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HUMAN RIGHTS COUNCIL  
Third session  
Agenda item 2

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15  
MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Intersessional open-ended intergovernmental working group to develop the modalities of  
the universal periodic review mechanism established pursuant to Human Rights Council  
decision 1/103**

**SUMMARY OF THE DISCUSSION PREPARED BY THE SECRETARIAT**

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## Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly (GA) established the Human Rights Council (Council) and decided that it shall, inter alia, “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session” (paragraph 5(e)).
2. At its first session held from 19 to 30 June 2006, the Council, by its decision 1/103 of 30 June 2006, decided to establish an intersessional open-ended intergovernmental working group to develop the modalities of the universal periodic review mechanism (UPR). The Council decided that the Working Group shall have at its disposal ten days (or twenty 3-hour meetings) of fully serviced meetings and that it shall allow sufficient time and flexibility for the development of the UPR mechanism. The Council also decided that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, to facilitate open-ended discussions appropriately scheduled by the Chairperson of the Working Group with the involvement of all stakeholders.
3. Pursuant to this decision, the President of the Council appointed the Permanent Representative of Morocco and Vice-President of the Council, Mr. Mohammed Loulichki, as Facilitator of the Working Group. Also pursuant to this decision, four rounds of open-ended intersessional informal consultations on UPR were held on 21 July, 2 August, and on 7 and 8 September 2006.
4. Prior to the first session of the Working Group, the Facilitator invited all stakeholders to submit written contributions outlining proposals and other views on UPR which, in addition to all oral statements made during the above-mentioned informal consultations, have been made publicly available and have been compiled into a single comprehensive document by the Office of the High Commissioner for Human Rights (Office/OHCHR).
5. The Office, by its note verbale dated 19 July 2006, invited the organizations listed in decision 1/103 (the Council of Europe, International Atomic Energy Agency, International Labour Organization, International Monetary Fund, New Partnership for Africa’s Development, Organization of American States, Organization for Economic Cooperation and Development, and the World Trade Organization) to provide the Working Group with background information on existing mechanisms for periodic review. All information received was widely disseminated and is publicly available. In addition, representatives of the Council of Europe, International Labour Organization, New Partnership for Africa’s Development, and the Organization for Economic Cooperation and Development attended the informal consultations held on 7

September 2006 and engaged in a dialogue with the Council on their respective existing mechanisms for periodic review.

6. At the first part of its second session held from 18 September to 6 October 2006, following the Facilitator's oral report on progress made since the convening of the above-mentioned informal consultations, the Council held a general debate on UPR.

### **I. ORGANIZATION OF THE SESSION**

7. The Working Group held its first session at the United Nations Office at Geneva from 20 November to 23 November 2006. It held 4 meetings during the session and concluded its work in a meeting convened by the President of the Human Rights Council on 24 November 2006.

8. The session was attended by representatives of States members of the Council, observer States of the Council, observers for non-member States of the United Nations and other observers, as well as observers for United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities and non-governmental organizations (NGOs).

9. In his opening remarks, the Facilitator reflected on the activities undertaken with regard to UPR since the first session of the Council in June 2006 and the progress made to date. The Facilitator also outlined the proposed programme of work for the session (see annex I), prepared on the basis of the following elements for discussion, which he had announced at the informal consultations held on 2 August 2006, and on which all previous written and oral contributions had been submitted:

- i. The terms of reference/basis of review;
- ii. The objectives and guiding principles of review;
- iii. Periodicity and order of review;
- iv. The process and modalities of review;
- v. The outcome of the review; and
- vi. Follow-up to the review.

### **II. PRESENTATIONS ON EXISTING MECHANISMS FOR PERIODIC REVIEW**

10. At the first meeting, on 20 November 2006, representatives of the International Monetary Fund, the Organization of American States and the World Trade Organization gave presentations to the Council on their respective existing mechanisms for periodic review. A representative of the International Atomic Energy Agency was also present at the meeting and provided an overview of the existing mechanism for periodic review in the field of Nuclear Safety.

11. The International Monetary Fund stressed that the review process is an evolving one, which is evaluated and updated as necessary to take into consideration other core activities of the organization, interaction between countries or groups of countries, and streamlining of procedures. The International Monetary Fund highlighted the positive effect of peer pressure, namely, that countries do not object to the publication of the review reports. The Organisation of American States emphasized that review, in the context of the Inter-American Commission on Human Rights, is accomplished through the combined effect of different mechanisms and procedures, such as individual petitions, thematic and country reports, and recommendations for policy change, and with the participation of many actors, including civil society. The World Trade Organisation pointed out that the review discussion provides moral persuasion for countries, and that the main element is the high-level interest and participation that the discussion generates. The International Atomic Energy Agency also stressed the importance of State cooperation in the review process.

