ANALYTICAL ASSESSMENT

OF

THE UNIVERSAL PERIODIC REVIEW

2008-2010

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UPR Info is a non-profit and non-governmental organisation (NGO) based in Geneva, Switzerland. Aiming at promoting and strengthening the Universal Periodic Review, UPR Info strives to contribute to the policy dialogue on the UPR, raise awareness and provide stakeholders with capacity-building tools through its website www.upr-info.org.

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<u>Contents</u>

ACRONYMS

GRULAC	Group of Latin American and Caribbean States
EEG	Eastern European Group
HRC	United Nations Human Rights Council
NGO	Non-governmental organisation
NHRI	National human rights institution
OHCHR	United Nations Office of the High Commissioner for Human Rights
SuR	State under Review
UN	United Nations
UPR	Universal Periodic Review
WEOG	Western European and Other States Group

INTRODUCTION

A new and unique mechanism of human rights promotion and protection – the Universal Periodic Review (UPR) – was launched in 2008 by the Human Rights Council (HRC).[1] A major innovative development of the United Nations human rights system, the UPR was created to ensure the review of the human rights situation in all UN Member States and the implementation of international norms and treaties on the ground.

Equally reviewing each State's obligations, commitments, and practices, the UPR is meant to improve human rights through interstate dialogue and cooperation. Based on three reports (a national report from the government, a report from the UN agencies, Special Procedures and Treaty Bodies, and a report from NGOs, NHRIs and other stakeholders), the UPR assesses the situation in every UN country and provides recommendations aiming at improving the human rights agenda and practices.[2]

In 2011 the HRC will review its work and functioning. As the UPR will be part of this important review, it appears necessary to make a preliminary critical assessment of the efficiency of this mechanism. UPR Info intends to contribute its expertise to the HRC review process by providing an analytical assessment of the UPR.

In this paper UPR Info aims at analyzing the following question: Is the UPR fulfilling its principles and objectives and showing, after two years of existence, human rights improvements in the 112 UN Member States it has reviewed?

Herewith we will look into the statistics of seven UPR sessions that took place from 2008 to beginning of 2010, discuss the features of the UPR that make the mechanism unique, analyze the lessons learnt to determine what really works within the UPR process and what does not, and finally attempt to provide practical recommendations that would help the HRC in advancing the UPR and making it more efficient, better organised and goal-oriented. We will discuss and examine why the reviews vary in their efficiency from State to State and what is needed to be done by the HRC and the UN Member States to make every review highly productive and fulfilling its aim. We will identify how the HRC can limit "gaps" so that the States and other actors would make the most of the UPR process and contribute to its quality and efficiency.

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[1] G.A. Res. 60/251 *[Establishing the Human Rights Council and the Universal Periodic Review]*
[2] UPR Info, "UPR Process," available at http://www.upr-info.org/-UPR-Process-.html

SEVEN UPR SESSIONS IN 2008-2010: STATISTICS IN BRIEF

The UPR started off with its first session in April 2008. During its subsequent seven sessions the mechanism has reviewed 112 UN Member States in total with 16 States per session. All States reviewed have gone through the UPR according to the HRC calendar adopted in 2007.[3]

- **States' participation in the Working Group sessions**

The UPR is a peer review mechanism in which States ask questions and make recommendations. It is therefore important to look closer at the dynamic of UN member States participation during UPR sessions. The first three sessions had nearly the same participation rate ranging from 98 to 110 States making statements. The number of statements per session was ranging from 604 (Session 3) to 647 (Session 2).

A significant change on participation was noted at the Session 4 where 128 States (45 HRC Member States and 83 Observer States) took the floor and delivered 856 statements in total which is about 200 statements more than during the previous three sessions. By this session the HRC Member States took more action and made 52.1% of the statements (i.e. 446). After the intense Session 4, the following Sessions 5 and 6 got back to its routine so to say, but still had a relatively high participation rate with delivery of 671 and 750 statements respectively. Session 7 has the second rating after Session 4 in terms of participation as 121 States delivered 754 statements.

Though the attendance rate was high at all sessions, the participation rate could be better if more States could or would take the floor. A plus is that nearly all HRC Member States delivered statements.

