



Star LAWanalysis

UNIVERSAL PERIODIC REVIEW

New HR enforcement mechanism

SAYEED AHMAD

THE Universal Periodic Review (UPR) is a new mechanism that has been established under UN General Assembly Resolution 60/2251, which created the Human Rights Council. The Resolution provides that the Council shall "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States". The General Assembly did not set out the details of how the process will be carried, instead asked the Council to develop the modalities and necessary time allocation for the universal periodic review mechanism within one year of its first session. The Council had its first session on 19 June 2006. Finally, the one-year long institution-building process ended with the adoption of a consensus document prepared by the Council President on 20 June 2007. In his document, the president of the council has outlined the basis of the review, the principles and objectives of mechanism, periodicity and order of the review and the process and modalities of the review. Let us summarise the document here.

Basis of the review

The Charter of the United Nations; the Universal Declaration of Human Rights (UDHR); human rights instruments to which the State is party have been proposed for the basis of the review. If the state presents its candidatures for election to the Human Rights Council, the voluntary pledges and commitments made by them will also be considered as the basis of review. Furthermore, the review shall also take into account applicable international humanitarian law.

Principles of the mechanism

The document proposed the following principles of the mechanism:

- 1. Promote universality, interdependence, indivisibility and interrelatedness of all human rights;
- 2. Be a cooperative mechanism

based on objective and reliable information and on interactive dialogue;

- 3. Ensure universal coverage and equal treatment of all States;
- 4. Be an intergovernmental process, United Nations Member-driven and action-oriented;
- 5. Fully involve the country under review;
- 6. Complement and not duplicate other human rights mechanisms, thus representing an added value;
- 7. Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicised manner;
- 8. Not be overly burdensome to the concerned State or to the agenda of the Council;
- 9. Not be overly long. It should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- 10. Not diminish the Council's capacity to respond to urgent human rights situations;
- 11. Ensure that a gender perspective is fully integrated in the UPR;
- 12. UPR should, 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;
- 13. Ensure participation of all relevant stakeholders, including non-governmental organisations (NGOs) and national human rights institutions (NHRIs).

Objectives of the mechanism

The former Commission on Human Rights had been heavily criticised for selectivity and double standards in responding to the situation of human rights within countries. This mechanism has been created mainly in response to that criticism. Under UPR, all countries will be subject to a review. Thus, the objectives of the mechanism are to improve the human rights situation on the ground, to fulfil the State's human rights obligations and commitments, to enhance the State's capacity and technical assistance, to share the best practices among States and other stakeholders and to provide sup-

port for cooperation in the promotion and protection of human rights.

Periodicity and order of the review

The order of the review has not yet been furnished completely. The document proposed some general guidelines for that. Likewise, all member States of the Council shall be reviewed during their term of membership. The initial members of the Council, especially those elected for one or two-year term should be reviewed first. A mix of member and observer States of the Council should be reviewed. Equitable geographic distribution should be respected in the selection of countries for review. The first member and observer States to be reviewed will be chosen, from each regional group in such a way as to ensure full respect for equitable geographic distribution, by drawing of lots. Alphabetical order will then be applied beginning with these countries, with the exception of those who volunteer to be reviewed. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare and the capacity of other stakeholders to respond to the requests arising from the review.

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. It is to be noted that, in the adopted document it has been mentioned that as the UPR is an evolving process, the Council after the conclusion of the first review cycle, may review the modalities and the periodicity of this mechanism based on best practices and lessons learned.

Documents to be considered in the review process

The review would be based on the information prepared by the State concerned. States shall prepare the information based on General Guidelines to be adopted by the Council at its next session (sixth session), which will be held in September 2007. To guarantee equal treatment to all States and not to overburden the mechanism, the length of the written presenta-



tion summarising the information has been limited up to 20 pages. States are encouraged to prepare this presentation through a broad consultation process at the national level with all relevant stakeholders.

A summary 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, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) will also be considered. This shall not exceed 10 pages.

In the review, the Council could also take into consideration additional credible and reliable information provided by other relevant stakeholders, such as national human rights institutions or NGOs. OHCHR will prepare a summary of such information that shall not exceed 10 pages.

Modalities of the review

The review will be conducted in one Working Group, chaired by the President of the Council and composed of the all members (47) of the Council. A group of three rapporteurs, selected by the members of the Council and from different

Regional Groups will be formed to facilitate each review. The country concerned may request to select one of the rapporteurs from its own Regional Group. They may also request to substitute a rapporteur on only one occasion.

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 Council plenary. The final outcome will be adopted by the plenary of the Council. Observer states can participate in the review, including in the interactive dialogue. Other relevant stakeholders (NHRIs and NGOs) can attend the review process only in the Working Group.