12. The presentations and ensuing interactive dialogue focused on the practical aspects of the review process. Issues raised included the nature or aim of the review, whether specific in terms of concrete fulfilment of obligations, or more general in terms of the country engaging in positive steps to improve. The role of the Secretariat, for example, in preparing the preliminary documents on the basis of objective, reliable and factually correct information or in drafting reports, the relatively high labour and resource intensive nature of the review processes described, and the types of actors involved in the review (experts or representatives of States), were discussed.

13. Other issues raised in the dialogue included: the periodicity and order of review, and more specifically, whether developing countries should be reviewed more or less frequently; dialogue with the country concerned throughout the process, including in the follow-up; the effectiveness of the review; and whether the information that is made public during the review leads to an increased number of complaints. In relation to follow-up, the desirability and effectiveness of specific sanction measures for non-compliance with the review process or with its outcome was also discussed.

### **III. TERMS OF REFERENCE/BASIS OF REVIEW**

14. At the 2nd meeting, on 20 November 2006, the Working Group discussed the terms of reference for the implementation of UPR and the basis of review. To guide the discussion, the Facilitator summarized the proposals and views previously expressed on these elements at the informal consultations and the general debate held by the Council on 2 October, as well as in the written contributions received by the Office.

15. Several delegations stated that GA resolution 60/251, in particular paragraph 5(e) should serve as the terms of reference for UPR. In this regard, it was generally acknowledged that the UPR mechanism should review the fulfilment by each State of its human rights obligations and commitments. The view was moreover expressed that UPR should also be applicable to the actions of States both within and outside of national borders.

16. On this basis, many delegations identified specific international instruments and other legal documents from which such obligations and commitments arose and which, in their view, constituted the basis of review. Others asserted that UPR should not be a judicial body but a cooperative mechanism for 'moral suasion'. Thus, a more general focus on obligations and commitments was encouraged rather than the identification of specific legal provisions and standards.

17. Many delegations made reference to the Charter of the United Nations (UN Charter) and the Universal Declaration of Human Rights (UDHR). One delegation considered, however, that as the UDHR was merely a declaration containing general provisions, the lack of specificity, particularly with regard to the human rights obligations of States, would pose difficulties as a basis of review.

18. A number of delegations also made specific reference to international human rights treaties to which the State under review was party (with one delegation also including any relevant reservations or declarations entered into by the State in this regard) as well as general references to treaty obligations undertaken by the State concerned. Some elaborated further, stating that obligations arising from treaties to which States were not party should be explicitly precluded from UPR since States were neither obligated to fulfil them nor had made commitments to do so.

19. Concern was expressed that different levels of ratifications as well as compliance with human rights treaties would perhaps lead to inconsistencies in the treatment of countries under review and thus, would not be compatible with the principles of universality of coverage and equal treatment of States outlined in paragraph 5(e) of GA resolution 60/251. One delegation asserted that the non-ratification of treaties by a State should not mean less scrutiny under UPR or evaluation using different measurements.

20. Concern was also expressed that the inclusion of treaty obligations as a basis of UPR would duplicate the work of the treaty bodies. One delegation underlined that UPR should not undertake a second substantive assessment of compliance, while another asserted that UPR should not serve as forum in which to re-open or challenge treaty body recommendations and conclusions. Other delegations, however, illustrated ways in which UPR could complement or reinforce the work of treaty bodies: though ensuring implementation and follow-up to their recommendations and conclusions; examining State interaction, including reporting obligations; and taking account of treaty ratification to identify gaps in international monitoring of a State's compliance with its human rights obligations.

21. There were also more general references to 'other human rights standards' and to international customary law although some delegations questioned the lack of specificity and noted that there was no clear and universal agreement on what these constituted, particularly considering differences in legal systems across countries and national specificities. Others cautioned against attempting to identify a list of applicable instruments or provisions as consensus and agreement would be difficult to achieve.

22. Proposals were also made to include international humanitarian law (IHL) as a basis for review with one delegation making specific reference to common article 3 of the Geneva Conventions (as also customary law) and another noting that many aspects of IHL were relevant to human rights. Others did not support such proposals. With specific reference to preambular paragraph 2 of GA resolution 60/251, one delegation stated that only human rights instruments and not IHL were applicable to the work of the Council.

23. Many delegations made mention of other human rights commitments and obligations, including those undertaken voluntarily by States when presenting their candidatures for election to the Council and those arising from various world conferences and summits – with some specifically highlighting the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights in this regard.

