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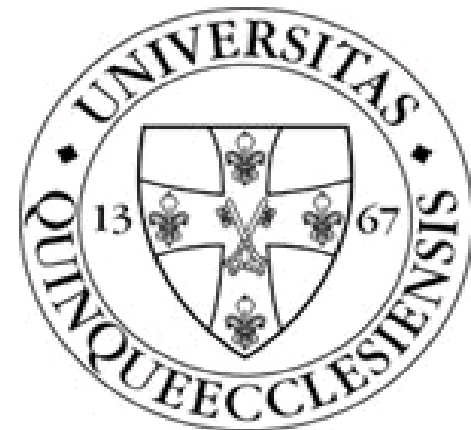


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**The Human Rights Council And The
Universal Periodic Review:
A Novel Method Of Promoting
Compliance With Human Rights**

**Adrienne KOMANOVICS (Pécs) and
Nives MAZUR-KUMRIĆ (Osijek)**

CONTEMPORARY LEGAL CHALLENGES:

EU – HUNGARY – CROATIA

Osijek, 16 – 18 february 2012

**THE HUMAN RIGHTS COUNCIL AND THE
UNIVERSAL PERIODIC REVIEW:
A NOVEL METHOD OF PROMOTING
COMPLIANCE WITH HUMAN RIGHTS**

Adrienne KOMANOVICS (Pécs) and
Nives MAZUR-KUMRIĆ (Osijek)

Outline

1. The Human Rights Council and its predecessor, the Commission on Human Rights
2. Universal Periodic Review. General Aspects
3. State under Review: Croatia
4. State under Review: Hungary
5. The Way Forward
6. Conclusions

1. THE HUMAN RIGHTS COUNCIL AND ITS PREDECESSOR, THE COMMISSION ON HUMAN RIGHTS

**Commission
on Human
Rights**

**Short-
comings**

Membership

Undemocratic and repressive States
Quasi permanent membership of the SC
permanent members

Functioning

The working became politicised
Selectivity: country specific resolutions

Meetings

Lack of meeting time: one annual session for
a six-week period



Human Rights Council

Membership

Elected by the GA
Membership reduced from 53 to 47
Prevention of quasi-permanent membership
Selection criteria
Suspension of membership

