

Transparency of consultation in the *Universal Periodic Review (UPR)* process

1. Introduction

As part of the third cycle of the Universal Periodic Review of Human Rights (UPR), Poland, like other United Nations (UN) member states, will once again participate in an interactive discussion on the UPR Working Group forum, during which the functioning of nationally established human rights will be assessed. This process will therefore consist - in simple terms - of verifying whether the state, by its internal regulations, does not violate the provisions contained primarily in the Charter of the United Nations and the Universal Declaration of Human Rights. At the same time, it will provide an indication of whether the actions recommended in the previous UPR cycle have been taken.

The UPR process can be divided into several stages, each of which entails specific responsibilities on the part of the state. At each stage of the review you will also find an area for NGO activities. NGO participation in the UPR process should not be limited to submitting reports, which, in addition to the national report and the information prepared by the Office of the United Nations High Commissioner for Human Rights, constitute the basis for the review. NGO participation is also to consist of consulting the government document, lobbying UPR Working Group members, speaking at the UN Human Rights Council, and monitoring and participating in the implementation process of UPR recommendations.

Confronting the basic problems raised in the first and second cycles of the UPR (2008 and 2012) with the statutory activities of our Association, the Citizens Network Watchdog Poland declined to formulate its own report. However, as a watchdog organisation that protects the human right to information and works for transparency and openness in the sphere of public life, we are following the UPR process with interest. Especially since it evaluates standards of respect for values that are close to us, such as freedom of speech and freedom of assembly. For 13 years the Association has been watching the authorities, making sure that the execution of tasks by public authorities is transparent and takes into account the voice of the society. For this reason, we decided to look at the very procedure of developing a national project on human rights. We conducted a mini-monitoring to answer questions such as: **whether and to what extent the actions taken by public authorities in connection with the third cycle of the UPR, up to the submission of the national report, were consulted with NGOs? If so, was the consultation genuine? Was the organisation's voice reflected in the content of the government report? Finally, has the public (including NGOs) been kept informed regarding the third cycle of the UPR?**

2. Basic rules and regulations

Preceding the answer to the questions posed, it is first worth pointing out the powers of NGOs within the UPR process. As already signalled, the human rights review is based on three documents: national report, a compilation prepared by the Office of the United Nations High Commissioner for Human Rights that includes information from treaty bodies and summarised information drawn from reports by other stakeholders, including NGOs. The report of an NGO (or coalition of organisations) is prepared according to technical requirements and submitted online by a certain date (for Poland, the set date is September 22, 2016).

Regardless of the possibility for NGOs to submit mini-reports, every interested organisation and other human rights entities should be involved in the development of the national report, which will be finalised by the Ministry of Foreign Affairs (if Poland is involved).

The key role of NGOs in the UPR process is to lobby other countries, i.e. to draw their attention to important legal and human rights problems from the point of view of civil society, which can be used as questions or recommendations of these countries on the forum of the UPR Working Group, directed towards Poland. This point is important insofar as it is an effective tool to raise on the Geneva forum issues that were not addressed in the report prepared by the national authorities, nor were they put forward in the summary of the reports sent by NGOs. In practice, the lobbying stage is exploited by NGOs in two ways: on the one hand, they take action on their own, on the other hand, they seek participation in organised pre-sessions (for Poland scheduled for April 6, 2017)¹.

During the actual review at the UPR Working Group session (scheduled for Poland on May 9, 2017), the presentation of the content of the national report is followed by a discussion of its content, during which any other country can ask questions of the reviewed country and make its own recommendations. Accredited NGOs have the right to participate in the forum at this stage, but not the right to vote (the entire meeting is recorded and broadcast).

The state is responsible for the implementation of recommendations, and is also obliged to present information on the progress of implementation of recommendations adopted in the previous cycle on the forum of the next UPR cycle. In addition, optionally - which Poland used in both cycles - each country under review may submit a mid-term report. It should be briefly pointed out that, even at this stage, the need for the national authorities to inform, consult and cooperate with the concerned NGOs on the implementation of the recommendations is evident.