With regard to regional participation, it should be noted that during most sessions the Western European and Others Group (WEOG) was the most active, except for Session 4 when its position was taken over by the Asian group. The least active groups were Latin American and Caribbean States (GRULAC) and the Eastern European Group (EEG). However the EEG was noted with higher participation rate than usually at the Session 7. This is explained by increase in number of EEG participating States (21 out of 23 States).[4]

In general regional groups play an important role in States' participation. The trend is that the most active group at the review session is the one to which the SuR belongs. For instance, during the review of Malaysia at Session 4 about 50% of the statements made were delivered by its regional group.[5]

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[3] OHCHR, "Calendar of Reviews for 1st Cycle," available at
http://www.ohchr.org/EN/HRBodies/UPR/Documents/uprlist.pdf
[4] UPR Info, "Sessions," available at http://www.upr-info.org/-Sessions-.html
[5] UPR Info, "States' Participation in the UPR Working Group – Session 4," available at http://www.upr-info.org/IMG/pdf/State_participation_S4.pdf

- **Recommendations**

Recommendations are the cornerstone of the UPR process. They constitute the SuR's roadmap for the next four years to improve human rights. During the first seven sessions, 10262 recommendations were made in total with the following statistics per session: Session 1 – 418 recommendations; Session 2 – 855 recommendations; Session 3 – 1335 recommendations; Session 4 – 1802 recommendations; Session 5 – 1665 recommendations; Session 6 – 2039 recommendations; and Session 7 – 2148 recommendations.[6]

UPR Info has provided support to Professor Edward R. McMahon from the University of Vermont to develop a scale which looks into the action contained in each recommendation. This scale ranges UPR recommendations into five categories from the least action to the most specific one: recommendations in category 1 are those which request *limited action* (most of the time to share experience or require the help of the international community); those in category 2 are requesting to *continue an action*; those in category 3 to consider *taking an action*; those in category 4 to take a *general action* (improve the situation of minorities) and those in category 5 to take a *specific action* (amend a law, set up a mechanism).[7]

Division of recommendations among categories over the seven sessions are as follow: Category 1 – 302; Category 2 – 1669; Category 3 – 1019; Category 4 – 4110 and Category 5 – 3162.

A various number of issues have been raised over the sessions. The five most frequent issues are: International instruments – 1808; Women's rights – 1689; Rights of the Child – 1541; Justice – 855 and Torture and other cruel, inhuman or degrading treatment – 721.

To summarize the statistical data, we shall note that participation of the Member States was high, although the level had varied from one session to another. The quantitative results are quite impressive: in the course of only 2.5 years the HRC delivered a great number of conceptual and practical recommendations for the UN Member States within the UPR mechanism.

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[6] UPR Info, "Database of UPR Recommendations," available at http://www.upr-info.org/database/
[7] McMahon, Edward R. "Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council," July 2010. Available at http://www.upr-info.org/IMG/pdf/McMahon_Herding_Cats_and_Sheeps_July_2010.pdf

WHAT MAKES THE UPR A UNIQUE MECHANISM?

The UPR is unique due to its universality – it covers all the human rights issues in each and every UN Member State. This process sets the agenda of global human rights policy, an agenda whose success is based on the full collaboration of all parties of the process.

Emphasizing the fact that human rights are universal and should be the focus of all States, the UPR has managed to bring States together to discuss, in a peer-review model, the challenges faced when protecting human rights and what has to be done to advance States' obligations in this respect. During past decades it became an informal custom to put more attention on regions traditionally associated with human rights challenges, thus neglecting the challenges facing countries with supposedly high human rights standards. The UPR solves this problem by reviewing each State of the UN system and putting *equal* attention onto the relevant situations in every country. As mentioned by Human Rights Watch in its report: "Through the UPR, the Human Rights Council has examined country situations that are rarely spotlighted in international forums, and has shed light on human rights concerns in states with generally strong human rights performance where such issues would otherwise have been overlooked."[8]

The UPR is a mechanism which complements the work done by Treaty Bodies. It enhances and coordinates the UN human rights efforts. The UPR was not meant to replace the Treaty Bodies which monitor the implementation of the key human rights treaties. The UPR is carried out by the HRC which is a Charter-based body, whereas the Committees are based on the nine key international human rights treaties.[9]

The UPR does not limit itself to a certain human rights treaty. Its broad coverage from the UN Charter to national human rights policies allows it to assess the situation in States from different angles, both conceptually and in details touching upon specific cases or issues of human rights violations.

Being more of a policy *plus* practice model, the UPR serves as a merging mechanism for the whole UN human rights protection system, including the Treaty Bodies and the Special Procedures. The UPR creates a single space to collect all recommendations from UN human rights bodies and address them to States in due course. The interrelatedness of the UPR with Treaty Bodies, Special Procedures and country mandates reinforces the work of the HRC in particular and the UN human rights system in general.