24. Mention was also made of the recommendations issued by the special procedures of the Council although some specified that only the recommendations of thematic special procedures should be utilized by UPR. The need to avoid overlap and duplication with the work of other human rights mechanisms was again emphasized by some delegations, while others considered that UPR could serve as a means for implementation and follow-up to such recommendations, and for identifying any gaps or capacity-building needs in this regard. More generally, several delegations proposed that the review should take into account the measure or extent to which the country concerned cooperates with United Nations human rights mechanisms, including cooperation with regard to reporting obligations, country visits and communications. Others expressed reservations, questioning whether there were objective criteria by which to assess level of cooperation and asserted that this element would lead to increased politicization and the practice of ‘naming and shaming’.

25. Different views were also expressed about the inclusion of national constitutions and other domestic legislation as a basis of review. Several delegations considered that domestic legislation reflected both the national aspirations and commitments undertaken by the State with regard to human rights and may elaborate on obligations in more detail than contained in international instruments. Others held that UPR should not be a mechanism for reviewing compliance by a State with its own law as this was a matter for domestic bodies. Further, international law already required States to ensure that their domestic legislation was in conformity to international obligations and thus, there would be no added value or relevance in considering domestic legislation as a basis of review.

#### **IV. THE OBJECTIVES AND PRINCIPLES OF REVIEW**

26. Also at the 2nd meeting, the Working Group discussed the principles and objectives of UPR. In this regard, views were expressed that UPR should generally enhance and protect human rights throughout the world and that it should improve the implementation of human rights obligations, standards and commitments by all States. Some delegations specified that incremental improvements should be sought by enhancing national capacities to promote and protect human rights. Views were also expressed that UPR should promote constructive dialogue and international cooperation in the field of human rights.

27. Referring specifically to GA resolution 60/251, many delegations underscored the importance of a number of principles and elements contained in paragraph 5(e): objective and reliable information for review; universality of coverage and equal treatment of States; full involvement of the country concerned; as well as complementarity and non-duplication with the work of other human rights bodies. Elaborating on the need to consider the capacity-building needs of States under review, several delegations asserted that UPR should assist in identifying areas where technical assistance could be provided with the consent of the State concerned.

28. Other provisions and principles contained in GA resolution 60/251 were also seen as relevant for the functioning of the UPR mechanism. In this regard, a number of delegations emphasized the importance of considering a country's level of development, as well as its national, religious and/or socio-cultural specificities in the review. Others asserted that this should neither undermine human rights and their universality in any way nor entail any derogation from international human rights law.

29. Reference was made to the universality, indivisibility, interdependence and interrelatedness of all human rights as an important guiding principle for any review process. On that point, several delegations emphasized the need for balance in the treatment of all human rights, specifically highlighting two sets of rights: civil and political, as well as economic, social and cultural rights, including the right to development.

30. Reference was also made to the importance of ensuring universality, objectivity, non-selectivity in the functioning of the UPR mechanism, and the elimination of double standards and politicization. Several delegations added that the review process should not be a form of tribunal for 'naming and shaming' but should be constructive and non-confrontational.

31. Several delegations stressed the importance of ensuring the participation of all stakeholders in various stages of the review process, specifically mentioning NGOs and other civil society actors in this regard. One delegation proposed that national NGOs without consultative status with the Economic and Social Council (ECOSOC) should be permitted to provide information for the review. Some delegations indicated that any decision-making should only be undertaken by States, while others considered that UPR should remain solely a 'member-driven' exercise.

32. Reflecting on the high cost and labour intensive nature of other existing mechanisms for periodic review, and the limited resources available to the Office, views were expressed that UPR should be a light and not overly-cumbersome process and not create or impose additional obligations or burden on either States, the Council or the Office.

## **V. PERIODICITY AND ORDER OF REVIEW**

33. At its 3rd meeting, on 22 November 2006, the Working Group held a discussion on the periodicity and order of review.

34. Various proposals were made with regard to the periodicity of review, ranging from 3 to 6 years or more, with the consequent total number of countries to be reviewed annually ranging

from 30 to 64. Delegations considered that any decisions on periodicity should take into account the workload and resource constraints of States, the Council and the Office. It was stated that the review cycle should be sufficiently frequent so as to allow a thorough assessment of a situation but also of such duration as to allow States to make any necessary adjustments to policies and programmes. Additionally, a regular review cycle was seen as important to ensuring that UPR was timely, meaningful and efficient. It was also stated, however, that longer cycles would allow UPR to focus on broader systemic and institutional issues, instead of specific events and cases which, in the view of one delegation, would be more constructive and beneficial.