In summary, within the UPR process, NGOs can undertake the following activities (formal and informal):

- Formulating your own NGO report - alone or in a coalition,
- Encouraging other entities and organisations to create the report - awareness campaign,
- Participating in consultations on the formulation of the national report - its draft and final version,
- Lobbying UPR Working Group members, participating in pre-session,
- Attending or reporting on UPR Working Group and UN Human Rights Council sessions and broadcasts (also discussing proceedings at organised meetings),
- Organising meetings on the results of the review and the progress of the implementation of the recommendations (not excluding active participation in their implementation).

3. Consultation of the national report in Poland – third cycle

The activities of the Citizens Network Watchdog Poland in the area of the third cycle of the UPR consisted primarily in monitoring the progress of work on the preparation of the national report. We

¹ For more information, see UPR Info Pre-sessions Empowering human rights voices from the ground, UPR Info 2016, https://www.upr-info.org/sites/default/files/general-document/pdf/2016_pre-sessions_empowering_human_rights_voices_from_the_ground.pdf (accessed: 20/03/2017)

conducted civil oversight of the process at the national level using the tool we are most familiar with - that is, using the right of access to public information. We also participated in a consultation meeting organised by the Ministry of Foreign Affairs (MFA).

When looking for an update on the work of the UPR report, we first reached out to the primary source of information - the MFA Public Information Bulletin. However, we did not find data on the third UPR cycle in the publication. Therefore, starting from August 17, 2016, until February 15, 2017, we sent 9 requests for public information to the Ministry of Foreign Affairs and 10 requests (with identical content) to other entities and institutions influencing the shape of the government report. The questions asked and answers provided will be divided and presented in the following two sections: information on the course of work on the draft report and information on consultations with non-governmental organisations.

a) information on the progress of work on the draft report

In August 2016, we asked MFA if work had already begun on the UPR report, and if so, when. We asked for a timeline for the report, including information on when it will be consulted with NGOs and made available to the public. We also wanted to know who, on behalf of the MFA, is responsible for coordinating the work related to the report (the person responsible along with information about the position held). We also asked whether the MFA prepares the report in consultation with other ministries, non-governmental partners, other institutions/experts (if so, which ones).

The reply confirmed that the Ministry of Foreign Affairs - Department of United Nations and Human Rights is the coordinating ministry for the elaboration of Poland's report under the UPR. Initial work on the report began in July 2016, and the first stage was to be a coordination meeting with the ministries that will be most involved in the work on the report, according to the thematic scope of the recommendations given to Poland, during the review of the UPR in 2012 (meeting planned for early September 2016). It was indicated that the report should be submitted in February 2017 and the review of human rights in Poland is planned for April/May 2017. The Ministry of Foreign Affairs said it is planning a series of inter-ministerial consultations, and will additionally seek input on the report from the Ombudsman and the Ombudsman for Children. It added that the ministry plans to hold a meeting with representatives of NGOs to hear their opinions on the proposed structure of the report and to consult on the issues that should be included in it. It was also indicated that apart from the Ministry of Foreign Affairs, the most involved ministries were the Ministry of Interior and Administration, the Ministry of Justice, the Ministry of Family, Labour and Social Policy, the Ministry of National Education, and the Government Plenipotentiary for Equal Treatment. When asked whether the Ministry of Foreign Affairs would prepare the report in cooperation with non-governmental partners, other institutions and experts, it was answered that at this stage the list of organisations invited to the meeting on the UPR has not been prepared yet, and apart from the mentioned Ombudsman and Ombudsman for Children, including other institutions in the work is possible if such a suggestion is made e.g. during the meeting with ministries.

Therefore, in September 2016, we decided to find out if a coordination meeting with the involved ministries had already taken place (if so, when and who attended). We also asked when the MFA will seek input on the report to the Ombudsman and the Ombudsman for Children.

The MFA explained that on September 8, 2016, a coordination meeting was held with the participation of representatives of the already mentioned ministries as well as the Government Plenipotentiary for Equal Treatment, the Police Headquarters and the National Prosecutor's Office. This meeting was of a working nature (no notes were made of its proceedings), and it resulted in a formal letter to the above-mentioned ministries, asking them to provide inputs to the report by September 30, 2016. On the other hand, the letter requesting input to the report to the Ombudsman and the Ombudsman for Children was sent on September 19, 2016, and the MFA did not limit the extent to which these

institutions could take a substantive position.

