

**ENGAGEMENT OF NATIONAL
HUMAN RIGHTS INSTITUTIONS
WITH THE UNIVERSAL PERIODIC
REVIEW MECHANISM**



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

...a partnership for human rights in our region

APF POSITION PAPER

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BACKGROUND

1. The development of the Universal Periodic Review (UPR) mechanism as mandated by General Assembly resolution 60/251 establishing the Human Rights Council (the Council) holds the potential to be a significant new procedure of the United Nations (UN) human rights machinery.
2. The purpose of the UPR, as set out in resolution 60/251, is to provide for a new mechanism to assess the fulfilment by each State of its human rights obligations and commitments and to give consideration to its capacity-building needs.¹ The resolution sets out a number of guiding principles for the UPR mechanism, including that the review must be based on objective and reliable information and ensure the equal treatment of all States through cooperation, dialogue and the full involvement of the State concerned. The resolution mandates the Council to develop the UPR mechanism within one year of its first session in June 2006.
3. While the former Commission on Human Rights was often criticised as being selective and overly political in its manner of addressing human rights situations, the new Council has been given a clear mandate to undertake its work on the basis of the principles of universality, equality, non-selectivity and objectivity. These principles must also guide the work of the UPR mechanism to ensure that it is effective in contributing to better protection and promotion of human rights in all countries.
4. In this paper, the Asia Pacific Forum of National Human Rights Institutions (APF) sets out its views on the development of an effective UPR mechanism with a specific focus on the participation of national human rights institutions (NHRIs) in the UPR.
5. The APF is a regional organisation of NHRIs in the Asia and Pacific region. It currently has seventeen (17) member NHRIs from Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Territories, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor Leste.

¹ GA res 60/251, OP5(e).

6. The APF and its member institutions are committed to contributing to the institution-building of the Council and its mechanisms and procedures, including the UPR mechanism.

7. It is against this background that the APF has developed this paper to contribute towards an effective UPR mechanism. The APF recommendations are based on the practical, constructive and consultative approach of NHRIs to human rights promotion and protection. The APF paper addresses the main topics discussed by the open-ended working group responsible for developing the modalities of the UPR mechanism reflected in the "Preliminary Conclusions" paper of 30 November 2006 prepared by the facilitator of the working group, H.E. Mr Mohammed Loulichki (Morocco).² The APF paper is therefore structured around the following six elements:

- (a) The basis of review;
- (b) The objectives and guiding principles of review;
- (c) The periodicity and order of review;
- (d) The process and modalities of review;
- (e) The outcome of the review; and
- (f) The follow up to the review.

8. The APF welcomes the fact that the role of NHRIs in the UPR process was recognised during the discussions of the working group and is reflected in the preliminary conclusions of the facilitator and looks forward to further discussions on the scope of their participation in the UPR process and engagement with the UPR mechanism.

ROLE OF NATIONAL INSTITUTIONS IN THE COUNCIL

9. The UN has, on many occasions, recognised the important role that NHRIs can play in promoting and protecting human rights at the national level. General Assembly resolution 60/251 recognised that the Council will work in close collaboration with NHRIs.³ It also provided that the participation of NHRIs shall be based on the arrangements and practices observed by the Commission on Human Rights.⁴ These practices should allow (i) individual NHRIs that are fully compliant with the Principles Relating to the Status of NHRIs (the Paris

² Open ended working group to development the modalities of the UPR mechanism established at the first session of the Council, HRC res 1/L.12.

³ GA res 60/251, OP 5(g).

⁴ GA res 60/251, OP 11.

Principles)⁵, (ii) the International Coordination Committee of NHRIs (ICC) and (iii) regional coordinating bodies of NHRIs such as the APF, to make oral statements and submit written documentation during the meetings of the Council.⁶ The role of NHRIs in the Human Rights Council is further discussed in the ICC Position Paper Volume I: National Human Rights Institutions and the UN Human Rights Council (27 June 2006).⁷

10. NHRIs are independent bodies established by law devoted to the promotion of international human rights instruments at the national level and to the protection of the rights enshrined in them within their countries through effective human rights implementation. They have a specific mandate to provide advice to the government on the scope and implementation of its human rights obligations; monitor and report on the human rights situation; review national legislation; receive complaints; contribute to education and to capacity-building; contribute to reports to treaty monitoring bodies and cooperate with UN bodies.⁸

11. NHRIs therefore have specialised human rights expertise in how to address the challenges and circumstances of local conditions in the implementation of international human rights obligations. NHRIs may also have a good sense of the capacity-building needs in the relevant country. Given this expertise, NHRIs believe that the institution-building processes of the Council, including the establishment and functioning of an effective UPR mechanism, can benefit from the participation of NHRIs.