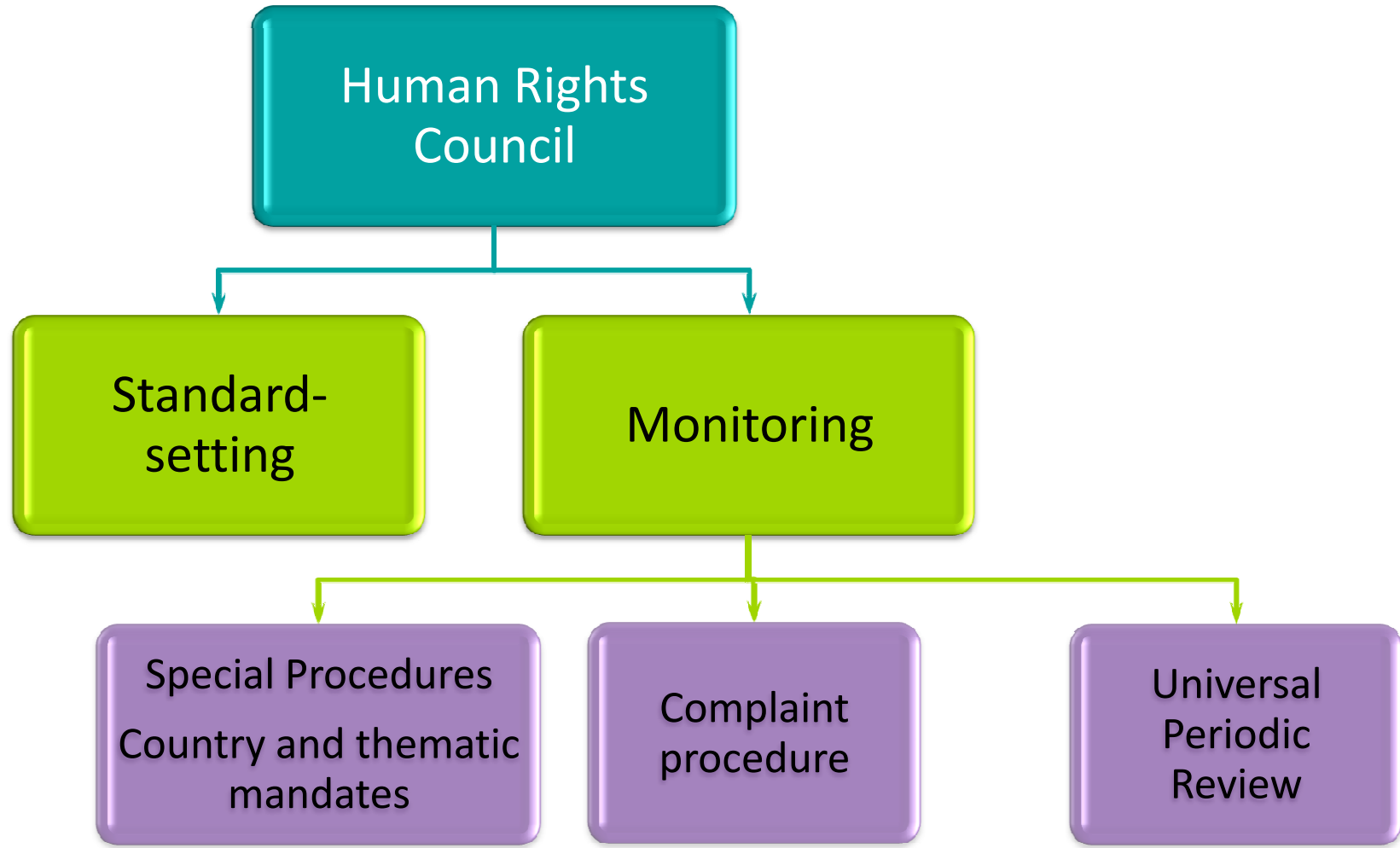
Mandate

Standard setting
Monitoring of human rights

Meetings

More regular meeting schedule
Special sessions

Mandate of the Human Rights Council



2. UNIVERSAL PERIODIC REVIEW. GENERAL ASPECTS

How the UPR works ...



All UN members reviewed every four years

48 States reviewed each year

All Council members reviewed during their term of membership

Reviews carried out by UPR Working Group (the 47 HRC members)

The UPR WG holds three two-week sessions per year

WG sessions take place at the UN Office at Geneva

Review carried out by groups of three States ("troikas"), drawn by lot who act as rapporteurs

**What
human
rights
obligations
are
addressed?**



1. UN Charter

**2. Universal Declaration of
Human Rights**

**3. Human rights treaties ratified
by the State**

**4. Voluntary pledges and
commitments**

**5. International humanitarian
law**

Stage 1: Reports on SuR are prepared

1. State report
2. Compilation of stakeholder contributions
3. Compilation of human rights findings by UN on SuR

Stage 2: SuR appears before UPR Working Group

Government engages with other countries about the human rights situation in SuR and specified steps it will take to improve the enjoyment of human rights.
Any government can ask questions of SuR or make recommendations

Stage 5: Follow up processes

Government will be required to report on how it has implemented recommendations at next UPR appearance. Outcomes can also be considered in all UN processes.
Processes for implementation and follow up domestically can also be undertaken.