We requested access to documents - contributions of individual ministries and other institutions to the UPR report - from the MFA in early October 2016. Due to the fact that the Ministry considered that these documents are of a working nature and thus do not constitute public information, we addressed an analogous request separately to each entity. Interestingly, the vast majority made their contributions available to us, as shown in the table below:

Request for contributions to the UPR report	
To whom?	Has input to the report been made available?
Ministry of Interior and Administration	YES (with cover letter to MFA)
Ministry of National Education	YES (after urging)
Ministry of Health	YES (with information that it is only a draft)
Ministry of Family, Labour and Social Policy	YES (after urging)
Ministry of Justice	NO
National Prosecutor's Office	YES
Police Headquarters	YES (after urging)
Ombudsman	YES
Ombudsman for Children	YES
Government Plenipotentiary for Equal Treatment	Does not have the information

In view of the negative responses of the Minister of Foreign Affairs and the Minister of Justice, we filed complaints against the inaction with the Voivodeship Administrative Court in Warsaw. As of today, by a non-final judgement of March 14, 2017. (ref. no. II SAB/Wa 720/16) the court dismissed our complaint in the case with the MFA - we are waiting for the delivery of a written justification of the ruling.

b) information about consultations with non-governmental organisations

In our submissions, we asked parallel questions about the inclusion of NGOs in the process of preparing the national report. We wanted to know if a list of organisations that would be invited to participate in the report's consultation had been prepared (if so, we asked that it be made available). We asked when and how the MFA will organise consultations with NGOs and whether it will prepare the report in consultation with NGO partners, among others.

According to the Ministry's response, a meeting with representatives of NGOs (on the structure of the report and consultation of issues) was planned for October/November 2016, while at the current stage (August 2016) there was no specific date of consultation and no list of organisations invited to it.

We addressed similar issues in a subsequent request, asking whether and how the results of the planned consultative meeting with NGOs would be taken into account in the report and whether the-

re was a possibility to involve these organisations in the work on the report at an earlier stage than the planned consultative meeting.

MFA wrote back that it is not possible to respond without knowing what kind of comments/postulates etc. will be provided by NGOs. It was also reminded that information from NGOs is included in a separate report.

We subsequently asked about the planned date of the consultation meeting three times. In November 2016, we were informed that it would be held in the first half of December 2016, and an invitation would be extended to organisations that had participated in a similar meeting prior to the review under the second cycle of the UPR, as well as organisations suggested by individual ministries (a list of organisations was made available following a subsequent request). The meeting invitations were finally sent out on November 21, 2016, while the consultation took place already on December 2, 2016. The sequence of events is shown on the axis below (in red is the date of our last request, which is also the date of the meeting invitation):



At the consultation meeting at the MFA, the deadlines for Poland to submit a national report and review Poland at the UPR Working Group were presented. Guidelines, in terms of the structure of the government's report, were also discussed, including the methodology and description of the consultation process, information on the implementation of the recommendations from the second cycle, and a description of achievements and challenges in respecting human rights. Afterwards, representatives of non-governmental organisations were given the floor - they could signal important issues to be included in the draft report (the content of which, as well as the content of individual departmental contributions, was not made available for review). It was assured that a memo would be made of the meeting, which would then be forwarded to the ministries (the memo was made available following a subsequent request). When asked if the final version of the draft report would be subject to consultation, the organisations received a negative response. On the other hand, there was no clear answer to the question of whether the organisations would receive information about whether their comments were taken into account in the report.

Finally, when asked if meetings were held with NGOs after the second UPR cycle regarding the implementation of the recommendations from that cycle, it was indicated that they were not, but that the ministry was open to establishing such a custom.

According to the information provided by the MFA, the set deadline for the country report was February 3, 2017. However, the official document has not been published on the website of the MFA (this state has not changed as of today) or provided to NGOs, so in mid-February we requested the content of the report. After obtaining the document, we also shared it with other NGOs.