DESIGNING AN EFFECTIVE UPR MECHANISM

(a) Basis of review

12. The review process should be open and transparent. Consequently, the information used in the review, the interactive dialogue and the outcomes and their follow up should be publicly available and accessible.

13. The UPR should examine the fulfilment of the universal spectrum of human rights obligations and commitments of the State under review. The primary basis of the review should be the relevant provisions of the UN Charter

⁵ The *Paris Principles* defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

⁶ See CHR res 2005/74.

⁷ The paper is available on www.nhri.net

⁸ GA res 48/134.

and the Universal Declaration for Human Rights as well as ratified human rights instruments and other commitments made by States, including the voluntary pledges made by States in seeking membership of the Council. In April 2006 the Office of the High Commissioner for Human Rights suggested a number of elements for voluntary pledges and commitments for candidates to the Council. These included the establishment and strengthening of NHRIs. At the first elections in May 2006 many election pledges made by States related directly to the strengthening of NHRIs.⁹ The implementation of such pledges should be examined by the UPR mechanism when the States are reviewed.

14. In States where NHRIs have been established, a review should examine the legal framework governing the functioning of a NHRI and whether it conforms to the minimum standards contained in the Paris Principles.¹⁰ As both the APF and the ICC review and periodically re-examine the compliance of NHRIs with the Paris Principles to ensure their continued independence and accountability, the outcomes of these review processes will be relevant for the Council to examine, as part of the overall review of State's efforts to protect and promote human rights.

15. In States where no NHRI has been established, the review process should allow for an examination of any challenges and impediments faced by the country concerned in setting up such an institution.

RECOMMENDATIONS:

- The UPR should be based on the UN Charter and the Universal Declaration for Human Rights as well as ratified human rights instruments and other commitments made by States, including the voluntary pledges made by States in seeking membership of the Council.
- The review should examine the State's legal framework governing the functioning of the NHRI and whether it conforms to the Paris Principles.
- Where no NHRI exists, the review should examine the challenges and impediments faced in setting up such an institution.

(b) Objectives and guiding principles

16. The APF strongly supports the view that the UPR mechanism should be based on principles of equality, universality, transparency, cooperation and

⁹ See <http://www.un.org/ga/60/elect/hrc/>

¹⁰ The treaty monitoring bodies, for example, have often requested information about NHRIs with a focus on their independence and capacity to effectively carry out their mandates.

complementarity as recognised in General Assembly resolution 60/251. The UPR mechanism should be legitimate, credible and effective.

17. The review process should therefore ensure that all States are treated in the same manner in the scrutiny of the implementation of their human rights obligations. The review should assess a State's compliance with its general human rights obligations, identify positive developments and good practices and ultimately aim at improving human rights protection and promotion in the State under review. The review process should also identify areas for improvement.

18. The APF supports the preliminary conclusions of the facilitator's paper that the review should be public and open to all stakeholders. The UPR mechanism should promote cooperation and constructive dialogue between the State concerned and all other parties involved in the review, including NHRIs, representatives of civil society and non-governmental organisations. These stakeholders should be provided with the opportunity to contribute to all aspects of the review, including its preparation, conduct and follow up.

19. NHRIs contribution to the process, for example, could involve the submission of credible and objective information to support a well-informed review and assist in the formulation of recommendations that can realistically be implemented by the State to improve its fulfilment and implementation of human rights obligations and commitments. The outcomes of the review should also contribute to enhancing national capacities to promote and protect human rights, including through the work of NHRIs.

20. The UPR mechanism is distinct from the role and work of other parts of the UN human rights machinery including the treaty monitoring bodies and the special procedures. The analysis undertaken by the treaty monitoring bodies within their field of expertise when examining a State's compliance with the treaty and by the special procedures within their individual mandates should not be duplicated by the UPR process, nor should the UPR process become a substitute for the role of the treaty monitoring bodies. Rather the UPR mechanism should complement the work of the treaty monitoring bodies and the special procedures by drawing on the work of these bodies and procedures and identifying structural issues within a State or external sub-regional or regional factors that may hinder the full and effective implementation of human rights obligations and commitments as well as obstacles a State may face in cooperating with the various human rights mechanisms. Such an approach would assist in contributing to the effective follow up of the recommendations of the treaty

bodies and special procedures. Furthermore, the review process should also complement the work done by the Council to address serious human rights situations and emergencies, including through its special sessions.

