THE DANISH INSTITUTE FOR HUMAN RIGHTS

# UNIVERSAL PERIODIC REVIEW FIRST CYCLE

## REPORTING METHODOLOGIES FROM THE POSITION OF THE STATE, CIVIL SOCIETY AND NATIONAL HUMAN RIGHTS INSTITUTIONS

DISSEMINATED THROUGH

INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC)

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## ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| DIHR | Danish Institute for Human Rights |
| ECOSOC | Economic and Social Council |
| HRC | Human Rights Council |
| ICAT | International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| ICCPR | International Covenant on Civil and Political Rights |
| ICEDAW | International Convention on the Elimination of All Forms of Discrimination Against Women |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICRC | International Convention on the Rights of the Child |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| ICRPD | International Convention on the Rights of Persons with Disabilities |
| ISHR | International Service for Human Rights |
| NGO | Non-governmental organization |
| NFP | National Focal Point |
| NHRI | National Human Rights Institution |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| UNDP | United Nations Development Programme |
| UNIFEM | United Nations Development Fund for Women |
| UPR | Universal Periodic Review |

# I. INTRODUCTION

**Lisbeth Arne Nordager Thonbo**
Project Manager, DIHR

This publication is intended as inspiration for all actors involved in the Universal Periodic Review (UPR) process. We hope it will serve as an action oriented guide which is easily accessible and easy to use. In accordance with the process in Geneva, it is based on and mainly intended for the first cycle of the UPR process. However, it can also be applied in the coming cycles.

The Danish Institute for Human Rights, DIHR, is very happy that the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ICC, has agreed to assist the distribution of this publication among its members. However, the views expressed in this publication remain the sole responsibility of DIHR and the authors of the four cases.

Although the process is still developing, some suggestions for best practices will be presented for consideration.

In order to highlight the special roles and functions of the main actors in the process, individual chapters are available aimed at the state, civil society actors and National Human Rights Institutions (NHRIs) respectively. The UPR is cyclic and the presented methodologies are described as steps in the cyclic process.

The publication complement "Universal Periodic Review – An Introduction"[1] published by DIHR in 2010, which gives a description of the functioning of the UPR, introducing the machinery and its main actors. It is therefore recommended to study

1) **Spot On – Universal Periodic Review, An Introduction** by Anette Faye Jacobsen, DIHR 2010.

this publication before embarking on the present one. In order to enable the three chapters in Part 1 to be read individually, some repetitions inevitably occur in the text, mainly on factual issues.

The approach to UPR remains holistic and it is crucial to maintain the concept of the overall UPR cycle. However, the different actors involved need to focus their contributions in different ways, at different times and with varying emphasis. Their different mandates naturally give them varied roles and functions. This publication intends to provide advice and guidelines to facilitate the UPR process for all main actors, while in doing so also suggesting how best to streamline and coordinate the different contributions. At the same time factual knowledge and case stories are presented.

The overall aim of the publication is thus to ensure the universality of the UPR and that the different actors supplement rather than overlap each other, always keeping in mind the overriding goal of UPR – the improvement of human rights implementation on the ground. It is also the hope that the publication can inspire – as has been the case in its preparation – further cooperation and dialogue between the three main stakeholders to the benefit of the UPR process and its impact.

The authors of the three individual chapters in Part 1 received valuable inspiration from a seminar held at the Danish Institute for Human Rights (DIHR) in Copenhagen on 15 to 17 September 2010[2]. A list of the seminar participants and the seminar programme are enclosed as Annex 1 and 2. Comments and suggestions from the seminar participants have been included where relevant in the individual chapters. More specifically, the four cases presented in Part 2 are contributions from seminar participants, who have kindly allowed their inclusion here.

Some more general issues arising from the seminar concerning the UPR

2 **The Universal Periodic Review: Reporting methodologies from the positions of state, NHRI and civil society**, the Danish Institute for Human Rights, Copenhagen, Denmark, 15 to 17 September 2010.

process as such can be summarized as follows:

It was repeatedly stressed that the overall aim of the UPR process – actual implementation of human rights – must never be forgotten. The review process, the reporting, the dialogue, etc. are simply tools to this end. Recommendations should therefore be precise and practical, constructive and forward looking in order to be as useful as possible for improving implementation on the ground. In this connection, it was also noted that the first round of UPR reviews is relatively "easy", whereas the subsequent ones will be much more difficult, as this is when the state has to document that implementation has actually improved.

Consequently, emphasis should be put on monitoring the follow up on recommendations accepted and to this end the identification of indicators is crucial. All three parties to the process, but not least the NHRIs, have a role to play here. The independence of the NHRIs gives them special credibility and responsibility in this respect as does their capability in terms of substance and necessary research to develop this area further.

It was also highlighted that the UPR process – being a universal process – is indeed strengthening the notion of universality of human rights. This happens not only through the process itself and the peer review but very much through the awareness raising, information exchange and constructive dialogue which are indispensable for the smooth and productive conduct of the UPR process. The process has so far been characterized by openness and by respectful dialogue at national level. Such an open approach nurtures increased and more professional input to the process from all parties involved, and brings them together in an open and non-confrontational manner where everybody participates for the same end: improving implementation of human rights. It was noted that although the national consultation is not mandatory it

is actually being perceived and performed as such. This indicates an understanding as to the value of the open, constructive dialogue as a tool for improving the implementation of human rights.

The peer review, involving all states at an equal footing, and the above described dialogue approach are unique to the UPR process, and have already proven a constructive innovation in the efforts to improve the implementation of human rights. Experiences show that all states without exception in fact participate in the process.

A group of important stakeholders seem to have been forgotten in the UPR process, such as parliamentarians, the judiciary, the media, academics and think tanks etc. It was suggested to ensure the inclusion and involvement of these groups to reinforce the national commitment. The inclusion of indigenous and other minorities in the UPR process, as well as ensuring that relevant information is made available in all major languages of the state in question was also pointed out as key to ensure genuine participation in the process.

The role and potential of active NHRI involvement in the UPR process was stressed repeatedly. The independence of those NHRIs accredited in accordance with the Paris Principles put them in a unique position as facilitator and link between the state and civil society and as professional human rights advisors for both the state and civil society. A number of NHRIs are also in a unique position to carry out useful research e.g. on human rights indicators and monitoring.

It was noted that some kind of mid-term review at national level or as a formal part of the UPR process in Geneva would be a useful mechanism to push even harder for improved implementation of human rights.[3]

3 It should be noted that as there is still no final outcome of the review of the UPR, suggestions and proposals from this review process have not been included in this publication.

The seminar showed a broad consensus that the UPR process has so far been a positive experience, even surprisingly so. The value added of the UPR is no longer questioned and efforts now concentrate on improving the process. It seems that the UPR will grow in importance and impact over the years to come, and become the key mechanism to ensure the universality and implementation of human rights. This was the perception of several participants to the first round of reviews. Still, the challenge remains to ensure that the UPR process and its modalities continue to be applied in an open and constructive manner to the benefit of implementation of human rights.

It was suggested that a check-list of best practices be developed for the entire UPR process. The Office of the United Nations High Commissioner for Human Rights (OHCHR) or DIHR was suggested as conveners of a conference with broad participation for this purpose.

PART 1

# II. THE ROLE OF THE STATE

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Project Manager, DIHR

Until the establishment of the Human Rights Council (HRC) in 2006, monitoring of compliance with human rights obligations was limited to monitoring individual human rights conventions separately in accordance with the requirements stipulated in the respective conventions. The responsibility for documenting compliance with these conventions lies with the respective states having acceded to the convention in question. This state obligation forms an integral part of the commitment of the state by acceding to the convention.

With the establishment of the HRC, the Council was also mandated to undertake the UPR, which thus constitutes both a new role for the HRC and a new mechanism for all UN members. Obviously, the UPR thus also constitutes a new obligation for the states.

The UPR mechanism differs considerably from treaty reporting – which only concerns those states having acceded to the treaty in question – by being based on the UN Charter and thus being universal and covering all UN members, and by the basis of the review being very broad:

1. The basis of the review is:
   a) The Charter of the United Nations;
   b) The Universal Declaration of Human Right;
   c) Human rights instruments[4] to which the State is a party;
   d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidates for election to the Human Rights Council (hereinafter "the Council").

4 The main human rights instruments being: ICCPR, ICESCR, ICRC, ICERD, ICEDAW, ICAT, ICRMW, CRPD and their respective optional protocols.

2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.[5,6]

This approach reaffirms that human rights together with world peace are the core objectives of the United Nations, while at the same time recalling the commitment of all UN member states not only to specific human rights conventions but to the UN Charter itself as well as to the Universal Declaration of Human Rights – notwithstanding the not legally binding status of the latter.

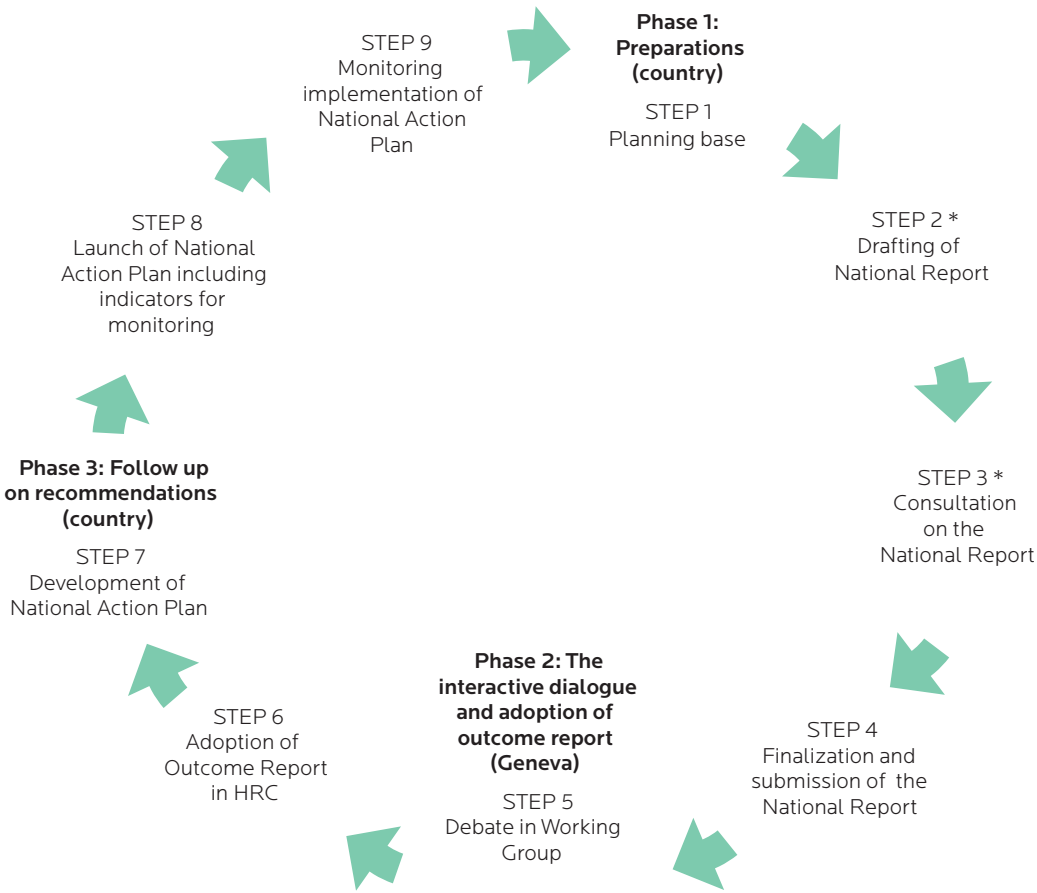
Consequently, while the active participation of the entire society in the process is crucial for its value and usefulness, the main responsibility for and obligation to prepare the national UPR report lie solidly with the state. The entire process is illustrated in the UPR wheel seen from the state perspective, first cycle (next page). Each step is then explained in further detail in the text which follows, including best practice, cases from reviews already undertaken etc.

A major obstacle to the successful development of the UPR process seems to be a lack of financial and human resources allocated as well as starting the process very late. Hopefully, experience from the first round of reviews will encourage states to consider the process as a continuous effort, i.e. not a task with a specific start and end date but as an element in ordinary, day-to-day efforts for improved implementation of human rights.

5 E.G. the Geneva Conventions.

6 A/HRC/RES/5/1 Institution-building of the United Nations Human Rights Council.

**The UPR wheel seen from the state perspective, first cycle:**




* The order of steps 2 and 3 depends on the approach of the state to the national consultation.

## PHASE 1: PREPARATIONS (COUNTRY)

### Step 1: Planning base

The UPR mechanism is new, and especially when a country is undergoing the first review there is a need for the state to decide on the structures and mandates necessary to perform its obligations in this respect.

It is recommended that the state appoints a National Focal Point (NFP) to ensure coordination and be responsible for fulfilling all formal and substantive requirements for the UPR. This NFP can be established in the Ministry of Foreign Affairs, Ministry for Human Rights or another suitable state institution. The NFP ensures the state focus and overview of the entire process. The NFP can also ensure the necessary connection between the state's UPR and Treaty Body reporting.

The first task of the NFP will include elaboration and presentation of a timetable for the process and identification of contact points for all relevant stakeholders (state, civil society and NHRI where such an institution exists).

The second task consists in information about the UPR to all relevant stakeholders and to the public at large. In order for the UPR to be universal and participatory, there is a need to inform about the objective, formalities and content of the UPR, including how relevant stakeholders can participate in and contribute to the process. The general awareness raising should be broad in scope, and the information about UPR ought to be general, educational, easy to understand and appealing in order to reach as many as possible in the general public.

The state can apply various instruments for awareness raising: a national UPR website, booklets, illustrated handouts, posters etc. The electronic media, TV, radio etc. could provide complementary ways to spread awareness about UPR.

Information should include 1) what is UPR, 2) how the national consultation process will be carried out and 3) how it is possible to participate in the process. The information should be available in all main languages of the state and also take into consideration the needs of persons with disabilities. Ideally, the state can enter into cooperation with civil society and/or the NHRI to ensure a comprehensive information campaign on the UPR. There may also be a need for public meetings and training could be arranged to provide more in-depth knowledge to specific target groups.

Since civil society and other stakeholders submit stakeholder reports six months before the review of the state in Geneva, information activities of the state should ideally begin 12 to 14 months before this takes place. However, in practice it will hardly be realistic to start this early and keep the attention of the recipients for such a long period.

The third task of the planning base should be to call for inputs to the process from relevant stakeholders. Such an early call will contribute to a fruitful national consultation process and confirm the commitment of the state to ensure a universal and participatory UPR process. Again, it is essential to apply all main languages of the state when calling for input. The state may find it appropriate that the NHRI assist in calling for inputs e.g. from independent stakeholders such as the judiciary.

**In Denmark** the Ministry of Foreign Affairs requested the DIHR to consult with at number of key, independent state institutions for input to the National Report. Due to their autonomous nature, it was decided that it would be more appropriate that the NHRI requested input to the UPR process from these entities rather than the government. Consequently, DIHR requested input from the following institutions:

1. the Courts of Denmark,
2. the Folketing (Danish Parliament), Landstinget (Parliament of Greenland), Lagtinget (Parliament of the Faroese Islands),
3. the Ombudsman, both in Denmark, Greenland and the Faroese Islands,
4. the Auditor General,
5. the Danish Bar and Law Association,
6. the National Council for Children,
7. the Council for Socially Marginalized People,
8. the Equal Opportunities Centre for Disabled Persons,
9. the Board of Equal Treatment and
10. the Danish Data Protection Agency.

The input received could be used in connection with the preparation of both the National Report and DIHR's stakeholder report. In order to supplement rather than overlap the National Report, DIHR's stakeholder report will focus on the Danish system for implementation and monitoring of human rights and DIHR's role in this respect, including follow up on recommendations, rather than on specific human rights issues.

When calling for inputs it is very important that the different roles of various stakeholders are made clear. It must be stressed that the National Report is the responsibility of the state, while at the same time stressing the importance of input from other stakeholders who must realize that they can only encourage and inspire the content of the state report. Any views that can not be aligned with those of the state must be presented in the relevant stakeholder reports. Such attuning of expectations is crucial in order to avoid disappointment and misunderstandings where stakeholders may feel that they are not being taken seriously.

It is key to the success of the first step – as well as to all the following steps – that the state takes on an open approach and invites for genuine participation from all relevant stakeholders. This will assist the state in fulfilling its obligations and ensure a constructive process which can yield substantive and sustainable improvement of the implementation of human rights.

**Step 2: Drafting of National Report**

As already mentioned, the review takes point of departure in 1) the UN Charter, 2) the Universal Declaration of Human Rights, 3) the human rights instruments which the country is party to and voluntary pledges and commitments made by states, including those undertaken when presenting their candidates for election to the HRC, as well as applicable international humanitarian law.

The format and structure of National Reports can follow the General Guidelines adopted by the HRC which are also applied for stakeholder reports and UN information reports[7]. These guidelines are in fact very general and not mandatory. Information about the following seven main points can be included:

1. The **broad consultation process followed nationally** for the preparation of the national report provided to the UPR by the country under review;
2. The current **normative and institutional human rights framework of the country:** constitution, legislation, policy measures such as national action plans, national jurisprudence, human rights infrastructure including NHRIs;
3. The **implementation of the normative and institutional human rights framework** as described above in point 2;
4. **Cooperation of the country under review with human rights mechanisms** including NHRIs, non-governmental organizations (NGOs), rights holders, human rights defenders, and other relevant national human rights stakeholders;
5. **Achievements and best practices** of the country under review and challenges and constraints faced by the country under review;
6. **Key national priorities** as identified by stakeholders, initiatives and commitments that the state concerned should undertake, in the view of stakeholders, UN treaty

7 "Information and Guidelines for Relevant Stakeholders on the UPR Mechanism [as of July 2008]" OHCHR.

bodies etc. to improve the human rights situations on the ground.
7. Expectations in terms of capacity building and technical assistance provided and/or recommended by stakeholders through bilateral, regional and international cooperation.

The OHCHR guidelines allow for additional documentation to be annexed for reference.

The National Report can thus be structured covering these seven points. However, the state may still wish to consider whether to present a general report only or whether to add information on specific issues which the state wishes to highlight.