Conclusion

So far, the UPR is being considered as a welcome new innovative form to address all country-specific human rights situations. In the consensus document, there are several provisions, which allow the NGOs to participate in the review process at all stages -- preparatory, review and implementation. However, there is no scope of direct participation for the NGOs in an interactive dialogue during the Working Group. This creates the

doubt over the effectiveness and efficiency of the mechanism. In fact, the main reason behind establishing this new mechanism is to get rid of the criticism that the former Commission faced for its selectivity and double standards.

In this regard, it might be appropriate to reiterate the point made in the joint statement issued by several international NGOs on the institution-building process: "What has been achieved as important as it is, is the minimum necessary for the Human Rights Council to have a credible basis to become an effective mechanism for the promotion and protection of human rights. This Council will eventually be judged by its contribution to human rights promotion and protection, not by what have been achieved on paper at this time."

Source: Office of the United Nations High Commissioner for Human Rights (OHCHR) documents

The writer is Coordinator, Media and Communication Unit, Ain o Salish Kendra (ASK), Dhaka

LAWweek



Kidnapped Danida staff rescued after 2 weeks

Law enforcers rescued Danida official Shahid Suman near a stream in the remote forest of Thanchi upazila after two weeks of his abduction. A 20-member patrol team of Bangladesh Rifles (BDR) found Suman near Sampajhiri stream, 110km away from Bandarban district. The BDR suspected that the kidnappers left the Danida staff in the face of the guerrilla operation. Suman was found ill at the time of rescue. He was immediately taken to the Chhoto Modok BDR camp by stretcher and boat as there was no facility for helicopter landing in that remote area. Later, Suman was flown to Chittagong Combined Military Hospital (CMH) from the BDR camp 10km off the Bangladesh-Myanmar border. Sources said Suman's legs were swollen and scratched from long walks in the hilly area. Suman is a patient of diabetes and blood pressure and had to spend the two weeks without medicine. CMH sources however said his blood pressure was normal. Danida Programme Officer Suman was abducted on June 25 along with his driver during an official visit to Kya Buri Para village in Thanchi upazila. Later, Danida driver Md Hanif was rescued unconscious some 40km away from Kya Buri Para. The law enforcers recovered seven sets of combat uniform and utensils from the place. --*The Daily Star, July 9.*

Govt looking for houses to set up sub-jails

The government has decided to set up sub-jails outside the prisons for the VIP prisoners as several of them fell ill recently due to the stark living conditions in jails. The jail authorities have already started searching for suitable government or non-government houses that can accommodate some 50 to 60 prisoners. "Since the government order has already been issued, with the help of police we are now looking for government or non-government houses that can be managed for the makeshift jail," Deputy Inspector General (Prisons) Major Shamsul Haider Siddique told a private television channel. The authorities would take decisions about setting up any such jail after considering the security issues of the place and its distance from the court and hospitals, he added. The jail would be in such places around which there are no high-rise buildings. The authorities would acquire government structures or rent any non-government house if it meets the requirements, sources said. The decision was taken as the VIP prisoners once accustomed to luxurious lifestyle are falling ill in jails and the authorities have been struggling to cope with the situation, the jail authorities said. --*The Daily Star, July 9*

ACC's job not to defame politicians

Anti-Corruption Commission (ACC) Chairman Lt Gen (retd) Hasan Mashhud Chowdhury said that the commission's main objective is to root out corruption from the country, not to defame politicians. "I have no intention to defame any quarter. My area of work is precise -- to campaign against corruption. It does not matter whether the person engaged in corruption is a politician, a businessman or a bureaucrat," said the ACC chief in an interview with the BBC Bangla Service. He made the comment at a time when voices from different quarters have been suggesting that the ongoing anti-corruption drive aims at defaming politicians since charges are yet to be filed against a large number of detained lawmakers and ministers, around 70 in total, whereas only six or seven of them have so far been proven guilty. "They have been held on the basis of your [media] reports that had been published over the past few years. Those reports were not lost. Rather, those were stored and we are working on that ground," Mashhud said. The evidence against them would be placed before the court and that needs to be done very carefully. That is why it is taking some time, he added. "It would be wrong for anyone to think that we are working towards a special motive," the ACC chairman added. --*The Daily Star, July 10.*