RECOMMENDATIONS:

- The UPR mechanism should be based on principles of equality, universality, transparency, cooperation and complementarity. It should be legitimate, credible and effective.
- The review should be public and open to all stakeholders, including NHRIs, civil society and non-governmental organisations. These stakeholders should have opportunities to contribute to all aspects of the review, including its preparation, conduct and follow up.
- The review should focus on structural issues within a State that may hinder the full and effective implementation of human rights obligations and commitments as well as obstacles a State may face in cooperating with human rights mechanisms with a view to assisting a State's fulfilment of human rights obligations and commitments.

(c) Periodicity and order of review

21. The APF believes that the period between reviews must be reasonable to take account of the capacity of a State and other stakeholders, including NHRIs, to respond to any recommendations emerging from the review. The interval between reviews should be five years with priority given to those new member States who have not been reviewed at all.

22. The APF supports the view that the order of the review be determined as soon as possible after the adoption of the UPR mechanism to allow States and all other stakeholders to prepare adequately for the process. The order of review should be based on objective criteria and respect the principles of universality and equal treatment to ensure that the review and its outcomes are not prejudged by the order of scheduling.

RECOMMENDATIONS:

- The UPR should review each member State every five years.
- The review schedule should be made public at the earliest possible time to allow for adequate time for preparation by the State and other stakeholders.

(d) Process and modalities of review

23. The central element of the UPR is an interactive dialogue with the participating States. To ensure the effectiveness of this interactive dialogue, the UPR should clearly set out the procedures concerning its preparation, implementation and follow up.

Preparation of the review

24. The review must be based on credible and reliable information from all sources, including the State under review, special procedures, treaty monitoring bodies, UN country teams, OHCHR field presences and other UN bodies and agencies, NHRIs, civil society and non-governmental organisations. The UPR mechanism should therefore invite all stakeholders, including NHRIs, to submit relevant information. This will provide a range of sources and material for the review. Furthermore, the UPR mechanism could specifically request relevant information from any stakeholder, including NHRIs.

25. In preparation for the review, if States are asked to submit answers to a general questionnaire, the APF would recommend that such a questionnaire focus on the general human rights obligations and commitments of the State, positive developments and good practices, the structural challenges facing the State in fully implementing these obligations and any obstacles encountered in cooperating with human rights mechanisms. The questionnaire should request specific information on whether a NHRI has been established by a State, its mandate and powers and the States response to the implementation of its recommendations. Answers submitted should be published in time to allow other stakeholders to respond.

26. The relevant conclusions and recommendations of the special procedures and treaty monitoring bodies are important sources of information for the review and their implementation and follow up should be one of the focuses of the UPR process. Furthermore, follow up and implementation of conclusions and recommendations from previous UPR reviews should be included in subsequent UPR reviews.

27. In the preparatory phases of the review, NHRIs could play an important role. Given their mandate of monitoring and reporting on the human rights situation in a State and advising the State on its human rights obligations, NHRIs are in a position to provide reliable and well-documented information to the

Council, the Office of the High Commissioner for Human Rights or any independent expert tasked with compiling relevant information for the review on the human rights situation, best practices and particular challenges faced by the State concerned. In particular, NHRIs could assist in the preparation of the review by submitting their annual reports (which are submitted to their own Parliaments) or information and/or other reports. Such a process would be similar to the participation of NHRIs in the examination of State reports by the treaty monitoring bodies.

28. Given the range and scope of information that will be submitted and considered in the review process, the APF recommends that independent experts be involved in the preparation of an impartial, objective and consistent analysis of the relevant information to identify the main questions to be addressed during the interactive dialogue. This would ensure a more neutral, focused and consistent review process.

29. The APF would welcome a process where key questions are sent to the State for reply prior to the interactive dialogue to ensure a more focused dialogue. If the State under review is asked to submit answers to questions, NHRIs may assist the State by providing supplementary information. Such a questionnaire should focus on the general human rights obligations and commitments of the State, positive developments and good practices, the structural challenges facing the State in fully implementing these obligations and any obstacles encountered in cooperating with the human rights mechanisms.

RECOMMENDATIONS:

- The UPR should be based on objective and reliable information from all sources including the State under review, special procedures, treaty monitoring bodies, UN country teams, OHCHR field presences and other UN bodies and agencies, NHRIs and non-governmental organisations.
- Independent experts should be involved in the preparation of the review through analysis of information and sending questions to the State under review.
- The review should be open and transparent. NHRIs should be invited to provide background information to the UPR in the preparation stage of the review.