35. Some delegations were also of the view that the frequency of review could differ depending on a country's level of development. In this regard, proposals were made for graduated periodicities for developed (3 years), developing (5 years) and least developed countries (7 years), taking into account national capacity and potential difficulties, particularly for least developed countries, in meeting UPR obligations. Many delegations, however, underlined that equal treatment was an important principle set out in paragraph 5(e) of GA resolution 60/25 and accordingly, considered that the periodicity of review should be the same for all countries. Further, it was suggested that technical assistance should be provided to overcome any potential difficulties faced by a State in undergoing review instead of creating differentiated periodicities based on level of development.

36. While it was generally acknowledged that Council members should undergo review during their term of membership (as provided for in paragraph 9 of GA resolution 60/251), some delegations were of the view that this would necessarily entail a 3 year review cycle. Others disagreed, stating that paragraph 9 did not preclude 4 or even 5 year review cycles. Elaborating further, some delegations noted that this would simply imply practical arrangements and coordination between membership and review cycles, particularly following the election of new members to the Council. One delegation added that 5 year cycles were the norm in terms of treaty reporting.

37. Various proposals were also put forward on the selection of countries for review, including by alphabetical order, drawn by lot or on a voluntary basis (with specific regard to observer States of the Council). Whatever the means for selection, the importance of ensuring equitable geographic distribution in the countries to be reviewed each year and informing the concerned countries well in advance was underlined.

38. With regard to order, several delegations considered that member States of the Council should undergo review first, particularly those with 1 or 2 year terms of membership. Others proposed that observer States should also be reviewed, even as of the first round, with one delegation proposing that this could be done on a voluntary basis. It was also stated that the review should only begin after the adoption of the UPR mechanism by the Council.

## **VI. THE PROCESS AND MODALITIES OF REVIEW**

39. Also at its 3rd meeting, the Working Group held a discussion on the process and modalities of review, specifically considering issues related to the preparatory process and to the conduct of the review itself.

40. There was general acknowledgment that UPR should not overburden States, the Council or OHCHR, with some delegations asserting that the process should be 'simple' and 'light', as well as efficient and implementable. As in the discussion on the objectives and principles of review, some delegations asserted that emphasis should be given to the universality, indivisibility, interdependence and interrelatedness of all human rights. Additionally, consideration should be given to differing levels of development, diverse legal systems, as well as religious and socio-cultural specificities. Several delegations also asserted that the review should address the capacity-building needs of States and identify areas for technical assistance and international cooperation, with a view to enhancing the fulfilment of human rights obligations and commitments. One delegation added that the Council could consequently commit the necessary resources for this purpose.

41. In a discussion on ensuring complementarity and avoiding duplication with the work of other human rights mechanisms, the constructive and cooperative nature of UPR, as well as its focus on capacity-building and technical assistance, was seen as important features which differentiated UPR from other mechanisms. It was also stated that UPR should undertake a general review of the human rights situation in a country and not address specific and more technical issues already dealt with by the treaty bodies.

42. Different proposals were made on the modalities of UPR and consequently, on the actors or mechanisms responsible for the review. Different views were also expressed on whether UPR should be conducted intersessionally or during the regular sessions of the Council. Some delegations called for the creation of UPR working groups or sub-committees so as not to add to the work of the Council or reduce the time available for the consideration of other substantive issues. Additionally, suggestions were made for the appointment of a session or country rapporteur (selected from each sub-committee or from the relevant regional group) for each country reviewed. Others proposed that UPR should be conducted by the plenary of the Council so as to ensure maximum transparency and to reduce any potential difficulties faced by smaller delegations in attending multiple parallel meetings.

43. Some delegations asserted that UPR was intended to be an intergovernmental process; others specifically referred to the mechanism as a review by peers. In this regard, no role for independent experts was envisaged. Alternatively, some delegations considered that the participation of experts would be crucial to ensure the impartiality and objectivity of the review. Additionally, it was stated that specific expertise would be important, particularly for the analysis of country information, the identification of problems and challenges, and the formulation of recommendations. Elaborating further, one delegation noted that experts should be chosen for their technical knowledge of the UPR process, for example the processing and summarizing of country information for review. Such experts could be identified from a roster of candidates maintained by OHCHR, as had been suggested in other discussions held by the Working Group on the implementation of operative paragraph 6 of GA resolution 60/251.

