



# ENGAGING GOVERNMENTS THROUGH THE UPR PROCESS

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*“Every day we are reminded of the need for a strengthened United Nations, as we face a growing array of new challenges, including humanitarian crises, human rights violations, armed conflicts and important health and environmental concerns. Seldom has the United Nations been called upon to do so much for so many. I am determined to breathe new life and inject renewed confidence in a strengthened United Nations firmly anchored in the twenty-first century, and which is effective, efficient, coherent and accountable.”*

UN Secretary-General Ban Ki-moon

**I**N 1997, and again in 2002, reforms in the United Nations gained ground in Geneva and New York, respectively. These reforms came in the heels of then-Secretary General Kofi Annan’s challenge to the UN’s “continued significance” in the face of 21<sup>st</sup> century realities. He called for improvements in how the UN conducts its work, implements its mandate and manages the funds entrusted to it by its Member States in order to bring human rights to all peoples of the world.

These reforms took a significant turn during the General

Assembly’s 60<sup>th</sup> session. The world’s leaders adopted UNGA Resolution 60/251 on the 15<sup>th</sup> of March 2006, which created the Human Rights Council. The HR Council is now a subsidiary organ of the General Assembly, taking over the role of the Commission on Human Rights, which was created under article

68 of the UN Charter on Economic and Social Council (ECOSOC). The HRC was mandated to conduct a Universal Periodic Review (UPR), a mechanism to evaluate each member state’s human rights commitments. The said review shall be a cooperative mechanism, based on an interactive dialog, with the full involvement of the country concerned and with consideration given to its capacity-building needs. The UPR is intended to complement and not duplicate the work of treaty bodies.

At its fifth session on June 18, 2007, the Council responded to this request and adopted, through resolution 5/1, detailed modalities regarding the UPR. Threshed out in particular were the basis of the review, principles and objectives to be followed, the periodicity and order of review of countries, process and modalities, as well as the outcome and the follow-up to the review. The HRC also decided that the review would be conducted in one working group composed of the 47 member States of the Council.

At its sixth session on September 21, 2007, the HRC adopted a calendar in relation to the consideration of 192 Member States of the United Nations for the first four-year cycle of the UPR mechanism. The Philippines was selected among the 16 countries to be reviewed in the 1<sup>st</sup> UPR session on April 7–18, 2008.

As preparation for review, HRC required the concerned governments and other stake-



**Renato Mabunga of the Philippine Alliance of Human Rights Advocates (PAHRA) presents a human rights report at the UN in Geneva, on behalf of 29 civil society organizations (top). Outside the UN headquarters (above).**

holders to submit human rights reports, which should follow the following guidelines:

1. Description of the methodology and the broad consultation process followed for the preparation of information;
2. Background of the country under review and framework—normative and institutional—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”;
3. Promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the “basis of review”, national legislation and voluntary commitments, national human rights institutions’ activities, public awareness of human rights, cooperation with human rights mechanisms;
4. Achievements, best practices, challenges and constraints;
5. Key national priorities, initiatives and commitments that the State intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground;
6. Expectations in terms of capacity-building and requests, if any, for technical assistance;
7. Presentation by the State of the follow-up to the previous review.

Following these guidelines, the Office of the High Commissioner for Human Rights



(OHCHR), issued information relevant to NGO engagement. In urging NGO engagement, the OHCHR emphasized that the UPR should be seen as a process, composed of several steps in accordance to the HRC Resolution 5/1 of June 18, 2007:

1. States are encouraged to prepare the information they submit “through a broad consultation process at the national level with all relevant stakeholders,” which include NGOs;
  - a. NGOs may wish to ensure that they are included in the broad consultation process at the national level organised by the State for the purpose of the preparation of the information to be submitted to the UPR;
2. Other relevant stakeholders, including NGOs, may submit additional information in a 5-page document. Input received from stakeholders will be summarized by the OHCHR (the summary shall not exceed 10 pages);
3. Other relevant stakeholders, including NGOs, may attend the review in the working group;
4. Before the adoption of the outcome by the plenary of the Council, the State concerned should be given the opportunity to reply to

questions or issues raised. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary;