The National Report has to be submitted by the latest 6 to 13 weeks before the UPR review of the state takes place. In order to allow for a comprehensive consultation process, the process should thus be initiated 10 to 12 months before the review of the state.

In **Norway** a meeting was held with the participation of relevant ministries to decide on the main issues and the tone of the report as well as the aim of conducting a self-critical and open process. This approach ensures a much more consistent and coherent report and puts the state ahead of any criticism by being open about the critical issues. Norway also decided that there should be only "one pen" to ensure a coherent, assessable text and collaborative tone.

In **Panama** the President of the Republic established a national commission to draft the national report. The commission was composed of representatives from the three branches of government and was chaired by the Ministry of Foreign Affairs. As part of its mandate, this national commission held consultations with representatives of non-governmental organizations and civil society to collect their contributions and comments. The commission set a five-year time frame to prepare the report for submission.

### Step 3: Consultation on the National Report

According to the guidelines mentioned, states should prepare the information they submit in the National Report "through a broad consultation process at the national level with all relevant stakeholders".

The national consultation can be described as the materialization of the state's policies on both human rights and the rule of law, as the consultation requires participation, access to information, openness, transparency etc. which make up key elements of human rights and rule of law. Already when holding the national consultation, the state in question can demonstrate its commitment to the implementation of human rights. This is also reflected in the requirement to the National Report that it includes information about the broad consultation process followed nationally.

This process constitutes a golden opportunity for the state to obtain information – factual as well as concerning the current trends, debates and issues concerning human rights among the population – and should consequently be considered a present rather than a burden to the state. The specialist knowledge of civil society organizations can be very useful to the state and such information can be obtained through an open and participatory national consultation. At the same time, a successful process also requires serious information efforts from the state in order to put all stakeholders in a position allowing them to participate in a meaningful manner.

There is no further advice on how this can be carried out, and during the first UPR cycle the initial ways to carry out national consultation processes have therefore also varied greatly. In some cases states have initiated countrywide meetings, made use of media to disseminate information about the mechanism and for broad discussions of the contents of the National Report, opened UPR web-sites for stakeholder

comments etc. In some instances stakeholders were consulted at an early stage and re-consulted after the fully developed draft or re-drafts of the National Report were made available. In other countries two workshops in the capital constituted the national consultations. In general, there is still room for improvement in this process, while at the same time there is also a wealth of inspiration from some good practices. At the same time, experience so far suggests that the national consultation process is of the greatest importance to the overall success of the UPR process.

The main purpose of the national consultation process is for the stakeholders to influence and provide inputs to the National Report so that it reflects 1) a real and comprehensive picture of the actual human rights situation in the country, 2) the efforts made by the state to progressively improve it and 3) that the proposed recommendations to improve the situation are important, relevant and substantial.

Consequently, the state should take this into consideration both when formulating the National Report and during the national consultations. By doing so, the state will be able to address any issues at an early stage of the process, thus avoiding any undue criticism. This should also be among the objectives for the state during the national consultation.

At this stage, the state should offer comprehensive information about the UPR and the purpose of the national consultation. This information builds on the information offered at the planning stage complemented with specific information about the national consultation, including the specific modalities (who can take part, how to participate and give inputs, when, where, etc.).

There are 3 basic options on how to structure the national consultation: 1) the state can present a draft of the National Report and let this be the basis of the consultation, 2) the state can invite for at more open

consultation without presenting a draft National Report or 3) the two approaches can be combined in a two-phase process. However, if the state has decided to focus on a specific issue in its report, it may be appropriate to announce this in connection with the invitation for the consultation and to present relevant background material. Both draft(s) and the final National Report should be available in the main languages of the state.

After the first UPR cycle of the state, the recommendations adopted at earlier UPRs should constitute a core element in the national consultation: how has the state followed up on the adopted recommendations, what are the lessons learned, etc.

The approach of the state to the national consultation is crucial for a constructive process and outcome. The earlier the state starts information about the UPR and specifically the national consultation, and the more open the state is to input and participation from stakeholders, the more information will be available to the state. This will enable the state to make possible improvements to the National Report and to avoid undue criticism.

The state can choose to cooperate with the NHRI e.g. in order to present the necessary facts thus ensuring that the national consultation takes place at an informed level. The NHRI can be extremely useful to the state both as a source for independent, expert knowledge on human rights and as an "honest broker" acting as link and facilitator between the state and relevant stakeholders.

In **Denmark** the Ministry for Foreign Affairs as NFP for the UPR process and DIHR co-hosted two public hearings in Denmark. DIHR also acted as coach in preparing the planning base for the UPR process in Denmark.

**Tonga** went through a national consultation process which has been praised widely: The consultations took place with capacity constraints but briefings and preparatory work were undertaken with government ministries and agencies, including the Tonga Police, the Tonga Defence Service as well as with most of the 49 civil society organizations that are members of the Civil Society Forum of Tonga. The Tongan Government also took into account a report by the only single Tongan civil society organization contributing to this UPR. The Tonga Church Leaders Forum was also consulted. Discussions were held with the Chief Justice, the Minister for Justice and Attorney General, the Solicitor-General and the Tongan Law Society. In addition, the Tonga Chamber of Commerce was consulted as was the Tonga Media Council. By the end of the consultation process the civil society as a whole publicly approved the National Report.

**Step 4: Finalization and submission of the National Report**

When finalizing the National Report, the state should to the degree possible take into consideration the results of the national consultation.

The National Report must be submitted to the OHCHR no later than 6 to 13 weeks before the review in question. As the deadline for submission of stakeholder reports is much earlier (six months in advance of the review in question), the state should consider also to publish drafts of the National Report during the drafting process as input to the public debate on human rights and to the benefit of other stakeholders' preparations for the review in Geneva.

For transparency and general information purposes, as well as in order to enable other stakeholders to prepare for the review in Geneva, the final National Report should be publicly available as early as possible and in all major languages of the state in question. Obviously, the National

Report also serves as the point of departure for the next UPR review and should therefore be available to allow monitoring and follow up by all stakeholders.

## PHASE 2: THE INTERACTIVE DIALOGUE AND ADOPTION OF OUTCOME REPORT (GENEVA)

### Step 5: Debate in Working Group

The review of the state in Geneva will be conducted by the members of the Working Group under the HRC including members and observer states. Prior to the review it is possible for members of the Working Group to prepare written questions and their oral questions, comments and recommendations for the interactive dialogue which forms the first step of the review of the country in Geneva.

Some states prepare questions and recommendations for upcoming UPR review of other states up till six months prior to the review in order to have these approved at the political level but this does not always happen. Whether to do so is of course a political decision by the state. At this point, the state also needs to consider how to ensure speaking time and how best to use it, including whether to make an individual national statement or whether to participate in joint statements.

The webcasted interactive dialogue holds excellent potential for awareness raising, information and openness, and the state can choose to use this opportunity to present directly to its citizens how it performs in terms of human rights implementation. This can happen by transmission in national TV. The state's action to follow up on adopted recommendations should have a prominent role also in this connection.

However, some countries have experienced technical problems which have prevented them from benefiting from the webcast, which obviously requires both a stable power

supply and access to the Internet. To this should be added the need for interpretation in to relevant languages in order to make the information as widely accessible as possible.

The composition of the delegation going to Geneva should be considered carefully both in terms of hierarchy – the more prominent the head of delegation the more prominence the state gives to the UPR process – and in terms of substance/specialist input. It can e.g. be very useful that national or other minorities are represented in the delegation.

The delegation of **Burkina Faso** consisted of 14 representatives of the government and was headed by Her Excellency Salamata Sawadogo, Minister for the Promotion of Human Rights. Prior to this an external person was engaged to assist with preparing the presentation of the national report in the Working Group. The government found this very useful since it ensured that needs and priorities were accommodated. Later on Burkina Faso provided similar assistance to the government in Niger in preparing their presentation of the National Report in the Working Group.

**Step 6: Adoption of Outcome Report in HRC**

The interactive dialogue in the Working Group results in a working group report (30 pages) summarizing the review process including questions raised, discussion points, recommendations by the Working Group as well as the presentations, comments and views expressed by the reviewed state delegation. A separate part of the report lists the entire set of recommendations which the state under review will consider for adoption, further considerations or rejection. In some cases the state under review makes immediate voluntary commitments.

In an upcoming plenary session, the HRC will adopt an outcome report including a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by states to the country under review, as well as the responses by the reviewed state.

Before this, a plenary discussion is allocated for each of the reviewed states. The one hour discussion is divided evenly between the reviewed state (20 minutes), members of the council and observer states (20 minutes) and stakeholders (20 minutes). After this, the plenary will adopt the outcome report.

The adoption of the outcome report is the direct follow up to the interactive dialogue, and it usually takes place at the next regular session of the HRC. This usually takes place between 4 to 6 months after the interactive dialogue.

These sessions are also webcasted and can be used by the state as suggested above.

## PHASE 3: FOLLOW UP ON RECOMMENDATIONS (COUNTRY)

### Step 7: Development of National Action Plan

The UPR mechanism is divided with a four year span between the reviews of the states. The preparation and review process is time consuming and leaves approximately 3 years for the newly reviewed state to implement the adopted UPR recommendations. In order to give room for a continued national dialogue on human rights, the adopted recommendations and the state's reaction should be widely disseminated. This will also ensure independent monitoring of the state's fulfilment of its obligations. At the same time the adopted recommendations can constitute the core elements of a National Human Rights Action Plan. The elaboration of such a National Action Plan should also include broad national consultation and dialogue to ensure ownership, commitment and independent monitoring.

Once the outcome report is adopted by the HRC, the state can start the planning and carrying out the implementation of the UPR recommendations. This implementation lasts until the next UPR review. In this process, it can be helpful to cluster the adopted recommendations according to substance, order of priority etc. and a time schedule for the planned implementation will assist monitoring of improvements.

In order to streamline the process of implementation, the state may choose to prepare a comprehensive National Action Plan and/or a strategy, policy papers, reform programmes etc. based on the UPR recommendations. Some countries have established an inter-ministerial committee to be responsible for the follow up. This process can be assisted by a follow up, mini national consultation by which the state can involve national stakeholders in the implementation.

Facts based dialogue could be an excellent approach to apply during this process to encourage broad hearings taking point of departure in ongoing and relevant human rights documentation[8]. In order to monitor the implementation, indicators need to be defined in order to be able to measure progress.

The UN system and possibly development partners can also assist in the implementation of UPR recommendations with technical and/or financial assistance. The NHRI can also play an important role in monitoring the state's follow up, assist in developing indicators etc.

**Mauritius** adopted a recommendation which suggested the preparation of a National Human Rights Action Plan, and the country has subsequently reported back to the HRC that the National Action Plan is expected to be finalized by

8 DIHR has developed a methodology, facts based dialogue, which takes point of departure in the concerned country's international human rights obligations and documented human rights concerns which are presented and debated in broad national hearings. The hearings result in recommendations which provide the directions for the further process of systematically addressing and improving the relevant legislation and/or implementation.

April 2011. Mauritius furthermore submitted a complete list of the adopted recommendations to HRC listing the progress made. To provide updates to the HRC is in fact another example of best practice. Other countries such as Colombia, the Czech Republic, the Republic of Korea, Romania, Switzerland, the United Arab Emirates and the United Kingdom have already provided information. In Switzerland and Canada, civil society is involved in the follow up process through regular meetings and consultations with the government.

**Norway** is still in the process of developing implementation plans for the recommendations accepted; however, a matrix has been prepared where all recommendations as well as the ministries responsible for follow up are listed. The matrix is published and can thus be used by all interested parties in monitoring follow up.

**Step 8: Launch of National Action Plan including indicators for monitoring**

In cases of states positively committed to the implementation of the UPR recommendations, the state should invite for a broad dialogue on the contents, time schedule and other modalities of such a national plan.

The NHRI would be a natural and very useful partner to the state in these endeavours. At the same time, NGO networks and platforms can also seek to enter cooperation with the relevant state institutions with the purpose of offering their coordinated inputs and contributions and possible monitoring of the progress.

**Step 9: Monitoring implementation of National Action Plan**

In some countries, part of the implementation of the UPR recommendations will involve formulation of indicators and continuous measuring of progress in

this process. In other cases this will not be a part of the state initiative and the NGOs, networks, NHRI etc. could remind, encourage and assist the state in the development and use of indicators. Indicators can be seen as a transparent tool measuring the degree of implementation[9].

It was noted that there is a great need for further research into and development of human rights indicators, a task that could be taken up by NHRIs.

9 Human Rights Indicators at Programme and Project Level. 2006. DIHR. Erik André Andersen & Hans-Otto Sano.

# III. THE ROLE OF CIVIL SOCIETY

**Lis Dhundale**
Project Manager, DIHR

»The UPR process ensures the participation of all relevant stakeholders, including NGOs and NHRIs. NGOs and NHRIs can submit information which can be added to the "other stakeholders" report which is considered during the review. Information they provide can be referred to by any of the states taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the HRC when the outcome of the state reviews is considered«.

This is how the stakeholder involvement is presented at the website of OHCHR.

In addition to the important submission of independent information and the unique participation in the review, there are a number of other ways for stakeholders to influence the UPR cycle which include the just as important prelude and postlude, which take place outside the UN setting and at the national level.

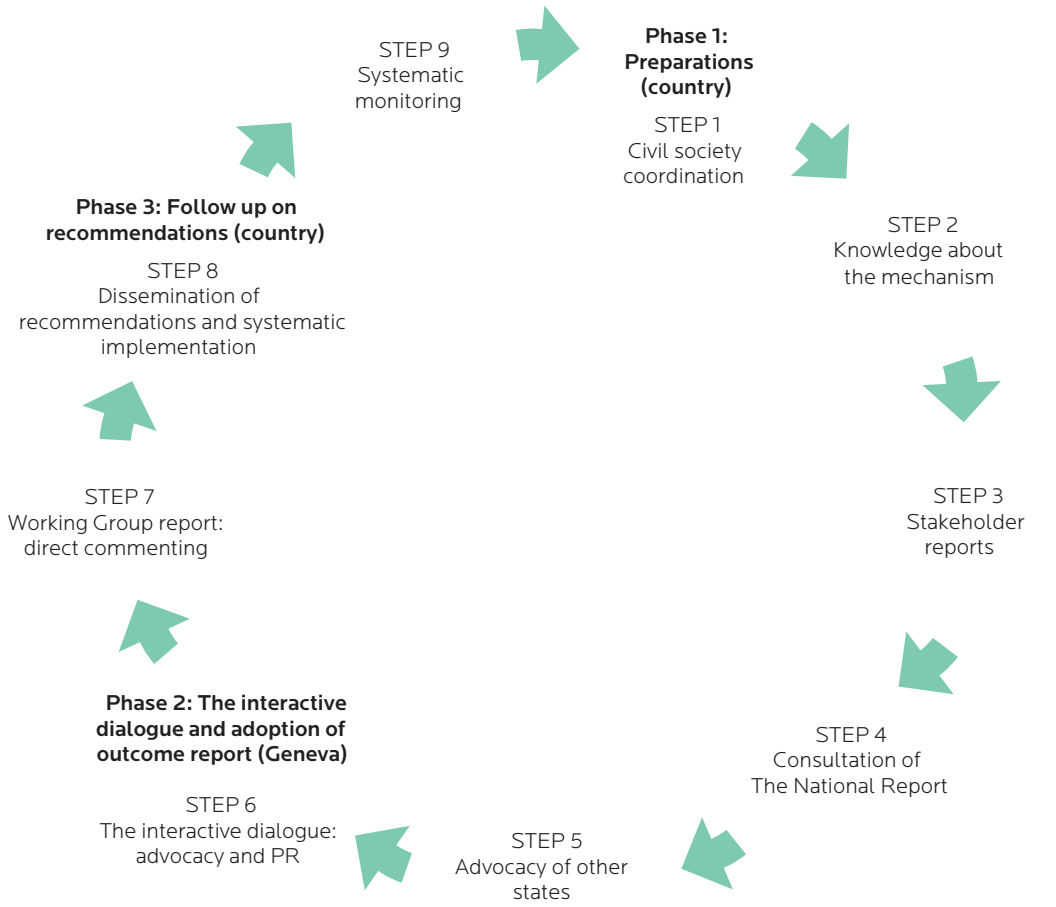
Stakeholders – and in this case civil society organizations in the concerned country – are also encouraged to ensure that they are included in the broad consultation process at the national level organized by the state, with the purpose of partaking in the preparation of the information to be submitted to the UPR by the state. Finally, the outcome of the UPR is described as a cooperative mechanism which primarily should be implemented by the state and when appropriate by other relevant stakeholders. At country level, civil society has important contributions to make in raising knowledge and awareness of the UPR mechanism as a vehicle for people to participate in the hearings, to provide their own comments to the National Report, to ensure that the consultations are genuine, to flag their independent stakeholder reports etc. After the active participation at the UPR review in Geneva, civil society has a new role waiting when returning home: to raise public awareness about the adopted and rejected recommendations, to encourage the state to prepare a systematic and comprehensive implementation of the UPR recommendations, to monitor progress of implementation etc.

The importance of civil society engagement in the UPR cycle is evident. Independent perspectives and voices are needed from beginning to end to provide a needed balance to the state's performance. The engagement can be in cooperation with the NHRI and the state, but it can also take the form of independent initiatives. The non-governmental nature of civil society makes it a legitimate representative for the right holders and it ought to have a natural role to play when the human rights situation is reviewed in a country. Finally, civil society can act as a vehicle for the marginalized and vulnerable groups to have their voice heard. The objective of the review is to improve the human rights situation on the ground. This implies that everyone without distinction is entitled to the rights and freedoms, and in order to

take weighty steps in this direction the participation of civil society is indispensable.

The following page shows the UPR wheel seen from the civil society's perspective, first cycle. Each step is then explained in further detail in the text which follows, including best practice, cases from reviews already undertaken etc.

## The UPR wheel seen from civil society's perspective, first cycle:



## PHASE 1: PREPARATIONS (COUNTRY)

### Step 1: Civil society coordination

In order for civil society, the NHRI and others to engage actively in the UPR process, a joint approach can be an excellent starting point, and if successful it should be continued though the entire UPR cycle and include all steps.