#### **i. Preparatory process of review**

44. The importance of the preparatory process in ensuring an effective review was underlined. In this regard, the need to establish a clear and simple process, which was

implementable for the States concerned, the Council and OHCHR, was highlighted. It was also noted that States should be informed of the timeframe for review reasonably in advance in order to enable adequate preparation at the national level. Additionally, one delegation outlined the timing for various phases of preparation: from 9 months to 3 months prior to the review dialogue.

45. Various proposals were put forward on the sources and types of information to be utilized for review, with some delegations indicating that all available and existing information on a country should be utilized so as to avoid duplication and to maximize available resources. In this regard, mention was made of information provided by the State (see below), the recommendations and concluding observations of treaty bodies (including any comments or responses provided by the State), the recommendations of thematic and/or country-specific special procedures (including any comments or responses provided by the State), information from OHCHR and other United Nations entities (with one delegation also referring to UN Country Teams), information from NGOs (either only those with ECOSOC consultative status or local organizations), and information from national human rights institutions (NHRIs).

46. Some delegations considered that States should be the primary source of information for review and should provide any information it deemed appropriate. While it was noted that UPR should not create additional reporting obligations for States, several proposals were made for States to submit a report on the general human rights situation in the country, perhaps using a standard format developed with the assistance of the Office and/or agreed to by the Council. Such reports should be submitted in advance (perhaps 1 month) of the relevant UPR session. Proposals were also made for States to prepare a report or submit written responses to a questionnaire either prepared by an independent expert, a group of experts, the Office, or the Council. Different views were expressed on whether the questionnaire should be standardized for all States (to ensure uniformity in format and to focus the ensuing interactive dialogue), or individualized (to reflect the particular issues and challenges faced by a State).

47. As suggested by some delegations, the responses to the questionnaire could be utilized to formulate a list of issues or specific questions for the interactive dialogue (either by States or by experts) to be provided in advance to the State concerned. Several delegations, noting the need for technical expertise in consolidating and analysing the information provided, as well as in drafting possible issues and questions, emphasized the importance of expert involvement at this stage.

48. Some delegations proposed that other stakeholders should also provide information: either in writing, through additional questionnaires (to be transmitted by the Office) to the concerned State, or proposing questions to be included in the questionnaire. As noted by some delegations, supplementary information provided by other stakeholders would be important for the review of States that are not party to the major human rights treaties or that are not the subject of specific recommendations of special procedures.

49. With regard to the role of the Office, several delegations proposed that OHCHR compile all available information on a country, including any relevant State responses, in a 'country dossier' or some form of background document, or in a public database on its website. There

were also proposals for OHCHR to produce a factual or background report (to supplement the information provided by States) containing basic information on the country, such as institutional human rights infrastructure, status of treaty ratifications, level of development, etc. It was suggested that this factual report follow a standard format agreed to by the Council and draw on information from United Nations entities and 'objective and reliable information' from NGOs. The factual report should be made available to the concerned State in advance of the review (perhaps 1 or 2 months in advance) so that any factual errors may be corrected. It was also proposed that any responses by the State concerned should be incorporated in the report before circulation to other States. One delegation stated that OHCHR should summarize and assess all available country information with a view to identifying, among others, the recommendations that have been made by the United Nations system, any achievements and outstanding issues, as well as capacity-building needs.

50. In discussing possible measures to ensure the use of objective and reliable information for review, the filtering role of the Office, particularly in excluding non-credible information from NGOs, was highlighted by a number of delegations. Additionally, some delegations indicated that information should be based on fact and not supposition, while others urged that the widest number of sources be used.

## **ii. Conduct of the review**

51. Most delegations proposed that the review dialogue should be of either 2 or 3 hours duration for each country (although one delegation envisaged 1½ hours per country). Alternatively, it was proposed that countries could be reviewed in two separate sessions (of 3 hours and 2 hours duration, respectively) to allow sufficient time for additional questions and answers.

52. With regard to the format, it was generally acknowledged that the review dialogue should be conducted in public and in an open and transparent manner. Many delegations suggested that a brief presentation or statement should be made by the State concerned, possibly on the basis of the questionnaire, the list of issues or on the State report. Depending on the type of modalities envisaged, this could be followed by a presentation on the list of issues and questions (by an expert) or by the High Commissioner on the basis of the factual document prepared by OHCHR.

53. There was general agreement that a question and answer session with the State concerned would comprise the main element of the review dialogue. In this regard, it was stated that the dialogue should be constructive and conducted in the spirit of cooperation, equality and mutual respect. One delegation specified that the dialogue should not be inquisitorial in nature. Others proposed that the dialogue could serve as forum for exchanging best practices and lessons learned. Further, it was proposed that the questions be provided to the concerned State in advance.