5. The UPR outcome should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders, including NGOs.

In October 2007, the Philippine Alliance of Human Rights Advocates (PAHRA) called for a training-workshop on the UPR process, to enable Philippine Human Rights NGOs to engage the Philippine State in the UPR and to formulate a specific program for NGO engagement. Specifically, the workshop aims were:

1. A firm understanding of the UN reform developments in the UN human rights system and how these developments are relevant to national HR work;
2. Determine why (or why not) participating human rights NGOs should (not) engage in the UNHRC-UPR on the Philippines, and to determine the extent of engagement;
3. Identify the main issues that will be engaged in by the participating Philippine NGOs;

4. Decide the main forms of NGO engagement in the UPR, identify targets and allies;
5. Decide on a specific timeline and organization of work for the next two months; and
6. Reflect on the role of Philippine NGO engagement in the UPR within a broader international advocacy strategy.

Thirty Philippine civil society organizations took part in the training-workshop and decided to engage the Philippine government in the UN-UPR process. They identified key human rights issues and concerns on the ground, the Philippine government’s voluntary pledges and commitments made during its candidacy to the HRC, the existing mechanisms (both local and international) that protect and promote human rights, and the gaps in the promotion and protection of human rights vis-à-vis these mechanisms. Committees were constituted for the gathering of data, drafting, validation and submission of the NGO report.

On November 20, 2007, the “*Joint Submission by NGOs with Consultative Status and Endorsed by 29 Civil Society Organizations (JSNGO)*” was received by the OHCHR. This was the official title of the NGO submission initiated by PAHRA, which was quoted 11 times in the OHCHR collation of reports. The JSNGO report was only one of the 31 civil society submissions to the UPR, including that of the Commission on Human Rights-Philippines (CHRP).

#### UPR lobby work

Upon the official acknowledgement of the JSNGO report by the OHCHR, the secretariat for the UPR process (PAHRA through its International Affairs Committee) embarked on both local campaign and international lobby. Information dissemination and dis-

cussion of the report with various stakeholders, including the media, highlighted the local initiatives. The international lobby included appointments with individual heads of various permanent missions in Geneva, meetings with the different UN Special Procedures in relation to their mandates, and establishing links with international NGOs and exploring possible areas of cooperation and complementation of work. A Philippine Lobby team was composed to form the PAHRA delegation to Geneva.

The team met and discussed issues with various Permanent Missions and representatives of the offices of Special Procedures. While representatives of the Special procedures welcomed the team in their offices, meetings with country-diplomats were conducted during session breaks. Though meetings were informal, the discussions raised serious issues and concerns. The lobby succeeded in getting the commitments to bring to the session questions and recommendations regarding HR in the Philippines.

Countries like France, Canada, India, Mexico, Slovenia, Ghana, Thailand, Japan, Guatemala, Republic of Korea, Switzerland, UK, USA, Australia, Malaysia and the offices of the special rapporteurs on Torture, Human Rights Defenders, Terrorism, Internally Displaced Persons, Violence against Women, Enforced Disappearance and OHCHR were among the groups the team was able to meet.

Out of the 18 Country Missions the team reached, 17 missions spoke during the interactive dialogue. 16 Missions carried the team's questions and recommendations while 1 (Thailand) only praised the Philippine Government and Malaysia declined to intervene, as it was a troika member for the Philippine review.

On Thursday, April 10, 2008, the Philippine lobby team together with other international NGOs and various government missions were invited to a lun-

