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Civil Society Involvement in the UPR - the example of Indonesia

Parallel event to the 7th session of the Human Rights Council

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Parallel to the 7th session of the UN Human Rights Council, the **FRIEDRICH-EBERT-STIFTUNG (FES)**, together with the **GERMAN FORUM HUMAN RIGHTS, PAPUA LAND OF PEACE**, and **PAX ROMANA**, held on 17 March 2008 a public panel discussion on **CIVIL SOCIETY INVOLVEMENT IN UPR – THE EXAMPLE OF INDONESIA**. Before the floor was open to general debate, the following panellists made presentations based on their experience with the UPR process: Wisnu Lombard (Department of Foreign Affairs, Indonesia), Mylène Bidault (OHCHR), Rafendi Djamin (Human Rights Working Group, Indonesia), and J. Budi Hernawan OFM (Justice and Peace Commission of Jayapura). The discussion was chaired by Theodor Rathgeber (German Forum Human Rights).

Introduction to the UPR Mechanism

The Universal Periodic Review (UPR) is considered by many to be the most important feature marking the transition from the UN *Commission on Human Rights* to the UN *Human Rights Council* (HRC or the Council). This new mechanism provides for the review of every UN Member State within a regular periodic system according to the same standards in a cooperative rather than confrontational manner. Its core objective is to end the often criticized selectivity and double standards that were perceived in the work of the former Commission (and which led to its dissolution).

The UPR is essentially (a):

- **U**-niversal - meaning that every UN member state will be reviewed
- **P**-eriodic - ensuring some form of follow-up, even if only four years later
- **R**-eview - based on reports on the situation of all human rights and not restricted to those contained in certain Covenants only.

Additionally, its input will be threefold, based on the information submitted in three UPR documents: a report by the concerned state; a compilation of information obtained through the UN treaty bodies, special procedures and other relevant official United Nations documents; and a summary of “stakeholders” (National Human Rights Institution(s) and civil society) submissions on the state under review. The latter two documents are being prepared by the Office of the High Commissioner for Human Rights (OHCHR).

The review itself will be carried out by a Working Group of the HRC, the “UPR Working Group” outside the regular session time of the HRC. In a three hour session, the state concerned will be able to present its report and will be asked questions on its human rights record by three appointed by lot members of the Council - *troika*. This system has been set up to facilitate the work of the Council, establishing a way of

burden sharing between the members. Other states will also be able to ask questions but these will be channelled through the *troika* who will subsequently also serve as rapporteurs, preparing a report on the state’s UPR, including conclusions and recommendations, and possibly also reflecting voluntary commitments made by the state concerned during the review process.

This new mechanism is of potentially high value as it could contribute to the political strengthening of the UN human rights system and to the promotion and protection of human rights in general. It proves the willingness of all states to have their human rights record reviewed on an equal and impartial basis and will enable the HRC to address issues in countries that usually “escape” its attention. It will also allow for the addressing of human rights issues covered by human rights treaties and conventions other than those that are already ratified by the concerned state.

The above-mentioned threefold input already goes some way in fulfilling the demand of HRC Resolution 5/1¹, according to which the UPR should “Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions [...]”. Yet, participation in this mechanism has to go far beyond sending in a five-page submission on the state’s human rights performance. NGOs are supposed to be consulted for the preparation of the state report, can be present during the UPR session and become active again in monitoring and evaluating the follow-up to the recommendations and conclusions of the UPR.

UPR in the Context of Indonesia

The event was attended by all sides concerned with the preparation of the UPR documents for the Indonesia’s review (government, national and international civil society, as well as the OHCHR) – an achievement underlining the

¹ Also known as the Institution Building of the United Nations Human Rights Council

potential of the UPR to “Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner”². As the UPR mechanism gives important new opportunities for civil society involvement in the evaluation of states’ human rights performance, this event aimed at both contributing to the follow-up on the UPR process in the context of Indonesia; and to assisting other states (as they prepare for their UPR participation) with regard to conducting constructive consultations with civil society and identifying other lessons learned through the experience of the first states scheduled for a review. The event co-organizers moreover considered it would be beneficial to explore the experience leading to the preparation of the UPR reports of all stakeholders: the Indonesian state, civil society, and the OHCHR unit responsible for the preparation of UPR documents.

State

Mr. Wisnu Lombard, the panellist representing the Government of Indonesia explained that in accordance with the HRC guidelines, his government undertook broad consultations with all relevant stakeholders prior to the drafting of the state UPR report. This was carried out by a specially set up inter-agency Task Force, coordinated by the Department of Foreign Affairs, which took responsibility for the preparation of the state report. The Task Force conducted several consultations with national civil society groups on 29 January 2008 and on 5 February 2008 and during these meetings the modalities needed for the preparation of the state report were discussed extensively. Due to time constraints, further planned consultations with local (non-Jakarta based) civil society organizations could not take place. Mr. Lombard noted that the consultative process was greatly facilitated by the fact that similar exercises had been conducted previously (in preparation of state reports to UN treaty bodies) and therefore the infrastructure for state interaction with NGOs on human rights issues was already in place. With regard to the finalized state report, it was further noted that due to time and page limitations, it contained only the most prominent and pending issues.