54. There were differences in views as to who would be responsible for conducting the dialogue. Some delegations were of the view that UPR was a member-driven process and accordingly indicated that only member States of the Council should participate in the interactive dialogue. Others considered that both member and observer States should be able to participate

(one delegation proposed that observer States would be subject to certain restrictions, depending on time constraints), with other stakeholders, such as NGOs with ECOSOC consultative status, present as observers. In the view of one delegation, this would allow for a diversity of views to be presented. Alternatively, some held the view that all stakeholders, including representatives of treaty bodies, special procedure mandate-holders, NGOs and NHRIs, should be able to participate and to pose questions or make comments to the State concerned. Additionally, it was suggested that the dialogue be led by a 'discussant' - possibly a representative of a member State of the Council acting in his/her individual capacity or a member of a sub-committee or working group, perhaps drawn by lot.

55. Depending on the type of modalities envisaged, it was proposed that the dialogue should be guided by the responses to the questionnaire, the list of issues or the State report. It was suggested that States or other participating stakeholders should be able to refer to other objective and reliable information. Additionally, some delegations proposed that States should be able to submit written responses (within a reasonable period of time) to questions not sufficiently answered during the dialogue. One delegation added that this would allow States to reflect and undertake consultations at the national level.

## VII. OUTCOME OF THE REVIEW

56. At its 4th meeting, on 23 November 2006, the Working Group held a discussion on the possible outcome of review. Issues raised in the discussion related to the process of drafting and elaborating the outcome as well as to its format, type and content.

57. Depending on the type of UPR modalities envisaged, some delegations were in favour of having the outcome drafted by an expert, group of experts or an independent body. Delegations that proposed the creation of UPR working groups or sub-committees (as well as the appointment of session or country rapporteurs for each country reviewed) considered that such bodies should be mandated with this task. Alternatively, the establishment of a drafting taskforce or working group was also proposed. With respect to its composition, one delegation highlighted the importance of ensuring equitable geographic representation and suggested that it consist of three representatives from each region.

58. Various views were expressed on the format of the UPR outcome. One delegation specified that the underlying principle of equal treatment would not necessarily translate into equality of all countries and thus, the outcome could vary depending on the country under review. Others, however, underlined the need to maintain a uniform format for every country. Many delegations expressed support for reflecting the discussions in some form of summary record or some form of outcome document containing conclusions and recommendations addressed to the State concerned. There were also proposals that the results of the review be consolidated into a global human rights report at the end of each review cycle. One delegation proposed a different course of action, whereby the UPR outcome would include a summary prepared by the High Commissioner for Human Rights, a summary of the relevant UPR committee as well as the response of the State under review. The adoption of a resolution or decision on each country was also proposed, although this was explicitly opposed by one

delegation on the grounds that the Council would then have to consider and adopt a large number of country-specific texts at each session.

59. With respect to their purpose and content, some general views were expressed that the conclusions should provide an assessment of the country situation and highlight achievements and challenges. A suggestion was also made for such an assessment to address the level of implementation of treaty body or special procedure recommendations. Additionally, general views were expressed that the recommendations of UPR should be objective, adapted to the specific situation, practical, realistic and achievable. Many delegations asserted that the recommendations should highlight the capacity-building needs of States and focus on areas where technical assistance could be provided – some specified that such recommendations should be made with the consent of the State concerned or at its specific request. Recommendations for the provision of technical assistance should be addressed to OHCHR and/or to other relevant actors, such as United Nations funds and programmes. Some delegations moreover favoured the inclusion in the UPR outcome of voluntary pledges and commitments made by the State under review.

60. A number of delegations also proposed the inclusion of other possible recommendations, such as the establishment of special procedure mandates or fact-finding/investigative missions (to report to the Council at its next session). In response, a number of delegations emphasized the risk of politicization, while one stated that it did not oppose the proposal as such, as long as special procedures mandates were appointed for each and every country.

61. While noting that UPR was intended to be a cooperative mechanism with the full involvement of the country concerned, several delegations highlighted the need to include the State's views and responses in the outcome. In this regard, it was specifically proposed that the State under review should be involved in drafting and/or should approve the draft prior to its consideration by the Council. Elaborating further, some delegations emphasized that the effectiveness of the UPR would depend on the cooperation of the State concerned to implement the UPR outcome. Its consent, therefore, was seen as essential.

62. Many delegations were of the view that the UPR outcome should be considered and approved by the plenary of the Council. Some delegations stressed the need for the UPR outcome to be adopted by consensus. Others stated that adoption by vote, in the absence of consensus, should be one option. Also discussed was the issue of whether the State under review would or would not be required to form part of this consensus.