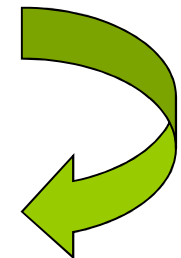
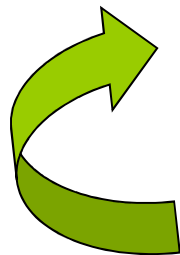
Stage 3: Report of the Working Group is prepared

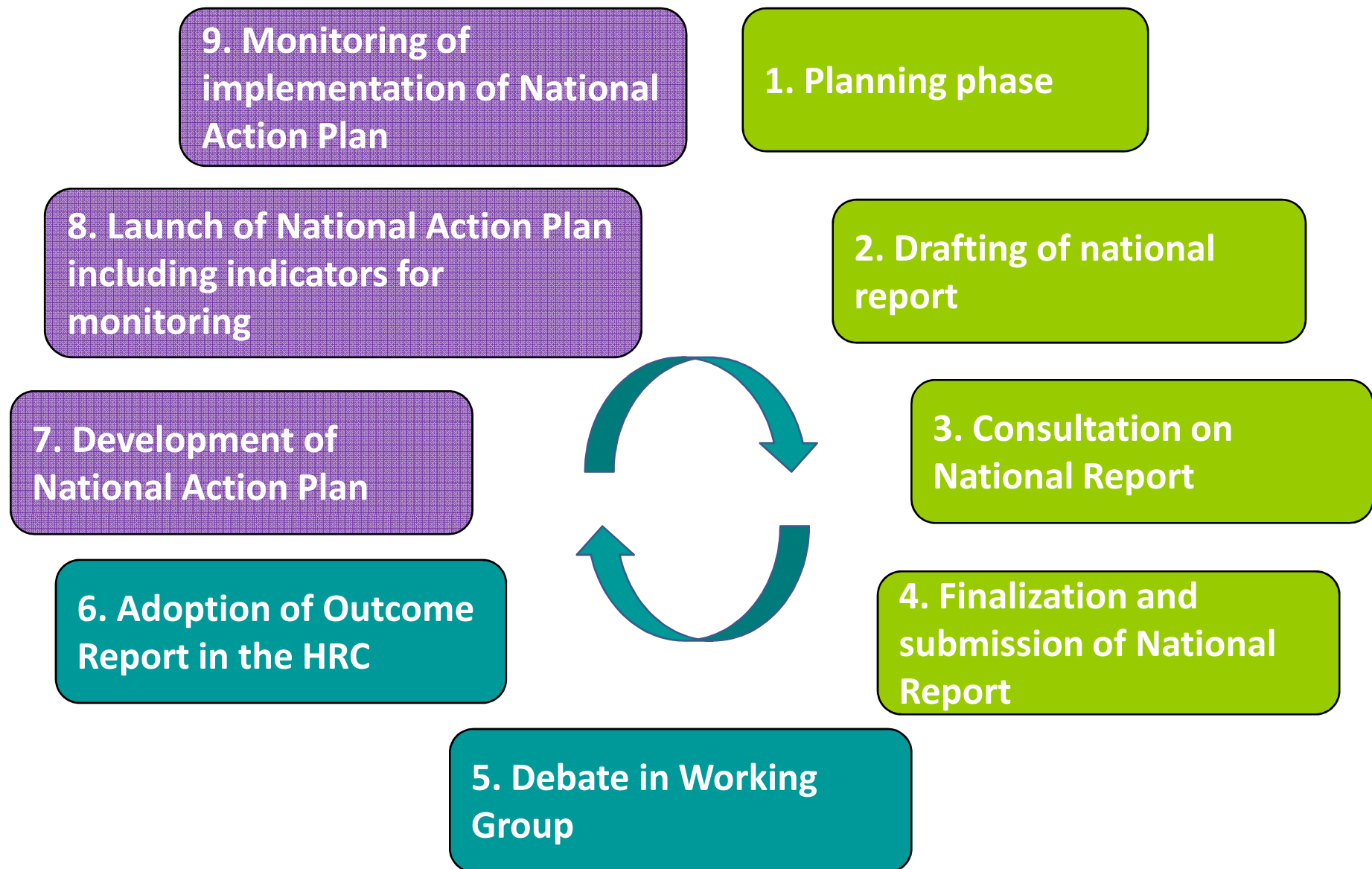
Outcome report will include conclusions and recommendations for consideration by the government under review