Interactive dialogue

30. The interactive dialogue should take place between representatives of the State and a subsidiary body of the Human Rights Council with the participation of the independent expert(s) involved in the preparation of the review, other States, NHRIs and non-governmental organisations. The subsidiary body of the Council should be composed of a geographically balanced segment of the Council's members.

31. The interactive dialogue with participating States should provide opportunities for NHRIs to contribute to the review. The participation of NHRIs in the dialogue could allow them to engage constructively with the State concerned and the international human rights system and play their particular role as bridge between the national and international levels. The provision of a right to NHRIs to speak during a review, if they so wish, would be consistent with an emerging practice from the treaty monitoring bodies allowing NHRIs to answer questions directly to the committee during the examination of the State report.¹¹ Furthermore, it would support greater NHRI engagement, where relevant, in the follow up and implementation of the recommendations resulting from the review process.

RECOMMENDATIONS:

- The interactive dialogue should be carried out by subsidiary bodies of the Council in a public meeting with the participation of the independent expert(s) involved in the preparation of the review.
- All relevant stakeholders, including NHRIs, should be able to take part in the interactive dialogue.

(e) Outcomes of the review

32. The review should identify good practices as well as particular areas where the State faces challenges in implementing its human rights obligations and commitments and any obstacles to its cooperation with human rights mechanisms. The APF believes that the UPR should result in clear, concise and

¹¹ The practice has been developed by the Committee on the Elimination of All forms of Racial Discrimination and has also been used by the Committee on the Elimination of Discrimination Against Women. See also the recommendations of the ICC in its position paper on NHRIs and UN treaty monitoring bodies.

realistic recommendations to the State concerned and other relevant stakeholders, including NHRIs.

33. These recommendations should give due consideration to the capacity-building needs of the State (including NHRIs). Recommendations for technical assistance should be realistic and take account of the available resources both within the State concerned and in the UN system. Any technical assistance programs or projects should consider opportunities for collaboration with NHRIs.

34. The Council should adopt conclusions and recommendations following a UPR review. If the Council also takes other measures, such as requesting additional information, appointing a special procedure, recommending action by another part of the UN system or sending a fact-finding mission to the State, consideration should be given to the interaction of these mechanisms with NHRIs where they exist.

35. Where NHRIs have not been established by a State, the Council may wish to consider, where relevant, adopting a specific recommendation for the establishment of a NHRI based on the Paris Principles or for bringing an existing institution into compliance with these Principles.

36. NHRIs can assist in disseminating the outcome of the review to the public through the use of information technology, media and other forms of public information strategies.

RECOMMENDATIONS:

- The Council should adopt conclusions and recommendations following the interactive dialogue and the report from the subsidiary body that respond to the situation in the country, the particular implementation challenges, any obstacles to cooperation with human rights mechanisms and capacity-building needs.
- The UPR should result in clear, concise and realistic recommendations to the country concerned and other relevant stakeholders including NHRIs.
- Technical assistance programs or projects should consider opportunities for collaboration with NHRIs.

(f) Follow up to the review

37. States bear the primary responsibility for implementation of their human rights obligations. The effectiveness of the UPR process will therefore depend upon States implementing and following up on the UPR recommendations.

38. While the Council may decide to take specific measures to monitor the implementation of the UPR recommendations in addition to the regular cycle of review, NHRIs can play a role in assisting the State in the implementation and follow up of relevant recommendations from the UPR process. This role flows from the mandate of NHRIs in advising the State on the scope of its human rights obligations and commitments. NHRIs can therefore contribute to the follow up of UPR recommendations through engaging with the State and civil society on ways and means to ensure effective follow up.

39. Furthermore, NHRIs are also well-placed to undertake education programs and help build capacity on human rights within the State. Where the review process results in recommendations for particular capacity-building or technical assistance measures, NHRIs could be closely involved in their implementation. However, governments must ensure that NHRIs are provided with a broad mandate and are adequately resourced to undertake any responsibilities in relation to effective capacity-building activities.

RECOMMENDATIONS:

- While the State has primary responsibility for implementing its human rights obligations other actors, including NHRIs can play a role in assisting the government in the implementation of relevant recommendations and in follow up to recommendations emerging from the UPR process.
- Where the UPR identifies capacity-building needs and suggests NHRI involvement, the UPR should also recommend that the State ensure that the NHRI is provided with the appropriate powers and funding.