COUNTRY	INTERVENTIONS, QUESTIONS, AND RECOMMENDATIONS
<b>New Zealand</b>	Gaps on services on the issue of violence against women. Rehabilitation of children and women victims of human rights violations. Inquired about "gender responsive approach" in the judicial system.
<b>Pakistan</b>	Praised the Philippine government.
<b>India</b>	Inquired into the functions of the BHRAC and appointments of BHRAOs. Inquired on the issues of migration particularly the brain-drain effects.
<b>Singapore</b>	Inquired about efforts to combat corruption and solve extra-judicial killings, but the inquiry was presented in such a manner as to erode the essence of the question.
<b>China</b>	Inquired into the poverty issue and specific cases and challenges in combating trafficking of women.
<b>Canada</b>	Raised concern about the few convictions related to EJK cases. Inquired on the recommendations of the Melo commission, TF Usig and the Special Rapporteur on EJK. Inquired into the limiting attempts of executive orders in the search for justice of EJK and enforced disappearance victims. Inquired about the protection of HRDs.
<b>Slovenia</b>	Relayed the intention of Alston to visit the Philippines to input on its final report. Inquired into the implementation of the Alston recommendations. Recommended accession to CED and OPCAT.
<b>Cuba</b>	Requested additional information on the experience and programs on poverty alleviation particularly on poverty indicators.
<b>DPRK</b>	Requested sharing of strategies on program implementation related to women's rights.
<b>Turkey</b>	Looked for the advantages and disadvantages on using the traditional judicial systems among IPs. Inquired into the legal framework on women's rights and the need for assistance.
<b>Holy See</b>	Inquired about protection of migrants. Proposed complete elimination of torture. Reiterated calls against abortion.
<b>Italy</b>	Inquired about the legislative gaps on children. Inquired about the integration of Human Rights in the school system.
<b>France</b>	Expressed worries about the few convictions on EJK and ED cases. Inquired about the implementation of Alston's recommendations. Inquired about the plans of blocking recruitment of children in armed groups. Inquired into the budget of the CHRP.
<b>Thailand</b>	Praised the Philippine government.
<b>Norway</b>	Inquired about concrete steps to resolve EJK of HRDs. Followed up the Alston recommendations.
<b>Japan</b>	Inquired on the issues and additional measures on Women and EJK. Looked into the facilitation of cooperation with various stakeholders.
<b>Algeria</b>	Inquired into the measures of addressing the root causes of migration and its effect on children.
<b>Syria</b>	Requested information on plans regarding migration and over-population.
<b>Tunisia</b>	Requested information on the difficulties and challenges related to labor issues.
<b>Latvia</b>	Recommended extending invitation to all Special Procedures.
<b>Guatemala</b>	Inquired into the experience of bilateral agreements with the receiving countries on issues of migration.
<b>Sudan</b>	Recommended sharing experience on the justiciability of ESC rights.
<b>Egypt</b>	Requested information on the systems installed related to migration. Recommended human rights education to all migrants before leaving the country. Expressed concerns regarding the protection of the rights of the minorities.
<b>Republic of Korea</b>	Inquired into the plans of protection and promotion of the rights of the vulnerable groups particularly the IPs. Inquired into the policy measures regarding migration and women, particularly trafficking. Recommended ratification of OPCAT and CED.

COUNTRY	INTERVENTIONS, QUESTIONS, AND RECOMMENDATIONS
<b>Russia</b>	Inquired about the protection of IPs. Recommended consultations with civil society organizations.
<b>Australia</b>	Inquired about the role of NHRI in the promotion and protection of human rights. Requested for updates on the matter.
<b>Switzerland</b>	Inquired into the problem on impunity. Recommended stepping up of investigation of EJK cases. Recommended adoption of a long-term approach in resolving underlying causes of EJKs.
<b>United Kingdom</b>	Requested for details regarding resolution of EJK cases and concrete follow-up measures in implementing the Melo and the Alston recommendations. Inquired about the peace process in Mindanao. Inquired about the process of involving CSO in the process of resolving issues. Inquired about the measures undertaken on issues of corruption and justice to victims. Recommended ratification of OPCAT.
<b>Belarus</b>	Praised the Philippine government.
<b>Cameroon</b>	Inquired about the difficulties encountered in delaying reports to treaty bodies. Inquired about the protection of street children.
<b>Azerbaijan</b>	Expressed concerns regarding the limited mandate and resources of the NHRI. Inquired about the national plan in combating trafficking. Voiced concerns about the reported low budget for institutions.
<b>Netherlands</b>	Recommended criminalization of torture in domestic laws. Inquired about follow-up efforts to address EJK and enforced disappearance.
<b>USA</b>	Raised concerns regarding EJK and the slow prosecution. Inquired into plans of compliance to HR principles among law enforcers.
<b>Palestine</b>	Praised the Philippine government.
<b>Bangladesh</b>	Asked for additional information on managing migration.
<b>Nigeria</b>	Recommended efforts for the protection of vulnerable groups. Inquired into the issue of poverty.
<b>Iran</b>	Asked for elaboration on actions against human trafficking.
<b>Brazil</b>	Inquired about the civil and political situation particularly institutional changes to address EJK. Recommended issuance of standing invitation to special procedures.
<b>Mexico</b>	Recommended that the national human rights action plan consider reporting to treaty bodies. Concerned about the issue of children and women. Recommended accession to OPCAT and CED.
<b>Indonesia</b>	Expressed concerns on inclusive participation of all stakeholders in the HR processes.
<b>Sri Lanka</b>	Inquired about the specific measures on migration's problem of "brain-drain" and the social problems it creates.

