



General Assembly

Distr.
GENERAL

A/HRC/3/3
30 November 2006

Original: ENGLISH

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**

**Preliminary conclusions by the Facilitator,
Mr. Mohammed Loulichki (Morocco)**

Introduction

1. Pursuant to paragraph 5 (e) of General Assembly resolution 60/251 of 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”.
2. In its decision 1/103 of 30 June 2006, the Human Rights Council 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 10 days (or 20 3-hour meetings) of fully serviced meetings and that it shall allow sufficient time and flexibility for the development of the UPR mechanism.
3. Since my appointment by the President as Facilitator of the Working Group, the Council has held four rounds of open-ended intersessional consultations on UPR held on 21 July, 2 August, and 7 and 8 September 2006. I have 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 compiled into a single comprehensive document by the Office of the High Commissioner for Human Rights and made publicly available including on the extranet page of the Human Rights Council. Background information on other existing mechanisms for periodic review has also been received from a number of organizations listed in decision 1/103 and has been made publicly available. Finally, at the first part of the Council’s second session, on 2 October 2006, I delivered an oral report on progress made with regard to UPR and on the activities undertaken since the Council’s first session in June 2006.

Reflections on the session of the Working Group

4. The Working Group to develop the modalities of the UPR mechanism met in its first formal session from 20 to 23 November 2006, and held four meetings. All meetings were well attended by member States of the Council, observer States, as well as representatives of other United Nations bodies, intergovernmental organizations and non-governmental organizations (NGOs).
5. The Working Group proceeded in accordance with a programme of work that I had prepared on the basis of six elements proposed for a structured discussion. These elements were announced at the informal consultations held on 2 August 2006 and all previous written and oral contributions have been submitted on that basis:

- (a) The terms of reference/basis of review;
- (b) The objectives and guiding principles of review;
- (c) Periodicity and order of review;
- (d) The process and modalities of review;
- (e) The outcome of review; and
- (f) Follow-up to review.

6. The discussions have been interactive and constructive and the Working Group heard from a variety of participants and stakeholders. Throughout the entire session, the Working Group was able to move beyond statements of a general nature and focus, with more details, on the analysis of the elements of each cluster, and to reflect and react to the different proposals and views expressed. There was a real exchange among delegations and a true reflection on the issues at hand.

7. There are, however, many complex issues, both of a conceptual and practical nature that remain to be addressed. While General Assembly resolution 60/251 provides the basic outlines of the UPR mechanism, the general nature of its provisions, in particular paragraph 5 (e), leaves much room for interpretation as to the meaning, scope and implications of important concepts included therein.

8. Notwithstanding the issues that remain to be addressed, the discussions of the Working Group, as well as the discussions at previous informal consultations, have made clear some general points. Notably, all stakeholders strive to establish a credible, effective and manageable UPR mechanism aimed at improving the respect and promotion of all human rights by all States. Further, it is obvious that such a mechanism is by definition an evolving process, which will be improved on the basis of experience and lessons learned. Finally, there is an obvious link between UPR and the other review processes, notwithstanding the specificities of each one of them and their outcomes.

9. The discussions held so far have also allowed me to identify emerging elements of convergence as well as to point out areas requiring further reflection and discussion on each of the six elements that were extensively discussed by the Working Group. I have therefore prepared my preliminary conclusions, in my capacity as Facilitator, on this basis.

10. The present preliminary conclusions are set out in the following section below. All delegations are invited to study and reflect upon them in the light of the discussions and contributions that have been held and submitted on UPR to date. The Facilitator looks forward to receiving comments and observations on these points from all stakeholders.

