Sur – Human Rights University Network, a Conectas Human Rights project, was created in 2002 with the mission of establishing closer links among human rights academics and of promoting greater cooperation between them and the United Nations. The network has now over 180 associates from 40 countries, including professors, members of international organizations and UN officials.

Sur aims at strengthening and deepening collaboration among academics in human rights, increasing their participation and voice before UN agencies, international organizations and universities. In this context, the network has created Sur - International Journal on Human Rights, with the objective of consolidating a channel of communication and promotion of innovative research. The Journal intends to add another perspective to this debate that considers the singularity of Southern Hemisphere countries.

Sur - International Journal on Human Rights is a biannual academic publication, edited in English, Portuguese and Spanish, and also available in electronic format.

www.surjournal.org

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TRANSITIONAL JUSTICE

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This Journal was produced in partnership with the ICTJ
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SUR - HUMAN RIGHTS UNIVERSITY NETWORK is a network of academics working together with the mission to strengthen the voice of universities in the South on human rights and social justice, and to create stronger cooperation between them, civil society organizations and the United Nations. Conectas Human Rights, a not-for-profit organization founded in Brazil, is home to Sur. (See website <www.conectas.org> and portal <www.conectasur.org>. To access the online version of the journal, please go to: <www.surjournal.org>.)

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PRESENTATION

We have reached issue seven of Sur – International Journal on Human Rights with an excellent response from our readers and a new partnership with the International Center for Transitional Justice.

An evaluation of the journal was conducted to gain some feedback for us to improve the quality, to cater more to the interests of our readers and to make it even more accessible and critical. Of the 15% of readers who responded to an online survey, among them professors and human rights activists, 66% considered the journal to be excellent and 34% judged it to be good. The best qualities they identified were: (a) the high standard of the journal; (b) its potential to disseminate information on human rights; and (c) its broad application, both for university and non-university courses. The main challenges, meanwhile, are: (a) to address more specific thematic issues; (b) to publish new authors; and (c) to improve the dissemination of the journal. To meet these challenges, the following steps have already been taken: (a) we shall focus this and future issues on topics specifically related to the Global South, such as transitional justice, access to medicine and freedom of expression; and (b) we have staged launches in human rights centers at universities on different continents. Furthermore, we have plans in 2008 to establish a monitorial system, whereby new authors who have written promising articles will be supervised by more experienced researchers or professors. (For a more detailed account of the evaluation, please see the report at the end of this issue.)

In addition to the evaluation, we have also forged a partnership between Conectas Human Rights, which has published the journal since its first issue, and the International Center for Transitional Justice. This center was set up in 2000 with the mission to promote
justice, peace and reconciliation in societies emerging from repressive regimes or from armed conflicts, as well as to establish democracies where historical or systemic injustices remain unresolved.

The partnership was established so we could focus on a key topic for countries in the southern hemisphere: transitional justice. The balance between peace and justice and between reconciliation and retribution in post-conflict societies, or in cases of historical and persistent injustices, is dealt with by the authors from different geographical perspectives: Australia, Cambodia, Peru and Uganda. The authors, however, raise questions that often transcend these local contexts. By addressing the violated rights of aboriginal children in Australia who were forcibly taken from their families, for example, Ramona Vijeyarasa questions whether Truth Commissions can help build more inclusive societies. By analyzing the Extraordinary Chambers in Cambodia, Tara Urs attempts to identify what truth commissions and extraordinary courts can realistically expect to accomplish. She also examines how culturally specific processes can help shape transitional justice and how best to respond to the interests of the victims. Looking at Peru’s case, Elizabeth Salmón sheds some light on the links between conflict and poverty, and questions whether transitional justice should have a specific role beyond universalistic public policies. Finally, when addressing the situation in Uganda, Cecily Rose and Francis Ssekandi consider the role of amnesty in the consolidation of peace and question how to implement transitional justice in situations where peace agreements are still being reached.

To round off this subject, the journal is publishing an interview with Juan Méndez, director of the International Center for Transitional Justice.