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[8] Human Rights Watch, Report "Curing the Selectivity Syndrome. The 2011 Review of the Human Rights Council," June 2010. P.12. Available at http://www.hrw.org/en/node/91074/section/5
[9] For example, the Human Rights Committee reviews the reports on State's obligations under the ICCPR and its Optional Protocols, and examines the individual communications or complaints on the ICCPR violations.

UPR ANALYTICAL ASSESSMENT

Although the first UPR cycle is not over yet, the past seven UPR sessions have already given us enough information and insight to assess the extent of UPR efficiency and challenges. The UPR has a special mandate prescribed in the 5/1 UN HRC resolution of 18 June 2007 which provides inter alia for a number of key principles, objectives, and modalities to be maintained by the HRC when operating the UPR mechanism.[10] To analyze the extent of fulfilment of this mandate, UPR Info decided to study certain aspects that are well implemented in accordance with the mandate and those aspects that are preventing the HRC from efficient fulfilment of the UPR mandate.

What works to fulfil the UPR mandate?

The following aspects clearly indicate the positive results of the UPR process.

- **100% Participation of States**

As demonstrated above, the UPR maintains a 100% participation of States which is a significant accomplishment compared to for example, the Treaty Bodies system in which certain States skip sessions or do not submit reports for years. In the UPR sessions all States under Review were represented and they all proactively participated in their reviews. This fact shows the seriousness of the States' attitudes and the level of States' respect for the mechanism.

Hereby the UPR upholds the full coverage of the UN Member States including those States which are not party to the main international instruments and those which do not submit reports to Treaty Bodies or attend the Treaty Bodies' sessions.[11] Also, as mentioned previously, the UPR allows for a detailed assessment of the situation and revelation of human rights violations in those States which are considered to have good human rights standing.

- **All human rights are concerned**

The UPR is mandated to "promote the universality, interdependence, indivisibility and interrelatedness of all human rights."[12] The HRC manages to preserve this principle in an simple way: the reviews raise many important issues pertaining to all human rights, including and not limited to: child rights, women's rights, political, civil, economic, social and cultural rights etc. Each review, which is based on three reports and specific questions from the Working Group, strives to demonstrate the full picture of the human rights situation in the SuR.

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[10] Human Rights Council Res.5/1 *[Institution-building of the United Nations Human Rights Council]*.

[11] For instance Brunei Darussalam is not a party to the International Covenant on Civil and Political Rights and thus it is not possible for the UN treaty body – the Human Rights Committee – to examine the human rights situation in this country. However, within the UPR it was possible in December 2009 to raise all human rights issues taking place in Brunei Darussalam.

[12] Op.cit, HRC, 5/1 Institution-building of the United Nations Human Rights Council, B 1 (para. 3) a.

- **Space for NGO reporting and consultation with the SuR at the national level**

Though participation of NGOs in the UPR process is very limited, it can still make a difference. The space for State consultations with NGOs provides an opportunity for the latter to get involved in discussions with the SuR and declare an interest in the UPR session the SuR is supposed to undergo. This allows the SuR to be better prepared for a constructive dialogue and it also enhances cooperation between the NGOs and the SuR within the UPR process at its early stage. Certainly the effect of this may not be this pronounced. However, considering the fact that the UPR is a peer-review process aimed firstly at the States, the role allocated to NGOs can and should be used proactively and fully.

Most importantly NGOs are welcomed to submit their reports on the human rights situation in the SuR to provide an alternative perspective. NGOs enhance their role by using different strategic lobbying campaigns, making comments at plenary sessions, and getting involved in the follow-up process. To ensure the efficiency of the NGO participation, States need to cooperate with them and make positive use of this joint effort. Switzerland is one of the good examples of NGO and State cooperation which has been evident from the beginning of the review of Switzerland to the follow-up process. The Swiss government cooperated with the Coalition of NGOs at the stage of drafting the national report and now it continues to do so by partnering with NGOs to implement the recommendations received.[13]

- **Actions taken by some UN Member States to follow-up on the UPR recommendations**

Some States have already started the follow-up process to implement the recommendations made to them during their review. Specific actions include accession to international human rights treaties, change of domestic legislation to make it pro-human rights oriented, invitations for Special Rapporteurs to visit the countries, better reporting to Treaty Bodies, establishment of national human rights institutions (NHRI), and others.

