

## The Human Rights Council

Since March 15th, 2006, Human Rights have been promoted within the United Nations from the rank of a functional body of the Economic and Social Council to the rank of a subsidiary body of the General Assembly, in other words one of the main UN institutions. Before 2006, Human Rights were the concern of the called United Nations Commission on Human Rights. However, on the occasion of the reform process launched within the UN, the Secretary-General himself proposed in March 2005 the creation of a new entity, more credible and with a more extensive field of competence. Indeed, the previous Commission was accused to tarnish the UN image and to sully its credibility, because some states sought to be elected in the Commission not to fight for Human Rights, but to escape from critics. The Human Rights Council (HRC) has been consequently created in March 2006 and held its first session three months after. The HRC is composed of 47 Member States and is helped in its work by the Human Rights Council Advisory Committee, composed of 18 experts in the field of human rights. The Advisory Committee has no competence to adopt resolutions or decisions; its only function is to provide expertise to the Council and to bring implementation-oriented recommendations. This reform within the UN system brought Human Rights to a high consideration and induced an increasing involvement of the civil society in the promotion and protection of Human Rights. The different means used by the HRC prove that.

For example, one of the most important changes with this new entity was the establishment of the “**Universal Periodic Review**” (UPR), which consists in monitoring the implementation of Human Rights in all Member States without exception. It means that each State is subjected to a three-hour review during specific sessions, gathering the Member States of the HRC, but also Member States observers and representatives of NGOs who are allowed to expose their point of view before the final recommendations to be adopted. And yet, it is worth-noticing that the review is based on three documents:

- a report written by the State concerned, called for this purpose to evaluate the implementation of Human Rights in their own countries in collaboration with all relevant stakeholders
- a compilation of the relevant information contained in treaty bodies and official UN documents prepared by the Office of the High Commissioner for Human Rights (OHCHR)
- and another report also made by the OHCHR about NGOs positions on the State concerned

At the end of the session, a report is written, “*consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned*”<sup>1</sup>.

Then, for example, as far as Poland is concerned, its review has been held on the 1<sup>st</sup> session of UPR, as well as 15 other countries. At this occasion, Federacja na Rzecz Kobiet i Planowania Rodziny denounced some violations of Human Rights at stake in Poland: the criminalization of abortion which led women to seek for unsafe abortion, the fact that the anti-abortion law was still more restrictive *de facto* than *de jure*, the limited access to contraceptives, and the limited access to comprehensive sexual education. Amnesty International also expressed its concern at this time about continual attacks against LGBT

---

<sup>1</sup> Art.26 of the institution-building package of the HRC. It is a word document which may be found on Internet while googling “human rights council institution-building package”

people, but also about police ill-treatment and racism, violence against women, refugees and secret-detention centers<sup>2</sup>.

We have to bear in mind though that the purpose of the HRC is not to blame countries, but to help them remedying to the Human Rights violations. That's why the UPR mechanism is based on cooperation and the country under review has to be fully involved in the process. The final outcome should then include, inter alia, an objective assessment of the situation, but also, if needed "*the provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned*" and most of all "*voluntary commitments and pledges made by the country under review*"<sup>3</sup>

Furthermore, the civil society can use a "**complaint procedure**" mechanism which has been in existence since previous Commission for Human Rights. Individuals claiming to be victims of a violation of Human Rights or NGOs having direct and reliable knowledge concerning the violations at stake may complain to the HRC. The condition for the Council to examine the situation in the country pointed at is that the violation enlightened must be a repeated one. The complaints must reveal the existence of "*a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms*"<sup>4</sup>. It means that a one and only case is not enough to ask for an examination. Then, after a communication has been declared worth considering, a working group leans towards the situation and writes thereafter a report for the Council with recommendations on the actions to take. Though, the Council is not a law court, its role is not to punish any country. On the contrary, the aim of the HRC is to help implementing Human Rights everywhere and then, as an end to this complaint procedure, it can "*recommend to OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned*"<sup>5</sup>.

Finally, the last means for the HRC to monitor the implementation of Human Rights is the "**special procedure**". Experts, either individuals (the called "Special rapporteur") or working groups are leading investigations in specific thematic or in specific countries after having been informed of a violation of Human Rights. They may first ask for clarification to governments (in 2007, more than 1,000 communications were sent to governments in 128 countries) or they may go to see for themselves the situation at stake. Currently, there are 30 thematic (on the right to education, on the right to food, on the independence of judges and lawyers, etc...) and 8 country mandates<sup>6</sup> incl. Special Rapporteur on Health, Violence. SP on Health will visit Poland in May on the invitation of the Polish Government.

However, the UN documents don't have any normative obligation. Even if the HRC points out the violations of Human Rights at stake in a country, this one is not compelled to move its legislation. But the recommendations of UN institutions do have a symbolic value, and it's always a shame for a country to be accused of breaking the Human Rights. International pressure plays important role in improving the implementation of Human Rights worldwide.

---

<sup>2</sup> The Submission to the Universal Periodic Review concerning Poland written by Amnesty International is available on: <http://asiapacific.amnesty.org/library/Index/ENGEUR370052007?open&of=ENG-2EU>.

<sup>3</sup> Art.27 of the institution-building package of the HRC

<sup>4</sup> Art.85 of the institution-building package of the HRC, but also "the complaint procedure" on the UN website: [http://www.invoqueroitsdelhomme.org/hrc\\_complaints.html](http://www.invoqueroitsdelhomme.org/hrc_complaints.html).

<sup>5</sup> Art.109 of the institution-building package of the HRC

<sup>6</sup> For more informations about special procedures, see: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.