PRELIMINARY CONCLUSIONS

I. BASIS OF REVIEW

A. Elements of convergence

- The United Nations Charter
- The Universal Declaration of Human Rights
- Human rights instruments to which a State is party
- Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council

B. Elements requiring further consideration

- National constitutions, legislation and domestic laws
- International customary law/other human rights standards
- International humanitarian law
- Commitments in United Nations conferences and summits
- Existing information, including the conclusions and recommendations of treaty bodies and special procedures

II. OBJECTIVES AND PRINCIPLES

A. Principles

1. Elements of convergence

The UPR should:

- Be based on objective and reliable information;
- Be a cooperative mechanism based on interactive dialogue;
- Promote universality, interdependence, indivisibility and the interrelatedness of all human rights;
- Not add more reporting obligations on States or be burdensome to the Council or the Secretariat;
- Complement and not duplicate other human rights mechanisms, thus representing an added value;

- Ensure universal coverage and equal treatment of all States;
- Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- Fully involve the country under review;
- Be an intergovernmental process, Member-driven and action-oriented;
- Ensure the participation of all stakeholders, including NGOs and national human rights institutions (NHRIs).

2. Elements requiring further consideration

- UPR should count among a number of tools at the disposal of the Human Rights Council;
- If countries do not cooperate with UPR, other means or measures should be sought;
- Level, nature and stage of participation of stakeholders other than Member States, during the preparatory process, the conduct of the review and the implementation of outcome;
- UPR should take into account the level of development and specificities of countries.

B. Objectives

1. Elements of convergence

- Assessment of the human rights work done by a State, positive developments and challenges faced by it in that process;
- Improvement of the human rights situation on the ground;
- Fulfilment of the State's human rights obligations and commitments;
- Enhancement of the State's capacity and technical assistance;
- Sharing of best practices among States and other stakeholders;
- Support for cooperation in the promotion and protection of human rights;
- Not diminishing HRC's capacity to respond to urgent human rights situations.

2. Elements requiring further consideration

- Encouragement of full cooperation and engagement with human rights bodies, HRC and OHCHR;
- Assessment of situations of human rights violations, including gross and systematic violations and any recommendations in this regard.

III. PERIODICITY AND ORDER OF REVIEW

A. Elements of convergence

- Review begins after the adoption of the UPR mechanism by the HRC;
- The order of review should reflect principles of universality and equal treatment;
- The order of review should be established as soon as possible in order to allow States to prepare adequately;
- All member States of the Council should be reviewed during their term of membership;
- A mix of member and observer States of the HRC should be reviewed;
- States may volunteer to be reviewed at any time;
- The period between review cycles should be reasonable so as to take into account the capacity of States to prepare and the capacity of other stakeholders to respond to the requests arising from the review.

B. Elements requiring further consideration

- Proposals for periodicity have ranged from three to six years, or more. If review is done by the Council's plenary, the amount of time necessary for that purpose would be as follows:

Periodicity/year	Number of countries/year	2-hour meeting		3-hour meeting	
3 years	64 countries	128 hours	43 meetings	192 hours	64 meetings
4	48	96 hours	32 meetings	144 hours	48 meetings
5	38.4 = 39	78 hours	26 meetings	117 hours	39 meetings
6	32	64 hours	22 meetings	96 hours	32 meetings

- The periodicity will of course change depending on whether the review is done through working groups or subcommittees meeting in parallel or intersessionally;
- The periodicity of the review should be different for developed and developing countries, in particular least developed countries;

- The duration of the review could range between two and three hours;
- Members to be reviewed should be selected based on alphabetical order or determined by lot;
- Members elected for one or two years should be reviewed first;
- Equitable geographical distribution should be respected in the selection of countries for review.

IV. PROCESS AND MODALITIES OF REVIEW

A. Elements of convergence

- Review should be based on objective and reliable information;
- Some form of background document should be elaborated in preparation for the review;
- Interactive dialogue between the State reviewed and the Council should take place;
- Review should be opened to all stakeholders although the scope of their participation requires further reflection;
- Final decision by the Council should be adopted in plenary;
- UPR should not be overly long. It should be realistic and not absorb a disproportionate amount of time, human and financial resources.