In cases of states being positively committed to the UPR process and implementation of the UPR recommendations, civil society networks and platforms can seek to enter into cooperation with the relevant state institutions in order to suggest how the preparation and hearing process can be carried out, and once the review of the state has been conducted in Geneva, the networks or platforms can suggest their role in the follow up of the adopted recommendations, the monitoring of progress etc.

In countries where reluctant governments rule, existing or new civil society platforms or networks can be formed with the purpose of approaching the state more forcefully in order to present their ideas of how the consultation process can be done or make suggestions to the follow up on some or all of the adopted UPR recommendations.

Experiences have shown that in some cases vocal stakeholders in the UPR process have subsequently been threatened or otherwise harassed. In this case, civil servant or state bodies who in earlier connections have been willing to cooperate with NGOs and who are receptive to human rights can be approached in an informal manner for advice or possible involvement. The platform or network can analyze the situation and accordingly formulate a strategy designed to pressure the state to take action.

Regardless of the situation in the country, the outset ought to be that the stakeholders including civil

society are involved in as many steps as possible of the UPR cycle. The network or platform will have to formulate a joint strategy that will seek to reach this goal to the largest possible degree.

While there are many good examples showing excellent civil society coordination in preparing joint stakeholder submissions, there are yet only few known examples of coordinated monitoring efforts having to do with follow up and implementation of UPR recommendations. Such initiatives might exist, but not yet be documented. In guidelines, tool kits, studies etc. of the UPR process most attention has so far been concentrated on preparation of the stakeholder submissions and the possibilities related to the UPR review in Geneva.

**Step 2: Knowledge about the mechanism**

The UPR mechanism is new, and especially when a country is undergoing the first review there is a need for civil society organizations to gather knowledge about it, just as there is a need for the general public to become aware of what the UPR is and the consultation process which the country will go through. The broad awareness raising initiatives can be carried out by human rights organizations and activists or others in civil society and complement similar efforts by the NHRI and the state.

Since civil society and other stakeholders in general have to submit stakeholder reports six months before the review of the state in Geneva, the information activities should ideally begin 12 to 14 months before this takes place.

There are no fixed guidelines for doing information activities. Ideally, civil society, the NHRI and state could initiate informative activities jointly or complementary in order to provide particular interested groups and individuals as well as the general public with information in the native

language. This should be about 1) what is the UPR, 2) how the national consultation process will be carried out and 3) how it is possible to participate in the process.

The information targeting specific groups and individuals who are likely to become active in the national consultation process, and especially those wishing to prepare stakeholder submissions, should clarify what the UPR procedures, deadlines and formats are. The information can be prepared for example as toolkits or as short texts with graphics illustrating the UPR steps. These could be distributed by mail or post, communicated through websites, etc. Meetings and training could be arranged to provide more in-depth knowledge to the target groups.

Since UPR is a new human rights mechanism there is a special need to inform the general public about it. If a participatory hearing process is to be successful, it presupposes a broad knowledge about UPR. The general awareness raising should be broad in scope, and the information about UPR ought to be general, educational, easy to understand and appealing in order to reach as many as possible in the general public. Ideally booklets, illustrated handouts, posters etc. could be prepared and distributed widely for free at accessible places, websites etc. The electronic media, TV, radio etc. could provide complementary ways to spread awareness about UPR.

**Step 3: Stakeholder reports**

Who and how much?
In the suggested guidelines for relevant stakeholders for UPR reporting prepared by the OHCHR[10], stakeholders are defined as NGOs, NHRIs, human rights defenders, academic and research institutions, regional organizations and civil society organizations. This group is encouraged to either submit their own independent individual report (5 pages) or joint reports (10 pages) to the review.

10 Suggested guidelines for "Relevant stakeholders" wishing to provide information to the Universal Periodic Review. Suggested guidelines for NGOs – as of July 2008. Office of the High Commissioner for Human Rights, Civil Society Unit.

All of the received stakeholder submissions are merged by OHCHR into one compiled stakeholder report (10 pages). This is made available and considered during the review along with the National Report (20 pages) and the "UN compilation" including information provided by UN special procedures, treaty bodies and UN agencies such as UNIFEM, UNDP etc. (10 pages).

What should be in the report?
The review takes point of departure in 1) the UN Charter, 2) the Universal Declaration of Human Rights and 3) the human rights instruments which the country is party to and voluntary pledges and commitments made by states including those undertaken when presenting their candidates for election to the HRC, as well as applicable international humanitarian law.

The format and structure of reports submitted by stakeholders can follow the General Guidelines adopted by the HRC which can also be applied for National Reports and UN information reports[11]. These guidelines are in fact very general and are only suggestive. Information about the following seven main points can be included:

1. **The broad consultation process followed nationally** for the preparation of the national report provided to the UPR by the country under review;
2. The current **normative and institutional human rights framework of the country:** constitution, legislation, policy measures such as national action plans, national jurisprudence, human rights infrastructure including NHRIs;
3. The **implementation of the normative and institutional human rights framework** as described above in point 2;
4. **Cooperation of the country under review with human rights mechanisms** including NHRIs, NGOs, right holders, human rights defenders, and other relevant national human rights stakeholders;

11 General Guidelines for the Preparation of Information under the Universal Periodic Review. Decision 6/102, Human Rights Council. 20th meeting on 27 September 2007. Follow up to the Human Rights Council resolution 5/1.

5. **Achievements and best practices** of the country under review and challenges and constraints faced by the country under review;
6. **Key national priorities** as identified by stakeholders, initiatives and commitments that the State concerned should undertake, in the view of stakeholders, UN treaty bodies etc. to improve the human rights situations on the ground.
7. Expectations in terms of **capacity building and technical assistance** provided and/or recommended by stakeholders through bilateral, regional and international cooperation

The stakeholder guidelines prepared by OHCHR require that the reporting is specifically tailored for the UPR and 1) contain credible and reliable information on the state under review; 2) highlight the main issues of concern and identify possible recommendations and/or best practices, 3) cover a maximum four-year time period and 4) do not contain abusive language. The requirements formulated in the OHCHR guidelines are, however, mandatory and it may lead to rejection of the submission if they are not followed.

In reality, stakeholders can often draw on their existing human rights documentation when engaging in the stakeholder reporting. Their earlier submitted shadow reporting to the UN treaty bodies can also be applied in this connection although it has to be adjusted to the requirements. The stakeholder report prepared especially for UPR can be a combination of adjusted summaries of existing data, findings, conclusions and recommendations and new added text. The OHCHR guidelines allow that additional documentation can be annexed for reference.

### When?

The deadline for submitting stakeholder reports during the first UPR cycle is most often six month before the state is scheduled to be reviewed in Geneva[12]. In general, the state needs to submit the National

12 In the subsequent periodic cycles the deadline for submission of stakeholder reports will be five months before the review of the country is scheduled.

Report between 6 to 13 weeks before the review. On the OHCHR website the exact deadlines are published well in advance.

Consequently, the stakeholders are often engaged in the preparation of the reporting before the state. The stakeholders are likely to start their preparations at least 12 months before the review, especially in cases where several stakeholders decide to prepare a joint submission.

### Alone, together – or both?

Experiences have shown that the joint stakeholder submissions are encouraged and appreciated. It carries more weight when participating stakeholders succeed in reaching consensus about the human rights situation and recommendations to improve it in the concerned country. Organizations and others wanting to jointly prepare a report are especially in need of an early start to coordinate their report writing well.

In the first cycle of the UPR review, the stakeholder submissions have varied considerably. In some countries stakeholders have only submitted individual reports while in others one or several joint submissions have supplemented the individual reports. In some instances individual stakeholders have participated both in joint submission and prepared their own individual submissions. The total amount of stakeholder submissions for a concerned country has varied from a few to several dozens. In some cases, like minded stakeholders or networks made joint reporting on a specific human rights issue e.g. children's rights, the media, the rights of sexual minorities, while others have aimed at a holistic coverage of human rights in the country.

Since the stakeholder reports are generally submitted 6 months prior to the review of the state, the preparations of the stakeholder reports – joint or individual submission – are advised to start at least 12 months before the review in Geneva.

**Kenya** can serve as an inspiring example of how civil society and the NHRI can engage in stakeholder submissions to UPR. The Kenya National Commission on Human Rights took the initial initiative to facilitate the civil society organizations in preparing a joint submission. This initiative resulted in a comprehensive cooperation developing into the Kenya Stakeholders' Coalition comprising 97 national and international organizations and institutions working on human rights and development concerns. To facilitate the preparation of the joint report, a steering committee was established and the stakeholders were sub-divided into various thematic clusters including women, children, youth, older persons, persons with disabilities, minorities and indigenous communities, sexual minorities, civil and political rights, and economic, social and cultural rights. An initial series of cluster meetings revealed the need for capacity building on the UPR. Subsequently a workshop was carried out facilitated by experts. The information gathered by each cluster on areas of critical human rights concern was compiled and consolidated into the Kenya Stakeholders' Coalition for the UPR Report. In addition to this, four other joint submissions were prepared by groups of other NGOs covering one specific or several human rights topics, while 14 individual organizations prepared their own stakeholder submissions.

### Step 4: Consultation of the National Report

States are encouraged to prepare the information they submit in the National Report "through a broad consultation process at the national level with all relevant stakeholders". There is no further advice on how this can be carried out and during the first UPR cycle the initial ways to carry out national consultation processes

have therefore also varied greatly. In some cases, states have initiated countrywide meetings, made use of media to disseminate information about the mechanism and initiated broad discussions of the contents of the National Report, opened UPR web-sites for stakeholder comments etc. In some instances, stakeholders were consulted at an early stage and re-consulted after the fully developed draft or re-drafts of the National Report were made available. In other countries two workshops in the capital constituted the national consultations. In general, there is a perception that this process can be improved significantly with respect to timing and the scope and shape of the consultations including the inclusiveness and participation in the consultations as well as during the follow up and implementations steps.

The National Report has to be submitted between 6 to 13 weeks before the UPR review of the state takes place. In order to allow for a comprehensive hearing process, the activities should start 10 to 12 months before the review of the state.

The civil society organizations, other independent human rights actors and the NHRI can try to influence the consultation process at an early stage, especially if it is expected that only symbolic consultations will be held. After identifying which government agency will be responsible for the UPR National Reporting, the stakeholders can make inquiries on how and when the state plans to carry out the consultations. Along these lines the organizations, activists etc. can propose ways to make the process optimal and suggest how they would like their own involvement to be. The consultations can take the form of constructive dialogues with the state. In such cases, the attitude and tone of the dialogue have to build on openness and respectful exchange of views.

Some stakeholders have often been left out in the consultation process. This includes parliamentarians,

political parties, the judiciary, think tanks, academics etc. It is advisable to ensure their involvement since their roles and engagements can make valid contributions to the process.

The main purpose of the national hearing process is for the stakeholders to influence and provide inputs to the National Report so that it reflects 1) a real and comprehensive picture of the actual human rights situation in the country, 2) the efforts made by the state to progressively improve it and 3) that the proposed recommendations to improve the situation are important, relevant and substantial.

In countries where civil society is unable to take on this active role, it is important that civil society draws attention to the insufficient national consultations as well as issues or concerns left out and inadequate recommendations in the National Report.

Finally, regardless of the quality and extent of the national consultation process the stakeholders have an important role in disseminating information about the review of the country in the HRC in Geneva, and particularly the recommendations supported by the state in order to raise the public knowledge and expectations of the state's future commitments to human rights.

**Tonga** went through a national consultation process which has been praised widely: The consultations took place with capacity constraints but briefings and preparatory work were undertaken with government ministries and agencies, including the Tonga Police, the Tonga Defense Service as well as with most of the 49 civil society organizations that are members of the Civil Society Forum of Tonga. The Tongan Government also took into account a report by the only single Tongan civil society organization contributing to this UPR. The Tonga Church Leaders Forum was also consulted. Discussions were held with the Chief

Justice, the Minister for Justice and Attorney General, the Solicitor-General and the Tongan Law Society. In addition, the Tonga Chamber of Commerce was consulted as was the Tonga Media Council. By the end of the consultation process, civil society as a whole publicly approved the National Report. It should be noted that the case of Tonga is exceptional due to the small size of the population.

**Step 5: Advocacy of other states**

The review of the state in Geneva will be conducted by the members of the Working Group under the HRC including members and observer states. Prior to the review it is possible for members of the Working Group to prepare written questions and their oral questions, comments and recommendations for the interactive dialogue which forms the first step of the review of the country.

It varies considerably how far in advance each state prepares themselves for the review of other states. It might be worth while to share experiences with other organizations or NHRIs to assess when it is the right time to approach specific states to discuss questions and recommendations. Larger states tend to start the process earlier since their procedures require the approval of the government in advance. Smaller states might be approachable on a shorter notice since their procedures might be more direct and rely on their permanent UN representation in Geneva.

Another factor is the priority of the countries under review. Not all states prepare questions and recommendations for all of the 16 countries which are reviewed in each Working Group session. It is quite a challenge to identify which states are willing and perceptive to engage in each of the 16 states under review. Finally, some states have identified human rights priorities and are

only willing to raise questions and recommendations concerning these.

The national stakeholders but also regional and international organizations can contact other countries either through their UN representations in Geneva or their embassies or diplomatic representations in the country to be reviewed. Often the UN country representations will consult with their embassies in the countries coming under review and it is therefore advisable always to communicate directly with them. The national stakeholders can propose central human rights questions and concerns to be raised by other countries. However, it is just as important to add concrete information and recommendations pointing towards suggested ways to improve the raised areas of concern.

Experiences show that states such as **Brazil, Guatemala, Mexico, The Republic of Korea and some in the Western group** have been receptive to being approached by NGOs even just before or during the review of a state. Statistics indicate that at least during the first UPR sessions in 2008 it was also these countries that most frequently raised questions and recommendations. The statistics from UPR reviews in 2008 also reveal that human rights issues raised in the NGO stakeholder submissions are sometimes also raised among many issues by other states during the interactive dialogue but to varied degrees. As examples the stakeholder submissions raised eight main human rights concerns in the review of Morocco while four of these were raised by other states and eventually adopted by the Moroccan delegation. In the review of Ecuador three main human rights concerns were raised by other states which were to be found in the stakeholder submissions which in total flagged

nine topics. These three concerns led to recommendations adopted by Ecuador. Poland did not accept but will consider five recommendations proposed by other states which are also to be found in the stakeholder submissions. The stakeholder submissions brought up a total of nine human rights concerns. It is not known to which degree the NGOs in these three cases advocated other states to raise issues from their reporting.

## PHASE 2: THE INTERACTIVE DIALOGUE AND ADOPTION OF OUTCOME REPORT (GENEVA)

### Step 6: The interactive dialogue: advocacy and PR

The interactive dialogue takes place during a session of the UPR Working Group under the HRC in Geneva. The national stakeholders can make use of the attention of the interactive dialogue in several ways. Organizations with ECOSOC status can attend the sessions but they are not allowed speaking time. The three hour interactive dialogue is made available live and filed on webcast by OHCHR and transmitted in the official language of the country and in English.

The specific dates set for states to be reviewed in the Working Group under the HRC in Geneva can be found on the OHCHR website.

The presence of stakeholders during the review of the state is important. If national organizations, activists or others do not have the required ECOSOC status they might contact Geneva based organizations with ECOSOC status to apply for enrolment on their behalf. Further information about how stakeholders can obtain ECOSOC accreditation, how to make reservations for side events etc. can be found on the OHCHR website[13].

Once present, the national stakeholders can attend the interactive dialogue as

13 The relevant OHCHR web-site link is: http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx.

observers. They can also prepare side events, media briefings etc. at the UN premises with the purpose of drawing broad and public attention to the review. It is important that the media from the country under review is also present to cover such events.

National stakeholders can make last minute lobby meetings in Geneva with representatives from other states. However, at this late stage it is likely that most other state representatives have already formulated and had their written and oral contributions approved and might therefore not be receptive to new inputs.

The webcasted interactive dialogue holds excellent advocacy and PR potentials. Especially stakeholders staying at home can make use of this and draw attention to the review by organizing live round table debates with state and civil society representatives to be transmitted through TV, large scale civil society meetings, live media events etc. in the country under review.

As mentioned, the webcast of the interactive dialogue is a unique feature of UPR and it can help bring transparency and democracy into the process. However, not all countries have the required technology and resources to make use of the webcast. The languages of the broadcast are limited to the native language and English and thus exclude other language groups from participation.

A group of NGOs from **Belarus** which submitted a joint stakeholder submission arranged a well visited side event by assistance of CIVICUS prior to the review of Belarus. The topic was “Article 193” which is a relatively new article adopted in the criminal code in 1992 criminalizing unregistered NGOs by large fines or longer imprisonment. One of the NGO representatives from Belarus made an account of the negative effects the law amendment has had on the activities of civil society in Belarus. Another activist told her personal story of four months

imprisonment as the first person prosecuted according to article 193. Finally, a third NGO representative informed of activities civil society had engaged in to protest about article 193 and attempts made to discuss the problems with the public authorities. The panel of activists encouraged the state representatives attending the side event to consider the recommendations they had made and to bring them up during the interactive dialogue with the Belarus state delegation.

**Step 7: Working Group report: direct commenting**

The interactive dialogue results in a Working Group report (30 pages) summarizing the review process including questions raised, discussion points, recommendations by the Working Group as well as the presentations, comments and views expressed by the reviewed state delegation.
A separate part of the report lists the entire set of recommendations which the state under review will consider for adoption, further considerations or rejection. In some cases the concerned state makes immediate voluntary commitments.

In an upcoming plenary session, the HRC will adopt an outcome report which includes the Working Group report as well as other documentation such as response to the recommendations by the state under review and the decision of the outcome. A plenary discussion is allocated for each of the reviewed states. The one hour discussion is divided evenly between the reviewed state (20 minutes), members of the Council and observer states (20 minutes) and stakeholders (20 minutes). After this, the plenary will adopt the outcome report.

The adoption of the outcome report is the direct follow up to the interactive dialogue and it usually takes place in the coming plenary session of the HRC. This can span between 4 to 6 months after the interactive dialogue.