#### THE PHILIPPINE MISSION'S RESPONSE TO THE ISSUES AND QUESTIONS RAISED:

On Violence against Women, trafficking of persons, women's rights	Programs of gender mainstreaming in the judiciary are being implemented. Proposed magna carta on women is pending in congress. Laws and programs are laid for the protection of women, particularly regarding trafficking of persons. Patriarchal values still exist. Provided opportunities to stakeholders to implement projects. There are existing laws protecting vulnerable groups.
On poverty alleviation indicator	The Philippines is using Community-Based Data Collection and Community-Based Monitoring System.
On migrants	Assistance to migrant workers; Migrant Act, legal assistance and appeals, PDOS.
On child rights	Filed bills in Congress related to foster care, illegitimate children, pornography, etc.
On the Alston report	Pro-active in the resolution of cases of EJK. Establishment of TF 211 with 37 cases handled at present. Transparent in the implementation through web information. Delisting HRD from the Order of Battle.
On IPs	Gave a presentation of IPRA.

cheon with the Philippine government panel hosted by Executive Secretary Eduardo Ermita, head of the panel. Then civil society representatives met with the government panel, during which the lobby team pointed out the gaps in the government report and gave recommendations for the government to consider. Issues like extrajudicial execution, torture, and housing and policies such as EO 197 and the Mining Act, all detrimental to human rights protection and promotion, were raised. Recommendations like issuance of standing invitation to all special procedures, accession to OPCAT and CED, reporting to the treaty bodies and meaningful involvement of CSOs in government human rights processes were forwarded.

#### Side events

Aside from meeting various delegations in Geneva, the team managed to present the JSNGO report to various international audiences, including Filipino communities in Switzerland.

On March 19, 2008, the first civil society UPR side event on the Philippines was organized by Diakonie/ Action Network Human Rights, Amnesty International and the World Council of Churches. Missions from Canada, Switzerland and Slovenia, together with the OHCHR-Asia Pacific Unit and INGOs, attended the event.

On April 11, 2008, hours before the Philippine review, the Philippine Civil Society was able to share its experiences on the preparation of the UPR process in the Philippines. This was jointly sponsored by the International Federation of Human Rights (FIDH), Forum Asia, Human Rights Watch, OMCT and PAHRA at the Palais des Nations. It was attended by Permanent Missions, the OHCHR, various International Non-Government Organizations and representatives from the Philippine Commission on Human Rights.

Gaps and challenges that need immediate attention by all stakeholders in the Philippines, particularly the state, as identified



by the 31 separate submissions of civil society organizations.

Had it not been for the vigorous NGO lobby for civil society participation in the UPR process, the side events would not have pushed through. There was reluctance on the part of the OHCHR Civil Society Unit to allow country-specific forums without the concerned government's endorsement, due to pressure from some HRC members. In particular, some leaders from Arab and African nations were not open to NGO participation. They viewed NGO forums as venues for criticism and attacks against governments. As an attempt to block civil society voices, they drafted and circulated a non-paper modalities of the UPR which would have limited – if not closed off – NGO engagement within the UPR process.

It is also important to note that while many NGOs pushed for the side events as improvements in a still-developing process, some International NGOs based in Geneva were willing to accede to government restrictions. It was their view that NGOs should not push the issue of the side event as it might result in a backlash to the overall NGO engagement in the whole UPR process. The OHCHR's granting of the side events proved them wrong.