Stage 4: Report of the Working Group is adopted at the Human Rights Council

SuR indicates which recommendations it supports and which ones it rejects

SuR = State under Review





- ➔ Phase 1: Preparations (country)
- ➡ Phase 2: The interactive dialogue and adoption of outcome report (Geneva)
- Phase 3: Follow up on recommendations (country)

Statistics: State under review

| Rank | State under Review | Total recommendations | % of 18 889 recommendations |
|------|--------------------|-----------------------|-----------------------------|
| 1 | United States | 280 | 1.48 |
| 2 | Iran | 212 | 1.12 |
| 3 | Sudan | 204 | 1.08 |
| 4 | Myanmar | 197 | 1.04 |
| 5 | Nepal | 193 | 1.02 |
| 6 | Irak | 179 | 0.95 |
| 7 | Kyrgyzstan | 175 | 0.93 |
| 8 | Viet Nam | 172 | 0.91 |
| 9 | Egypt | 171 | 0.91 |
| 10 | Austria | 170 | 0.90 |
| ... | | | |
| 34 | Hungary | 149 | 0.79 |
| ... | | | |
| 59 | Croatia | 131 | 0.69 |

Source: www.upr-info.org

Statistics: Recommending State

| Rank | Recommending State | Total recommendations | % of 18,889 recommendations |
|------|--------------------|-----------------------|-----------------------------|
| 1 | Canada | 816 | 4.32 |
| 2 | Norway | 636 | 3.37 |
| 3 | France | 621 | 3.29 |
| 4 | Mexico | 604 | 3.20 |
| 5 | Brazil | 603 | 3.19 |
| 6 | Spain | 586 | 3.10 |
| 7 | United Kingdom | 585 | 3.10 |
| 8 | Algeria | 571 | 3.02 |
| 9 | Netherlands | 512 | 2.71 |
| 10 | Slovenia | 483 | 2.56 |
| ... | | | |
| 25 | Hungary | 242 | 1.28 |
| ... | | | |
| 122 | Croatia | 12 | 0.06 |

Source: www.upr-info.org

Statistics: Response

| Rank | Response | Total recommendations | % of 18,889 recommendations |
|------|------------------|-----------------------|-----------------------------|
| 1 | Accepted | 816 | 72.84 |
| 2 | Rejected | 636 | 14.21 |
| 3 | General response | 621 | 7.14 |
| 4 | No response | 604 | 5.81 |

Statistics: Issue

| Rank | Issue | Total recommendations | % of 18,889 recommendations |
|------|-----------------------------------|-----------------------|-----------------------------|
| 1 | International instruments | 3714 | 19.66 |
| 2 | Women's rights | 3308 | 17.51 |
| 3 | Rights of the child | 3054 | 16.17 |
| 4 | Torture and other CID treatment | 1499 | 7.94 |
| 5 | Justice | 1362 | 7.21 |
| 6 | Human rights education & training | 830 | 4.39 |
| 7 | Detention conditions | 798 | 4.22 |
| 8 | Death penalty | 796 | 4.21 |
| 9 | Special procedures | 787 | 4.17 |
| 10 | Treaty bodies | 765 | 4.05 |
| 11 | Migrants | 762 | 4.03 |
| 12 | Minorities | 757 | 4.01 |