B. Elements requiring further consideration

- Who will provide the background document: State reviewed? OHCHR? Experts?
- The use of a questionnaire as a basis for the preparatory work of UPR: should it be standardized or individualized?
- Should there be a prior review by regional group or a group of friends of the country reviewed?
- Sources of background information should be provided by: State reviewed; other States; treaty bodies; special procedures; regional organizations; NHRIs; NGOs and other civil society actors?
- Extent of the State's presentation during review: comprehensive report or brief presentation?
- UPR conducted in HRC plenary meeting or in committees, working groups or chambers, meeting in parallel with the Council or during the intersessional period;

- Scope of participation of stakeholders: member States only; observer States; NGOs; NHRIs; or other relevant stakeholders?
- Possible contribution during the interactive dialogue of experts or a country rapporteur from the relevant regional group.

V. OUTCOME OF THE REVIEW

A. Format of the outcome

- Report or document drafted by a group of experts based on the interactive dialogue and submitted for adoption by the HRC;
- Outcome document including recommendations and decisions;
- Summary of the proceedings;
- Conclusions of the HRC.

B. Content of the outcome

1. Elements of convergence

- Assessment in an objective and transparent manner of the human rights situation in the reviewed country;
- Sharing of best practices;
- Emphasis on enhancing cooperation for the promotion and protection of human rights;
- Provision of technical assistance and capacity-building;
- Voluntary commitments and pledges made by the country reviewed.

2. Elements requiring further consideration

- Appointment of a special procedure mandate, dispatching of fact-finding missions, investigative teams or commissions of inquiry;
- Adoption of resolutions or decisions for each country reviewed;
- Assessment of the implementation of treaty body and special procedure recommendations and conclusions, as well as their follow-up;
- Establishment of OHCHR field offices or other forms of field presence;
- Financing of technical assistance and capacity-building: establishment of a dedicated ad hoc fund or use of existing mechanisms?

C. Mode of adoption

1. Elements of convergence

- Whether the review is done by the HRC plenary, a chamber(s) or a subcommittee(s), working groups, or experts, members of the working group share the view that the outcome should be adopted by the plenary;
- The reviewed country should be fully involved in the outcome.

2. Elements requiring further consideration

- There are only two ways for decision-making on the outcome, either adoption by consensus or through a vote. Further discussions are needed on this issue;
- Should adoption by consensus be circumvented by the objections of a single country, including the reviewed country?
- Before the adoption of the outcome the State concerned should be offered the possibility to present written replies to questions or issues that were not sufficiently addressed during the interactive dialogue;
- The level of involvement of the State reviewed in drafting and approving the outcome even prior to its consideration by the HRC plenary;
- The outcome should be published and widely disseminated.

VI. FOLLOW-UP TO THE REVIEW

A. Elements of convergence

- The outcome of UPR, which should be a cooperative mechanism, should be implemented by all relevant stakeholders, in particular the State concerned;
- The subsequent review should focus, inter alia, on the implementation of the preceding outcome.

B. Elements requiring further consideration

- The State reviewed should have the main responsibility in implementing and following up the UPR outcome, through the implementation of any voluntary commitments undertaken;
- The State reviewed should present a report on the implementation of UPR conclusions and recommendations;
- The recommendations and conclusions regarding capacity-building and technical assistance should be implemented by relevant actors of the international community;

- Other actors such as treaty bodies, special procedures, expert body, NGOs or NHRIs should play a role in the implementation of UPR outcomes;
- The HRC should have a standing item on its agenda devoted to the follow-up of UPR outcomes;
- OHCHR should regularly report to the Council on the implementation of UPR outcomes;
- A rapporteur should be nominated to ensure the follow-up of UPR outcomes;
- At the end of every cycle and after all countries have been reviewed, all UPR reports should be consolidated into a global report;
- The measures to be taken in case of non-compliance by a State with the UPR outcome (even indeed of non-cooperation with the UPR mechanism in general) should be further examined. Proposals have ranged from suspension of membership in the HRC, to adoption of resolutions and/or public statements by the HRC.