The UPR Process of the Human Rights Council, though still evolving in terms of procedures and modalities, presents a venue for civil society organizations to engage governments on the

real condition of human rights on the ground. It is with no illusion though that the process has a ready-made provision for CSO engagement. The process is a continuing challenge to assert CSO participation. As a process, it gives other governments a chance to look into the actual HR situation within a country through the reports of civil society organizations. The nature of engagement the CSOs bring into the process will determine the relevance of the process to the people and communities they serve.

It must never be forgotten that the UPR Process is a national process. As long as national CSOs remain grounded and continually engage their governments on the concrete human rights condition, the UPR as a whole will serve as window of opportunity for the continuing promotion and protection of human rights on the ground.

UPR is a also a state process. Thus, when engaging in the UPR, NGOs should entertain no illusions that the process is primarily for civil society. But as long as avenues for engagement are presented, civil society must not default from its duty to rise above pre-conceived ideas of "government propping up government."

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HRC GENERAL GUIDELINE	HR GAPS AND CHALLENGES
Background and Framework Scope of International Obligation Constitutional and Legislative Framework	Ratified Core Int'l Human Rights Treaties except OP-CAT, CPD, CPD-OP and CED. Pending overdue reports: CERD 15 <sup>th</sup> to 19 <sup>th</sup> periodic reports overdue from 1998 to 2006 respectively; CESCR 2 <sup>nd</sup> to 4 <sup>th</sup> periodic reports overdue since 1995, submitted in 2006, to be reviewed in 2008; HR committee report overdue since 2006; CAT 2 <sup>nd</sup> to 5 <sup>th</sup> periodic reports overdue from 1992 to 2004 respectively; CRC 3 <sup>rd</sup> and 4 <sup>th</sup> periodic reports due in 2007; CRC OP CP initial report overdue since 2004; CMW initial report overdue since 2004.
Institutional and Human Rights Structure	Limited mandate and resources of the CHRP as reason for lack of efficient performance. Assertion of CHRP as an independent monitoring and investigation body on human rights. Involvement of civil society in consultations and project implementation on issues of human rights particularly with the Presidential Human Rights Committee.
Institutional and Human Rights Structure	Willingness or unwillingness of the Philippines to issue Standing Invitations to all Special Procedures.
IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS	
Equality and Non-Discrimination	Finding the necessary steps to adopt legislation explicitly prohibiting discrimination. Need to strengthen human rights education to forestall manifestations of intolerance and <i>de facto</i> discrimination.
Right to Life, Liberty and Security of Person	Institutional and technical capacity to ensure the functionality of National Action Plans e.g. "Child 21" and its medium-term plan called National Plan of Action for Children (NPAC); National Human Rights Action Plan including local mechanisms for the protection of human rights. Effective measures to prevent extrajudicial killings including that of children and to investigate thoroughly all alleged cases of killings and to bring perpetrators to justice. Guarantee free access to legal counsel and doctors immediately after arrest and during all stages of detention.  Policy pronouncement/ executive order to the Armed Forces and the National Police reiterating the prohibition of extrajudicial killing.  Vigorous investigation and prosecution of state agents implicated in extrajudicial killings or enforced disappearances, particularly those identified by the Melo Commission report. Effective enforcement of HR legislation.
Right to Social Security and to an Adequate Standard of Living	Establishment of a legal framework for the promotion of gender equality and women's rights to ensure gender discrimination is addressed across all sectors, including indigenous and Muslim women, and in all spheres.  Gaps in adequate protection of ancestral lands of indigenous peoples from potentially harmful development projects and enforcement of requirement to obtain free and informed consent of affected communities prior to the initiation of any commercial activities on their lands. Pursuance of bilateral agreements and memoranda of understanding with countries and regions to which Filipinos migrate and work.  Addressing the root causes of migration, including the creation of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or unemployment.  Addressing the social costs and effects of migration, including issues such as the adverse effects of migration on the family, particularly children, as well as tackling the reintegration of overseas Filipino workers.  Urgent measures to ensure the protection of civilians in areas affected by military operations, in accordance with the State's human rights obligations.  Comprehensive plan for rehabilitation program of internally displaced persons and communities especially among areas affected by armed conflict.