

**READING MATERIAL**  
**related to: section 8, sub-section 1:**  
**The UN Charter-based system of human rights protection**

**The Universal Periodic Review (UPR): Theory and Practice**

The appendix to the Human Rights Council Resolution 5/1 'Institution-building of the United Nations Human Rights Council' (18 June 2007) describes the UPR in the following terms:

**Human Rights Council, Resolution 5/1: Institution-building (18 June 2007):**

**A. Basis of the review**

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

**B. Principles and objectives**

**1. Principles**

3. The universal periodic review should:
  - (a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
  - (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
  - (c) Ensure universal coverage and equal treatment of all States;
  - (d) Be an intergovernmental process, United Nations Member-driven and action-oriented;

- (e) Fully involve the country under review;
- (f) Complement and not duplicate other human rights mechanisms, thus representing an added value;
- (g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- (h) Not be overly burdensome to the concerned State or to the agenda of the Council;
- (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- (j) Not diminish the Council's capacity to respond to urgent human rights situations;
- (k) Fully integrate a gender perspective;
- (l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
- (m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, 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.

## **2. Objectives**

4. The objectives of the review are:

- (a) The improvement of the human rights situation on the ground;
- (b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) The sharing of best practice among States and other stakeholders;
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

## **C. Periodicity and order of the review**

- 5. The review begins after the adoption of the universal periodic review mechanism by the Council.
- 6. The order of review should reflect the principles of universality and equal treatment.
- 7. The order of the review should be established as soon as possible in order to allow States to prepare adequately.
- 8. All member States of the Council shall be reviewed during their term of membership.
- 9. The initial members of the Council, especially those elected for one or two-

year terms, should be reviewed first.

10. A mix of member and observer States of the Council should be reviewed.
11. Equitable geographic distribution should be respected in the selection of countries for review.
12. The first member and observer States to be reviewed will be chosen by the drawing of lots from each Regional Group in such a way as to ensure full respect for equitable geographic distribution. Alphabetical order will then be applied beginning with those countries thus selected, unless other countries volunteer to be reviewed.
13. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review.
14. The periodicity of the review for the first cycle will be of four years. This will imply the consideration of 48 States per year during three sessions of the working group of two weeks each. [The Outcome document adopted following the review of the Human Rights Council in 2010 provides that the second cycle will take place over a period of 4 and a half years, allowing for a review of 42 States each year.]

#### **D. Process and modalities of the review**

##### **1. Documentation**

15. The documents on which the review would be based are:
  - (a) Information prepared by the State concerned, which can take the form of a national report, on the basis of general guidelines to be adopted by the Council at its sixth session (first session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;
  - (b) Additionally a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages;
  - (c) Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.
16. The documents prepared by the Office of the High Commissioner for Human Rights should be elaborated following the structure of the general guidelines adopted by the Council regarding the information prepared by the State concerned.
17. Both the State's written presentation and the summaries prepared by the

Office of the High Commissioner for Human Rights shall be ready six weeks prior to the review by the working group to ensure the distribution of documents simultaneously in the six official languages of the United Nations, in accordance with General Assembly resolution 53/208 of 14 January 1999.

## **2. Modalities**

18. The modalities of the review shall be as follows:

- (a) The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council. Each member State will decide on the composition of its delegation;
- (b) Observer States may participate in the review, including in the interactive dialogue;
- (c) Other relevant stakeholders may attend the review in the Working Group;
- (d) A group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (troika) will be formed to facilitate each review, including the preparation of the report of the working group. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the rapporteurs.

19. The country concerned may request that one of the rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion.

20. A rapporteur may request to be excused from participation in a specific review process.

21. Interactive dialogue between the country under review and the Council will take place in the working group. The rapporteurs may collate issues or questions to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.

22. The duration of the review will be three hours for each country in the working group. Additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council.

23. Half an hour will be allocated for the adoption of the report of each country under review in the working group.

24. A reasonable time frame should be allocated between the review and the adoption of the report of each State in the working group.

25. The final outcome will be adopted by the plenary of the Council.

## **E. Outcome of the review**

### **1. Format of the outcome**

26. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

### **2. Content of the outcome**

27. The universal periodic review is a cooperative mechanism. Its outcome may

include, *inter alia*:

- (a) An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;
- (b) Sharing of best practices;
- (c) An emphasis on enhancing cooperation for the promotion and protection of human rights;
- (d) The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned;
- (e) Voluntary commitments and pledges made by the country under review.

### **3. Adoption of the outcome**

- 28. The country under review should be fully involved in the outcome.
- 29. Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue.
- 30. The State concerned and the member States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review before the plenary takes action on it.
- 31. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.
- 32. Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.