One of the examples of States taking specific action was Barbados, which after the review opted for abolition of the mandatory death penalty and a change in its respective domestic legislation.[14] Other States have improved their reporting system to the Treaty Bodies. As mentioned by Rachel Brett, "Tunisia, reported in March 2007, under the item 6 general debate, that it had submitted its overdue reports to CAT, CEDAW and Human Rights Committee."[15] Bahrain's National Plans of Action included UPR recommendations, and moreover, the government of Bahrain formed a steering committee with NGO representatives to monitor the implementation of the Plans of Action.[16]

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[13] OHCHR, "Working with the United Nations Human Rights Programme: A Handbook for Civil Society," Chapter VII, p.147. Available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

[14] Brett, Rachel, "A Curate's Egg. UN Human Rights Council: Year 3. 19 June 2008 to 18 June 2009," Human Rights and Refugees Publications. Quaker United Nations Office. August 2009, p. 11. Available at http://www.quno.org/geneva/pdf/humanrights/ACuratesEgg200908.pdf

[15] Ibid, Brett, p.11.

[16] UPR Info, "Follow-up," available at http://www.upr-info.org/-Follow-up-.html

- **Putting the UN human rights system together**

The UPR is operating quite well in providing for the implementation of the HRC coordination and mainstreaming function. This function is prescribed to the HRC by the Resolution the General Assembly adopted when establishing the HRC.[17] Putting together all human rights bodies, agencies and actors within the UN system, the UPR provides for a much better coordination of action, recommendations, and improvement on the ground.

By using the information received from all the actors involved in human rights protection, including the SuR itself, UN agencies, Treaty Bodies and Special Procedures, NHRIs and NGOs, the UPR creates a space to reveal the problems the SuR has and give recommendations for improvement as well as to share the best practices and knowledge on human rights protection. This way the UPR enhances the global human rights protection action and monitoring.

What does not work to fulfil the UPR mandate?

Though the UPR has quite a few important positive and efficient aspects that help fulfil the mandate given by the HRC, there is a number of factors either preventing the mechanism to be efficient or affecting its efficiency.

- **List of speakers/Speaking opportunities**

States are restricted in their speaking opportunities during the review. Only two hours are allocated for the interactive dialogue and States usually only have two minutes each to raise questions or make recommendations. This time limit hinders States from expressing their thoughts or concerns about the respective SuR.

Similarly, only about 60 States, and often less, can take the floor within those two hours. The result is that not all States can take the floor and ensure a universal review. Very often the speaking time is taken over by the so called "friendly" States to the SuR. As we have seen in the section on statistics, the regional group of the SuR tend to be very active during the interactive dialogue. Sometimes these friendly States take a lot of time to praise the SuR's accomplishments rather than make constructive critiques. Limited speaking time and number of speakers contradicts to the principle of universality of the UPR.

- **Number of recommendations**

As a result of its comprehensive coverage of all human rights and freedoms and the success of the mechanism, the UPR has been subject to an increasingly large number of recommendations issued over the sessions.

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[17] Op. cit, G.A. Res. 60/251, para 3.

As seen above, the number of recommendations has tremendously increased. The average number of recommendations per State under Review went from 26 for States reviewed during session 1 to 134 for those during session 7. Bahrain, as the first State under Review at the UPR, received 12 recommendations while Iran during session 7 received 212.[18]

The high number of recommendations does impact on the quality of the implementation of recommendations and its assessment. Numerous similar recommendations can confuse the SuR on what measure is needed to be taken on a given issue. This can eventually distort the assessment of the number of recommendations accepted and implemented. Also, the high number of recommendations for small developing countries can discourage it from participating and cooperating with the UPR mechanism.

- **Type of recommendations**

While recommendations calling for technical assistance and sharing best practices (category 1), continue an effort (category 2), consider an action (category 3) and those of general action (category 4) are fully in line with the objectives of the UPR, specific and action-oriented recommendations are the most effective ones to improve the human rights situation on the ground. However, only 30.8% of recommendations made in the course of the seven sessions contain a specific action.

Recommendations of category 1 and 2 can be seen as a chance for the SuR to accept a high number of recommendations. The broad scope of recommendations which require minimal action or continuing action or even general action make it hard to measure the efficiency of the action taken on the ground. They will be easier to implement and SuRs will be able to present at the second cycle a high number of implemented recommendations which might not have had an impact on the ground.

Overall, 40% of recommendations made over the seven first sessions were of general action that is belonging to category 4. These recommendations give a lot of freedom to the SuR and make it very easy to accept them as one can hardly measure the implementation of those recommendations within a strict timeframe, i.e. by the next cycle.

States giving more recommendations of categories 1, 2 and 4, and less recommendations of categories 3 and 5 take away precious time from recommendations that require real change.