Human Rights Council Universal Periodic Review

| | 1st Session (2008) | 2nd Session (2008) | 3rd Session (2008) | 4th Session (2009) | 5th Session (2009) | 6th Session (2009) | 7th Session (2010) | 8th Session (2010) | 9th Session (2010) | 10th Session (2011) | 11th Session (2011) | 12th Session (2011) |
|----|-----------------------|-----------------------|-----------------------|-----------------------|---|---------------------------------------|----------------------------|----------------------------------|----------------------------------|------------------------|----------------------------------|------------------------------------|
| 1 | Morocco | Gabon | Botswana | Cameroon | Central African Republic | Côte d'Ivoire | Angola | Guinea | Liberia | Mozambique | Seychelles | Swaziland |
| 2 | South Africa | Ghana | Burkina Faso | Djibouti | Chad | Democratic Republic of the Congo | Egypt | Guinea-Bissau | Libyan Arab Jamahiriya | Namibia | Sierra Leone | Togo |
| 3 | Tunisia | Mali | Burundi | Mauritius | Comoros | Equatorial Guinea | Madagascar | Kenya | Malawi | Niger | Somalia | Uganda |
| 4 | Algeria | Zambia | Cape Verde | Nigeria | Congo | Eritrea | Gambia | Lesotho | Mauritania | Rwanda | Sudan | United Republic of Tanzania |
| 5 | Bahrain | Benin | Turkmenistan | Senegal | Vanuatu | Ethiopia | Qatar | Kiribati | Lebanon | Sao Tome and Principe | Palau | Zimbabwe |
| 6 | India | Japan | Tuvalu | Bangladesh | Viet Nam | Bhutan | Fiji | Kuwait | Maldives | Myanmar | Papua New Guinea | Syrian Arab Republic |
| 7 | Indonesia | Pakistan | United Arab Emirates | China | Yemen | Brunei Darussalam | Iran (Islamic Republic of) | Kyrgyzstan | Marshall Islands | Nauru | Samoa | Tajikistan |
| 8 | Philippines | Republic of Korea | Uzbekistan | Jordan | Afghanistan | Cambodia | Iraq | Lao People's Democratic Republic | Micronesia (Federated States of) | Nepal | Singapore | Thailand |
| 9 | Argentina | Sri Lanka | Colombia | Malaysia | Uruguay | Cyprus | Kazakhstan | Grenada | Mongolia | Oman | Solomon Islands | Timor Leste |
| 10 | Ecuador | Tonga | Bahamas | Saudi Arabia | Belize | Democratic People's Republic of Korea | Bolivia | Guyana | Honduras | Paraguay | Saint Vincent and the Grenadines | Trinidad and Tobago |
| 11 | Brazil | Guatemala | Barbados | Cuba | Chile | Costa Rica | Nicaragua | Haiti | Jamaica | Saint Kitts and Nevis | Suriname | Venezuela (Bolivarian Republic of) |
| 12 | Netherlands | Peru | Israel | Mexico | Malta | Dominica | El Salvador | Spain | Panama | Saint Lucia | Belgium | Antigua and Barbuda |
| 13 | Finland | France | Liechtenstein | Canada | Monaco | Dominican Republic | Italy | Sweden | United States | Australia | Denmark | Iceland |
| 14 | United Kingdom | Switzerland | Luxembourg | Germany | New Zealand | Norway | San Marino | Turkey | Andorra | Austria | Greece | Ireland |
| 15 | Poland | Romania | Montenegro | Russian Federation | Slovakia | Portugal | Slovenia | Armenia | Bulgaria | Estonia | Hungary | Lithuania |
| 16 | Czech Republic | Ukraine | Serbia | Azerbaijan | The Former Yugoslav Republic of Macedonia | Albania | Bosnia and Herzegovina | Belarus | Croatia | Georgia | Latvia | Moldova |