This edition of the journal also carries an analysis of the recently established structure of the UN Human Rights Council (Lucia Nader) and a study on the influence of the inter-American system and “transnational legal activism” on the protection of human rights in Brazil (Cecília Santos).

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Glenda Mezarobba, Helena Olea, J. Paul Martin, Jeremy Sarkin, Juan Amaya Castro, Juan Carlos Arjona, Kawame Karikari, Maria Herminia Tavares de Almeida, Paula Ligia Martins, Richard Pierre Claude, Thami Ngwenya and Vinodh Jaichand.

Finally, we would like to announce that the next edition of the SUR Journal will be a special issue on access to medicine and human rights, to be published in collaboration with the Brazilian Interdisciplinary AIDS Association (ABIA). The journal will also carry articles on other topics.

The editors.
<table>
<thead>
<tr>
<th>Authors</th>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELIZABETH SALMÓN G.</td>
<td></td>
<td>The long road in the fight against poverty and human rights</td>
</tr>
<tr>
<td></td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Interview with Juan Méndez, president of the International Center for Transitional Justice (ICTJ)</td>
<td>167</td>
<td></td>
</tr>
<tr>
<td>LUCIA NADER</td>
<td>7</td>
<td>The role of NGOs in the UN Human Rights Council</td>
</tr>
<tr>
<td>CECÍLIA MACDOWELL SANTOS</td>
<td>29</td>
<td>Transnational legal activism and the State: reflections on cases against Brazil in the Inter-American Commission on Human Rights</td>
</tr>
<tr>
<td>TARA URS</td>
<td>61</td>
<td>Imagining locally-motivated accountability for mass atrocities: voices from Cambodia</td>
</tr>
<tr>
<td>CECILY ROSE AND FRANCIS M. SSEKANDI</td>
<td>101</td>
<td>The pursuit of transitional justice and African traditional values: a clash of civilizations – The case of Uganda</td>
</tr>
<tr>
<td>RAMONA VIJETYARASA</td>
<td>127</td>
<td>Facing Australia’s history: truth and reconciliation for the stolen generations</td>
</tr>
<tr>
<td>ELIZABETH SALMÓN G.</td>
<td>151</td>
<td>The long road in the fight against poverty and its promising encounter with human rights</td>
</tr>
<tr>
<td>GLEMDA MEZAROBBA</td>
<td>167</td>
<td>Interview with Juan Méndez, president of the International Center for Transitional Justice (ICTJ)</td>
</tr>
<tr>
<td>Annex</td>
<td>A1</td>
<td>Annex 1 - Human Rights Centers</td>
</tr>
<tr>
<td>Annex</td>
<td>A4</td>
<td>Annex 2 - Results of the Evaluation on Reader Profile and the Quality of Sur Journal</td>
</tr>
</tbody>
</table>
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.

Original in Portuguese. Translated by Barney Whiteoak.

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

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THE ROLE OF NGOs IN THE UN HUMAN RIGHTS COUNCIL

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 Annan

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
– 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 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 session to “assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights [...].”

The HRC approved, in its fifth session, Resolution 5/1, 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, 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. 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 1996/31 defines the principles and rights concerning formal participation by NGOs, its principal regulatory instrument being the concession of consultative status for civil society organizations.

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.”

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.

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 ECOSOC 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. There are in all seven tables, in the following order:

1) Election and membership - page 12
2) Agenda and Program of Work - page 14
3) Methods of Work and Rules of Procedure - page 15
4) Universal Periodic Review Mechanism - page 17
5) Special Procedures - page 19
6) Human Rights Council Advisory Committee - page 21
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.