International human rights law which is the basis of the UPR provides for specific obligations to the States and thus the broad character of certain UPR recommendations is not appropriate for the specific character of rights contained in human rights treaties.

- **Responses to recommendations**

Responses to recommendations are key to the process as only accepted recommendations will be implemented by the SuR. The latter must provide clear responses to facilitate the monitoring of the

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[18] Op. cit, UPR Info, "Database of UPR Recommendations"

implementation at the second cycle. Resolution 5/1 provides that "Recommendations that enjoy the support of the State concerned will be identified as such" and that "other recommendations […] will be noted."[19]

Over the sessions, practices in responses to recommendations have evolved. Since the adoption of the Report of the Working Group of Israel and following interpretation of paragraph 32 of Resolution 5/1, SuRs are requested to "take note" of the recommendations that are not accepted.[20] States also consider many recommendations as "already implemented or in the process of implementation" de facto implying that no additional action will be requested from them.

UPR Info distinguishes four types of response: accepted (including the ones already implemented or in the process of implementation), rejected, not clear/general response and pending/no response. The latter also contains the "noted" recommendations as we consider that the SuR has not pronounced itself on them. Over the first seven sessions, out of the 10262 recommendations made, 6962 were accepted, 1338 rejected, 1220 received an unclear response and 742 are still pending. In total, 1962 recommendations, that is 19.1 % of all recommendations were neither accepted nor rejected. But as noted by Prof. McMahon, "many of these [not clear/general responses] appear to be *de facto* rejections of recommendations without so stating officially."[21]

An interesting and key aspect here is that quite a number of not clear/general responses are attributed to Category 5 which requires a specific action to be made by the SuR. In the course of Sessions 2 and 3 France and Luxembourg gave no clear position on any of the recommendations received by limiting their responses merely to general comments.[22]

States are more willing to accept the recommendations of categories 1, 2 and 4. This could be explained by the assumption that these recommendations require less effort than those of categories 3 and 5. Furthermore, accepting "easy" recommendations could give the impression that the SuR is willing to cooperate with the UPR mechanism to improve the human rights situation.

- **Reasons to reject recommendations**

Although the UPR is a mandatory process for every State to undertake, it gives the SuR a large degree of freedom in decision making. The UPR was created in a form of cooperative dialogue where every State is free to decide which recommendations to accept or reject. This is both a strength and weakness of the process. Assuming that a recommendation can potentially be irrelevant and contrary to international human rights law it is useful to have the rejection option. However, the weakness is that a number of

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[19] Human Rights Council Res.5/1 *[Institution-building of the United Nations Human Rights Council]*. E 3 (para. 32).
[20] UPR Info, "Egypt raises a point of order to ask Israel to answer all the recommendations," available at http://www.upr-info.org/+Egypte-raises-a-point-of-order-to+.html
[21] Op. cit. McMahon, p.10.
[22] France received 33 recommendations and Luxembourg – 18 recommendations. See more in official addendums containing the States' responses. Addendums are available at UPR Info, Addendum on France http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/A_HRC_8_47_Add1_France_E.pdf; Addendum on Luxembourg http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/121/84/PDF/G0912184.pdf?OpenElement.

strong and specific recommendations that could lead to fundamental changes in the human rights agenda on the ground may also be rejected due to this freedom in decision making. This illustrates the difference between the UPR and the Treaty Bodies system where the Committees of experts do not rely on the States' good will and responsibility, but rather impose the recommendations for mandatory implementation.

While it is understandable to give a State leeway to reject any recommendation, reasons for rejection should be valid. In practice, certain States tend to reject recommendations on irrelevant and inappropriate grounds. Pakistan and Iran rejected recommendations because they were "neither universally recognized human rights nor conform to its existing laws, pledges and commitments" and Uzbekistan and Egypt did so because the recommendations were "factually wrong."[23]

Turkmenistan rejected the recommendation on "decriminalising sexual relations between consenting adults of the same sex and taking steps to promote tolerance in this area" and claimed that societies are free to adopt laws "based on their own moral standards and national traditions."[24] However, the reference to the domestic legislation contradicts Article 27 of the Vienna Convention on the Law of Treaties which states that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[25] Human rights are universally recognised and should not be differentiated by country specificities and domestic legislations which are not in line with international treaties a State has committed to.

States giving irrelevant reasons for rejecting recommendations that could protect the human rights of its people prevent the HRC from successfully implementing the UPR mandate. Such actions hinder the objective of the UPR which is to improve the global human rights situation.

