking any action 2. Keep the case open and request the State concerned to provide further information 3. Keep the case open and appoint an independent expert to monitor the situation and report back to the HRC 4. Make the case public 5. Recommend to the UN High Commissioner for Human Rights that it provide technical cooperation, capacity building assistance or advisory services to the State concerned 		<p>The procedure still does not offer any concrete response to remedy the situation of the victims⁵⁶</p>	<p>Keep check on the activities of the UN High Commissioner for Human Rights when the HRC requests that this office provide technical cooperation, capacity building assistance or advisory services to the State concerned</p>
Timetrames	<p>The State being accused should cooperate with the complaint procedure, supplying information whenever it is requested by the working groups within a maximum period of 3 months</p> <p>The timeframe between the communication of the complaint to the State concerned and the consideration of the case by the HRC should not exceed 24 months</p>	<p>Reinforcement of the need for cooperation by the State, with the establishment of a timeframe for sending information</p>	<p>Difficulty obtaining information from the States</p>	

NOTES

1. I am grateful to Thiago Amparo and Camila Asano for their help compiling the information contained in this article and for their tireless work with the UN Human Rights Council as staff members of Conectas Human Rights.
2. Former Secretary General of the UN, in a speech at the inaugural session of the Human Rights Council, "*The Secretary General Address to the Human Rights Council*", on 19 June 2006,
3. General Assembly, *Human Rights Council*, Resolution A/RES/60/251, 3 April 2006, available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf>, last access on 30 August 2007.
4. Ibid.
5. UN, International Convention for the Protection of all Persons From Enforced Disappearance, not yet in force, available at <<http://www.ohchr.org/english/law/disappearance-convention.htm>>, last access on 15 September 2007.
6. UN, Declaration on the Rights of Indigenous Peoples (draft), Res. 2006/2, 2006: available at <<http://www1.umn.edu/humanrts/hrcouncil2-2006.html>>, last access on 12 September 2007.
7. The first session of the Human Rights Council occurred from 19-30 June 2006 in Geneva.
8. General Assembly, *Human Rights Council*, Resolution A/RES/60/251, 3 April 2006, Paragraph 6.
9. Human Rights Council, Institution-building of the United Nations Human Rights Council, Res. A/HRC/5/1, 18 June 2007, available at < >, <<http://www.ohchr.org/english/bodies/hrcouncil/5session/reports.htm>> last access on 10 September 2007.
10. Created by Res. 60/251 of 3 April 2006, the General Assembly requires all UN Member States to submit to a periodic review to determine the fulfillment of their international human rights obligations and commitments.
11. International Service for Human Rights (ISHR) and Friedrich Ebert Stiftung, *A New Chapter for Human Rights* – a handbook on issues of transition from the Commission on Human Rights to the Human Rights Council, Geneva/Switzerland, June/2006, p.88, available at <www.ishr.ch>, last access on 21 August 2007.
12. UN, ECOSOC, Resolution 1996/31 - Consultative Relationship between the United Nations and non-governmental organizations, 25 July 2006, available at <http://www.un.org/esa/coordination/ngo/Resolution_1996_31/index.htm>, last access on 30 September 2007.
13. See the criteria for obtaining consultative status with ECOSOC in: ECOSOC, *How to obtain Consultative Status with ECOSOC*, available at <<http://www.un.org/esa/coordination/ngo/howtoapply.htm>>, last access on 11 September 2007.
14. General Assembly, *Human Rights Council*, Resolution A/RES/60/251, 3 April 2006, Paragraph 11.
15. In R. Brett, *Neither Mountain nor Molehill – UN Human Rights Council: one year on*, Quaker

United Nations Office, Geneva/Switzerland, August 2007, p. 13, available at <www.uno.org>, last access on 10 September 2007.

16. European NGOs represent 37% and North American NGOs 29% of the total. Data available in ECOSOC, *Number of NGO's in Consultative Status with the council by Region, 2007*, available at <<http://www.un.org/esa/coordination/ngo/pie2007.html>>, last access on 12 September 2007.

17. Special thanks to three bibliographic references that were crucial in developing this article: International Service for Human Rights (ISHR) and Friedrich Ebert Stiftung, *A New Chapter for Human Rights – a handbook on issues of transition from the Commission on Human Rights to the Human Rights Council*, *op. cit.*; Y. Terlingen, "The Human Rights Council, A New Era in UN Human Rights Work?", *Ethics & International Affairs*, v. 21, number 2, 12 June 2007 and M. Abraham, *Building the New Human Rights Council – outcome and analyses of the institution-building year*, Geneva/Switzerland, Friedrich Ebert Stiftung, August 2007, available at <www.fes-globalization.org/geneva>, last access on 11 September 2007.

18. For a list of current members of the HRC, see *Membership of the Human Rights Council*, available at <<http://www.ohchr.org/english/bodies/hrcouncil/membership.htm>>, last access on 30 August 2007.

19. In the Commission on Human Rights, the geographic composition was: 15 African countries, 12 Asian, 5 from Eastern Europe, 11 from Latin America and the Caribbean and 10 from Western Europe and other countries. Both in the Commission and in the Council, the geographic division is reflected in 5 "regional groups" that work together more or less cohesively: African group, Asian group, Eastern Europe group, America and the Caribbean group (GRULAC) and Western Europe and Others group (WEOG).