<table>
<thead>
<tr>
<th>Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1</th>
<th>Innovations in relation to the former Commission</th>
<th>Challenges for the success of the new</th>
<th>Forms of action by NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership</td>
<td>The Council is comprised of 47 countries and any UN member state can be a candidate</td>
<td>Number of Member States is lower than the 53 members of the former Commission</td>
<td>As a result of the new composition, the relationship between African and Asian countries and other countries is likely to be different</td>
</tr>
<tr>
<td>Criteria for candidacy</td>
<td>There are two criteria: 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)</td>
<td>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</td>
<td>Difficulty gauging the contribution of each country to the promotion and protection of human rights</td>
</tr>
<tr>
<td>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 Countries</td>
<td>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</td>
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**THE ROLE OF NGOs IN THE UN HUMAN RIGHTS COUNCIL**
## Election and membership

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<thead>
<tr>
<th>Elections</th>
<th>Commitment</th>
<th>Mandate</th>
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<tbody>
<tr>
<td>Member countries are elected by the UN General Assembly, in a secret ballot by an absolute majority (at least 97 of the 192 votes)</td>
<td>Member 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</td>
<td>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</td>
</tr>
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<tr>
<th>Innovations in relation to the former Commission</th>
<th>Challenges for the success of the new Council</th>
<th>Forms of action by NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td>Importance of having competitive elections, with more candidates than available positions, so only the best candidates are actually elected</td>
<td>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</td>
</tr>
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</table>

| | The mandatory review by the Universal Review Mechanism during the mandate becomes a "cost of membership" to the Council | The credibility of the HRC is closely linked to the quality and the effective participation of its members |
| | 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 | Work together with the UN General Assembly to consider the suspension of a mandate whenever necessary |

---

Election and membership is an important aspect of the Human Rights Council (HRC). Member countries are elected by the UN General Assembly through a secret ballot with an absolute majority (at least 97 of the 192 votes). The elected countries must make a commitment to uphold and promote the highest standards in the promotion and protection of human rights, cooperate with the work of the HRC, and be reviewed by the Universal Periodic Review Mechanism during their mandates. The mandate is for 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, elections were not held directly by the General Assembly, and the mandatory review was not as stringent. Elections held directly by the General Assembly have more credibility and legitimacy than those held by members of ECOSOC. The mandatory review by the Universal Review Mechanism during the mandate becomes a "cost of membership" to the Council. The credibility of the HRC is closely linked to the quality and the effective participation of its members.

Promoting joint campaigns and initiatives to support or oppose given candidates, depending on their human rights records and potential commitment to the HRC, is crucial. This can be done by influencing the votes of countries in the General Assembly. Additionally, monitoring the positions taken by all States on the HRC to determine their commitment to the success of the Council, and considering the suspension of a mandate whenever necessary, are essential for maintaining the credibility and effectiveness of the HRC.

The two-thirds majority required to suspend a mandate makes this prerogative of the General Assembly, in practice, difficult to apply. 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.

<table>
<thead>
<tr>
<th>Principles</th>
<th>Innovations in relation to the former Commission</th>
<th>Challenges for the success of the new body</th>
<th>Forms of action by NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td>The agenda of the Commission did not define the principles it should be based on</td>
<td>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</td>
<td>Monitor the information released about the agenda and the program of work for the sessions on the HRC extranet24</td>
</tr>
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</table>

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

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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.

<table>
<thead>
<tr>
<th>Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1</th>
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<tr>
<td>At least 3 ordinary sessions should be held per year, including one main session, for a minimum total of 10 weeks of work. 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. Both ordinary and special sessions should be public, unless otherwise decided, and permit the participation of NGOs with consultative status.</td>
<td>An increase in the number of ordinary annual sessions to 3, while in the Commission there was only one. It is easier to convene special sessions, which will probably develop into an important mechanism for addressing situations in specific countries.</td>
<td>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. Guarantee effective dialogue between States and NGOs before and during the sessions.</td>
<td>Forms of action by NGOs: Keep track on the sessions via internet transmission, 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. 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. 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. Furthermore, NGOs with consultative status may: 1. Submit written statements for official review during the sessions, besides circulating other documents during the sessions. 2. Attend the sessions and make oral presentations. 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.</td>
</tr>
</tbody>
</table>
### Methods of work and rules of procedure