- • **Wrong perception of the review in Geneva as the only part of the UPR process**

In the course of the past sessions it was observed that certain States share an incorrect perception of the Working Group stage. Rather than seeing the UPR as a continuing process, they seem to identify only with the public review in Geneva after which they do not really need to take further action. Some States even congratulate each other after the 3-hour review as if they passed an exam. This is an erroneous perception of the UPR. The Working Group in Geneva is only a moment of the whole process within which the SuR has to put visible efforts to address the human rights problems.

The reason for States to be interested mainly in "passing" the Geneva part of the UPR process is a lack of concern for the follow-up which is a vital part of the mechanism. When accepting or rejecting

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[23] UPR Info, "Debate over Iran's reasons for rejecting recommendations," available at http://www.upr-info.org/+Sweden-responds-to-Egypt-s-reasons+.html; "Sweden responds to Egypt's reasons for rejecting recommendations," available at http://www.upr-info.org/+Sweden-responds-to-Egypt-s-reasons+.html

[24] FIACAT, "Universal Periodic Review: An Ambivalent Exercise," Report and Recommendations. April 2008 – December 2009, (December 2009), p. 19. Available at http://www.upr-info.org/-Articles-and-analyses-.html

[25] Vienna Convention on the Law of Treaties, Art. 27. Source: UN Treaty Collection (United Nations, 2010). Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

recommendations, States tend to be more concerned with the amount of effort and costs they would have to bear in implementing the recommendations rather than the long term value of implementing a pro-human rights recommendation.

- **Weak Troika**

The Troika – a group of three rapporteurs selected by lot among HRC members and assisting the Working Group – was given the power by the HRC Resolution 5/1 and the President Statement on Modalities and Practices for the UPR to receive written questions before the review, facilitate the review and prepare and present the Working Group report.[26]

In practice, the Troika's role is weakened by the fact that it does not really lead the review and the interactive dialogue. Besides, States are not very active in submitting their written questions on the SuR to the Troika in advance though doing this could secure time to voice important findings on the SuR human rights policy or situation.

The fact that the Troika is composed by the drawing of lots among HRC members and has no other impartial external experts results in its lack of expertise in the review notably leading to States giving recommendations which are contrary to the international human rights law. In case this key finding is not addressed properly it will influence the UPR's competence within the international legal human rights framework.

- **No mechanism to measure the implementation of recommendations**

Although the recommendations are the main outcome of the UPR and have to be implemented by the SuR, so far there is no mechanism to measure the implementation of the UPR recommendations which could undermine the UPR process. As the first cycle is approaching its end, how will the HRC assess the level and quality of the States' cooperation with the UPR and their willingness to make positive changes and reforms in human rights protection? Absence of clear and objective assessment methods will make the second cycle less efficient since the very idea of the UPR mechanism lies in the implementation of recommendations. If effective follow up indicators are not developed, there is a serious threat that the UPR initiative will lose its credibility.

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[26] Op. cit. HRC Res.5/1. Para. 18 (d); G.A. Res. 8/PRST/1: *[President statement on modalities and practices for the Universal Periodic Review Process].*

PRACTICAL RECOMMENDATIONS FOR STRENGTHENING AND BETTER EFFICIENCY OF THE UPR

UPR Info is of the view that the UPR should be enhanced from a practical side that would give quicker, efficient and quality-based results. This approach will strengthen the UPR mechanism and add bona fide value to it. The following recommendations pursue this practical approach.

- **Improve the system of allocating the speaking time to States**

Considering serious problems with restricted speaking opportunities of States during the review, it is recommended to extend the review session from 3 to 4 hours or even more. Since the intervention/speaking time is only 2 minutes due to time constraints, extending the review up to at least 4 hours would make a real difference and provide for delivery of more and longer statements by States.

Because of the time limit which restricts States to express all their concerns or give all their recommendations to the SuR, one way of improving the speaking time system would be through better use of written questions. Currently the majority of States are still reluctant to submit written questions though this saves time which can be better used for States' interventions. More attention should be put onto written questions by delegations. As noted by Rachel Brett: "Encouraging greater use of written questions would make sense in order to enhance the substance of the review."[27]

To this end, the time allocated to the SuR could be extended to 1,5 hours. 15 minutes would be devoted to the presentation of the national report, 30 minutes to respond to advance questions and 45 minutes to respond to questions during the interactive dialogue.

- **Strengthen the character of the UPR recommendations and States' responses**

Since the UPR recommendations are key to the mechanism, it is necessary to provide for their effective implementation and ensure States' willingness to cooperate with the HRC in making changes on the ground.