### **VIII. FOLLOW-UP TO THE REVIEW**

63. Also at its 4th meeting, the Working Group held a discussion on the possible follow-up to the review. Issues raised in the discussion related to the actors or mechanisms responsible for follow-up, as well as the format and timing of follow-up activities.

64. Different proposals were put forward on the types of follow-up activities envisaged including: the circulation of written responses by the State under review to questions that could not be sufficiently answered during the interactive dialogue; the publication and wide

dissemination of UPR outcomes to all stakeholders; the provision of technical assistance by OHCHR, other relevant United Nations entities or international actors; cooperation with relevant human rights mechanisms, including possible country visits to be taken by thematic special procedures; the appointment of a special rapporteur on follow-up for each country reviewed; the monitoring of any voluntary commitments or initiatives undertaken by the State during review; the transmittal of a standard questionnaire, perhaps to be prepared by OHCHR, on follow-up; the preparation of a report on follow-up by the concerned State or by OHCHR; as well as the preparation of a global report on the proceedings and outcomes of UPR at the end of each review cycle. Differences in views were also expressed on the actors responsible for follow-up, with mention made of the Council, the State concerned, OHCHR and other actors, such as treaty bodies, special procedures, a pool of experts, NGOs, or NHRIs, etc.

65. Several delegations considered that follow-up should be taken up at the next scheduled review of the country under UPR. Some were of the view that a standing and separate item on follow-up should be created in the agenda of the Council. It was also proposed that OHCHR should regularly report to the Council on the implementation of UPR outcomes. One delegation emphasized that the consideration of follow-up should not coincide with any scheduled reporting to treaty bodies.

66. Several delegations indicated that the implementation of voluntary commitments undertaken by States during UPR should be considered the focus for follow-up. It was also proposed that the implementation of national measures to promote and protect human rights should be considered in this regard. Other delegations also referred to the implementation of previous UPR conclusions and recommendations, including the provision of technical assistance, while one delegation made mention of the recommendations of special procedures.

## **IX. ANY OTHER REMAINING ISSUES**

67. The Working Group discussed the possible establishment of a dedicated fund for technical cooperation in the context of UPR. Some delegations pointed to the existence of a voluntary fund for technical cooperation and other existing funding mechanisms, and expressed their preference for exploring and utilizing such mechanisms at the national and international levels. It was also noted that many human rights issues do not depend on capacity-building but rather on political will. Others highlighted the need for such a fund, noting that implementation of human rights obligations and commitments may be impeded by lack of capacity in developing countries. Delegations further considered the possible resource implications of UPR and the need to develop additional means of financing the mechanism.

68. The Working Group also considered the question of non-cooperation by a State in the UPR process, with specific regard to the implementation of recommendations and their follow-up. Some delegations stated the need for specific sanctions to be applied for non-cooperative States, including the adoption of resolutions by the HRC or the issuance of public declarations. A graduated approach was recommended in this regard. It was also noted that suspension of the rights of membership was possible under the terms of GA resolution 60/251. Others cautioned that the establishment of sanctions or other such measures would ultimately lead to confrontation and politicization, thus being contrary to the cooperative nature of the UPR. It was also

underlined that suspension of membership should only be considered as a last resort – utilized only after having explored other cooperative avenues and having engaged in a constructive dialogue with the country concerned.

#### **X. CLOSURE OF THE SESSION**

69. At a joint meeting convened by the President of the Council on Friday, 24 November 2006, the two Working Groups heard oral presentations by the respective Facilitators outlining their preliminary reflections on the discussions held during the session. It was announced that preliminary conclusions highlighting areas of convergence and areas requiring further reflection and discussion would be prepared under the responsibility of the Facilitators and circulated to all delegations on Wednesday, 29 November 2006. It was also announced that a summary of the discussion would be prepared by OHCHR and also circulated to delegations on the same day.

70. The Working Group thus concluded its first session.

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## Annex I

### Proposed programme of work for the Working Group to develop the modalities of the universal periodic review mechanism (UPR) (20 to 24 November 2006)

Prepared by the Facilitator, H.E. Mr. Mohammed Loulichki (Morocco)

#### Legislative basis:

Pursuant to paragraph 5(e) of General Assembly resolution 60/251 (15 March 2006), the Human Rights Council is to:

*Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session.*

By its decision 1/103 (30 June 2006), the Human Rights Council decided to establish an intersessional open-ended intergovernmental working group to develop the modalities of the UPR mechanism. The Working Group would have at its disposal ten days (or twenty 3-hour meetings) of fully serviced meetings and would allow sufficient time and flexibility for the development of the universal periodic review mechanism. See attached decision for complete reference.

