



Dialogue on Globalization

FACT SHEET
FES GENEVA

April 2009/N°2

The Role of Parliaments in the Universal Periodic Review

A review of resolution A/HRC/Res/5/1 of the Human Rights Council and further suggestions

Felix Kirchmeier

The Role of Parliaments ... Within democratic states the prime roles of Parliament are the enacting of legislation and control of the government. Elected representatives, including from political minorities, fulfill their role in a “checks and balances” system.

The Universal Periodic Review (UPR) is a mechanism reviewing the human rights situation in every UN member state in a comprehensive way¹. The government of the “State under Review” (SUR) is responsible to prepare for and respond to the review, but according to resolution A/HRC/Res/5/1 of the Human Rights Council (HRC), the UPR should “[e]nsure the participation of all relevant stakeholders” (para. 3 m).

The UPR process is generally divided into three phases – the preparation of the background documents; the two-step review of the state concerned (review by the working group, adoption of the report by the HRC plenary); the national follow-up to the review.

Given the role of Parliaments nationally, it is surprising how undefined and underdeveloped their role in the UPR process is. In the relevant resolution, there is no distinct reference. Parliaments may be part of the broader group of “relevant stakeholders” (see above), which includes at the same time NGOs, National Human Rights Institutions, academic institutions and individuals, albeit the role of this broad group is defined quite vaguely, too.

The present Fact Sheets explores the possible roles of Parliaments in the UPR – it does not give an

exhaustive description of the UPR process,² but rather a brief overview, outlining the most promising entry points for parliamentary involvement.

In the preparation of the national UPR report, states are “encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;” (para. 15 a), which of course may include Parliaments. But they are not required to do so.

Within a government, the preparation of the national report is often entrusted to the Foreign Office, but also to the Ministry of Justice. In practice, different ministries contribute to the report, which is compiled by one focal point. Consultations with other stakeholders (i.e. civil society, trade unions, etc.) are organized by this focal point. Only in rare cases, this role has been fulfilled by Parliament³; yet, the pluralistic nature of Parliament could make it a prime convener for such consultation meetings, especially in countries where this role is not fulfilled by a National Human Rights Institution.

Apart from this national report, the UN Office of the High Commissioner for Human Rights (OHCHR) prepares two documents which also serve as background for the review: a 10 page compilation of information by the UN system on

¹ For general information and official documentation see: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx.

² For in depth information and analysis see, e.g.: Theodor Rathgeber: The HRC universal periodic review: a preliminary assessment, Berlin and Geneva: Friedrich-Ebert-Stiftung, 2008. (Dialogue on globalization: Briefing papers - FES Geneva), available in English and Arabic. For ongoing reviews and “frequently asked questions” see: www.upr-info.org.

³ In Brazil, e.g., Parliament’s Human Rights Committee organized a hearing on the UPR.

the State Under Review and a 10 page summary of “[a]dditional, credible and reliable information provided by other relevant stakeholders...” (para. 15 c). This second document, the summary of additional information could be the second entry point for active engagement by parliamentarians. Parliaments as a whole, political fractions or individual Members of Parliament (MP) could provide information to the OHCHR to be included into this summary. While the OHCHR has to comply with the rule to keep the compilation to 10 pages, all information used will be referenced and accessible in its entire form.

During the Review, which is conducted by the Working Group on the UPR (composed of all HRC members), the role of Parliamentarians is just as restricted as the one of NGOs. No stakeholder, “relevant” as he may be, is allowed to take the floor during this process; they are only allowed to attend. MPs could therefore lobby for the inclusion in the delegation of the state under review or decide to participate at the review as an observer.⁴ This could also add democratic variety to the state delegation but on the other hand entails the danger of blurring the responsibility of the government in answering to questions on the human rights situation in the state. Some countries have already chosen this way and should serve as an example, but this option might not be very realistic in the case of many countries. A second option for involvement during the review is to prepare questions and recommendations as laid out below in the paragraph on the “review of other states”.

At the adoption of the Outcome, which takes place in the plenary of the regular HRC session, for the first time others than government representatives can take the floor during this otherwise strictly intergovernmental process. Their input will not be reflected in the UPR review, but at least, the “relevant stakeholders” can voice their concerns in form of “general comments before the adoption of the outcome by the plenary.” (para. 31)

In the Follow-up to the review, the role of Parliaments could and should become more important and visible. Resolution 5/1 lists the “other stakeholders” as partially responsible for the implementation of the outcome of the UPR (para. 33). While the prime responsibility lies with the state (understood as government), depending on the national constitution there will be a consider-

able role for national Parliaments. Here again, Parliament can exert its role in monitoring and controlling the actions of government. In its role as legislator, it might also have to undertake its own initiatives to implement the UPR outcome and the commitments undertaken by the state in the frame of the UPR. Especially a parliamentary committee on human rights will have the task to remind legislative and executive branches of the state concerned repeatedly on its commitments and duties resulting from the UPR along with its general human rights obligations and even start initiatives based on the commitments made by the state during the UPR.

The role of Parliamentarians in the review of other states could also be interesting. Again, there is no legal difference regarding the possibilities among any “relevant stakeholders”. But here, the political weight of MPs comes into play. Besides submitting information to be included in the OHCHR summary (see above), NGOs can only try to persuade their home state or other “friendly states” to ask certain questions during the UPR of another state, or make specific recommendations regarding the amelioration of the human rights situation, to be included in the UPR outcome report. MPs can do just the same, but their government might be more inclined to take up the questions and recommendations coming from its Parliamentarians or maybe a parliamentary committee on human rights (if there is one) than from NGOs. In this sense, MPs could enhance their role in the promotion of human rights internationally.

Conclusion

Possibilities for involvement of Parliaments in the UPR are manifold and necessary. Their role can be convening consultations, but also in giving active input and ensuring follow-up to the reviews. In the preparation of the UPR they can give input to the national report and directly to OHCHR. During the review questions and recommendations prepared by them can be voiced by national delegations, while they can give their views at the plenary session adopting a report. But most important is their role between the reviews – as after the review is before the review – ensuring implementation during the 4-year cycle until the next review and using this time to prepare again through reporting and consulting for the next session.

*Friedrich-Ebert-Stiftung, Geneva Office,
Felix Kirchmeier, Program Officer (Human
Rights), FKirchmeier@fes-geneva.org*

⁴ Examples were set in this regard by Parliamentarians from Germany and Hong Kong (China).