



INTERNATIONAL COMMISSION OF JURISTS

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The Universal Periodic Review of the Human Rights Council

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1. The General Assembly Resolution

In Resolution 60/251 of 15 March 2006, establishing the Human Rights Council, the General Assembly decided:

*"That the Council shall, inter alia: [...] (e) 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 [...]"*¹.

The General Assembly resolution sets out a number of criteria to guide the creation of the Universal Periodic Review (UPR), namely that:

*"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;"*².

The UPR should also be consistent with the general principles that govern the Human Rights Council's functioning, which were also explained by the General Assembly:

*"The work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights [...]"*³.

With such guidance in mind, the General Assembly cautiously left to the Council the task to "develop the modalities" of this mechanism within the first year of the Council.

¹ Paragraph 5 of Resolution 60/251

² Paragraph 5 of Resolution 60/251

³ Paragraph 4 of Resolution 60/251

The Secretary-General, in his statement before the Commission on Human Rights on 7 April 2005, proposed that a human rights council have “an explicitly defined function as a chamber of peer review...to evaluate the fulfilment by all states of all their human rights obligations.” This idea was then developed during the months of debate about how to reform the Commission on Human Rights and in what ways it should, as the UN’s main human rights body, address country situations. From the beginning, this mechanism of universal scrutiny has been conceived as a way of addressing the criticism that the Commission on Human Rights was selective. General Assembly Resolution A/60/251 established, not a “peer review” but a “universal *periodic* review”. While a “peer review” implied that the whole process was exclusively intergovernmental, it is clear that a “*periodic* review” does not demand that every stage be at the political, i.e. intergovernmental level.

2. Principles guiding the Universal Periodic Review

The ICJ considers that universal scrutiny should be one of the guiding principles of the Council and that a form of periodic review, if wisely constructed, could help in building the political confidence of states in the new institution. The UPR could improve on the work of the Commission and contribute to the promotion and protection of human rights, as well as the prevention and remedy of human rights violations around the world, based on principles of universality, impartiality, objectivity and non-selectivity. Whether it does so will depend largely on how this new procedure is designed. It would be unwise, for example, simply to implement proposals made during the negotiation of Resolution 60/251 at the General Assembly, that the procedure should be exclusively based on information from member states and only aimed at providing capacity-building and technical assistance to states.

Several cautionary notes must be entered:

- a) While the new Human Rights Council is a political body, GA Resolution 60/251 says that the work of the Council should be guided by principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.⁴ If the Human Rights Council took these principles seriously in creating the UPR, it would contribute to the credibility of the UPR proceedings and remove inappropriate political influences from this new mechanism. In making decisions or taking action through the Council on any country, other states inevitably take into account political considerations. However, at least prior to such a decision at the political level, the review of the fulfilment by each state of its human rights obligations and commitments should be based on a preliminary impartial, objective and technical expert assessment, which should be free from political pressures or influences. One of the major challenges is to ensure that the review procedure will not be hostage to politicization, double standards and misuse of political power, factors that discredited the way the Commission

⁴ Paragraphs 4 and 12 of Resolution 60/251.

on Human Rights dealt with many countries. The General Assembly Resolution 60/251⁵ expressly recognises that the new Council must work differently.

- b) The UPR should bolster and not replace the work of the treaty bodies. In accordance with General Assembly Resolution 60/251, the UPR “shall complement and not duplicate the work of treaty bodies”⁶. The UPR should therefore not be an opportunity to reopen concluding observations and decisions on countries made by treaty bodies. However, such country concluding observations and decisions should play an important role in informing the process of assessing a country situation and the extent to which the state has fulfilled its human rights obligations and commitments.
- c) Guided by General Assembly Resolution 60/251, which decided “to maintain a system of special procedures”⁷ and “that the methods of work of the Council shall [...] allow for substantive interaction with special procedures and mechanisms”⁸, the UPR should also not replace the work of special procedures. As with treaty bodies, special procedures should play an important role in the process of assessing country situations and the fulfilment by each state of its human rights obligations and commitments.
- d) Guided by the spirit of General Assembly Resolution 60/251 - which decided “the Council should address situations of violations of human rights, including gross and systematic violations”⁹ – the UPR should not replace or undermine the capacity of the Council to take specific action in respect of states with especially serious human rights problems. Separate from the UPR, the Council will have to set up procedures to ensure timely, effective and adequate action to address chronic, persistent or emerging situations of gross or systematic human rights violations.