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1. Meetings for reports and/or informal consultations on potential resolutions or decisions 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 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 4. Debates, seminars, working groups and round tables – that can occur and are defined on a case-by-case basis</td>
<td>Provisions for meetings and informal consultations that may be attended by different actors, including NGOs</td>
<td>Difficulty for NGOs outside Geneva to participate and obtain information (it is worth noting here the efforts of the secretariat of the Council to lend publicity to these meetings and release the information resulting from them)</td>
<td>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</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adoption of documents</th>
<th>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</th>
</tr>
</thead>
<tbody>
<tr>
<td>In addition to resolutions and decisions, the HRC can adopt recommendations, conclusions, summary of the discussions and statements of the president  The quorum for approving resolutions or any other decision of the HRC is the simple majority of members present and voting</td>
<td>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 action</td>
</tr>
<tr>
<td>Attempt to identify and, if necessary, influence the position (vote) of each country on a given resolution  After the vote, draw attention to the votes considered “problematic”, calling on the countries to justify their positions  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</td>
<td></td>
</tr>
</tbody>
</table>
4) *Universal Periodic Review Mechanism*

Mechanism created by General Assembly Resolution 60/251 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.

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<tr>
<th>Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1</th>
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<tbody>
<tr>
<td><strong>Objectives</strong></td>
<td><strong>Actually improve the human rights situation on the ground, not just be a process of accountability by the country under review</strong></td>
<td><strong>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</strong></td>
</tr>
<tr>
<td>1. Improve the human rights situation on the ground 2. Determine the fulfillment by States of their obligations and commitments 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</td>
<td><strong>Difficulty measuring fulfillment by States of their human rights obligations</strong></td>
<td><strong>Accompany nationally the preparation of the official report to be presented by the State</strong></td>
</tr>
<tr>
<td><strong>Information to be considered</strong></td>
<td><strong>Quality and definitiveness of the information presented by the State</strong></td>
<td><strong>Submit relevant information to be considered by the UN High Commissioner for Human Rights for the document on information presented by civil society</strong></td>
</tr>
<tr>
<td>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</td>
<td><strong>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</strong></td>
<td><strong>Increased fragmentation of the UN human rights protection system, since the Treaty Committees have no formal role in the review mechanism</strong></td>
</tr>
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### Universal Periodic Review Mechanism

#### Process of the review

- **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.**
- **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

#### Final document

- 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.
- 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.

#### Implementation of the recommendations

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

#### Challenges for the success of the new body

- 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 exposure.
- 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.

#### Forms of action by NGOs

- Urge countries to include independent experts in their delegations for the review in the Working Group.
- NGOs with consultative status may attend the review sessions.
- Participation by NGOs from the same country and/or region as the State under review will be fundamental in this process.
- Devise strategies to influence the quality of the recommendations, among them releasing to the media the information presented by the States, in the hope that the publicity will have an effect on the quality of the presentation and the final document.
- Observe and monitor, on a national level, the effective implementation of the recommendations and of keeping track of their effective implementation on a national level.
- 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 recommendations.
- 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.
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). 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.
## Special procedures

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Duration of the mandates: 3 years for thematic mandates and one year for country mandates</td>
<td>Prior definition of country and thematic mandate durations</td>
<td>Guarantee that the Code of Conduct does not affect the independence or effectiveness of the work of the mandate-holders</td>
<td>Submit requests to mandate-holders for them to visit given countries or to work on a specific issue</td>
</tr>
<tr>
<td>According to Resolution 60/251, all current mandates will be reviewed</td>
<td>Preparation and approval of the Code of Conduct – CoC, 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</td>
<td>Assure that the review of the mandates is not politicized and takes into account the real need for the existence of the special procedures</td>
<td>Organize and/or participate in meetings between mandate-holders and civil society during missions to the countries</td>
</tr>
<tr>
<td>The presentation of the reports prepared by the special procedures occurs during the Council sessions, in a stage known as interactive dialogue</td>
<td>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 stages</td>
<td>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</td>
<td>Pressure States to extend open invitations to all mandate-holders, accepting a priori visits to the country, and to respond to their requests for information</td>
</tr>
</tbody>
</table>

In addition, NGOs with consultative status can participate in the interactive dialogues.
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.