### **F. Follow-up to the review**

- 33. The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders. [The Outcome document adopted following the review of the Human Rights Council provides that 'States are encouraged to conduct broad consultations with all relevant stakeholders in this regard' (para. 17).]
- 34. The subsequent review should focus, *inter alia*, on the implementation of the preceding outcome.
- 35. The Council should have a standing item on its agenda devoted to the universal periodic review.
- 36. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.
- 37. In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary.
- 38. After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

**Human Rights Council, Decision 6/102. Follow-up to Human Rights Council Resolution 5/1 (27 September 2007) – General Guidelines for the Preparation of Information under the Universal Periodic Review:**

[The report prepared by States for the universal periodic review should contain the following information:]

- A. Description of the methodology and the broad consultation process followed for the preparation of information provided under the universal periodic review;
- B. Background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations identified in the ‘basis of review’ in resolution 5/1, annex, section IA;
- C. Promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the ‘basis of review’ in resolution 5/1, annex, section IA, national legislation and voluntary commitments, national human rights institutions activities, public awareness of human rights, cooperation with human rights mechanisms ...;
- D. Identification of achievements, best practices, challenges and constraints;
- E. Key national priorities, initiatives and commitments that the State concerned intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground;
- F. Expectations of the State concerned in terms of capacity-building and requests, if any, for technical assistance;
- G. Presentation by the State concerned of the follow-up to the previous review.

In order to illustrate the functioning of the UPR in practice, the following are excerpts of three of the documents pertaining to the review of the United Kingdom in 2008.

The *first excerpt* is the full list of conclusions and recommendations made by the members of the Human Rights Council (Working Group on the Universal Periodic Review), upon examining the situation of the United Kingdom on the basis of the three documents submitted to them – the State report, the compilation by the Office of the High Commissioner for Human Rights of findings of treaty bodies and special procedures, and the compilation of information received from other sources.

The *second document* is the decision of the Human Rights Council on the outcome of the UPR regarding the United Kingdom.

The *third document* lists the responses of the United Kingdom to certain recommendations made in the course of the UPR. While for reasons of space the full set of responses could not be reproduced, the sample presented is representative of the type of questions addressed, and the kind of justification offered when a recommendation is not accepted.

**Human Rights Council, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland (A/HRC/8/25, 23 May 2008)**

**Conclusions and/or Recommendations**

56. In the course of the discussion, the following recommendations were made to the United Kingdom of Great Britain and Northern Ireland:

1. To set up a strategic oversight body, such as a commission on violence against women, to ensure greater coherence and more effective protection for women. (India)
2. To address the high incarceration rate of children, ensure that the privacy of children is protected and put an end to the so-called 'painful techniques' applied to children. (Algeria)
3. To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)
4. To reconsider its position about the continued legality of corporal punishment against children. (Sweden)
5. To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)
6. To continue to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards. (Cuba, Ghana and the Netherlands)
7. To harmonize its legislation with its human rights obligations towards individual protesters exercising their freedom of expression and opinion and to curtail excessive pretrial detention. (Algeria)
8. To enshrine in legislation the right of access of detainees to a lawyer immediately after detention, and not after 48 hours. (Russian Federation)
9. To strengthen guarantees for detained persons, and not to extend but to shorten the length of time of pretrial detentions. (Switzerland)
10. To introduce strict time limits on pre-charge detention of those suspected of terrorism, and provide information about so-called 'secret flights'. (Russian Federation)
11. To consider that any person detained by its armed forces is under its jurisdiction and respect its obligations concerning the human rights of such individuals. (Switzerland)
12. To elaborate specific policies and programmes aimed at ensuring that its applicable human rights obligations are not violated in situations of armed conflict. (Egypt)
13. To elaborate a national programme to combat the problem of overcrowding of prisons. (Russian Federation)
14. To facilitate the access of the International Committee of the Red Cross (ICRC) to its prisons. (Algeria)
15. To enhance the programmes aimed at addressing socio-economic inequalities, from a human rights perspective in fulfilment of its obligations under the International Covenant on Economic, Social and Cultural Rights. (Egypt)