1. Recommendations need to be action-oriented and specific

To secure the efficiency of the UPR, recommendations should be specific and more action oriented. To this end, States need to make such recommendations to the SuR. Being action oriented means that a recommendation must contain a measure to be implemented and not only an aim to achieve. The recommendation should be explicit on how to achieve its goal.

2. States to provide a clear response to each recommendation

As seen above, besides the "Accepted" and "Rejected" responses, numerous SuRs give "General Response" or even "No Response" to recommendations. States have to provide clear responses to each

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[27] Op. cit. Brett, p.7.

and every recommendation they receive. These responses should be given in advance and in writing in an addendum to ensure transparency and predictability and show States' attitude and willingness to cooperate with the mechanism.

The General Responses should not serve as an answer to specific and concrete recommendations and the "No Response" should be eliminated in order to ensure accountability of the SuR and provide clear picture of which recommendations are accepted and should therefore be implemented.

3. Ensure that States do not reject recommendations from Treaty Bodies and Special Rapporteurs

It is important to distinguish recommendations coming from Treaty Bodies and Special Rapporteurs stated in the OHCHR compilation, from recommendations made by States.

Treaty Bodies monitor the implementation of international obligations undertaken by the States when signing or ratifying the respective treaties. Therefore the legal nature of these treaties makes it mandatory for the States to comply with recommendations given by the Treaty Bodies. The UPR should not undermine the system of treaty bodies by allowing States to reject them. Therefore they should be distinguished from other recommendations when made during the interactive dialogue and in Reports of the Working Group.

4. In case a recommendation from a delegation is rejected, a detailed explanation has to be provided by the SuR

The UPR is a peer-review process based on States' cooperation and political will. Rejection of recommendations coming from States should be regulated in order to ensure the accountability of the SuR. Thus a detailed explanation would demonstrate the States' cooperation within the UPR. Good practices have been shown by Barbados (Session 3) and Bosnia and Herzegovina (Session 7) which gave extensive explanations to all recommendations, including those rejected and partially accepted.[28]

- • **Strengthen the role of the Troika**

To add value into the UPR process, the Troika could focus on playing a more significant role *before*, *during* and *after* the review.

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[28] See more in official addendums containing the States' responses. Addendum on Barbados is available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BB/A_HRC_10_73_Add1_Barbados_E.pdf; addendum on Bosnia and Herzegovina is available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A_HRC_14_16_Add.1_Bosnia%20and%20Herzegovina.pdf

Several actions could be taken to strengthen the role of the Troika:

1. Nominate a human rights law expert into the Troika

This step could tackle the problem of lack of expertise within the Troika and ensure that Troika is able to comment on recommendations or statements that are not in line with the human rights treaties the review is based on.

The idea of bringing expertise into the UPR was also noted by Human Rights Watch.[29] Hereby we are suggesting that the expertise should be put within the framework of the Troika as this way it would be central, it could enhance the Troika's role, and provide for legal advice or consultation on human rights.

2. The Troika to read out loud the written questions submitted in advance during the review

Here the HRC could encourage States to submit questions to the Troika in writing, in advance, in order to ensure for States' full participation during the review session. The Troika would then give priority to these questions. To provide for this priority the Troika could read the written questions out loud so they are included into the Report of the Working Group. Then the SuR could be asked to give responses to these questions in its introduction which would increase the responsibility of the SuR and the emphasis on advance questions.

3. The Troika to provide more input into the interactive dialogue and the adoption of the review

To facilitate the review process and the interactive dialogue in particular, the Troika could present the main issues contained in the three documents the review is based on. This could be done at the beginning of the interactive dialogue. Such a briefing would help the Troika add value into the process and make a sensible input into the content of the dialogue.

The same could be done at the final stage of the UPR process, i.e. adoption of the review. The Troika would this way ensure the international community is aware of the main issues of concern or main critical challenges the SuR is facing.

- **Strengthen the role of NGOs**

Although NGOs and other stakeholders are legitimate and recognized actors of the UPR process, their role is marginalised and limited to formal and brief participation in national consultations, submission of a 5-page report (10-page for coalitions of NGOs), and 20-minutes of total speaking time for all NGOs at the HRC Plenary session after the review.

NGOs today represent a strong sector with extensive expertise in human rights which can add constructive value into the UPR process as well as to all the other mechanisms of human rights protection. Using NGOs' expertise and better cooperation with them would be beneficial for the HRC in general and the UPR in particular. NGOs enhance the UPR through their active participation.