DUTA rejects move to enact common law for universities

Dhaka University Teachers' Association (Duta) rejected the government's proposed Umbrella Act 2007 for the country's 28 public universities terming it a "new version" of the University Ordinance 1961 imposed by military dictator Ayub Khan. "We consider the draft of the umbrella act 2007 for public universities as a black law. This so-called act is a clear violation of the Public University Ordinance 1973, which is an outcome of the Liberation War," Duta General Secretary Prof Anwar Hossain said. "This is clear that the Umbrella Act 2007 is an ill attempt of the government to control the public universities by the University Grants Commission," he read out from a written statement at a press conference on the DU campus. At the press conference, Duta President Prof Sadrul Amin urged the government not to impose the umbrella act. Duta leaders expressed their concern that the autonomy and uniqueness of the public universities will be hampered and the universities will take the shape of a college or a school if the law is implemented. Each public university is separate from another public university and should be allowed to be run in an environment free from government control. One umbrella law for all public universities is not realistic, the DU teachers said. The University Grants Commission has already sent the draft of the Umbrella Act 2007 to the Ministry of Education. -- *The Daily Star, July 11.*

Army chief feels need for constitution review

Army chief Gen Moeen U Ahmed said the constitution should be reviewed through a "constitution commission" for preparing new laws and mechanisms to ensure accountability and effective governance. Moeen hinted that an elected government may undertake the constitution review after elections are held by the end of 2008 when a constitution commission might be formed to prepare "relevant new laws" and ensure "horizontal accountability." He said two years is not enough to "heal the rot of the past 35 years" and as such the next elected government must continue the reforms currently being undertaken by the caretaker government. "Citizens of Bangladesh are seriously thinking that we need to review our constitution as per the requirements of the day," said Moeen in answer to a question from the audience at a seminar titled "Democratic accountability and way to curb corruption". Bangladesh Institute of Peace and Security Studies (BIPSS) and the American Centre organised the seminar at Hotel Radisson. Presenting his keynote speech to an audience he termed "citizens of hope", the army chief attacked the past political governments saying Bangladesh has never had "real democracy" in the last 35 years. --*The Daily Star, July 11.*

ACC chief's 'battle plan' against graft

Anti-Corruption Commission (ACC) Chairman Lt Gen (retd) Hasan Mashhud Chowdhury unveiled a "battle plan" to combat corruption emphasising tough action against the corrupt and paying reasonable remuneration to public servants. "Corruption took deep roots because of slack rules and regulations as well as crippled anti-corruption agencies," he said adding corruption is still a 'low risk-high reward' proposition in Bangladesh. "Make corruption a 'high risk-low reward' phenomenon by ensuring 'swift and sure' action against the corrupt elements," the ACC chief said while presenting the plan at a workshop on curbing corruption in South Asia. The Global Organisation of Parliamentarians Against Corruption (GOPAC) and The National Democratic Institute for International Affairs, Bangladesh (NDI) jointly organised the workshop in the capital. "Over the decades corruption has been patronised politically which explains its being immune to eradication efforts," Hasan Mashhud felt. "Political will, which is imperative for fighting corruption, simply does not exist." -- *The Daily Star, July 12*

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: **Law Desk,** The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e mail dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

LAW watch



Don't kick the inspectors out of the UN

RICHARD BUTLER

The United States and Britain is supposed to ask the United Nations Security Council to abolish the United Nations Monitoring, Verification and Inspection Commission the organization it created to oversee the elimination of Iraq's weapons of mass destruction.

On the surface, the proposal appears to be good housekeeping. After all, the work of the commission seems to be done. Iraq has no weapons of mass destruction. Why prop up an entity that requires millions of dollars a year to run? (The money comes from Iraqi oil.) In fact, it's not so simple. Saddam Hussein's purported possession of weapons of mass destruction was at the heart of the American and British justification for invading Iraq five years ago. We now know that those claims were false, and in some instances fabricated. Actually, we knew that then, too. Yes, Saddam Hussein had demonstrated a deep attachment to nuclear, chemical and biological weapons. United Nations inspectors collected ample evidence of that attachment.

But those of us involved with United Nations inspections the group I headed was the predecessor of the imperiled weapons commission also knew that virtually all of Iraq's weapons of mass destruction had been removed. This judgment was confirmed by the head of the International Atomic Energy Agency, Mohamed ElBaradei. Which is why we would not be wrong to be suspicious of the action proposed by the United States and Britain, which overruled the judgment of the United Nations in their decision to go to war in Iraq. Their decision demonstrates the danger of substituting national intelligence for the assessments assembled by an independent, international body. While individual governments will always track and analyze weaponry, their own national conclusions can never form a credible basis for action by the international community, especially for enforcement actions.