16. To provide further information with regard to efforts to reduce poverty among children in half by 2010. (France)
17. To provide more care and attention to the rights of the elderly. (Canada)
18. To follow the Council of the European Union 'Asylum Qualification Directive' in future cases with regard to sexual orientation as a ground for asylum-seeking. (Canada)
19. To consider holding a referendum on the desirability or otherwise of a written constitution, preferably republican, which includes a bill of rights. (Sri Lanka)
20. That the example of the United Kingdom in issuing, in principle, a specific law dealing with incitement to racial and religious hatred, be emulated as a good practice in countries which have not done so, in implementation of article 20(2) of ICCPR and its stipulated purpose. (Egypt)
21. To protect the children and families of migrants and refugees (Algeria, Ecuador) and to accede to the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families. (Algeria, Ecuador and Egypt)
22. To reflect upon and consider setting a date for signing the International Convention on the Protection of All Persons from Enforced Disappearance. (France)
23. To withdraw its interpretative statement with respect to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination [ICERD]. (Egypt) [Upon signing the International Convention on the Elimination of All Forms of Racial Discrimination, the United Kingdom stated its understanding that, although it imposes the criminalization of speech or activities promoting the idea of racial superiority or racial discrimination, Article 4 ICERD could only be implemented by the United Kingdom 'with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association)'.]
24. To study, with a view to withdraw, its reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. (Cuba)
25. To withdraw its reservation to the Convention on the Rights of the Child, concerning the provision that detained children be separated from adults while in detention, as well as the reservation concerning refugee and asylum-seeking children. (Indonesia)
26. To consider removal of its reservations to the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict. (Russian Federation)
27. To accept the full and unrestricted implementation of the provisions of the Convention against Torture and the International Covenant on Civil and Political Rights in overseas territories under its control. (Algeria)
28. To integrate fully a gender perspective in the next stages of the UPR review, including the outcome of the review. (Slovenia)
57. The response of the United Kingdom to these recommendations will be



included in the outcome report adopted by the Human Rights Council at its eighth session.

**Human Rights Council, Decision 8/107. Outcome of the universal periodic review: United Kingdom of Great Britain and Northern Ireland (10 June 2008):**

*The Human Rights Council,*

*Acting in compliance* with the mandate entrusted to it by the General Assembly in its resolution 60/251 of 15 March 2006 and Council resolution 5/1 of 18 June 2007, and in accordance with the President's statement PRST/8/1 on modalities and practices for the universal periodic review process of 9 April 2008;

*Having conducted* the review of the United Kingdom of Great Britain and Northern Ireland on 10 April in conformity with all the relevant provisions contained in Council resolution 5/1;

*Adopts* the outcome of the universal periodic review on the United Kingdom of Great Britain and Northern Ireland which is constituted of the report of the Working Group on the review of the United Kingdom of Great Britain and Northern Ireland (A/HRC/8/25), together with the views of the United Kingdom of Great Britain and Northern Ireland concerning the recommendations and/or conclusions, as well as its voluntary commitments and its replies presented before the adoption of the outcome by the plenary to questions or issues that were not sufficiently addressed during the interactive dialogue in the Working Group (A/HRC/8/52 chap. VI and A/HRC/8/25/Add. 1).

**Human Rights Council, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/8/25/Add. 1, 13 August 2008):**

The Government of the United Kingdom welcomed the recommendations made in the course of its Universal Periodic Review on 10 April 2008. It has given them careful consideration, and its responses are as follows:

**1. Elaborate a national programme to combat the problem of overcrowding in prisons. (Russian Federation)**

The United Kingdom accepts the recommendation and will implement it immediately. Lord Carter's review of prisons in England & Wales, which was published on 5 December 2007, looked at demand for prison places over the long and medium term. In response to his recommendations, the UK Government has announced a series of measures that will create an additional 10,500 prison places by 2014.

**7. Study, with a view to withdrawing, its interpretative statement to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). (Cuba and Egypt)**

The United Kingdom does not accept the recommendation. The United Kingdom has a long tradition of freedom of speech which allows individuals to hold and

express views which may well be contrary to those of the majority of the population, and which many may find distasteful or even offensive. The UK maintains its view that individuals have the right to express such views so long as they are not expressed violently or do not incite violence or hatred against others. The Government believes that this strikes the right balance between maintaining the right to freedom of speech and protecting individuals from violence and hatred.

**8. Continue to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards. (Cuba, Ghana and the Netherlands)**

The United Kingdom accepts the recommendation, and has already implemented it. The UK's counter-terrorism legislation is already subject to annual independent review. The independent reviewer of counter-terrorism legislation is required to produce an annual report for the Home Secretary on the operation of the Terrorism Act 2000, the Prevention of Terrorism Act 2005 (control orders) and Part 1 of the Terrorism Act 2006. This report must then also be laid before Parliament. It will continue to be the case that all of the UK's anti-terrorism measures have to be set in the context of the UK's general commitment to human rights and the protection of individual freedoms.

**16. Consider that any person detained by its armed forces is under its jurisdiction and respect its obligations concerning the human rights of such individuals. (Switzerland)**

The United Kingdom accepts the recommendation that the UK should respect its obligations concerning the human rights of detained persons but does not accept that any person detained by our armed forces is under our jurisdiction.

To the extent that the UK has human rights obligations in respect of persons detained by the armed forces, we comply fully with them. However, the House of Lords, the UK's highest court, has held that those detained by UK Forces operating overseas fall within UK jurisdiction for the purposes of the European Convention on Human Rights only in very limited circumstances. Other international human rights treaty obligations may also be applicable in limited circumstances.