According to Mr. Lombard, the progress made by the Government of Indonesia and national NGOs demonstrated the readiness and openness of both sides for further dialogue. It was further

noted that in the aftermath of the adopted UPR conclusions and recommendations, the fear of politicization should not break this spirit of collaboration. The overarching principle of dialogue and cooperation, which, it is said, would be the working mode for UPR sessions, would be tested by Indonesia through its participation in the first universal periodic review. Indonesia hoped that the recommendations to come under the UPR would be tangible to its country situation and would assist the government with the progressive realization of human rights at the national and local level, including the province of West Papua.

OHCHR

A representative of the OHCHR UPR Team – Ms. Mylène Bidault - shared with the participants that the time leading to the first UPR session was exciting also from an institutional point of view. The OHCHR UPR Team was pleased that almost all states of the first group to be reviewed (with the exception of one) had submitted reports and most of these were timely and of appropriate length. Welcome was also the active involvement of civil society and other stakeholders, including in the case of Indonesia. Quoting the *Information Note for NGOs regarding the Universal Periodic Review Mechanism*³ that synthesizes the basis for NGO reporting (as contained in the institution building package), Ms. Bidault noted that there were five possibilities for NGO contribution to the UPR process:

1. Participating in the broad consultation process organized at the national level by the state
2. Submitting “Additional, credible and reliable information” on the human rights situation in the country of concern to be compiled in a summary document by the OHCHR
3. Attending the review in the working group
4. Making general comments before the adoption of the working group by the plenary
5. Participating in the implementation and promotion of the review conclusions and recommendations.

Given that some of these procedural opportunities were still to be exercised by NGOs

² Ibid.

³ The Information Note was released by the OHCHR and can be accessed online at www.ohchr.org

for the first time, Ms. Bidault concentrated on the NGO exercise of their possibility to submit information on a state's human rights performance. As states and other stakeholders, as well as the OHCHR, had limited time to produce the documents required for the first UPR session, it was commendable that a great number of NGOs and other stakeholders made a timely submission. Furthermore, it was appreciated that most NGOs abided by the pre-defined page limitation (5 pages for NGO reports) and that this helped NGOs to concentrate on the issues of highest priority. Furthermore, the OHCHR noted that collaboration between NGOs had already led to the successful preparation of joint NGO coalition reports and this was found to be another positive experience. In order to encourage the practice, there was already consideration to increase the page limitation for the submission of coalition reports to 10 pages for following UPR sessions.

With regard to the actual process of summarizing NGO reports in a 10-page summary document, Ms. Bidault explained that the OHCHR made great efforts to apply the general guidelines provided by the HRC with impartiality in developing a working methodology. In structuring the summaries of "other stakeholders", the OHCHR followed an already defined framework (based on the HRC guidelines):

1. Background and Framework
2. Promotion and Protection of Human Rights on the Ground
3. Achievements, Best Practices, Challenges and Constraints
4. Key National Priorities, Initiatives and Commitments
5. Capacity Building and Technical Assistance

While some participants indicated that more could be done in order to reflect the NGO submissions under certain chapters, it was pointed out that information that could not be located under certain sections of the summary could usually be found scattered over other pertinent sections. Similarly, information submitted on women and children's rights could be found in different parts throughout the summary of reports as with this the OHCHR intended to give more salience to and mainstream women's and children's rights. In conclusion, Ms. Bidault remarked that in preparation of the summary of NGO reports, the

OHCHR recognized the importance of national submissions (as compared to NGOs with a larger international or regional scope) and accorded due coverage to the submissions of national civil society organizations.

Indonesian Civil Society Organizations

Mr. Rafendi Djamin, the panellist from the Indonesia-based Human Rights Working Group, spoke about the democratic transition that Indonesia has been undergoing since the end of a thirty-year-long authoritarian regime. The creation of democratic culture and respect for human rights would take time, he said, referring also to the report of the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani. The democratic transition in Indonesia was an important process because it was still felt that one could not exclude the possibility of a reversal to a mode of governance similar to the preceding authoritarian regime. Hence, Mr. Djamin stressed the importance of strengthening civil society in Indonesia and the progress NGOs had made in transforming their confrontational approach in interacting with government agencies, to one of dialogue (at least in relations with some sectors).