The plenary discussion provides a unique opportunity in the UN system for the national and other stakeholders to directly comment on the outcome report. As during the interactive dialogue stakeholders can only attend such sessions in the Council if they are ECOSOC accredited or are invited by another accredited organization. The stakeholders can express their own independent views but are often constrained to address topics raised in the National Report or during the Working Group review of the state.

These sessions are also webcasted and the national stakeholders can again organize events, media briefings, TV transmitted discussions etc. to draw the attention of the public to the outcome discussion and especially which recommendations the state adopted or rejected.

The varied extent of stakeholders making use of the possibility to comment verbally on the outcome reports of 10 June 2010 at the 14th session of the HRC is illustrated at the bottom of this page.

The stakeholders most often include a combination of international, regional and national NGOs. Commenting on the outcome report can also be done later on and in the country just reviewed. However, in such cases the commenting will not be included in the outcome report. After the conclusion of the UPR of Bangladesh at the 11th session of the HRC e.g. the NGO, Asian Legal Resource Centre, made a public statement about the outcome report in which it commented especially on the rejected recommendations.

| Country reviewed | # stakeholder comments on outcome report |
|---|---|
| Fiji | 3 |
| Madagascar | 4 |
| United Kingdom | 3 |
| San Marino | 1 |
| El Salvador | 1 |
| Angola | 6 |
| Iran | 10 |

## PHASE 3: FOLLOW UP ON RECOMMENDATIONS (COUNTRY)

### Step 8: Dissemination of recommendations and systematic implementation

The UPR mechanism is divided so that there is a four year span between the reviews of the states. This should leave four years for the newly reviewed state to implement the adopted UPR recommendations. However, due to the preparation and hearing process as well as the time lag between the review of the state and the adoption of the outcome report, the time left for implementation is reduced considerably and approximately three years are left for this.

The suggested guidelines for stakeholders encourage relevant stakeholders to contribute to the follow up to the outcome of the UPR process, and suggest this to be done in two ways: 1) follow up action could be undertaken in cooperation with the state entities, to whom the recommendations are addressed and 2) stakeholders may disseminate the outcome of the UPR at the national level.

Once the outcome report is adopted by the HRC, the state can start the planning and carrying out of the implementation of the UPR recommendations. The period for this is until the next UPR review of the state.

If possible, the different national stakeholders can in a joint forum with the human rights focal point in the state directly contribute to the formulation of a National Action Plan, strategy, policy papers, reform programmes etc. based on the UPR recommendations.

In addition, indicators should be formulated to enable monitoring of progress of the recommendations. If there is no focal point in the state for this task it should be suggested to have it established. Facts based dialogue could be an excellent approach to apply during the implementation process to encourage

broad hearings taking point of departure in ongoing and relevant human rights documentation[14].

If NGOs, NHRI and other independent stakeholders are not invited to participate directly, they can submit written comments or alternative suggestions and encourage the state to conduct open hearing meetings. In cases where no initiatives are taken by the state, the national stakeholders might have to resort to more powerful strategies in order to press for such actions.

The independent organizations, NHRIs etc. can in such countries formulate their own indicators and themselves carry out the monitoring of selected or all UPR recommendations.

Regardless of the follow up situation after the review, the stakeholders ought to create public awareness of the adopted UPR recommendations as well as the response of the state. It is especially important to make use of the media to draw attention to the implementation plans and initiatives if any made by the state. If the recommendations are not translated into all major languages in the country this would be an obvious starting point.

**Mauritius** adopted a recommendation which suggested the preparation of a national human rights action plan, and the country has subsequently reported back to the HRC that the national action plan is expected to be finalized by April 2011. Mauritius furthermore submitted a complete list of the adopted recommendations to HRC listing the progress made. To provide updates to the HRC is in fact another example of best practice. Other countries such as Colombia, the Czech Republic, the Republic of Korea, Romania, Switzerland, the United Arab Emirates and the United Kingdom have already provided information. In Switzerland and Canada, civil society is involved in the follow up process through regular meetings and consultations with the government.

14 DIHR has developed a methodology, facts based dialogue, which takes point of departure in the concerned country's international human rights obligations and documented human rights concerns which are presented and debated in broad national hearings. The hearings result in recommendations which provide the directions for the further process of systematically address and improve the relevant legislation and/or implementation.

**Step 9: Systematic monitoring**

In some countries, part of the implementation of the UPR recommendations will involve formulation of indicators and continuous measuring of progress in this process. In other cases this will not be a part of the state initiative and the NGOs, networks, NHRI etc. could remind, encourage and assist the state in the development and use of indicators. Indicators can be seen as a transparent tool measuring the degree of implementation.

It is important that the NGOs, and possibly in cooperation with the NHRI, in addition continue their own independent monitoring of the human rights record in the country since this will in the next reviews once again be included and considered. Monitoring of the state implementation of the adopted recommendations is particularly relevant in this connection but equally important are also human rights concerns which were not addressed in the recommendations adopted by the state. As a part of this, the UPR process in the country should also be monitored and assessed.

In **West Africa** human rights defenders formed a regional coalition consisting of 16 countries. The coalition was formed to focus on the UPR process. Joint capacity building was carried out and strategies and action plans for the platform formulated. Strategies were also developed in each country taking the national contexts into consideration. Efforts were put on the hearing process and civil society participation in the review of the West African countries in Geneva. However, also the monitoring of the recommendations in the countries was highly prioritized. Two years after each UPR review a mid-term evaluation including government participation was conducted to assess progress and lack of progress. In countries with human rights ministries and NHRIs these were always involved.

# IV. THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

**Christoffer Badse**
Special Advisor, DIHR

The UPR and the process which surrounds it, is ideally suited to the work of NHRIs. The process covers essential parts of the work of an NHRI, given that the mandate of an NHRI encompasses counselling to state entities on human rights matters, to cooperate with NGOs, to assist in human rights education, and raise public awareness as well as acting as bridgehead to the international human rights system assisting in narrowing the "implementation gap" on the domestic scene, and improving the effective enjoyment of human rights for all. However, the NHRI will have to take point of departure in the given national context when engaging itself in the process. Especially the cooperation with the state will depend on the perceptiveness of the state to promote human rights issues. In countries where this is a challenge, the national strategy will be less offensive.

Resolution 5/1 allows for an active engagement of NHRIs in the UPR mechanism. The UPR shall "ensure the participation of all relevant stakeholders, including NGOs and NHRIs, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard". (Paragraph 3 (m))

The NHRI potentially has a unique role to play in advising the state on the UPR, co-organizing and co-hosting public consultations, consulting civil society on the process and preparing its own UPR submission.

Finally, the NHRI has a task in the follow up procedure ensuring effective implementation of accepted recommendations.

The NHRI can make an impact on the UPR process in various ways:

1. Dissemination of knowledge about the UPR
2. Engage the state and civil society in the process and inform of obligations and opportunities
3. Submission of an NHRI stakeholder report
4. Facilitate and assist other stakeholder reports with technical assistance
5. Assist the state in the consultative process concerning the National Report
6. Prepare suggestions for advance questions and publish them on the Web
7. Public information campaign before the review
8. Consult with civil society organizations and state before the review
9. Consider side events and interaction with diplomatic missions
10. Attend the review in Geneva
11. Follow up on commitments made by the state in relation to recommendations
12. Scrutinize rejected recommendations
13. Approach the state in a follow up process to ensure implementation of pledges without delay
14. Ensure domestic media coverage, dissemination and translation of recommendations and National Report and stakeholder reports.

### The entity of the NHRI: The uniqueness of the NHRI and its special responsibilities

NHRIs are in a unique position in that they are state funded entities established by an act of the state but at the same time independent from the government, i.e. they are neither governmental, nor non-governmental. NHRIs can serve the role as natural coordinators at the national level by linking several actors e.g. the state and civil society, but

also in regard to the international system by being the natural point of entry for the international system for an independent knowledge base on the present domestic human rights situation. NHRIs have increasingly become crucial partners in narrowing the 'implementation gap'. NHRIs as independent non-judicial bodies are particularly important when it comes to addressing state obligations of a preventive and fulfilling nature. NHRIs may also help ensuring indivisibility and interdependence of all human rights. They bring independent expertise and a local perspective to regional and international fora.

According to the Paris Principles, an NHRI shall have the competence to protect and promote human rights and shall possess a broad mandate. Due to the indivisibility and interdependence of human rights, all human rights should be appropriately reflected in the NHRI's mandate.

The UN Paris Principles are the principal international source of normative values for NHRIs, which establish the minimum standards required for their effective functioning. An international monitoring mechanism (the International Coordination Committee) exists to periodically assess the functioning of an NHRI. An NHRI can thus be accredited with an "A – status", meaning that there is compliance with each of the Paris Principles.

The Paris Principles require NHRIs to fulfil certain functions or responsibilities. At the national level, NHRIs should advise state entities on human rights matters, cooperate with NGOs, assist in human rights education/research, and raise public awareness about the national human rights situation. Several responsibilities relate to the NHRI's role as the connection between the national and international dimension; in that regard NHRIs should ideally:

- encourage the ratification of or accession to international human rights instruments;

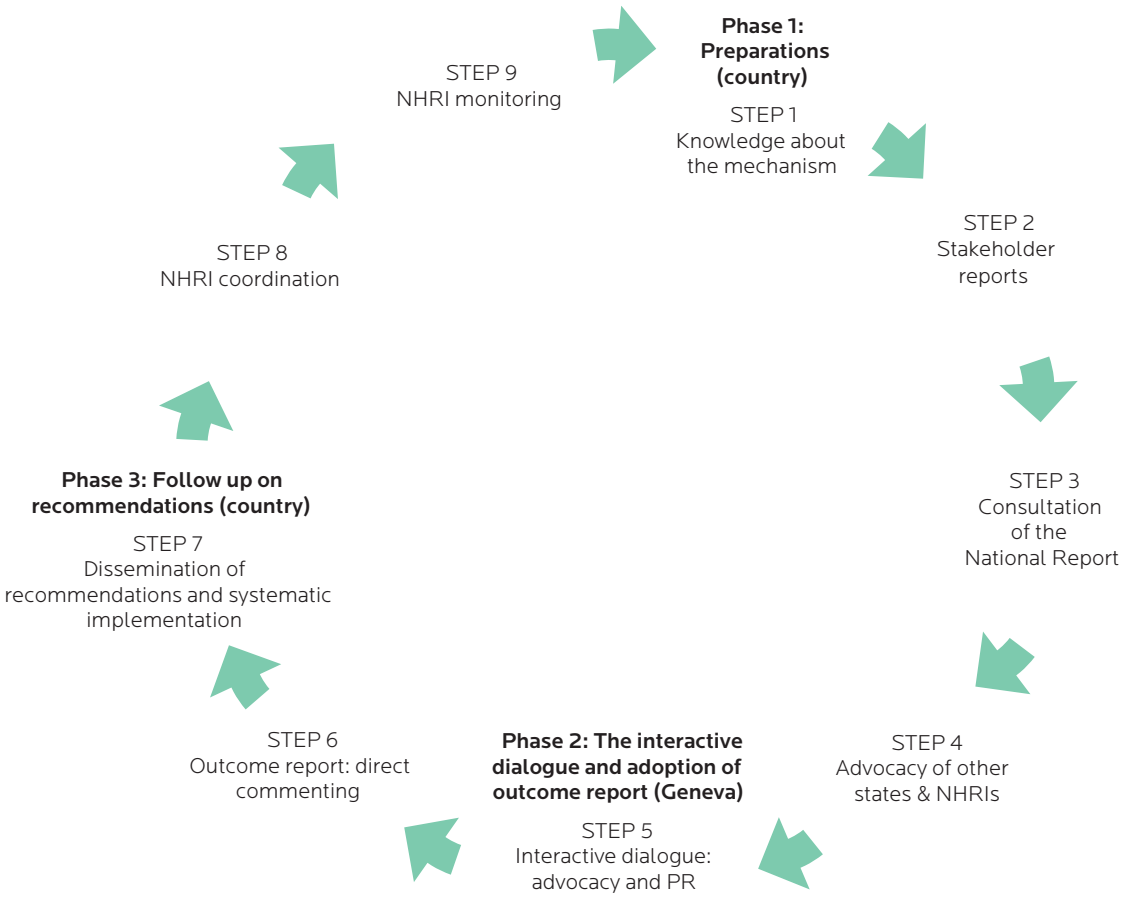
- ensure the harmonization of national laws with international human rights standards and follow up at the national level on recommendations resulting from the international human rights system;
- engage with the international human rights system, in particular the HRC including its mechanisms (Special Procedures) and the UN Human Rights Treaty Bodies (e.g. contribution of NHRIs to state reports to treaty bodies or establishment of 'parallel reports'), and contribute to the drafting of international human rights instruments.
- cooperate with NGOs and other NHRIs as well as other national and international stakeholders.

Only A-accredited NHRIs dispose of a range of rights including voting rights in the International Conference of NHRIs or Conferences of the Regional Groupings and full participation rights in international fora (e.g. right to participate and speak in their own right from a designated seating area during the deliberations of the HRC and other UN organs).

Thus, especially an A-accredited NHRI is an important human rights actor at national and international level due to their crucial role in addressing the so-called 'implementation gap', in monitoring the effective implementation of international human rights standards at the national level, and in theory be able to include all human rights in a credible way given its broad legal mandate, its independence and its expertise.

The next page shows the UPR wheel seen from the NHRI's perspective, first cycle. Each step is then explained in further detail in the text which follows, including best practice, cases from reviews already undertaken etc.

## The UPR wheel seen from the NHRI's perspective, first cycle:



## PHASE 1: PREPARATIONS (COUNTRY)

### Step 1: Knowledge about the mechanism

Obtaining information and expertise
First priority should be that resources are set aside to develop in-house expertise on the mechanism well in advance of the actual domestic process. Since several countries have gone through the process, the NHRI will be well advised to seek good practice and obtain updated information on the latest development and share this with NGOs. Also international NGOs dedicated to the UPR process continuously make information and updates available on the Internet.[15]

Disseminating information
NGOs typically have a larger public outreach and therefore a constructive and fruitful cooperation should be initiated at an early stage by the NHRI with central NGOs to be able to draw public interest and participation to the process as well as providing feedback and specialist knowledge. Due to NHRIs' familiarity with the international system and international network, NHRIs are well suited to act as coordinators by obtaining experience abroad and disseminating it among local stakeholders.

In relation to the state, the NHRI is ideally placed to convince the state to distribute adequate resources into the process making use of well known channels of communication. The NHRI should likewise advocate the state for an early start of the participatory process (consultative national process). It should be noted that the NHRI is not able to take on these roles in all countries, and in such cases the NHRI might have to invest more intensively in efforts to pressure the state to engage in the UPR process, and if this fails e.g. identify other non-governmental stakeholders to cooperate with in a separate process.

Ideally, the NHRI should appoint a UPR liaison officer among staff at the

15 See e.g. http://www.upr-info.org/

NHRI and make the person known to state representatives, NGOs and other stakeholders. The position and the person could be the contact for inquiries and dissemination of information.

Especially, the broad awareness raising initiatives can be carried out by the NHRI and state in cooperation with the NGOs making use of their effective public outreach.

There are no fixed guidelines for doing information activities. Ideally, civil society, the NHRI and the state could initiate informative activities jointly or complementary in order to provide particular interested groups and individuals as well as the general public with information in the native language. This should be about 1) what is UPR, 2) how the national consultation process will be carried out and 3) how it is possible to participate in the process.

The information targeting specific groups and individuals, who will become active in the national consultation process and especially those wishing to prepare stakeholder submissions, should clarify the UPR procedures, deadlines, formats etc. The information can be prepared for example as toolkits or short texts with graphics illustrating the UPR steps. These could be distributed by mail or post or communicated through websites. Meetings and training could be arranged to provide more in-depth information to the target groups.

The general awareness raising should be broad in scope, and the information about UPR ought to be general, educational, easy to understand and appealing in order to reach as many as possible in the general public. Ideally booklets, illustrated handouts, posters etc. could be prepared and distributed widely for free at accessible places, websites etc. The electronic media, TV, radio etc. could provide complementary ways to spread awareness about UPR.

Since the NHRI and other stakeholders submit stakeholder reports six months before the review of the state in Geneva, the information activities should ideally begin 12 to 14 months before this takes place.

Ideally, the NHRI could initiate separate kick-off meetings with state and NGO representatives to encourage an early preparation of the national consultation process and compilation of reports.

**Step 2: Stakeholder reports**

Three reports serve as the basis for each state review and provide the following information:

- Information from the state under review (National Report) including information on achievements, best practices, challenges, constraints as well as key national priorities in addressing shortcomings;
- A 10 page compilation of information contained in the reports of the independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies and other UN entities;
- A 10 page compilation of information from NGOs, NHRIs and "other stakeholders" (stakeholder reports).

Stakeholder reports should provide credible and reliable information which should be taken into consideration by the Council in the review (together with National Report and the compilation of UN documents) in the form of a summarized document of 10 pages of all the alternative reports. Thus, the summarized document consists of information from NGOs, NHRI and other independent sources.

Who and how much?
Stakeholders are defined as NGOs, NHRIs, human rights defenders, academic and research institutions, regional organizations and civil society organizations. This group is encouraged to either submit their

own independent individual report (5 pages) or joint reports (10 pages) to the review.

All of the received stakeholder submissions (including the NHRI submission[16]) are merged by OHCHR into one compiled stakeholder report (10 pages).

The format and structure of reports submitted by stakeholders follow the General Guidelines adopted by the HRC which also apply to National Reports and UN information reports. Information about the following seven main points could be considered:

1. The broad **consultation process** followed nationally for the preparation of the National Report provided to the UPR by the country under review;
2. The current **normative and institutional human rights framework** of the country: constitution, legislation, policy measures such as national action plans, national jurisprudence, human rights infrastructure including NHRI;
3. The **implementation** of the normative and institutional human rights framework as described above in point 2;
4. **Cooperation of the country under review with human rights mechanisms** including NHRIs, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders;
5. **Achievements and best practices** made by the country under review and challenges and constraints faced by the country under review;
6. **Key national priorities** as identified by stakeholders, initiatives and commitments that the state concerned should undertake, in the view of stakeholders, UN treaty bodies etc. to improve the human rights situation on the ground.
7. Expectations in terms of **capacity building and technical assistance** provided and/or recommended by stakeholders through bilateral,

16 Examples of NHRI submissions can be found here: http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/82/Submission_to_UN_Universal_Periodic_Review.doc.

regional and international cooperation.