Human Rights Council Universal Periodic Review

| | 1st Session (2008) | 2nd Session (2008) | 3rd Session (2008) | 4th Session (2009) | 5th Session (2009) | 6th Session (2009) | 7th Session (2010) | 8th Session (2010) | 9th Session (2010) | 10th Session (2011) | 11th Session (2011) | 12th Session (2011) |
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| 2 | South Africa | Ghana | Burkina Faso | Djibouti | Chad | Democratic Republic of the Congo | Egypt | Guinea-Bissau | Libyan Arab Jamahiriya | Namibia | Sierra Leone | Togo |
| 3 | Tunisia | Mali | Burundi | Mauritius | Comoros | Equatorial Guinea | Madagascar | Kenya | Malawi | Niger | Somalia | Uganda |
| 4 | Algeria | Zambia | Cape Verde | Nigeria | Congo | Eritrea | Gambia | Lesotho | Mauritania | Rwanda | Sudan | United Republic of Tanzania |
| 5 | Bahrain | Benin | Turkmenistan | Senegal | Vanuatu | Ethiopia | Qatar | Kiribati | Lebanon | Sao Tome and Principe | Palau | Zimbabwe |
| 6 | India | Japan | Tuvalu | Bangladesh | Viet Nam | Bhutan | Fiji | Kuwait | Maldives | Myanmar | Papua New Guinea | Syrian Arab Republic |
| 7 | Indonesia | Pakistan | United Arab Emirates | China | Yemen | Brunei Darussalam | Iran (Islamic Republic of) | Kyrgyzstan | Marshall Islands | Nauru | Samoa | Tajikistan |
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| 13 | Finland | France | Liechtenstein | Canada | Monaco | Dominican Republic | Italy | Sweden | United States | Australia | Denmark | Iceland |
| 14 | United Kingdom | Switzerland | Luxembourg | Germany | New Zealand | Norway | San Marino | Turkey | Andorra | Austria | Greece | Ireland |
| 15 | Poland | Romania | Montenegro | Russian Federation | Slovakia | Portugal | Slovenia | Armenia | Bulgaria | Estonia | Hungary | Lithuania |
| 16 | Czech Republic | Ukraine | Serbia | Azerbaijan | The Former Yugoslav Republic of Macedonia | Albania | Bosnia and Herzegovina | Belarus | Croatia | Georgia | Latvia | Moldova |

3. STATE UNDER REVIEW: CROATIA

**8
November
2010**

**(9th
session of
the first
UPR
cycle)**



The UPR troika members:

1. Pakistan

2. USA

3. Burkina Faso

The three reports



National Report

UN Summary Report

Stakeholders' Report

(1) National Report

- drawn up by the **Working Group** established by the Croatian Government.
- preparation was coordinated by the **Ministry of Foreign Affairs and European Integration**, the **Ministry of Justice** and the **Government Office for Human Rights**.
- **a highly developed** normative and institutional framework for the protection and promotion of human rights

(1) National Report

- The National Program for the Protection and Promotion of Human Rights 2008-2011
- + The 2010 Operational Program for its Implementation
- The National Anti-Discrimination Plan 2008-2013
- the 2008 Anti-Discrimination Act

(1) National Report

Priorities of the human rights protection:

- Croats living abroad
- Detained and missing persons in Croatia
- Rights of active participants and victims from the Homeland War
- Right to a fair trial
- Victim/witness protection
- Freedom of the media
- Right to access to information
- Religious rights and freedoms
- Right to work

(1) National Report

Priorities of the human rights protection:

- Special protection of the family, children and youth
- Care for particularly vulnerable groups of citizens
- Right to healthy life and environment
- Combating corruption
- Trafficking in human beings
- Security and human rights
- Mine clearing in the areas covered with land mines remained from the Homeland War

(2) UN Summary Report

POSITIVE MARK:

Regarding the scope of international obligations assumed through ratification, accession or succession of the most relevant human rights treaties

NEGATIVE MARK:

Croatia is not a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) and the International Convention for the Protection of all Persons from Enforced Disappearance (CED)

(2) UN Summary Report

Several problematic areas:

- Equality and non-discrimination (women, minority groups, returnees)
- Right to life, liberty and security of the person (attacks against ethnic minorities, poor conditions in detention facilities, domestic violence)
- Administration of justice, including impunity and the rule of law (substantial backlog of the court cases)
- Right to privacy, marriage and family life (Roma girls)

(2) UN Summary Report

Several problematic areas:

- Freedom of expression, association and peaceful assembly, and right to participate in public and political life (attacks on journalists)
- Right to work and to just and favourable conditions at work (women, returnees)
- Right to social security and to an adequate standard of living
- Right to education and to participate in the cultural life of the community
- Minorities and indigenous peoples
- Migrants, asylum-seekers, refugees and internally displaced persons

(3) Stakeholders' Report

Several problematic areas:

- The most frequent forms of discrimination in Croatia those based on nationality, followed by gender, social status, social origin and disability
- Complexity of procedure for obtaining the Croatian citizenship → need to ratify the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession
- Employment and education of Roma

4. STATE UNDER REVIEW: HUNGARY

(1) Hungary: National Report

Segregation, hidden segregation

Violence against women

Homebirth

Forced sterilization

Roma community

Conditions of detention

Missing

Media legislation

Anomalies of the health care system

Withdrawal of the private tier of pensions

(2) Hungary: UN Summary Report

- The situation of women
 - Equality; domestic violence; underrepresentation in public life
- Roma population
 - Discrimination, exclusion and anti-Roma prejudices; Virulent and widespread anti-Roma statements by public figures, the media; high unemployment; low life expectancy; school segregation; percentage of inmates
- Multiple discrimination
- Persons with disabilities
- Migrants, asylum-seekers, refugees
- Torture, administration of justice
- Social security and adequate standard of living

(3) Hungary: Stakeholders' Report

- The stakeholders' report, to a large extent, reiterated the issues collected in the UN Summary Report
- New Constitution
 - The circumstances of its adoption
 - Contents
- Media legislation
 - The Public Service Broadcasting Television and Radio and the National Media and Telecommunication Authority were not independent from the government
- Inadequate handling of racially motivated crimes
- LGBT people

Advance questions to Hungary

States:

Sweden
Czech Rep.
Belgium
Denmark
Slovenia
Switzerland
UK
Norway

Issues:

Torture and ill-treatment
Roma people
Domestic violence
Gender based violence
Media law
LGBT rights

State under Review: Hungary

Working Group and Plenary of the HRC



Interactive dialogue

- The new Constitution
- Competence of the Constitutional Court
- The new media legislation
- Accession to the ICRMW (Convention on the Rights of All Migrant Workers and Members of their Families)

A total 148 recommendations were made

- 122 was accepted 82.4%
- 20 rejected 17.6%

5. THE WAY FORWARD

New UPR Modalities



GA Resolution 60/251 of 2006 establishing the HRC

HRC Resolution 12/1 of 2009 on Open-ended intergovernmental working group on the review of the work and functioning of the HRC

1. Report of the Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the HRC (March 2011)

2. HRC Resolution 16/21 of April 2011 on Outcome of the Review on the Work and Functioning of the HRC

HRC Decision on Follow-up to the Human Rights Council Res. 16/21 with regard to the UPR, July 2011

New UPR Modalities

- The order of the review established for the 1st cycle shall be maintained for the 2nd and subsequent cycles, whereby 14 states shall be reviewed during each session of the working group
- The 2nd and subsequent cycles should focus on the implementation of the accepted recommendations
- The duration of the review in the Working Group extended to 3 hours and 30 minutes for each country in the WG

New UPR Modalities

- The established procedures regulating the list of Speakers in the WG allow 3 minutes speaking time for Member States and 2 minutes for Observer States. If all the speakers can't fit in the foreseen time of 3 hours and 30 minutes, the speaking time shall be reduced to 2 minutes for all
- The 2nd and subsequent cycles will last 4.5 years and there will be 14 sessions per cycle and 14 states will be reviewed per session

6. CONCLUSIONS

UPR

- the most important procedural innovation introduced by the HRC
- a fairly realistic assessment of the fulfilment by each state of its human rights obligations and commitments in a way that it ensures universality of coverage and equal treatment
- most states involved in the UPR depict it as **constructive**

UPR

The UN Secretary General (2007)

„The UPR has a great potential to promote and protect human rights in the darkest corners of the world”