<table>
<thead>
<tr>
<th>Function</th>
<th>Principal characteristics of the HRC, according to resolutions A/Res/60/251 and A/HRC/5/1</th>
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</thead>
<tbody>
<tr>
<td>To provide expertise to the HRC in the manner and form requested by it, focusing on studies and research-based advice. It cannot adopt decisions or resolutions, but it can recommend that the HRC address a given issue in more depth.</td>
<td>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. A 3-year mandate with the possibility of re-election only once. 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. They are elected by the HRC from a list prepared by the secretariat. Any UN member state, in consultation with National Human Rights Institutions and NGOs, can propose candidates for this list.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Innovations in relation to the former Commission</th>
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</thead>
<tbody>
<tr>
<td>Very little innovation, continuing with the tendency to weaken the mandate of the Sub-Commission that began in 2000.</td>
<td>A fairly unpurposeful function, limited to thematic issues. 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 things.</td>
<td>Make suggestions to HRC Member States on issues to be addressed by the Advisory Committee.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Criteria for candidate, election and composition</th>
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<tbody>
<tr>
<td>A lower number of experts than the 26 members of the Sub-Commission. Limitation placed on the duration of the mandate. Existence and publicity of technical and objective criteria for nominating candidates and electing the experts.</td>
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<tr>
<th>Sessions</th>
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<tbody>
<tr>
<td>It will hold 2 sessions for a maximum of 10 working days per year. Additional sessions may be scheduled and working groups created with the approval of the Council. It should interact continually with States, National Human Rights Institutions and NGOs, which may participate in the sessions.</td>
<td>It will hold 2 sessions per year, compared to the former Sub-Commission’s single annual session. However, the Sub-Commission met for 3 weeks – more than the 10 days per year authorized for the new Advisory Committee.</td>
<td>“To maximize the time that is available and to focus discussions, the Advisory Committee will need to organize its timeweek and develop a clear agenda for its sessions well in advance to enable NGOs to plan their participation. An uncertain future for existing working groups and a lack of clarity about the eventual creation of new groups.</td>
</tr>
</tbody>
</table>

NGOs with consultative status can participate in the sessions and working groups of the Advisory Committee.
7) **Complaint procedure**

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

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<tr>
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<tr>
<td>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</td>
<td>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</td>
<td>More meetings held by the 2 Working Groups that need to present justifications for their decisions</td>
<td>Present complaints of systematic human rights violations. The country being accused does not need to have ratified human rights treaties</td>
</tr>
<tr>
<td>Complainants must be examined by 2 Working Groups: 1st - 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 2nd - 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</td>
<td>Rebuild the credibility of the procedure, which was damaged in the final years of the Commission, when it faced major problems: (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</td>
<td>Monitor the process by the Advisory Council of appointing the 5 members of the Working Group on Communications</td>
<td></td>
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### Complaint procedure

<table>
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<tr>
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<tr>
<td>The entire process is confidential, unless the HRC decides otherwise following a recommendation by the WGS. 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 The State being accused should be kept informed in the aforementioned stages 2, 3 and 4</td>
<td>The complainant must be kept informed during the entire process and they may request that their identity be kept secret</td>
<td>Maintaining confidentiality will hamper, among other things, the action of NGOs</td>
<td>Make sure that the provision to keep the complainant informed throughout the process is upheld</td>
</tr>
<tr>
<td>The Council should consider the situations submitted by the WGS at least once a year and may take the following measures: 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</td>
<td>The procedure still does not offer any concrete response to remedy the situation of the victims</td>
<td>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</td>
<td></td>
</tr>
<tr>
<td>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 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</td>
<td>Reinforcement of the need for cooperation by the State, with the establishment of a timeframe for sending information</td>
<td>Difficulty obtaining information from the States</td>
<td></td>
</tr>
</tbody>
</table>
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.


4. Ibid.


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.


15. In R. Brett, Neither Mountain nor Molehill – UN Human Rights Council: one year on, Quaker


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).


22. Ibid., p.15.


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.


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


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.


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


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.