In the suggested guidelines prepared by OHCHR, stakeholders are furthermore encouraged to prepare reports which:

1. are specifically tailored for the UPR and contain credible and reliable information on the state under review;
2. highlight the main issues of concern and identify possible recommendations and/or best practices;
3. cover a maximum four-year time period, and
4. do not contain manifestly abusive language.

In reality, stakeholders can often draw on their existing human rights documentation when engaging in the stakeholder reporting. Their earlier submitted parallel reporting to the UN treaty bodies can also be applied in this connection although it has to be adjusted to the requirements. The stakeholder report prepared especially for the UPR can be a combination of adjusted summaries of existing data, findings, conclusions and recommendations and new added text.

The OHCHR guidelines allow for additional documentation to be annexed for reference. It is, however, important to keep in mind the target group of a report. For UN treaty body reporting, the recipient of parallel stakeholder reports are international experts in the specific field of a given UN convention. Detailed information and recommendations, can therefore be made. The target group of a UPR report is state representatives who are engaging in interactive dialogue with several states in each Working Group session. The information should therefore be easily accessible and recommendations should be specific.

Due to the very limited number of pages, it is suggested that a few issues should be singled out – ideally between 5 or 10 issues depending on the number of pages submitted. Naturally,

the issues that give rise to the most serious concerns should be addressed. The NHRI should be in dialogue with NGOs to avoid overlapping on issues and contradictory assessments. Also the NHRI should be able to facilitate and coordinate discussions with NGOs, to call to meetings and provide general guidelines on structure, deadlines, style and content of the NGO reports. A strategy for submission of individual and joint submissions (coalitions) could be developed with assistance from the NHRI. The NHRI could encourage joint submissions using concerns and recommendations already formulated for treaty bodies. Also NGOs lacking the required resources to participate more actively in the process could be approached by the NHRI for their input to the report. Technical assistance, guidance and qualitative review on NGO reports could be offered as a service.

In addition, the liaison officer at the NHRI could monitor the process of drafting the state UPR report and regularly inform (e.g. by e-mail) the NGOs on any development, progress or obstacles in the process.

Unfortunately, the stakeholder reports have their deadline before submission of the National Report. It is therefore suggested that the NHRI attempts to ensure that topics not expected to be covered by the state report are covered by civil society organizations or the NHRI stakeholder report.
The NHRI stakeholder report should prioritize between the seven reporting areas mentioned above, and ideally supplement the state and other civil society stakeholder reports by reporting on areas not covered. If the state for instance is expected to focus on best practice and other positive aspects of the domestic human rights situation while the NGOs focus on key national priorities, the NHRI might consider reporting on main recommendations for improving the normative and institutional human rights framework. By being in contact with state representatives and civil society organizations, the NHRI will be able to ensure that all seven points

to some extend are covered in the reports.

The NHRI could attempt to ensure that the following areas are touched upon in the collected reports:

1. Equality and non-discrimination
2. Civil and political rights and fundamental freedoms
3. Personal liberties and security
4. Torture, and other cruel, inhuman or degrading treatment or punishment
5. Administration of justice
6. ESC rights (health, housing, education, work, social security...)
7. Women's rights and gender equality
8. Children's rights
9. Promotion and protection of the rights of specific groups, including: migrants, people with disabilities, minorities, indigenous peoples etc.

It should, however, also be noted that UPR reporting offers possibilities not available in treaty body reporting. Treaty body reporting covers the treaties ratified by the state and only cover one specific convention. The broad and holistic focus of the UPR enables the stakeholder reports to include recommendations to ratify new conventions or focus on overall topics or topics only indirectly covered by other UN treaties (e.g. human rights and business or the rights of imprisoned or detained persons). Furthermore, repetition of treaty body recommendations should also be kept to a minimum since these will be reflected in the compilation of treaty body recommendations.

### When?

The deadline for submitting stakeholder reports during the first UPR cycle is six month before the state is scheduled to be reviewed in Geneva. The state needs to submit the National Report 6 to 13 weeks before the review. Consequently, the stakeholders are sometimes engaged in the preparation of the reporting before the state. The stakeholders are likely to start their preparations at least 12 months before the review,

especially in cases where several stakeholders decide to prepare a joint submission.

Stakeholders' submissions should be sent to uprsubmissions@ohchr.org. Title e.g. Danish Institute for Human Rights UPR submission-Denmark-Nov 2010

Alone or together?
Experiences have shown that the joint stakeholder submissions are encouraged and appreciated. It carries more weight when participating stakeholders succeed in reaching consensus about the human rights situation and recommendations to improve it in the concerned country. Organizations and others wanting to jointly prepare a report are especially in need of an early start to coordinate their report writing well.

Due to the special mandate of the NHRI, it is recommended that the NHRI submit its own stakeholder report, which means that a 5 page report should be submitted by the NHRI.

**Kenya** is an example of how an NHRI can engage in stakeholder submissions to UPR. Kenya National Commission on Human Rights took the initiative to facilitate civil society organizations in preparing a joint submission. This initiative resulted in comprehensive cooperation developing into the Kenya Stakeholders' Coalition comprising 97 national and international organizations and institutions preparing a joint stakeholder report. In addition to the facilitation of this process, the Commission prepared its own independent NHRI report. The Commission furthermore invited the state to discuss the UPR process, National Report etc.

**Step 3: Consultation of the National Report**

According to the guidelines, states are encouraged to prepare the information they submit in the National Report

"through a broad consultation process at the national level with all relevant stakeholders"[17]. There is no further advice on how this can be carried out, and during the first UPR cycle the initial ways to carry our national consultation processes have therefore also varied greatly. In some cases, states have initiated countrywide meetings, made use of media to disseminate information about the mechanism and for broad discussions of the contents of the National Report, opened UPR websites for stakeholder comments etc. In some instances, stakeholders were consulted at an early stage and re-consulted after the fully developed draft or re-drafts of the National Report were made available. In other countries two workshops in the capital constituted the national consultations. Ideally, the state should conduct a consultative process as participatory as possible including:

- Public hearings in all major regions
- Accessibility by disabled people to the locations
- Tools and aid for the visually impaired and for people with impaired hearing
- Information available in all the major languages of the country
- Information and pamphlets in public institutions on the hearings
- Website and digital access on the National Report and the consultative process
- Co-hosting the public hearings with the NHRI

The National Report has to be submitted by the latest 6 to 13 weeks before the UPR review of the state takes place. In order to allow for a comprehensive hearing process, the activities should start 10 to 12 months before the review of the state.

The NHRI should at an early stage try to influence the consultation process, especially if it is expected that only symbolic consultations will be held. After identifying which government agency will be responsible for the UPR National Reporting, the NHRI can make inquiries on how and

17 Suggested guidelines for "Relevant Stakeholders" wishing to provide information to the Universal Periodic Review, OHCHR, July 2008.

when the state plans to carry out consultations. Ideally, the NHRI could provide the state with assistance in the consultative process co-hosting it and also the NHRI should take advantage of its network of NGOs to ensure the best possible outreach to the interested public.

The main purpose of the national hearing process is for the stakeholders to influence and provide inputs to the National Report so that it reflects
1) a real and comprehensive picture of the actual human rights situation in the country,
2) the efforts made by the state to progressively improve it and
3) that the proposed recommendations to improve the situation are important, relevant and substantial.

### Influencing the content of the National Report

Representatives from the NHRI should also in the process attempt to influence the content of the report and assist the state with information and reports which the NHRI might have drafted to international monitoring mechanisms but which the state might not be aware of. In addition to its stakeholder report, the NHRI should assist the state and the civil society organizations in identifying a broad range of human rights issues preferably including topics which the NHRI will deal with in detail in its stakeholder report. In the dialogue with the state representatives, the NHRI should advocate for some self reflection and identification of main human rights issues and shortcomings in the effective domestic implementation in the National Report. These challenges are often not sufficiently addressed in the National Report. A good practice for the state is to circulate a draft of the National Report for key stakeholders to comment upon before final submission. Naturally the stakeholders should be provided with adequate time to provide comments. The NHRI should advocate for this approach on behalf of all civil society organizations.

**Step 4: Advocacy of other states and NHRIs**

The review of the state in Geneva will be conducted by the members of the Working Group. Prior to the review it is possible for members of the Working Group to prepare written questions and their oral questions, comments and recommendations for the interactive dialogue which forms the first step of the review of the country.

Written questions on essential issues and challenges provide the states under review with time to prepare and explain themselves and thus improve the potential output and quality of the entire UPR process. Input to this part of the process by the NHRI should therefore not be underestimated.

It varies considerably how far in advance each state prepares itself for the review of other states. It might be worth while to share experiences with other organizations or NHRIs to assess when it is the right time to approach specific states to discuss questions and recommendations. Larger states tend to start the process earlier since their procedures require the approval of the government in advance. It might be possible to approach smaller states on a shorter notice, since their procedures might be more direct and rely on their UN representation in Geneva. Another factor is the priority of the countries under review. Not all states prepare questions and recommendations for all of the 16 countries which are reviewed in each Working Group session. It is quite a challenge to identify which states are willing and perceptive to engage in each of the 16 states under review. Finally, some states have identified human rights priorities and will only be willing to raise questions and recommendations within those.

In the opinion of the author, it would also be advisable to wait until the National Report is published. It is then easier to address issues which have been forgotten or deliberately ignored by the state. Also quite some consideration on which state

to approach would be wise for the NHRI. Research on main focus areas or highly prioritized areas within the field of a particular state should be initiated before a state should be approached. States with a high moral standing and a good human rights track record should be preferred. Also considerations as to states which have the same cultural values as or are like minded to the state under review could have an influence on the decision whether these states could be convinced, since it would be more difficult for the state under review to reject questions on sensitive issues from states which the state under review identifies more easily with. An alternative approach would be to publish a list on the website of the NHRI and inform that whoever might be interested is welcome to make use of the list of questions. This is a more transparent approach, however somewhat unpredictable.

The national stakeholders but also regional and international organizations can contact other countries either through their UN representations in Geneva or their embassies or diplomatic representations in the country to be reviewed. The national stakeholders can propose central human rights questions, concerns and recommendations to be raised by other countries if these are not included in the National Report.

Experiences show that states such as Brazil, Guatemala, Mexico, The Republic of Korea and some in the Western group have been receptive to being approached by NGOs even just before or during the review of a state.

It is suggested that an NHRI could make use of the international network of NHRIs to forward questions and recommendations. The NHRIs in the other countries can approach the Ministry of Foreign Affairs and suggest questions to be raised by that particular state to the state under review. Especially, NHRIs which do not enjoy A-accreditation could raise this through other NHRIs. However,

this approach should be applied very strategically in order not to burden NHRIs to constantly bring up issues and recommendation on behalf of other NHRIs.

## PHASE 2: THE INTERACTIVE DIALOGUE AND ADOPTION OF OUTCOME REPORT (GENEVA)

### Step 5: The interactive dialogue: advocacy and PR

The interactive dialogue takes place between the Working Group under the HRC in Geneva and the state under review. National stakeholders can make use of the attention of the interactive dialogue in several ways. Organizations with ECOSOC status can attend the sessions but they are not allowed speaking time. The three hour interactive dialogue is made available live and filed on webcast by OHCHR and transmitted in the official language of the country and in English. NHRIs are not allowed to speak but should attend the review to maintain last minute pressure by approaching other states to bring up certain questions and recommendations, and show interest in the process as well as to be able to inform media on the performance of the state under review. In order for NHRIs to attend they can contact Geneva based organizations having the required ECOSOC status and through them have the needed invitations extended.

Alternatively, the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) might provide help in the enrolment or in other types of assistances such as how to make reservations for side events. This information can also be found on the OHCHR website.

Once present, the NHRI can attend the interactive dialogue as an observer. The NHRI can inform NGOs of the possibility to establish side events, media briefings etc. at the UN premises with the purpose of

drawing broad and public attention to the review. It is important that the media from the country under review is also present to cover such events. Naturally, NHRIs can also themselves act in similar ways depending on the tradition, nature and political climate of their country of origin.

The webcasted interactive dialogue holds excellent advocacy and PR potentials. Especially stakeholders in the country under review can benefit from this and draw attention to the review by organizing live round table debates with state and civil society representation to be transmitted through TV, large scale civil society meetings, live media events etc. in the country under review.

**Step 6: Outcome report: direct commenting**

After 48 hours, the interactive dialogue results in an outcome report (30 pages) summarizing the review process including questions raised, discussion points, recommendations by the Working Group as well as the presentations, comments and views expressed by the reviewed state delegation. A separate part of the report lists the entire set of recommendations which the state under review will consider for adoption, further consideration or rejection. In some cases, the concerned state makes immediate voluntary commitments.

In an upcoming regular session, the HRC will consider the outcome reports for adoption. This can span between 4 to 6 months after the interactive dialogue. A one hour plenary discussion is allocated for each of the reviewed states. The discussion is divided evenly between the reviewed state (20 minutes), members of the council and observer states (20 minutes) and stakeholders (20 minutes). After this, the plenary will adopt the outcome report.

The plenary discussion provides a unique opportunity in the UN system for NHRIs to directly comment on

the outcome report. As during the interactive dialogue, stakeholders can only attend such sessions in the Council if they have ECOSOC accreditation or are invited by another accredited organization or ICC. The stakeholders including NHRI representatives can express their own independent views but only on topics raised in the National Report or topics raised in questions and recommendations posed by other states during the interactive dialogue.

These sessions are also webcasted live and the NHRIs can organize events, media briefings, TV transmitted discussions etc. to draw the attention of the public to the outcome discussion and especially which recommendations the state adopted or rejected. NHRIs should especially scrutinize rejected recommendations and assess whether the explanation put forward by the state is credible. Such an assessment could be a key issue in the media coverage on the outcome report.

## PHASE 3: FOLLOW UP ON RECOMMENDATIONS (COUNTRY)

### Step 7: Dissemination of recommendations and systematic implementation

The UPR mechanism is divided so that there is a four year span between the reviews of the states. The preparation and review process are time consuming and leaves approximately three years for the newly reviewed state to implement the adopted UPR recommendations.

The suggested guidelines for stakeholders encourage relevant stakeholders to contribute to the follow up to the outcome of the UPR process and suggest this to be done in two ways: 1) follow up action could be undertaken in cooperation with the state entities, to whom the recommendations are addressed, and 2) stakeholders may disseminate the outcome of the UPR at the national level.

Once the outcome report is adopted by the HRC, the state assisted by stakeholders can start the planning and carrying out of the implementation of the UPR recommendations. The period for this is until the next UPR review of the state which takes place every four years.

If possible, the different national stakeholders can contribute directly in a joint forum with the human rights focal point in the government and help formulate a National Action Plan, strategy, policy papers, reform programmes etc. based on the UPR recommendations. In addition, indicators should be formulated to enable monitoring of progress of the recommendations. Facts based dialogue could be an excellent approach to apply during this process to encourage broad hearings taking point of departure in ongoing and relevant human rights documentation[18].

If NGOs, the NHRI and other independent stakeholders are not invited to participate directly, they can submit written comments or alternative suggestions and encourage the state to conduct open hearing meetings. In cases where no initiatives are taken by the state, the national stakeholders might have to resort to more powerful strategies in order to push for such actions.

In such countries, the independent organizations, NHRIs etc. can formulate their own indicators and themselves carry out the monitoring of selected or all UPR recommendations.

Regardless of the follow up situation after the review, the stakeholders ought to create public awareness of the adopted UPR recommendations and especially through the media provide updated attention to the implementation plans and initiatives if any made by the state. If the recommendations are not translated into the official language in the country this would be an obvious starting point.

18 DIHR has developed a methodology, factsbased dialogue, which takes point of departure in the concerned country's international human rights obligations and documented human rights concerns which are presented and debated in broad national hearings. The hearings result in recommendations which provide the directions for the further process of systematically addressing and improving the relevant legislation and/or implementation.

**Mauritius** adopted a recommendation which suggested the preparation of a National Human Rights Action Plan, and the country has subsequently reported back to the HRC that the National Action Plan is expected to be finalized by April 2011.

Mauritius furthermore submitted a complete list of the adopted recommendations to HRC listing the progress made. To provide updates to the HRC is in fact another example of best practice.

Other countries such as Colombia, the Czech Republic, the Republic of Korea, Romania, Switzerland, the United Arab Emirates and the United Kingdom have already provided information. In Switzerland and Canada, civil society is involved in the follow up process through regular meetings and consultations with the government.

**Step 8: NHRI coordination**

In order for civil society, the NHRI and others to engage actively in the follow up process to the UPR, a joint approach can be an excellent starting point. Especially when approaching a reluctant state, a platform or network can be formed with the purpose of approaching the state more forcefully to suggest follow up on some or all of the adopted UPR recommendations. Since the UPR covers all human rights issues, it would be natural for the NHRI to play a key role in facilitating the platform.

Depending on resources, an invitation could also be made by the state to establish a permanent council with key stakeholders represented.

Individuals or bodies in the government who in other connections have been willing to cooperate with the NHRI, and who are receptive to human rights can be approached in an informal manner for advice or possible involvement. The platform

or network can analyze the situation and accordingly formulate a strategy designed to persuade the state to take action. No matter which strategy is adopted the outset ought to be those recommendations which the state have voluntarily adopted as a result of the UPR.

In cases of states positively committed to the implementation of the UPR recommendations, NHRI, networks and platforms can also seek to enter cooperation with the relevant state institutions with the purpose of offering their coordinated inputs and contributions and possible monitoring of the progress.

Individual NGOs, NHRIs and other stakeholders can in their specific areas of human rights specialization include relevant UPR recommendations and seek cooperation with relevant state bodies to promote their implementation.

An example could be annual meetings with parliament on the implementation process. The NHRI could also meet regularly with various ministries where the UPR recommendations could have a permanent place on the agenda. Also reporting to parliament and various international and regional monitoring mechanisms could include a status on the implementation process.