3. Developing procedures for different stages of the Universal Periodic Review

The ICJ sees great value in having a clear division of labour between the assessment of the facts, carried out at the technical, independent level, and decisions on action, taken at the political level, by states in the Council. This would address the criticism that the Commission on Human Rights, often considered a country situation principally on political grounds, without even first objectively assessing the human rights situation. If these stages are separated out, the UPR could change the current dynamic in addressing country situations, especially because every member state of the Council would know that it would be reviewed during their term of membership.

⁵ Paragraph 9 of the preamble states: “Recognizing also the importance of ensuring [...] the elimination of double standards and politicization,”

⁶ Paragraph 5 (e) of Resolution 60/251

⁷ Paragraph 6 of Resolution 60/251.

⁸ Paragraph 12 of Resolution 60/251.

⁹ Paragraph 3 of Resolution 60/251.

To make this new dynamic more likely, the UPR procedure should be divided into three procedural stages:

- a) **Diagnosis, evaluation and assessment of the country situation and the fulfilment by each state of its human rights obligations and commitments.** During this stage, the Office of the High Commissioner for Human Rights would be tasked to compile a concise, readily digestible dossier of the often voluminous analytical material and recommendations available on the country under review. The OHCHR would be carrying out an impartial, independent and expert function. The country report prepared by the OHCHR should include at least the following information:
- Information from the state under review;
 - Concluding observations on countries and decisions on individual complaints of the treaty bodies in relation to core treaties ratified by the state under review;
 - Any reports of missions to the country by special procedures or extracts from their general reports that refer to the country;
 - Information about ratifications of and reservations to UN human rights treaties and standing invitations to special procedures;
 - Reports or other relevant human rights information from UN agencies, programs and funds (eg. UNHCR, UNICEF, UNDP);
 - Reports or other relevant human rights information from regional human rights intergovernmental systems or bodies (such as the Council of Europe, the European Court of Human Rights, the African Commission of Human and Peoples' Rights, the Inter-American Commission and Court on Human Rights, the Organisation for Security and Cooperation in Europe);
 - Information from NGOs (with or without consultative status);
 - Relevant resolutions, decisions and chairperson statements from the former Commission on Human Rights, the Human Rights Council, the General Assembly and the Security Council;
 - For subsequent UPR reviews, after the initial examination, information on follow-up and implementation of recommendations of the Human Rights Council;

This dossier of information will necessarily contain gaps, some sizeable, especially in respect of certain states warranting the greatest scrutiny and those that have ratified few treaties or have not been visited by the special procedures or OHCHR. To fill these gaps, the Council will have to commission additional analyses, either by the OHCHR or an outside expert, which could require a field mission to the country concerned.

In advance of the examination of each country (at least 1 month before), the country report would be transmitted to the country under review and the members of the Human Rights Council, and be made public.

- b) **Public hearing before the Human Rights Council.** This stage should start with a public presentation by the OHCHR of its country report, followed by a

public debate conducted as an interactive dialogue, with the participation of the state concerned, member states and non-members of the Human Rights Council, NGOs and, when they exist, a special procedure on that country and/or thematic special procedures when they have recently undertaken a mission to the country concerned.

c) **Recommendations from and action by the Human Rights Council.** After the public hearing, during the same session, the Human Rights Council should adopt its recommendations addressed to the country concerned and, where necessary or appropriate, take other action. Depending on the specificity, gravity and the requirements of each situation, the Human Rights Council could *inter alia*:

- Identify specific questions or issues that need to be resolved by the state concerned in the next round of regular examination under the UPR;
- Request a special report from the state on specific issues, to be examined in the following months by the Human Rights Council;
- Request the OHCHR to establish with the country concerned a capacity-building program of technical and advisory assistance;
- Appoint a country procedure (monitoring and/or an technical assistance and advice), which would report regularly to the Human Rights Council;
- Decide to transmit conclusions and recommendations for action to the General Assembly, prior to the transmission of the Council's annual report to the General Assembly;
- Suspend the rights of membership in the Council, in accordance with the General Assembly Resolution¹⁰.

¹⁰ Paragraph 8 of Resolution 60/251.