52. Individual cases are not accepted.


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
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SUR 1

EMILIO GARCÍA MÉNDEZ
Origin, Concept and Future of Human Rights: Reflections for a New Agenda

FLAVIA PIOVESAN
Social, Economic and Cultural Rights and Civil and Political Rights

OSCAR VILHENA VIEIRA and A. SCOTT DUPREE
Reflections on Civil Society and Human Rights

JEREMY SARKIN
The Coming of Age of Claims for Reparations for Human Rights Abuses Committed in the South

VINODH JAICHAND
Public Interest Litigation Strategies for Advancing Human Rights in Domestic Systems of Law

PAUL CHEVIGNY
Repression in the United States after the September 11 Attack

SERGIO VIEIRA DE MELLO
Only Member States Can Make the UN Work Five Questions for the Human Rights Field

SUR 2

SALIL SHETTY
Millennium Declaration and Development Goals: Opportunities for Human Rights

FATEH AZZAM
Reflections on Human Rights Approaches to Implementing the Millennium Development Goals

RICHARD PIERRE CLAUDE
The Right to Education and Human Rights Education

JOSÉ REINALDO DE LIMA LOPES
The Right to Recognition for Gays and Lesbians

E.S. NWAUCHE AND J.C. NWOBIKE
Implementing the Right to Development

STEVEN FREELAND
Human Rights, the Environment and Conflict: Addressing Crimes against the Environment

FIONA MACAULAY
Civil Society-State Partnerships for the Promotion of Citizen Security in Brazil

EDWIN REKOSH
Who Defines the Public Interest?

VÍCTOR E. ABRAMOVICH
Courses of Action in Economic, Social and Cultural Rights: Instruments and Allies

SUR 3

CAROLINE DOMMEN
Trade and Human Rights: Towards Coherence

CARLOS M. CORREA
TRIPS Agreement and Access to Drugs in Developing Countries

BERNARDO SORJ
Security, Human Security and Latin America

ALBERTO BOVINO
Evidential Issues before the Inter-American Court of Human Rights

NICO HORN
Eddie Mabo and Namibia: Land Reform and Pre-Colonial Land Rights

NLERUM S. OKOGBULE
Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects

MARÍA JOSÉ GUEMBE
Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship

JOSÉ RICARDO CUNHA
Human Rights and Justiciability: A Survey Conducted in Rio de Janeiro

LOUISE ARBOUR
Plan of Action Submitted by the United Nations High Commissioner for Human Rights

SUR 4

FERNANDE RAINÉ
The measurement challenge in human rights
MARIO MELO
Recent advances in the justiciability of indigenous rights in the Inter American System of Human Rights

ISABELA FIGUEROA
Indigenous peoples versus oil companies: Constitutional control within resistance

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The strengths of different traditions: What can be gained and what might be lost by combining rights and development?

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Development and rights revisited: Lessons from Africa

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Brief observations on the mechanisms for NGO participation in the WTO

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Pharmaceutical corporations and access to drugs in developing countries: The way forward

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Social programs from a human rights perspective: The case of the Lula administration’s family grant in Brazil

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A schematic comparison of regional human rights systems: An update

BOOK REVIEW

SUR 5

CARLOS VILLAN DURAN
Lights and shadows of the new United Nations Human Rights Council

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The role of victims in International Criminal Court proceedings: their rights and the first rulings of the Court

OSWALDO RUIZ CHIRIBOGA
The right to cultural identity of indigenous peoples and national minorities: a look from the Inter-American System

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Overpromised, underdelivered: transitional justice in Sub-Saharan Africa

DEVNIKA PRASAD
Strengthening democratic policing and accountability in the Commonwealth Pacific

IGNACIO CANO
Public security policies in Brazil: attempts to modernize and democratize versus the war on crime

TOM FARER
Toward an effective international legal order: from co-existence to concert?

BOOK REVIEW

SUR 6

UPENDRA BAXI
The Rule of Law in India

OSCAR VILHENA VIEIRA
Inequality and the subversion of the Rule of Law

RODRIGO UPRIMNY YEPES
Judicialization of politics in Colombia: cases, merits and risks

LAURA C. PAUTASSI
Is there equality in inequality? Scope and limits of affirmative actions

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Intermediary services for child witnesses testifying in South African criminal courts

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Brazilian copyright law and how it restricts the efficiency of the human right to education

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Eradicating systemic poverty: brief for a Global Resources Dividend