While this development was very new and some state agencies were not yet used to this approach, NGOs had already well established relations with some, notably the Department of Foreign Affairs. Among other important partners of the Indonesian civil society, Mr. Djamin singled out Indonesia's National Human Rights Institution – Komnas HAM, and its two specialized agencies dealing respectively with children's and women's rights. A number of NGOs had already cooperated with the national human rights agencies and a consultation with these took place in preparation for the UPR4.

Mr. Djamin related also the experience of civil society consultations, which were held prior to the state-organized consultations (held already as early as 22 October 2007). During these consultations, participating NGOs decided to combine technical skills and know-how, and work together to draft a common coalition report for Indonesia's upcoming UPR session. In the course of four consultations the participants developed their joint report⁵ through

⁴ "Universal Periodic Review on Indonesia. INFID Submission to Indonesia for 1st session of UPR, 7-18 April 2008." p.1. (available online at www.ohchr.org)

⁵ Ibid. p.1

synthesizing the input of a number of human rights NGOs and abiding by the 5-page limit. It was not an easy exercise as every organization insisted that priority be given to its own area of interest, but it was a very positive experience since the comprehensive character of the UPR allowed the working group to look at the country human rights situation in its entirety. Due to time constraints, the organizers could not mobilize all regional stakeholders, but the consultations dealt with human rights issues on a nation-wide level and therefore this was a Jakarta-based, rather than a Jakarta-only process. While Indonesian civil society groups appreciated their inclusion in the government-held broad-based consultations, Mr. Djamin explained that regrettably the draft of the state report was not returned for comments to civil society before its submission for the UPR.

Another panellist - Mr. Budi Hernawan OFM, Justice and Peace Commission of Jayapura, expressed his regret that civil society from West Papua was not consulted in the process. Mr. Hernawan explained that it was important to know what was happening on the ground in West Papua in order to understand the difficulties that local NGOs encountered in their preparation of UPR reports. Facing serious human rights violations such as torture, racial discrimination, limited freedom of expression, little respect for the rule of law, and perpetual impunity, West Papua was one of the conflict areas in the region. Unlike Jakarta-based NGOs, NGOs operating in the province did not interact with the central government as much as Jakarta-based NGOs did. Furthermore, they found it difficult to coordinate with local government institutions because not all of these were “on board” with the Department of Foreign Affairs (to some extent owing to the remoteness of the West Papua province – seven hours flight from the capital). Another limitation was the lack of properly established human rights institutions in West Papua. As it was explained by another participant, the Komnas HAM office in Jayapura had insufficient means and therefore a reduced possibility to both report on the human rights situation in the region and to provide technical assistance to local NGOs for the preparation of their own reports.

Suggestions for Optimizing the UPR Outcome and Lessons Learned

The preparation of the UPR documents appears to have challenged all stakeholders – the state agencies, the OHCHR, and national NGOs. While it must be acknowledged that the UPR is still in

the making and that the tight deadlines placed an additional strain on all parties involved in the process, it already becomes evident that several issues deserve special attention:

- There is a need for capacity development and better coordination between **state agencies**, including between local- and central-government levels with a view of preparing more balanced and comprehensive reports, as well as handing ownership to all state actors that would be involved in implementing the UPR recommendations.
- The discussion showed that the UPR is a learning process for the **OHCHR** as well, since it was noted that the Office may need to concentrate on better reflecting the information provided by NGOs in the summary of stakeholder reports.
- The coalition-building experience of Indonesian NGOs was commended by all participants. There remains, however, a need to include even a greater number of **national NGOs** in this process, including those that operate at the local level. NGOs can further collaborate in order to educate and enhance each other’s capacity for participation in the UPR process.
- The OHCHR summaries of the information contained in the reports of treaty bodies, special procedures, and other relevant official UN documents follow the same structure as the summaries of NGO and other stakeholder’s reports (see above). **UN treaty bodies and special procedures** may wish to reflect this structure as they prepare future reports and submit more information under certain chapters as appropriate.
- **Other relevant UN agencies** can add value to the UPR process by, for example, allocating human or other resources for transmitting information to and capacity building of government/ NGO sectors to enhance their involvement in the UPR process. A good example of what can be achieved came up during the discussion as one of the panellists suggested that local UNDP offices have both the know-how and the resources to conduct training sessions on UPR.

As we prepare to witness the review of Indonesia and other states scheduled for the first UPR session, it is important to keep in mind that

the UPR is not only an important new channel for civil society concerns at the UN level, but also an institution in the making and as such its evolution can be influenced by all stakeholders, including civil society. Perhaps in adopting the intended constructive approach of the UPR to addressing human rights issues at the national level, NGOs can achieve more than through the usual “naming and shaming” of governments.

Through promoting the UPR as an important mechanism at the national level, namely through educating the public and the media, the role of national NGOs can extend far beyond simply reporting on human rights violations at the national level – they can actually influence the evolution of a potentially powerful new human rights mechanism.

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