20. On this topic, see the Commonwealth Human Rights Initiative report, *Easier Said than Done – a report on the commitments and performances of the Commonwealth members of the UN Human Rights Council, 2007*, available at <www.humanrightsinitiative.org>, last access on 15 September 2007.

21. R. Brett, *op. cit.*, p. 5.

22. *Ibid.*, p.15.

23. C. Villan Duran, "Lights and Shadows of the new United Nations Human Rights Council", *Sur – International Journal on Human Rights*, no. 5, year 3, São Paulo/Brazil, 2006, p.11, available at <www.revistasur.org>, last access on 15 September 2007.

24. The Council's official documents are available on its official website <<http://www.ohchr.org/english/bodies/hrcouncil/>> or its extranet, <<http://portal.ohchr.org/>> (login: hrc extranet; password: 1session).

25. Commission on Human Rights, Resolution 1998/84, 24 April 1998, available at <<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/a2d51307fc6f017680256672004dd8c2?Opendocument>>, last access on 2 September 2007.

26. International Service for Human Rights (ISHR) and Friedrich Ebert Stiftung, *op. cit.* p.26.

27. *Main Session*, held annually in March, during which the High Level Segment will occur with the

participation of ministers of state and ambassadors of Member States.

28. Y. Terlingen, *op. cit.*

29. The sessions of the Human Rights Council are broadcast live on the internet at <<http://www.un.org/webcast/unhrc/index.asp>> (*webcasting*), last access 23 August 2007.

30. The only way NGOs without consultative status can participate in the sessions of the HRC is by joining delegations of NGOs with consultative status, when authorized by them and acting on their behalf.

31. After the interactive dialogue and debates, each accredited NGO is given 3 minutes to make their oral presentation.

32. The Office of The High Commissioner for Human Rights acts as the secretariat and it is responsible for translating, printing, circulating and preserving all official documents of the HRC.

33. *A New Chapter for Human Rights – a handbook on issues of transition from the Commission on Human Rights to the Human Rights Council*, *op. cit.*, p. 28

34. General Assembly, *Human Rights Council*, Resolution A/RES/60/251, 3 April 2006, Paragraph 5.

35. According to Resolution A/HRC/5/1, the basis of the review will be the: (1) UN Charter, (2) Universal Declaration of Human Rights, (3) Conventions and covenants to which the State is party, (4) Voluntary pledges and commitments made by States – including those undertaken when presenting their candidatures for election to the HRC, (5) Applicable international humanitarian law.

36. C. Villan Duran, *op. cit.*

37. International Service for Human Rights (ISHR) and Friedrich Ebert Stiftung, *op. cit.*, p.84

38. C. Villan Duran laments that no permanent institutional working relations were established between the Council and the Treaty Committees, in C. Villan Duran, *op. cit.*, p. 15.

39. According to P. Hicks (Human Rights Watch), "The possibilities of using these reviews to expose violations and push for change are vast, but the spirit of 'protect our own,' which has limited action by the council so far, could infect these reviews as well," in P. Hicks, "Don't Write it Off Yet", *International Herald Tribune*, 21 June 2007, available at <www.hrw.org>, last access on 22 August 2007.

40. M. Abraham, *op. cit.*, p.40.

41. See also Amnesty International, "Conclusion of the United Nations Human Rights Council's institution building: Has the spirit of General Assembly resolution 60/251 been honoured?", 20 June 2007, available at <www.amnesty.org> Index: OIR 41/015/2007 (Public), last access on 15 August 2007.

42. See the list of current special procedure mandate-holders (thematic and country) at <<http://www.ohchr.org/english/bodies/chr/special/index.htm>>, last access 15 September 2007.

43. M. Abraham, *op. cit.*, p. 29.

44. *Ibid.*, p. 5.

45. However, the special procedure mandates for Cuba and Belarus were eliminated in the 5th Session of the HRC, as a result of political pressure from the two countries.

46. NGOs were categorical and persistent in their attempt to convince the African group there was no need to prepare a code of conduct for special procedures mandate-holders, fearing that this code could limit the autonomy and independence of the system. Human Rights Council, Resolution A/HRC/5/L.3/Rev.1 (Code of Conduct), 18 June 2007
47. R. Brett, *Neither Mountain nor Molehill – UN Human Rights Council: one year on*, *op. cit.*, pp 5 and 9.
48. M. Abraham, *op cit.*, p.17.
49. *Ibid.*, p. 18.
50. In the Sub-Commission, it became common practice for NGOs without consultative status to participate in the Working Groups, which could lead to the same thing happening in the new Advisory Committee.
51. The complaint procedure of the former Commission on Human Rights was based on ECOSOC Resolutions 1503 (XLVIII), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/1970.1503.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/1970.1503.En?OpenDocument), and its revised version, Resolution 2000/3, of 19 June 2000, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.RES.2000.3.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.RES.2000.3.En?OpenDocument), last access on 12 September 2007. The new complaint procedure draws on various characteristics of both these resolutions.
52. Individual cases are not accepted.
53. M. Abraham, *op. cit.*, p. 21.
54. These should be submitted to the UN High Commissioner for Human Rights, even by NGOs without consultative status with ECOSOC.
55. International Service for Human Rights (ISHR) and Friedrich Ebert Stiftung, *op. cit.*, p.66
56. *Ibid.*, p.65