**Step 9: NHRI monitoring**

In some countries, part of the implementation of the UPR recommendations will involve formulation of indicators and continuous measuring of progress in this process. In other cases, this will not be a part of the state initiative, and the NHRI could remind, encourage and assist the state in the development and use of indicators. Indicators can be seen as a transparent tool measuring the degree of implementation.

It is important that the NHRI and possibly in cooperation with the NGOs, also continues its own independent

monitoring of the human rights record in the country, since this will once again be included and considered in the next reviews. Monitoring of the state implementation of the most recently adopted recommendations is particularly relevant in this connection, but equally important are also human rights concerns which were not addressed in the recommendations adopted by the state.

PART 2

# V. CASE OF BURKINA FASO:

## GOVERNMENT CONSIDERATIONS DURING THE PREPARATION OF THE UPR CONSULTATIONS

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### Introduction

Burkina Faso's review in the Working Group of the Human Rights Council took place on 9 December 2008. The delegation was headed by Madam Minister for the Promotion of Human Rights. The Working Group's preliminary report presented by the Troika was adopted on 11 December 2008. On 19 March 2009, at the end of the 30th Plenary Session of the Human Rights Council, the Council adopted the final review document of Burkina Faso.

We will show:

1. The preparation of Burkina Faso's state report
2. The presentation before the Working Group
3. The working sessions with the Troika
4. The recommendations
5. The participation at the Plenary Session
6. The follow up to the UPR.

**1. The preparation of the state report**

The process followed for the elaboration of the UPR report was conducted by the Ministry for the Promotion of Human Rights.

The process developed in the following stages:

i. Establishment of a technical team, limited to three persons in the Ministry for the Promotion of Human Rights, in order to make a technical proposal for the process to elaborate the state report.
ii. Preparation of a questionnaire by the said team addressed to ministerial departments, institutions and civil society organizations.
iii. Organization of a consultation and working meeting with representatives from all the ministerial departments and institutions in order to inform them about the UPR, and to collect information from them for the preparation of the report. At this stage, the National Human Rights Commission was closely associated with the process.
iv. Organization of a meeting with civil society organizations (CSO) working with human rights in order to inform them about the UPR process and receive information from them.
CSO have participated actively in the process. They have provided useful information for the preparation of the state report. They were informed of their possibility to present an alternative report and thus to transmit their maximum 5-page contribution to the Office of the High Commission for Human Rights (OHCHR).
v. Compilation and use of the different contributions by the Ministry for the Promotion of Human Rights and preparation of the first draft report.
vi. Organization of a national validation workshop which brought together representatives from ministerial departments, institutions, civil society

organizations, Parliament and the justice system.

vii. Submission of the report validated by the workshop to the Inter-ministerial Committee on Human Rights and International Humanitarian Law. This is an entity composed by the general secretaries of the 14 ministerial departments with the task of coordinating the preparation of the reports that Burkina Faso must submit to international and regional fora.

viii. Adoption of the report by government in the Council of Ministers.

ix. Transmission of the report to the OHCHR in Geneva.

In parallel with all the above mentioned steps, information and awareness activities have been undertaken to make the UPR mechanism known to the general public. They comprised publicity spots on national radio and TV, publication of articles in the press, TV programmes and press conferences.

**2. The review in the working group**

Burkina requested and obtained services from an expert from the international organization, La Francophonie; this much appreciated support contributed to finalizing the report and preparing the team that was going to Geneva. This partnership continued until the adoption of the report in March 2009.

- Burkina's delegation consisted of 15 persons distributed as follows:
- Ministry for the Promotion of Human Rights: 6 persons
- National Human Rights Commission: 1 person
- Ministry of Justice: 1 person
- Ministry of Health: 1 person
- Ministry for the Promotion of Women: 1 person
- Ministry for Primary Education: 1 person
- Ministry for Social Action and National Solidarity: 1 person
- Permanent Mission in Geneva: 3 persons

Consequently, there was a variety of competences. The composition of the delegation took gender into account by observing a balanced representation of the two sexes (8 women, 7 men).
The National Report was presented in accordance with section 15a) of the annex to resolution 5/1 of the HRC setting up the institutions of the Council. Burkina Faso went before the Working Group on 9 December 2008. The review was facilitated by a Troika composed of Madagascar, Qatar and Switzerland. The Working Group's adoption of the report by the Troika took place on 11 December 2008.

About 20 written questions from various countries were received before the review of Burkina Faso before the Working Group. The delegation was formed in order to give written responses to the written questions, which were read out during the interactive dialogue on 9 December 2008.

Forty-six (46) countries, including seventeen (17) African countries, took the floor during the interactive dialogue. Their interventions are included in the final UPR document of Burkina Faso.

The recommendations made by different stakeholders were compiled by the OHCHR. They were discussed with the Troika.

**3. The working sessions with the Troika**

There were two working meetings with the Troika on 10 December 2008. The exercise with the Troika consisted in reviewing all the recommendations and pronounce: should they be accepted, rejected or reserved for later statements? One by one all the recommendations were subject to this exercise.

The presentation of the preliminary report of the Troika took place on 11 December 2008 from 5 PM. The report was adopted by the Working Group.

## 4. The recommendations

Of the recommendations put forward, 27 were accepted by Burkina. For example the following recommendations:

- Ensure compliance of the National Human Rights Commission with the Paris Principles;
- Submit reports to the treaty bodies regularly;
- Put an end to discrimination against disabled persons;
- Consider to adopt legislation aimed at abolishing the death penalty;
- Continue the efforts within the area of economic, social and cultural rights.

The recommendations not accepted amounted to 18, ex:

- Ratify the Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty;
- Make legislation to repress violence against women;
- Extend a permanent invitation to the Special Procedures of the Human Rights Council;
- Eliminate polygamy;
- Take measures to protect the journalists that are victims of intimidation, identify the culprits and bring them to justice;
- Translate intentions into measures and concrete results in relation to corruption ;
- Permit the unfettered exercise of freedom of expression.

Concerning some recommendations, Burkina Faso took note and formulated observations. For example:

- Make legislation to repress violence against women (this legislation already exists)
- Extend a permanent invitation to the Special Procedures of the Human Rights Council (rather to be studied case by case)
- Take measures to protect the journalists that are victims of intimidation, identify the culprits

and bring them to justice (there is no intimidation of journalists)
- Translate intentions into measures and concrete results in relation to corruption (there are sufficient measures and institutions in this area).

Concerning others, like the abolition of the death penalty by adapting a law commuting all death sentences already pronounced, Burkina Faso decided to comment later.
During its exam, Burkina Faso expressly requested technical assistance from the OHCHR to assist its efforts for the promotion and protection of human rights.

**5. The participation at the Plenary Session**

The Plenary Session took place on 19 March 2009 in the afternoon.
The Minister for the Promotion of Human Rights proceeded to read the introductory declaration, which included answers to the questions that Burkina Faso, due to lack of time, had not responded to during the review in the Working Group, and some voluntary commitments undertaken by the country. Some states and NGOs made general observations after which the Minister read her concluding declaration.

The final UPR document of Burkina Faso was adopted by the Human Rights Council. It is presented in the form of a report containing a summary of the debates, the recommendations and conclusions and the voluntary commitments undertaken by Burkina Faso.

**6. The follow up to the UPR**

After Burkina Faso's review under the UPR, the Ministry for the Promotion of Human Rights has undertaken or participated in activities or actions concerning follow up. For example:

- Press conference led by the Minister for the Promotion of Human Rights and three of her collaborators (18 December 2008);

- Feed-back workshop on the UPR report and process with the persons who participated in the national validation workshop on Burkina's report (ministerial departments, institutions, National Human Rights Commission, civil society organizations);
- Meeting with the ministers most affected by the recommendations;
- Meeting with the representative of the Regional Office of the OHCHR in West Africa in Dakar;
- UPR workshop in Dakar (May 2009);
- Francophone seminar in Rabat (May 2010);
- Technical assistance to Niger for the preparation of their UPR;
- Establish an inter-ministerial follow up committee for the UPR;
- Elaboration of an action plan to implement the recommendations.

**Conclusion**

During the UPR process, Burkina Faso has endeavoured to ensure that the National Human Rights Commission and civil society organizations were fully involved in the process along side with the state. This was all the more necessary as all these actors should contribute to the implementation of the recommendations adopted after the review.

# VI. CASE OF KENYA:

## EXPERIENCES COLLECTED OF FUNCTIONS OF KENYA NATIONAL COMMISSION ON HUMAN RIGHTS IN THE UPR PROCESS

**Antonina Okuta**
Kenya National Commission on
Human Rights

### Introduction

The Kenya National Commission on Human Rights (KNCHR) is a National Human Rights Institution, set up in 2002 through an Act of Parliament, for the sole purpose of promotion and protection of human rights in Kenya.

Its core functions include investigation of human rights violations, educating the public on human rights, recommending to parliament, measures of promoting human rights and acting as the chief agent of the state's compliance with its obligations under international treaties and conventions on human rights.

KNCHR has been in existence for the past 8 years during which it has led to great enhancement of the realization of human rights in Kenya, including ensuring that a very progressive bill of rights is enshrined in the recently promulgated Constitution of Kenya.

### KNCHR and the UPR process

In 2009, the KNCHR embarked on a leadership role to ensure all stakeholders in Kenya prepared for and participated in the UPR for Kenya. KNCHR was the lead agency in this process, co-coordinating and

preparing the civil society as well as engaging in continuous dialogue with the government to ensure the UPR for Kenya addressed the real human rights issues in the country.

KNCHR had a clear focus and planned its work into functions before the review, which happened in May 2010, functions during the review and functions after the review. Kenya's report was adopted by the Human Rights Council on 22nd September 2010 and KNCHR then embarked on ensuring the implementation of the recommendations that had been accepted by the state.

The main observations of KNCHR's engagement in this process were as follows:

**1. Importance of continuous engagement with the government**

The KNCHR was involved from the onset in discussions with the government, through the Ministry of Justice, National Cohesion and Constitutional Affairs, on the UPR for Kenya. KNCHR attended various consultative forums convened by the government to discuss the concept and process as well as the role of different stakeholders in the UPR process. KNCHR was thus involved from the start in the conceptualization of the UPR process by the government but while it could make suggestions, it could not determine what the government decided to include in their report to the Human Rights Council.

KNCHR was conscious from the beginning of the fact that the state report might not adequately address the concerns that KNCHR as well as other stakeholder's working on human rights issues had, and there was need for alternative means of bringing these issues before the Human Rights Council. KNCHR therefore took a leading role in the UPR process of Kenya to ensure that all concerns raised by various human rights actors in Kenya would be addressed during the review. From the onset, KNCHR was clear that while it was involved

in both processes, the government process and the stakeholders' process would run parallel, with none overriding the other.

When the civil society consolidated all their issues into an advocacy charter, KNCHR led stakeholders into a meeting with the Minister for Justice and the National Cohesion and Constitutional Affairs who was to lead the Kenyan delegation to the review.

The concerns raised in the charter were presented to the government with a request that they commit to addressing them. While no commitment was obtained from the government, the meeting was nonetheless important as the government was now aware of the concerns of human rights actors in the country.

The team which travelled to Geneva for the review of Kenya in May 2010 sought out and met with the Kenya government delegation after the review. Discussions were held on the recommendations which had been made to the government and indications made on what they might or might not support.

After the review, KNCHR invited the government to a stakeholder's workshop to identify strategies for engagement and to secure implementation of the recommendations made. It was important to keep engaging with the government at every stage for effective implementation of the recommendations and also to offer a critique of the process, particularly the recommendations which had been rejected and to give guidance on the recommendations which had been deferred.

KNCHR thereafter sent an advisory to the government, putting on record stakeholders' concerns following the review and calling for an action plan from the government on implementation of the recommendations it accepted.

In August 2010, at a meeting of the Standing Committee on International Obligations, which consists of several government ministries, departments, the KNCHR and civil society organizations, discussions around UPR were held. The government's indication was that it would agree to the recommendation that it ratifies optional protocols allowing for individual remedies. These were the Optional Protocol to ICCPR 1, Optional Protocol to ICESCR, Optional Protocol to ICRPD and Optional Protocol to CEDAW. Continuous engagement with the government had borne fruit in this regard.

The continuous engagement with the government was fruitful as the government was able to listen to and address most of the stakeholders concerns. Discussing the issues with the government before the review also meant that they were not ambushed during the process and they were able to engage in meaningful discussions with the stakeholders.

**2. Importance of relationship with the civil society**

Due to the diverse nature of areas covered under the UPR, KNCHR realized it could not solely cover the entire process and in this regard, sought to work with NGOs, civil society organizations and international organizations working on human rights and development concerns in Kenya. The KNCHR's well developed relationship with the civil society was instrumental in making the UPR a success.  KNCHR has always had a very strong relationship with the civil society which made it possible to step in and take the leadership role in this process.

In March 2009, KNCHR held a meeting which brought together various organizations with the objective of finding out the extent to which organizations were aware of the UPR mechanism, what each organization was already doing in preparation for the UPR and to strategize as on how the efforts

of each organization could be consolidated in preparation for the UPR. All stakeholders agreed to adopt a common strategy and action plan towards Kenya's review. KNCHR would serve as the secretariat and convener.

To facilitate the preparation of the report that would be submitted to the OHCHR, a steering committee, led by KNCHR was established and the stakeholders were sub-divided into various thematic clusters to include the Civil and Political Rights Cluster; the Economic and Social Rights Cluster; the Women's Rights Cluster; the Children's Rights Cluster; the Minorities and Indigenous Communities' Cluster; the Sexual Minorities Cluster; the Persons with Disability Cluster; the Youth Cluster and he Older Persons Cluster. These clusters would outline the human rights issues in their various thematic areas, and this would ensure that most groups in the country would have their concerns raised at the UPR.

**3. Importance of capacity building**

An initial series of cluster meetings demonstrated the need for a capacity building workshop on the UPR, which was subsequently held on 19th and 20th May, 2009. The objective of the workshop was to equip the stakeholders with an in-depth understanding of the principles, norms and practical aspects of the UPR to enable them to engage effectively in Kenya's review process. The workshop was facilitated by experts from Rights and Democracy – Geneva Office; Conectas-Brazil; Human Rights House Foundation, Norway and the South African Commission on Human Rights and attracted some 65 participants from different parts of Kenya.

After this training, each cluster prepared a report on areas of critical human rights concerns, which were then consolidated into the Kenya Stakeholders' Coalition for the UPR Report and subjected to validation by all the stakeholders. This report was later submitted to the OHCHR on 2nd

November, 2009. KNCHR, apart from submitting the report jointly with the stakeholders, additionally submitted its own report.

**4. Importance of technical research and strategies around the UPR process**

With the advent of 2010 and with Kenya due for review under the UPR on 6th May 2010, KNCHR spearheaded the setting up of various teams to research on and work around certain strategies. These teams included:

- The Advocacy Charter Team, which was mandated to come up with an advocacy strategy that would be used to lobby states through their embassies in asking certain questions and making certain recommendations.
- The Media Strategy Team, which was to come up with strategies on how to create awareness in the public about the UPR process and how to use the media for this purpose.
- The Mapping Team which was to identify states and organizations which could be approached to ask questions and make recommendations to Kenya during its UPR review and to develop a lobbying strategy.

KNCHR coordinated weekly stakeholder meetings, which analyzed the various documents that were prepared by the teams. Buy-in was also sought from the media with an initial meeting being held with the Kenyan media to explain to the Kenyan media what the UPR process was all about, and to request that the process be broadcast widely in view of sensitizing the public about the UPR.

**5. Importance of engagement with international actors**

With the review date approaching, a final lobbying and mapping strategy was adopted that would see the stakeholders approach various missions to have the questions and recommendations they had identified

put through to Kenya during the review. A joint advocacy charter was endorsed and the stakeholders were divided into teams that would target specific regions such as Western European States, Americas, African States and Middle Eastern States.

KNCHR developed letters which would be sent to these missions and contacted various missions to request them to address issues that were in the advocacy charter. The states were contacted through their missions in Kenya first before their permanent UN offices in Geneva were approached.

KNCHR sent a team to Geneva a few days before the review which carried out a number of activities. Prior to the review, the team met with around a dozen state missions, NGOs, media and other stakeholders in various efforts in support of the review. These included the Swiss mission, the Norwegian mission, the Bolivian mission, UPR info, Amnesty International, OHCHR, the Commonwealth Secretariat, the UPR Secretariat, Media 21 and Conectas. The aim of meeting these groups was to persuade them to raise with the Kenyan delegation concerns that had been identified by stakeholders.

KNCHR undertook a side event on 4th May 2010 which was attended by around 30 persons from states delegations including the Kenya delegation, civil society and the media. The purpose of this side event was to lobby state delegations to put through the stakeholders' concerns to the government.

This paid off since during the review of Kenya on 6th of May, 2010, the essence of the concerns raised by the stakeholders was by and large captured in the questions and recommendations raised by state delegations.

### 6. Importance of having clear strategies after the review

Soon after the review, KNCHR identified the functions it would carry out to move the process forward. These would include:

- Working with the state on the recommendations which require further clarifications and advising it in relation to the recommendations it declined;
- Beginning to clarify the necessary milestones to realize the recommendations it accepted;
- Awareness raising and advocacy on implementation of those recommendations that were supported by government for example through dissemination of UPR recommendations including translation into accessible and easily understandable formats;
- Preparing a statement to present during the adoption of the report by the Human Rights Council in September.

### Concluding remarks and recommendations

- Collaborative effort between all stakeholders is of great importance in the UPR process. All stakeholders in the Kenyan review process were happy that the issues they work around were addressed during the UPR. Also, the states, NGOs and NHRIs were very impressed by the joint strategy between KNCHR and civil society in preparing reports for the process and lobbying around a common charter.

- However, for a joint strategy to work well there needs to be a clear focal point and agency leading the process. While KNCHR's leadership role in the UPR process was very successful, there were a few challenges, key of which was inadequate capacity of many stakeholder organizations in terms of resources to engage in the UPR process. While KNCHR was able to facilitate meetings and workshops

in Kenya, it could not fund stakeholder's travel to Geneva, with the result that a very small team was able to participate in the activities in Geneva.