4. Conclusions

The presentation of the collected data ultimately allows us to return to the problems captured in the introduction of the analysis, and therefore to answer two key questions:

- Do the public authorities (primarily the Ministry of Foreign Affairs, which coordinates work related to the UPR) reliably and transparently inform citizens, as well as NGOs and the media, about activities undertaken as part of the third cycle of the UPR?
- Has the third cycle of the UPR allowed NGOs to actually participate in shaping the national report on human rights in Poland?

There is no question that the authorities under-reported the UPR process. The MFA's website, other

than a brief reference to the second cycle of the UPR, looks in vain for information about this year's review. Thus, the MFA, which coordinates the work on the national report, assumed that the only entity authorised to assess the state of human rights in Poland is the ministry itself. We believe that the Ministry's Public Information Bulletin should contain a regularly updated schedule of the MFA work on the country report and documentation related to this work (i.e. contributions from individual ministries/institutions sent to the MFA, a draft report subject to consultations and the final version of Poland's report).

Instead, the current state (i.e., lack of basic information) should be assessed as unfavourable from the perspective of society in general. The sphere of the functioning of human rights affects everyone, and therefore everyone should be guaranteed the right to obtain reliable information on all of Poland's activities relating to the implementation of obligations in the field of improving the quality of rights and freedoms in our country. The debate on the protection of rights and their limitations cannot be limited to the preparation of a document by the authorities, the content of which the concerned citizens will not be aware of. It is highly undesirable that basic information related to a human rights review has to be requested for nearly six months (when the data could be subject to universal access). Additionally, lack of information prevents media coverage. Undoubtedly, an official document such as Poland's report should be posted on the MFA website. Moreover, also the Ministry of Justice, in response to our request, indicated that once the national report was submitted, it would be published on the Ministry of Justice website. As of today, such a document has not been posted, and interested press is turning to NGOs to learn its contents.

As for the issue of informing NGOs about the activities of the UPR cycle, it is in turn directly related to the evaluation of the MFA activities, framed by the ministry as consultations. In the report made available, the first point emphasises that its content was developed in the course of inter-ministerial consultations, also taking into account inputs from the Ombudsman and the Ombudsman for Children, and the draft was consulted with representatives of NGOs and relevant parliamentary committees. However, this claim raises legitimate questions.

First of all, one may have reservations about simply informing the organisation of the date of the consultation meeting. Essentially, until November 21, 2016 (which is not the date the invitation was delivered), organisations were unaware of when such would be held and who would be invited to it. At the same time, since the national report should be subject to consultations with the non-governmental community, the MFA should make it possible for each organisation to apply for participation in the consultation meeting (establish clear rules in this regard). Most importantly, however, and needing to be emphasised - in our view, a draft document cannot be consulted unless it is presented well in advance for review. Not only did the MFA not provide any materials to the organisations prior to the consultation meeting, but it also decided that both the draft and the inputs from the various ministries were not public information. The MFA's answers to our requests show a lack of understanding of the purpose of the consultations - on the one hand a meeting is organised, while on the other hand it is emphasised that NGOs should present their reflections in their own separate reports. Furthermore, the outcome of the meeting held is also unclear. The lack of access to the content of the draft report and the exclusion of renewed consultations on its content even before its final approval makes it impossible to assess whether the NGOs' suggestions have been taken into account and to what extent. The lack of publication of an official report makes it impossible to lobby other countries effectively, as NGOs do not have a full understanding of which topics are not addressed in the report (and which would be worth raising).

On the other hand, it is a positive declaration, provided that it is put into practice, to include the need to inform and cooperate with NGOs when it comes to implementing the recommendations ultimately adopted by the UN Human Rights Council. The authorities should not forget that the implementation of the UPR recommendations often consists of actions and activities of the non-governmental environment.

Judging the consultation process as insufficient and illusory, in order to truly involve NGO partners in the work on the UPR report, we recommend four starting principles:

- publication in the Public Information Bulletin of the body coordinating the work of the UPR, information on the basic principles of the UPR, the schedule of work, planned consultation meetings and the rules for submitting applications for these meetings,
- posting documentation related to the ongoing review cycle on the UPR coordinating body's Public Information Bulletin,
- the principle of double consultation with NGOs, meaning that discussions are also allowed before the final approval of the national report,
- organising meetings on the results of the review and progress of implementation of recommendations (not excluding the inclusion of NGOs in the process of their implementation).