So what should we do? Closing the commission creates an opportunity to create a standing office of weapons monitoring and verification at the United Nations. This body would provide the Security Council, member states and the secretary general advice and analysis constantly needed in the world of proliferation. It would also conduct some weapons inspections beyond those carried out under the individual weapons of mass destruction treaties. This is not a new idea. Twelve years ago, a committee led by McGeorge Bundy, national security adviser to Presidents John F. Kennedy and Lyndon B. Johnson, issued a report for the United Nations Association of the United States describing the need for such a body. Two years ago, the Canadian Center for Treaty Compliance, led by Prof. Trevor Findlay, called for a standing United Nations verification body. This would work, cost little and have potentially great benefit.

Opponents of this idea will say that objectivity in this field is in the eye of the beholder. They will also say that no United Nations finding would have deterred the invasion of Iraq. But it is that very experience that confirms that the world needs such a body. What's more, we should know by now that no single state, no matter how powerful, can prevent the spread of dangerous weapons alone. International cooperation is essential and that must include continuing monitoring and verification of nonproliferation obligations. If the Security Council decides to abolish the Iraq-centered monitoring commission, it should then create a permanent entity to keep a global eye on weapons of mass destruction.

Richard Butler was the head of the United Nations Special Commission to disarm Iraq from 1997 to 1999. Source: New York Times

RIGHTinvestigation



Working women in the informal sector: Condition in the era of globalisation



RAPID expansion of informal sector has emerged to contribute a greater part of national economy, which needs to be identified to measure the present scenario, growth trend and above all to identify problems of different sectors. The inability of the formal economy to generate employment is further aggravated due to the changes in the concept of employability and the organization of work, which is characterized by labour market flexibilisation including non-standard forms of employment and shorter product cycles.

Consequently the vast majority of unemployed people are engaged in various types of informal activities such as agriculture, shrimp cultivation and processing, construction works, brick field works, domestic works, rag picking, handicrafts, stitching, tant (handloom), work in bidi factories, tailoring, silk and zamdani shari

production oriented work, block printing works, fish processing and drying etc. Nevertheless, there is no policy guideline about the development and regulation of this sector in national development policy.

Globalisation and labour

The process of globalisation has a robust correlation with means, objects and process of labour. The current phase of globalisation is characterised by the internationalising of production and the new international division of labour.

Although scholars vary widely in terms of how they conceptualise globalisation and what they see to be its novel features, there is some consensus that globalisation is simultaneously an economic, cultural, and political phenomenon that includes the integration of world markets through increasing trade and capital mobility, the rapid diffusion of ideas and norms trans-

nationally, and the restructuring of power relationships and political interests.

Globalisation is viewed primarily as an economic phenomenon, involving the increasing interaction, or integration, of national economic systems through the growth in international trade, investment and capital flows. But one can also point to a rapid increase in cross-border social, cultural and technological exchange as part of the phenomenon of globalisation.

Globalisation and Female Workers

The impact of economic globalisation on women needs to be assessed in light of women's multiple roles as productive and reproductive labour in their families, as well as their contributions towards overall cohesion and welfare of community, and maintenance of the social fabric. Because of deep-rooted differences in gender roles and socio-cultural expectations, the impacts of economic globalisation are felt quite differently by women and men. While economic class, race and culture are also extremely important factors in determining the nature and extent of impacts, by and large, the very same policies and trends are likely to have quite different implications for women and men.

The current phase of globalisation is associated with changes in the economic policies, packages as structural adjustment and was adhered to by the governments of developing countries, under dictate of the different International Organisation. A series of studies shows that adjustment policies affected women much more deeply than men did to their male counterpart. For example, the elimination of public subsidies for health, education and other social services resulted in transference of the "welfare" function of the state onto families, and by extension

onto girls and women. This trend became entrenched as governments continued to cut back on social spending, thus increasing the burden of caring for vulnerable community members (such as children, the aging, disabled persons or those with illness) on families. Because of women's traditional roles in most societies as caregivers, this burden has been disproportionately borne by women than men (Guttal, 2000).

The ILO has published a report entitled Economic security for a better world for the first time to measure social and economic security of individuals and countries around the world. An Economic Security Index (ESI) has been calculated for over 90 countries (covering 86% of the world's population). The report shows that economic security promotes economic growth and social stability.

Economic security is composed of basic social security, defined by access to basic needs infrastructure pertaining to health, education, dwelling, information and social protection, as well as work related security. The report delineates seven component of work-related security. While all seven dimensions are important, two are essential for basic security: income security and voice representation security. Basic security means limiting the impact of uncertainties and risks people face daily while providing an environment in which people can belong to a range of communities, have a fair opportunities to pursue a chosen occupation and develop their capacities via what the ILO calls decent work. Hence it is essential to understand situation of different workers involved in informal sector, particularly the women. At the same time identify the actual need of workers and to o develop guidelines for providing legal support to the informal sectors workers.

Source: Karmojibi Nari, an initiative for working women in Bangladesh.