- Another challenge faced was lack of commitment to the process by stakeholders until conclusion; the process required devotion in terms of time and many organizations were unable to stay on to the end. Starting with 97 organizations, by the time the review was carried out only around 50 organizations were still participating in the process. It is important to devise strategies that would ensure organizations do not opt out of the process mid-way, this could be done for example by requesting the organizations to include the UPR process in their work plans from the onset and devote adequate resources to the process.

- Further, while the clusters were diverse in the thematic areas covered, the involvement of the grass root organizations was unsatisfactory. All stakeholders' weekly meetings happened at the KNCHR offices in Nairobi, and it was difficult for grassroots organizations to be involved. This was remedied by sending regular updates but it is still important to decentralize the process so that the grassroots organizations can play a more active role.

- The UPR process needs to be popularized so that it gets a national buy-in and becomes a process owned by the citizens. Using the media could be one way of creating awareness. Regular seminars and workshops around the process also aid in disseminating the necessary information. The steering teams should aim at disseminating UPR material in accessible and easily understandable formats.

- Throughout the process, it was clear that international actors are the mouthpiece of stakeholders in

the UPR process. If one does not seek them out and work with them, you risk having their views not put through at the review.

- Ultimately, it is upon the government to make decisions around the recommendations made to it and to follow through with implementation. It is therefore of utmost importance to have engagement with the government at every stage of the process.

- Stakeholders must clarify the necessary milestones for implementation of the recommendations and define recommendations that respective organizations will engage with; this facilitates follow up on implementation.

- Stakeholders should lobby the HRC to follow up on implementation of recommendations and device ways of giving feedback to the Council and treaty bodies and other human rights mechanisms on the status of implementation.

## ANNEX CASE VI

UN Human Rights Council – Universal Periodic Review: Kenya's Human Rights Balance Sheet

This Charter has been prepared by the Kenya Stakeholders Coalition for the Universal Periodic Review (UPR)[19] to highlight the key human rights concerns in Kenya for purposes of

19 Members include: Kenya National Commission on Human Rights (KNCHR), International Center for Transitional Justice - Kenya, The CRADLE – The Children Foundation, Centre for Minority Rights Development (CEMIRIDE), ARTICLE 19, Kenya Human Rights Commission, The Kenyan Section of the International Commission of Jurists, Caucus for Women Political Leadership , The League of Pastoralist Women of Kenya, MPIDO, MAA Civil Society Forum, Indigenous Fisher People's Network, Ogiek People's Development Programme, Isiolo Human Rights Network, NCCK Lower Eastern, Migori Human Rights Network, GALCK, Minority Women in Action, Ishtar MSM, Centre for Legal Information and Communication in Kenya (CLICK), Transgender Education and Advocacy, Gay House, Bar Hostess Program, Gay & Lesbian Coalition of Kenya, KAACR ,ANNPPCAN Kenya, Young Muslims Association, Zabibu Special Needs Centre, CLAN, ICS Africa, Undugu Society, Legal Resources Foundation, Girl Child Network, Tomorrow's Child Initiative(TCI), HelpAge Kenya , HelpAge International, Lavington United Church, FIDA Kenya , Coalition of Violence Against Women, League of Kenya Women Voters, Centre for Rights Education and Awareness(CREAW), Women in Law and Development (WILDAF), African Women & Child Features(AWC), Development Through Media (DTM), Young Women Leadership Institute (YWLI), Bar Hostess Empowerment Programme, National Council of Women in Kenya (NCWK), Maendeleo ya Wanawake (MYWO), KNDWOPNET, Coast Women Right, Kenya Female Advisory Organization (KEFEADO), The League of Kenya Women Voters, EACOR, SALAR, Social Reform Centre(SOREC), Mount Kenta HURINET, OXFAM IYP/CWF/GYCA, HENNET, Network of African National Human Rights Institutions, Samia Environmental Management, CLARION, Eastern Africa Collaboration for Economic, Social & Cultural Rights (EACOR), URAIA , Goal Kenya, Elimu Yetu Coalition, Seed Institute, GCAP Kenya, KYCEP, Kutoka, Daraja Civic Education Institute, Youth Agenda, Youth Alive Kenya, Young People's Forum, Kenya Youth Education and Community Development Program, Seed Institute, Bunge la Wananchi, UDEK, UDPK, Kenya Society for the Blind, Zabibu Special Needs Centre, Kenya Association for the Intellectually Handicapped, Global Deaf Connection , Kenya National Deaf Women Peace Network, Joint Epilepsy Foundation, Kenya Sign Language Interpreters Association, Federation of and for people with disability, Kenya Sign Language Interpreters Association, Transparency International , AFRICA HOUSE, Legal Resources Foundation Trust, Muslim Consultative Committee, IMLU, Kituo Cha Sheria, IMLU/Bunge La Mwananchi, CEDGG, DTM, ICT Consumers, Open Society Initiative of East Africa (OSIEA).

the UPR process. It uses information prepared by the stakeholders[20], the Kenyan state and UN Treaty Bodies and Special Procedures mechanisms as a foundational basis upon which suggestions are made for ensuring, protecting and promoting the human rights of people in Kenya.

This Charter may be used for advocacy purposes by stakeholders. It may also be a reference point for states and other actors who wish to engage the Kenyan state on pertinent human rights issues. The Charter also includes proposals and recommendations which stakeholders hope the government of Kenya will commit to implement towards better realization of human rights in the country. Finally, this Charter may be a baseline for all concerned in their interaction with future cycles of the UPR.

In preparing this Charter, the stakeholders have taken cognizance of the government's initiatives under its Vision 2030 Plan (particularly the Medium Term Plan of 2008-2012) and other state reports which, if realized, would positively impact on human rights issues in the country.

The stakeholders will continue to closely monitor these initiatives and will give a report of the achievements and challenges during the next review cycle.

20 The Charter is not a stand-alone document and relies on information provided in the Stakeholders' submissions namely: the Kenya Stakeholders' Coalition for the Universal Periodic Review; the Kenya National Commission on Human Rights; ARTICLE XIX; Legal Resources Foundation; HelpAge Kenya and HelpAge International; International Center for Transitional Justice; and the Office of the High Commissioner for Human Rights Summary of Stakeholders' submissions and compilation of information contained in reports of treaty bodies and special procedures.

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **1. Justice for the victims of the post-elections violence** | | | | |
| It has been almost two and a half years since the 2007-2008 post-election violence, yet none of the perpetrators of egregious human rights violations committed during that period have been effectively prosecuted. | The government has agreed in principle to cooperate with The International Criminal Court as efforts to establish a local mechanism to try perpetrators continue. | The Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions urged the state to establish a Special Tribunal to prosecute perpetrators of post –election violence. | - Given the state's failure to establish a special tribunal or any effective prosecutions for grave human rights violations, how does it intend to deal with perpetrators of these crimes?<br><br>- In keeping with the principle of cooperation under the Rome Statute, does the state commit to facilitate investigations and surrender suspects to the International Criminal Court? | - The state should immediately set up the Special Tribunal to investigate and prosecute cases of crimes that occurred immediately before, during and after the 2007 general elections in adherence to the principles of the Rome Statute.<br><br>- The state should fully cooperate with the Prosecutor of the International Criminal Court in conducting investigations in Kenya. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **2. Legal and credibility challenges to the Truth Justice and Reconciliation Commission (TJRC)** | | | | |
| Flaws within the TJRC Act including provisions on amnesty and lack of a coherent reparation programme, as well as the existence of inhibitive laws such as the Official Secrets Act and the Indemnity Act pose a critical challenge to the effective operation of the TJRC. Moreover, the TJRC is currently faced with a serious credibility crisis following the emergence of reports alleging the chairperson's involvement in the illegal acquisition of public property and land, and false presentations to a commission of inquiry. | The TJRC has been established to address past human rights violations and injustices. It is not expected to handle perpetrators of post-elections violence but will only deal with its mandate of correcting injustices. | | - What steps is the state taking to address the legitimate concerns over the TJRC chairperson's possible conflict of interest?<br><br>- Can the state elaborate on the steps taken towards ensuring a sound legal framework within which the TJRC can effectively carry out its mandate, including, but not limited to, the amendment and nullification of relevant laws? | - The state should immediately address the persistent controversies surrounding the TJRC's chairperson's office to safeguard the credibility of the truth seeking process.<br><br>- The state should take immediate steps to repeal the Indemnity and Official Secrets Acts and address the flaws within the TJRC Act. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **3. Insecurity** | | | | |
| The police and security agents are heavily implicated in instances of extra-judicial killings and police brutality.<br>The absence of an effective security presence, economic marginalization and the porousness of borders have led to the proliferation of arms, increased levels of insecurity and inter-communal and cross-border conflicts.<br>Recently, over 130,000 rounds of state ammunition were found in the hands of a private citizen in Narok, one of the epicentres of the 2007-08 violence. There are fears of more ammunition being hidden in other parts of the country. | Security agencies stand accused of extra-judicial killings and torture but the government is not prosecuting these officers.<br>The government is faced with limited institutional capacity and a weak legal framework to effectively protect its citizens' human rights. | The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions called for zero tolerance of unlawful killings by law enforcement or security forces, and the establishment of an independent civilian police oversight body with sufficient resources and power to investigate and institute prosecutions against police responsible for abuses. | - How does the state explain the possession of state ammunition by private citizens? And what decisive steps is the state taking in relation to credible reports that communities are re-arming for potential recurrence of violence in the next general election?<br>- What measures, beyond disarma-ment, is the state taking to curb the increasing instances of cross border conflict and the proliferation of arms associated with it?<br>- Can the state elaborate measures taken to address allegations of human rights violations associated with security operations such as those conducted in Mt. Elgon, Mandera and continued cases of extra-judicial killings? | - The state should without any further delay investigate and prosecute security agents found culpable of committing extra-judicial killings and torture.<br>- The government must commit to significantly increase the level of security presence on the borders while undertaking a comprehensive disarmament programme in a manner consistent with human rights standards. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **4. Threats to Human Rights Defenders** | | | | |
| Cases of extra-judicial killings, harassment and intimidation of human rights defenders have neither been investigated nor prosecuted. Presently, potential witnesses to the crimes committed during the post-elections violence are facing harassment and intimidation, with reported instances of killings and many others fleeing into exile. | Kenya enacted a Witness Protection Act in 2006, being the second African country to have a witness protection programme. The Witness Protection Bill has been introduced to delink the Witness Protection Unit from the Attorney General's office. | The Special Rapporteur on Extra-judicial, Summary or Arbitrary Execution recommended the urgent establishment of a well funded witness protection programme, independent of the security forces and the Attorney General's office. | - What steps has the state taken to investigate and prosecute cases of extrajudicial killings, harassment and or intimidation of human rights defenders?<br><br>- What measures is the state taking to ensure that the amended Witness Protection Act is immediately responsive to the needs of potential witnesses of crimes committed during the post-elections violence? | - The state should institute immediate and genuine investigations and prosecution of all persons, including security agents found culpable of extra-judicial killings of human rights defenders.<br><br>- The state should commit to immediately establish the Witness Protection Agency as prescribed by the amended Witness Protection Act with sufficient technical and financial resources.<br><br>- The state should ratify the Convention for the Protection of All Persons from Enforced Disappearances and accept the request of the Special Representative of the Secretary General on Human Rights Defenders. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **5. Infringement on the Freedom of Expression and Access to Information** | | | | |
| The prolonged and unreasonable delay in the passage of a Freedom of Information law since 2005 has significantly contributed to lack of accountability, transparency and public participation in governance.<br>Several cases of attack and harassment of journalists in the form of death threats, malicious prosecutions, ill-treatment and the Standard Group raid in March 2006 have neither been investigated nor prosecuted. | The state report is silent on the issue. | The Special Rapporteurs on the Right to Freedom of Opinion and Expression and on the situation of Human Rights Defenders condemned the arrest of journalists and civil society activists participating in demonstrations. | - Can the state commit to enact the Freedom of Information Bill by the end of 2010?<br><br>- What measures has the state taken to investigate and redress attacks and harassment of journalists? | - The state should enact and implement the Freedom of Information Bill by 2010.<br><br>- The state should immediately institute investigations into cases of harassment and attacks against journalists and prosecute those found liable. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **6. Moratorium on the Death Penalty** | | | | |
| Kenya has had a de facto moratorium on the death penalty since 1987 yet it is still entrenched in the Constitution and the Penal Code. | There is a presidential directive to all relevant government ministries and departments to conduct empirical studies and engage all stakeholders urgently, to determine whether the continued existence of the death penalty in the laws of the land has any value or impact in the fight against crime. | The Committee Against Torture urged the state to take the necessary steps to establish an official and publicly known moratorium of the death penalty with a view of eventually abolishing the practice. | Considering the increasing number of convicts on death row, when does the state intend to fully abolish the death penalty? | - The state should amend laws that currently permit the death penalty and move to a de jure abolitionist state.<br><br>- The state should ratify and implement the 2nd Optional Protocol to the International Covenant on Civil and Political Rights. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **7. Discrimination on the basis of Sexual Orientation and Gender Identity** | | | | |
| Lesbians, gays, bisexual, transgender and intersex persons (LGBTIs) face systemic and societal discrimination and lack legal protection to safeguard their rights. This is often characterized by violent attacks against them. Criminalization of same-sex activities drives LGBs away from accessing HIV/ AIDS prevention, treatment, and care. Furthermore, several transgender and inter-sex persons have been denied reassignment treatment in public hospitals. | The state report is silent on the issue. | The matter has not been addressed at the UN level. | - What measures is the state taking to ensure that the rights of LGBTIs are protected like all other Kenyans and has the state condemned the attacks against them?<br><br>- Can the state commit to infuse measures to protect the health rights of LGBTIs within existing policies and programmes? | - The state should enact a Comprehensive Anti- Discrimination Law affording protection to all individuals, irrespective of their sexual orientation or gender identity. The state should further respond appropriately to deal with any attacks on LGBTIs.<br><br>- The state should develop appropriate health policies to protect the health rights of LGBTIs including enhancing their access to HIV/ AIDS prevention, care and treatment.<br><br>- The state should develop appropriate and specific policies to deal with trans-sexual and inter-sex conditions. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **8. Gaps in the protection of the rights of persons with disabilities** | | | | |
| The state is yet to fully operationalize the Persons with Disabilities Act since its enactment in 2003. In particular, no concerted measures have been put in place to secure 5% of employment positions in the public and private sector for persons with disabilities. | There are gaps in harmonization of various policies regarding persons with disabilities. | The United Nations Country Team noted that implementation of the Persons With Disabilities Act remains below par and employment of persons with disabilities, which is recommended at 5% by the Act, is yet to be realized. | - Can the state give a commitment to fully operationalize and enforce the Persons with Disabilities Act particularly with regard to securing jobs and infrastructural accessibility for persons with disability within the next one year?<br><br>- What steps is the state taking to domesticate the Convention on the Rights of Persons with Disabilities? | - The state should implement the Persons with Disabilities Act towards ensuring that at least 5% of employment opportunities are secured for persons with disabilities. The state should immediately domesticate the Convention on the Rights of Persons with Disabilities and ratify its Optional Protocol. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **9. Lack of legal recognition of Minority and Indigenous Peoples** | | | | |
| Minorities and indigenous peoples lack legal recognition and avenues of participation with adverse effects on their land rights, management of resources and visibility in policy making processes. Furthermore, the abuse of constitutional and statutory provisions on trust land in addition to gazettement of forests and wildlife parks have led to the expulsion of pastoralists and hunter-gatherers from their ancestral land. | The state is in the process of implementing a development strategy of Arid and Semi-Arid Lands (ASALs) and has adopted a National Land Policy which proposes to protect the land rights of minorities | The Special Rapporteur on Indigenous Peoples' Rights recommended that there should be constitutional and statutory recognition of: land and resource rights; effective political participation; and distinct cultural identity of indigenous peoples with infusion of affirmative measures where necessary.<br>To this end, the state was encouraged to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries and promote the adoption of the United Nations Declaration on the Rights of Indigenous Peoples with a view to incorporating them in national laws. | - What concrete measures has the state undertaken to enforce existing affirmative measures on representation in favour of minorities and indigenous communities as stated in Rangal Lemaiguran and others vs. Attorney General of the Republic of Kenya and Others (the Il Chamus case)?<br><br>- Could the state elaborate on its Plan of Action on the implementation of the National Land Policy and can it commit to fully operationalize the Policy by 2012?<br><br>- Following the decision by the African Commission on Human and Peoples' Rights (ACHPR) (Communication 276/2003: Centre for Minority Rights Development and MRG on behalf of | - The state should ratify ILO 169 and adopt the United Nations Declaration on the Rights of Indigenous People.<br><br>- The state should implement the Il Chamus case decision and more particularly ensure nomination of indigenous peoples to the next parliament and take into account the special interests of minority and indigenous communities in the ongoing boundaries review process.<br><br>- The state should fully operationalize the National Land Policy by 2012.<br><br>- The government should immediately begin consultations with the Endorois community with a view to implementing the Endorois case communication. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| | | Endorois Community vs. the Republic of Kenya) what steps has the state taken towards implementation of the decision? | - The state should accept the request for a field visit from the Independent Expert on Minority Issues. | |
| **10. Lack of protection of children's rights in the criminal justice system** | | | | |
| Progressive statutory provisions regarding bail for children charged with capital offences have been declared **ultra vires** by the Court of Appeal (The **Kazungu Kaziwa** case; **Mombasa Criminal Appeal No. 239 of 2004**). There are also numerous instances where children are imprisoned with their convicted mothers. | The state report makes no mention of the plight of children's rights within the criminal justice system. | The Committee on the Rights of Children was concerned that although the death penalty is outlawed for children, according to some reports children are still being sentenced to death. | Following the precedent set by the case of **Kazungu Kaziwa** how does the state intend to safeguard the rights of children within the criminal justice system, particularly with regard to bail, children imprisoned with their mothers and considering alternatives to the formal criminal justice system? | - The state should establish a comprehensive legal framework that tackles the special needs of children within the criminal justice system.<br>- The state should promote the use of alternative sanctions in the judiciary with regard to children as an alternative to deprivation of liberty. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **11. Violations by Non-State Actors** | | | | |
| The elderly in Kenya are subject to accusations of witchcraft and subsequent violence but older women are particularly vulnerable to these accusations. They have been subjected to brutal beatings and, in the worst cases, burnt alive. | The state report does not address the issue. | The UN bodies have also not addressed the issue. | Has the state investigated and prosecuted the vigilante groups responsible for the execution of older persons on allegations of witchcraft? | The state must treat killings of older persons on allegations of witchcraft as murder and promptly investigate and prosecute perpetrators. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
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| **12. Statelessness** | | | | |
| The ongoing constitutional review process which seeks to reverse current gender discrimination in access to citizenship is commendable. However, undue application of various policies and administrative procedures continue to entrench discrimination against ethnic minorities notably the Kenyan Nubians, Somalis and the Coastal Arabs, thereby putting them at the risk of statelessness. | The state report does not discuss citizenship and citizenship rights. The total population of Kenya is estimated at 39,002,772 people (2009 estimates). | The Special Rapporteur on Indigenous Peoples' Rights recommended that the state reviews procedures for granting National Identity Cards to remove obstacles affecting indigenous communities. | - What steps has the state undertaken to address the challenges that ethnic minorities and marginalized communities face in acquiring national identity documents?<br>- Does the state have any data to demonstrate the utility of vetting as a justified means of maintaining security at the Kenyan borders? Have other less discriminatory means been pursued?<br>- When does the government intend to release the results of the 2009 census? Does the state have accurate data on the number of Kenyan Somalis, Nubians and Coastal Arabs? | - The state should immediately abolish discriminatory policies, administrative procedures and other practices in the issuance of citizenship documents.<br>- The National Registration Bureau should immediately develop and legalize a uniform registration process for all Kenyans.<br>- The state should safeguard the milestones achieved in the constitutional review process towards eliminating citizenship-based gender discrimination |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **13. Corruption in the education sector** | | | | |
| Funds allocated for free primary education have been grossly misappropriated and embezzled. | The state report is silent on the issue. | The UN treaty bodies have also not addressed this issue. | - What steps has the state taken to ensure administration of education donor funds and bursaries are free from corruption and that they are optimally utilized? | - The state should make a firm commitment to rein in corruption in the administration of educational funds. |
| **14. Challenges in HIV/AIDS management and treatment** | | | | |
| Factors including misappropriation of funds, and legal challenges in relation to tendering processes have led to an acute shortage in the availability of ARVs. Furthermore, even with the ongoing HIV/AIDS programmes, prison inmates, widows and orphans, persons with disabilities and marginalized communities continue to face challenges in accessing treatment and care. | HIV-AIDS has been declared a national disaster allowing for coordinated efforts against the pandemic | The Committee on the Rights of the Child & the Committee on Elimination of all Forms of Discrimination Against Women recommend that the state sustains efforts to address the impact of HIV/AIDS on women and girls and expand assistance to orphaned children made vulnerable by HIV AIDS, while the Committee Against Torture urged the state to ensure the availability of adequate health services in all prisons. | - What measures has the state undertaken to address the current shortage and ensure adequate availability of ARVs?<br>- What measures has the state undertaken to ensure the inclusion of vulnerable groups such as widows, orphans, prison inmates, persons with disabilities and sexual minorities in ongoing HIV/AIDS programmes? | - The state should streamline the tendering process so as to ensure the sustainability of the supply of ARVs and adopt inclusive policies in the management of HIV/AIDS to ensure that vulnerable groups are catered for. |