#### Proposed programme of work:

The following proposed programme of work has been prepared on the basis of decision 1/103 and on the six elements for discussion announced by the Facilitator at the informal consultations held on 2 August 2006, on which all oral and written contributions were previously presented on UPR.

#### **Monday, 20 November (10.00 am to 1.00 pm)**

- Presentations by representatives of the International Monetary Fund, the Organization of American States and the World Trade Organization on their existing mechanisms for periodic review. A representative of the International Atomic Energy Agency in Geneva will be present at the meeting.
- Interactive dialogue with the Working Group.

#### **Monday, 20 November (3.00 pm to 6.00 pm)**

- Focused discussion on the following elements:
  - i. Terms of reference / basis of review;
  - ii. Objectives and principles of the review;
  - iii. Periodicity and order of review.

#### **Wednesday, 22 November (3.00 pm to 6.00 pm)**

- Focused discussion on the process and modalities of review:
  - i. Preparatory process of review;
  - ii. Conduct of the review.

**Thursday, 23 November (9.00 am to 12.00 pm)**

- Focused discussion on the following:
  - i. Outcome of the review;
  - ii. Follow-up to the review.

**Friday, 24 November (9.00 am to 12.00 pm)**

- Any other remaining issues.
- Presentation of draft preliminary conclusions prepared by the Facilitator.
- Comments and observations on the draft preliminary conclusions.

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[see HRC decision 1/103 below]



### Human Rights Council decision 1/103. The Universal Periodic Review

At its 22nd meeting, on 30 June 2006, the Human Rights Council adopted, without a vote, the following text:

*“The Human Rights Council,*

*“Bearing in mind* General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council” and in particular the decision of the Assembly that the Council shall undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States,

*“Taking into consideration* that the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs and that such a mechanism shall complement and not duplicate the work of treaty bodies,

*“Bearing in mind* that members of the Council shall be reviewed under the universal periodic review mechanism during their term of membership,

*“Bearing in mind also* that the General Assembly decided that the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session, as called for in resolution 60/251,

*“Underlining* the importance of a comprehensive implementation of General Assembly resolution 60/251,

“1. *Decides* to establish an intersessional open-ended intergovernmental working group to develop the modalities of the universal periodic review mechanism;

“2. *Decides* that the Working Group shall have at its disposal ten days (or twenty 3-hour meetings) of fully serviced meetings and that it shall allow sufficient time and flexibility for the development of the universal periodic review mechanism;

“3. *Requests* the President of the Council to chair the Working Group with the assistance, if necessary, of one or more facilitators from among permanent missions in Geneva, to undertake these open-ended, intersessional, transparent, well-scheduled and inclusive consultations with the participation of all stakeholders;

“4. *Decides* that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, to facilitate open-ended discussions appropriately scheduled by the Chairperson with the involvement of all stakeholders;

“5. *Requests* the Office of the United Nations High Commissioner for Human Rights to provide the Working Group with background information on existing mechanisms for periodic review, for example, of the Council of Europe, the International Atomic Energy Agency, the International Labour Organization, the International Monetary Fund, the New Partnership for Africa’s Development, the Organization for Economic Cooperation and Development, the Organization of American States and the World Trade Organization) and to compile the contributions of all stakeholders;

“6. *Requests* the Working Group to report regularly to the Council starting in September 2006 on progress made in the development of modalities and necessary time allocation for the universal periodic review, as requested by the General Assembly in paragraphs 5 (e) and 9 of its resolution 60/251.”

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## Annex II

### Timetable for the Working Groups of the Council (13 to 24 November 2006)

	Morning	Afternoon
<b>Monday 13 November</b>	Review of mandates	Review of mandates
<b>Tuesday 14 November</b>	Review of mandates	Review of mandates
<b>Wednesday 15 November</b>	-----	-----
<b>Thursday 16 November</b>	Complaint procedure	Review of mandates
<b>Friday 17 November</b>	Complaint procedure	Review of mandates

<b>Monday 20 November</b>	Universal Periodic Review		Universal Periodic Review
<b>Tuesday 21 November</b>	Expert advice		Expert advice
<b>Wednesday 22 November</b>	Review of mandates		Universal Periodic Review
<b>Thursday 23 November</b>	Universal Periodic Review	Review of mandates	Complaint procedure
<b>Friday 24 November</b>	Review of mandates		Wrap-up session chaired by the President on the two WGs