| Stakeholders' Submissions | State Report | UN Treaty Bodies and Special Procedures Recommendations | Suggested Questions | Suggested Recommendations |
|---|---|---|---|---|
| **15. Lapses in Environmental Protection** | | | | |
| The National Environmental Authority (NEMA) lacks capacity to fulfil its mandate as a result of inadequate funding.<br>Essential ecosystems have continued to be adversely affected by human instigated practices resulting in environmental degradation such as in the Mau complex and more recently Lake Naivasha. | The state has commenced the development of an Environmental Policy Framework Paper and is undertaking a programme for reclamation of water towers. | The matter has not been addressed by UN mechanisms. | - When will the Environmental Policy Framework take effect?<br><br>- How is the state ensuring the effective inclusion and participation of contiguous communities in its environmental restoration processes particularly in the Mau Forest?<br><br>- How does the state intend to deal with the adverse effects of economic activities on the environment such as Lake Naivasha? | - The environmental management policy and legislation reforms associated with the policy framework should be undertaken as a matter of immediate priority.<br><br>- The government should commit to increase funding for NEMA over the next 4 years and effectively enforce environmental management regulations.<br><br>- The government should immediately within its environmental restoration processes ensure the active participation of contiguous communities. |

# VII. CASE OF WEST AFRICA:

## AN EXAMPLE OF CIVIL SOCIETY COOPERATION IN THE NATIONAL CONSULTATION PROCESS

**Diallo Abdoul Gadiry**
Chairman, West African Network of
Human Rights Defenders

The experience of the African civil society in relation to cooperation in the consultation process on the Universal Periodic Review (UPR) varies according to regions.

However, the recent character of this mechanism makes the content of the different strategies for participation and cooperation almost identical.

They are on the one hand:

1. The familiarization of the actors with the new mechanism;
2. The role and the position that the actors of civil society should play during all the stages of the UPR process. Especially the pre, per and post of the country's UPR.

In West Africa, the West African Human Rights Defenders Network (ROADDH/WAHRDN) has been strongly involved in the process. Its contribution focused on capacity building of its coalition members with

a view to their involvement not only in the preparation phase of the state reports but also in that of civil society.

In all the countries reviewed, or about to be reviewed (Niger), the cooperation was directed at all three phases of the process:

Created in May 2005 in Dakar, Senegal, the West African Human Rights Defenders Network is a sub-regional platform constituted by national coalitions of human rights defenders (HRD/DDH) from 16 West African countries (Benin, Burkina Faso, Ivory Coast, Cap Verde, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Mauritania, Senegal, Sierra Leone and Togo).

The ROADDH/WAHRDN has observer status with the African Commission on Human and People's Rights (ACHPR/CADHP), and is member of the steering committee of the African NGO Forum in the ACHPR/CADHP sessions. It is also member of the Human Rights Council Network (HRCnet), which conducts advocacy and lobbying with the UN Human Rights Council (HRC). The network intends to submit an application to be accredited as observer with the ECOSOC.

The objectives of ROADDH/WAHRDN are the promotion, protection and defence of the human rights defenders' rights through strengthening their capacities, monitoring and documentation of violations of their rights.

**1. The preparation phase of the review**

During this phase, civil society efforts covered:

i. Organizing lobbying to hold a national consultation:
This activity consisted in:
- Working with bi- and multilateral partners from the country with a view to encourage or commit the state to organize a national consultation on the UPR open to civil society actors;
- Attracting the attenting of parliamentarians to the relevance of a national UPR consultation and urge them to support the process.

ii. Launching an awareness campaign about the new UPR mechanism:
- Through the involvement of the printed and electronic media in the production of articles and broadcasts about UPR, about the role of the state and non-state actors in the UPR process;
- Through workshops to upgrade key actors involved in the UPR process.

iii. Participation in the national consultation organized by the state. Participation in the consultation has the advantage:
- of strengthening the credibility of the report through the input of civil society in order to enrich the report;
- of allowing to insist on the significance of important themes and questions concerning human rights to be taken into account in the state report;
- of introducing a tradition of dialogue between the state and civil society organizations.

iv. Adopting a plan of action for civil society participation in the UPR process:
- determining the strategies for participation in the process;
- creating a national platform for the UPR;
- allowing for mobilization of resources;

v. Formulation of a joint civil society report, especially concerning:
- Definition of the priority themes;

- Collection and analysis of information;
- Validation of the report by a national workshop.

**2. The actual review phase**

- Sending a civil society delegation to the HRC in order to engage in lobbying about the report and the recommendations presented to the state;
- organizing, in partnership with the local UN system, of a direct Webcast to be followed by members of civil society.

**3. The phase after the review**

Including monitoring the implementation of recommendations made to the state.

First it will:

- Organize a follow up workshop of the country's review with a view to ensure ownership to the recommendations from at large part of the public;
- ensure broad dissemination of the recommendations through the media;
- define levels of priority in advocacy for implementation of the recommendations and empower NGOs according to their specialty in monitoring implementation.

# VIII. CASE OF NIGER:

## PREPARATORY WORKSHOP FOR CIVIL SOCIETY CONCERNING NIGER'S UPR REVIEW

(12-17 June 2010, Hotel Ténéré, Niamey)

This document is the result of group work during the preparatory workshop for civil society concerning Niger's Universal Periodic Review in February 2011. The workshop was financed by the Danish Institute for Human Rights, and conducted by a team of facilitators from International Service for Human Rights (ISHR) and ROADDH/ WAHRDN.

**What role for civil society before the country's review?**

1. Organize a dissemination and information campaign about the UPR mechanism which is a new procedure and very little known to the state actors and civil society.
2. Organization of familiarization workshops about the UPR mechanisms targeting NGOs, economic interest groups, the media, traditional communicators, civil servants, parliamentarians, etc.
3. Organization of a dissemination campaign through all channels (printed press, state radio, private radio, community radio, traditional communicators, theatre people, etc.).
4. Undertake lobbying by organizing a national consultation to promote a partnership between the state and civil society in the preparation of the state report. The targeted partners for this should be the diplomatic missions accredited in the country, parliamentarians and all other actors that could influence a smooth process in a positive manner.

5. Work towards the establishment of an expanded framework of cooperation between civil society organizations to create a national coalition of NGOs with a view to the preparation of a civil society report. Organize a harmonization workshop for civil society actors about the content of the report and the establishment of a committee to monitor the process.
6. Organize a validation workshop for the project to formulate the report in the name of all the civil society actors involved in the process before handing it in to the HRC.
7. Engage, through the monitoring committee, in lobbying with strategic partners to mobilize the necessary resources for the participation of a civil society delegation at the national review.

**What role during the country's review?**

1. Constitute the delegation that should participate at Niger's review session.
2. Request support from the local representation of the UN system or any other diplomatic mission accredited in Niger, to facilitate the participation of a wide range of members of civil society at a direct Webcast of the review of the country, provided that conditions allow for this.
3. Mobilize a wide range of members of civil society to participate in monitoring the review of the country. Use the media for a wide dissemination of information that can contribute to mobilizing civil society actors.
4. Identify an NGO enjoying consultative status with the High Commission for Human Rights to facilitate the accreditation of the Nigerien civil society delegation with the HRC.
5. Identify the experts from the Council and members of the Troika responsible for Niger, and engage in an advocacy programme, also with the experts from the diplomatic missions likely to bring the recommendations of

civil society to the attention of the government delegations during the plenary.
6. Participate in the review of the country, follow the interactive dialogue, and take note of all the recommendations which the experts and participating states make during the review of Niger.
7. Enabling the transition to the Office of the High Commissioner for Human Rights to meet with Treaty Bodies and other Special Procedures to learn about the level of cooperation of the Nigerien government in the submission of periodic reports, in the implementation of recommendations of various UN mechanisms for human rights.
8. Organize, as necessary, side events to share concerns of Nigerien civil society on human right with a wide range of stakeholders present in the Council.

**What role after the review?**

1. Organize a press conference to report the results of the review of the country and ensure wide dissemination of these results by the media.
2. Organize a workshop on the results of Niger's review at the UPR for all the actors of civil society involved in the process. This workshop will also allow civil society actors to develop an action plan for implementation of the recommendations from the review.
3. Develop a strategy for resource mobilization to facilitate the participation of civil society in the process of implementation of the recommendations from the review of the country.
4. Encourage the creation of a framework for dialogue between state and society actors in order to allow regular monitoring of the process of implementation of the recommendations.
5. Ensure wide dissemination of the recommendations of the review

through the media, especially local media, and if necessary provide translation of these recommendations in the major languages of the country.

6. Classify the recommendations in order of priority to facilitate advocacy with strategic partners likely to fund the implementation programme.
7. Promote midterm review programmes on the status of implementation of the recommendations, and maintain a permanent link with the Council and Treaty Bodies to inform them regularly of the status of implementation of the recommendations.
8. Prepare for the next review of the country, and maintain the momentum of the dialogue between civil society actors to prepare for future processes.
9. Ensure that on the date of the next review of the country, all conditions are met for the active participation of civil society in the review process.

# IX. ANNEXES

## ANNEX I: LIST OF PARTICIPANTS

**Seminar 15 to 17 September 2010**
**The Universal Periodic Review – Reporting methodologies from the positions of state, NHRI and civil society**

**The Danish Institute for Human Rights**
Anders Buhelt, Director, Justice Department
Bent Vase, Corporate management advisor to DIHR
Burma Nyamaa, Project coordinator, Freedoms and Civic Participation
Charlotte Flindt Pedersen, Vice Director
Christoffer Badse, Head of national monitoring and reporting
Erik André Andersen, Researcher
Lis Dhundale, Project manager, Freedoms and Civic Participation
Lisbeth Arne Nordager Thonbo, Project manager, Justice Department
Martin Futtrup, Legal adviser

**External resource persons**
Abdel Wahab Hani, Arab Commission for Human Rights
André Dembélé, Ministry of Human Rights, Burkina Faso
Antonina Okuta, Kenya National Commission on Human Rights
Cynthia Gervais, CGervais International Inc.
Diallo Abdoul Gadiry, West African Network of HR Defenders
Helga Ervik, Ministry of Foreign Affairs, Norway
Marianne Lilliebjerg, Amnesty International
Petra Follmar-Otto, German Institute for Human Rights

## ANNEX II: SEMINAR PROGRAM

**Seminar 15 to 17 September 2010**
**The Universal Periodic Review – Reporting methodologies from the positions of state, NHRI and civil society**

**Wednesday 15 September**

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| 13.00-13.15 | Registration and coffee |
| 13.15-13.30 | Welcome and briefing about DIHR activities in the field of UPR<br>Charlotte Flindt Pedersen, Deputy Director, DIHR |
| 13.30-14.00 | Country case 1 of government considerations when preparing and conducting UPR hearings: Norway<br>Helga Ervik, Deputy Director, Ministry of Foreign Affairs, Norway |
| 14.00-14.30 | Country case 2 of government considerations when preparing and conducting UPR hearings: Burkina Faso<br>André Dembélé, Director General, Ministry of Human Rights, Burkina Faso |
| 14.30-15.00 | Questions and discussion |
| 15.00-15.30 | Tea/coffee break |
| 15.30-16.30 | UPR and the state |

The presentation is based on a circulated paper and is scheduled to take 40 minutes. It is followed by 20 minutes commenting by another expert.

**The UPR reporting wheel concept from the point of view of the state**
Lisbeth Arne Nordager Thonbo, Project manager, Justice Department, DIHR
Bent Vase, Corporate management advisor to DIHR, provides comments

16.30-17.00 Questions and comments to country case

**Thursday 16 September**

9.00-9.45 Experiences collected of roles/functions of the Kenya National Commission on Human Rights in the UPR process
Antonina Okuta, Kenya National Commission on Human Rights

9.45-10.30 The role of the German Institute for Human Rights in the preparations of the UPR of Germany
Petra Follmar-Otto, Head of HR Policy Department, German Institute for Human Rights

10.30-11.00 Questions and comments to both speakers

11.00-11.15 Tea/coffee break

11.15-12.15 UPR and the national human rights institutions (NHRI)

The presentation is based on a circulated paper and is scheduled to take 40 minutes. It is followed by 20 minutes commenting by another expert.

**The UPR reporting wheel and the role of national human rights institutions**
Christoffer Badse, Head of national monitor and reporting, DIHR
Anders Buhelt, Director of Justice Department, DIHR, provides comments

12.15-13.00 Discussion in plenary

13.00-14.00 Lunch

14.45-15.30 Models and best practices of civil society participation in the UPR process
Marianne Lilliebjerg, Advisor, Amnesty International

15.30-16.30 UPR and civil society

The presentation is based on a circulated paper and is scheduled to take 40 minutes. It is followed by 20 minutes commenting by another expert.

**The UPR reporting wheel: the civil society perspective**
Lis Dhundale, Project manager, Freedoms and Civic Participation, DIHR
Cynthia Gervais, President, CGervais International Inc. provides comments

16.30-17.00 Discussion in plenary

**Friday 17 September**

9.00-10.30 Panel 1: Focus on the national preparation process

Each panellist will make a 20 minutes presentation based on circulated papers. It is followed by 30 minutes discussion among the panellists.

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| Panellist 1: | How are civil society and NHRIs able to influence the governments in the preparation of national UPR reporting?<br>Cynthia Gervais, President, CGervais International Inc |
| Panellist 2: | The roles of DIHR in the Danish preparation process of UPR<br>Anders Buhelt, Director of Justice Department, DIHR |
| Panellist 3: | African example of civil society cooperation in the national consultation process<br>Diallo Abdoul Gadiry, Chairman, West African Network of Human Rights Defenders |

10.30-11.00 Questions and comments to panel

11.00-11.30 Tea/coffee break

11.30-13.00 Panel 2: Focus on UPR practices pointing forward

Each panellist will make a 20 minutes presentation based on circulated papers. It is followed by 30 minutes discussion among the panellists.

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| Panellist 1: | Important ingredients for good civil society, NHRI and state cooperation in the UPR process<br>Abdel Wahab Hani, Permanent Representative in Geneva, Arab Commission for Human Rights |
| Panellist 2: | Recommendations to consider in the implementation of UPR recommendations<br>Bent Vase, Corporate management advisor to DIHR |

13.00-13.45 Questions and comments to panel

13.45-14.00 Closing of seminar

14.00- Lunch

THE DANISH INSTITUTE FOR HUMAN RIGHTS

The Universal Periodic Review is still a new mechanism. This publication gathers experience and best practices from States, NHRIs and civil society organizations during the first UPR cycle. Improved implementation of human rights on the ground remains the focus of the UPR as well as of this publication. Hopefully, the proposed methodologies, cases and examples can contribute to continued strengthening of the UPR mechanism as the only universal tool for promoting and protecting human rights. The involvement of the citizens at large and constructive dialogue among all stakeholders is key to this end. We hope this publication can give useful inspiration in this regard.

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