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[29] Op. cit, Human Rights Watch, p.14.

The role of NGOs can be strengthened in a number of ways, including the following:

1. National consultations should be made more thorough

The process of national consultations which the State is responsible for is at times formal, brief and may include pro-governmental NGOs rather than a full range of stakeholders. To tackle this problem and make this process more thorough and participatory for NGOs, the HRC should pay more attention to it. This could be done through the engagement of OHCHR regional offices. OHCHR could follow the process of national consultations more closely and include its observations into its report to the HRC.

2. Allocate more time for NGOs at the Plenary adoption

NGOs are only allowed to speak at the HRC Plenary Session held a few months after the actual UPR session. Furthermore, their speaking time is restricted to only two minutes each. The current speaking opportunity for NGOs seems to be just a formality. This right to speak should be protected and strengthened by giving NGOs more time to speak. This will allow them to make substantial and valuable interventions which would benefit the UPR process and the SuRs.

3. Non-ECOSOC NGOs to be allowed to take the floor at the Plenary adoption

Limiting the list of NGOs that can take the floor only to those with ECOSOC-status creates a barrier for NGOs to take part in the process. In addition to the limited speaking time, this ECOSOC requirement discourages NGOs from expressing civil society views on States' human rights problems or the UPR in general.

Currently it is mostly international NGOs or Geneva-based groups with ECOSOC-status which take the floor. The HRC, by removing the ECOSOC requirement, will encourage more national and grassroots NGOs to take part in the UPR process.

In addition, the removal of this requirement would be in line with the UPR spirit as non ECOSOC-status NGOs can send submissions to the OHCHR for the Stakeholders summary.

- **Enhance the follow-up process**

The follow-up needs to be a productive and efficient process for each and every state, so it would not just become a matter of quantitative implementation of a number of UPR recommendations on the ground but a quality-based implementation.

The follow-up process could be strengthened by active participation and monitoring by the OHCHR regional offices, UN agencies, NHRIs and NGOs that could play an important role on the ground. The HRC could recommend States to engage the civil society into the follow-up. Considering the fact that NGOs are actors of the UPR process, they could contribute to implementation of the UPR recommendations.

The process could start with the organisation of yearly coordination meetings in the State between the government, the OHCHR regional office, UN agencies, the NHRI and NGOs. Under item 6 (General Debate) of the HRC Resolution, not only States, NGOs and NHRIs could report on implementation, but

also UN agencies and regional offices. As a result the coordination of all actors involved in the UPR would be ensured in the most efficient manner.

For the follow-up process to be successful, the HRC through OHCHR offices could help the States and share the best practices of implementation with them.

Another recommendation would be to establish a concrete mechanism to evaluate the implementation of recommendations by the States. The role of OHCHR regional offices could be crucial for delivery of information to the HRC. The OHCHR conclusions could then be presented by the Troika during the second cycle.

- **Second cycle**

As the second cycle approaches it is essential for the HRC to prepare an effective strategy for it. Inter alia this strategy should be based on lessons learnt from the first cycle and demonstrate the enhancement of the UPR mechanism.

It is recommended that the second cycle concentrates on the human rights situation in the UN Member States *and* their implementation of recommendations received during the first UPR cycle. The second cycle should not function as a mere continuation of the first cycle as it would decelerate the whole process. At the onset of the second cycle the HRC should have all the information on the States' implementation of the UPR recommendations and be able to assess the development of the human rights situation.

For the second cycle to be well organised the HRC could ask all the actors submitting reports for review sessions to include a section in each of the three reports on the status of implementation of the UPR recommendations. OHCHR in its turn could draft a fourth report solely on the implementation of recommendations accepted by the States.

During the second cycle it is crucial that the SuRs are challenged on the recommendations which they did not implement. In such cases, and in cases where recommendations were rejected, it is important that States are allowed to make the same recommendations again. Such a measure will show the pro-human rights persistence the States should have when giving recommendations to their peers rather than letting the politics take over human rights agenda.

CONCLUSION

As a part of the 2011 HRC review, the UPR process and its modalities have to be re-considered to make the most of this unique mechanism and make it as effective as possible. The UPR is a unique element of the HRC and the whole UN human rights system. It demonstrates the level of efficiency of interstate work and States' willingness to make real changes to improve the human rights situation on the ground and eliminate practices which prevent people from exercising their rights and freedoms.

The UPR has to be reinforced both practically and conceptually by bringing the mechanism in line with its fundamental principles which state that the UPR has to "[b]e conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner."[30]

The concrete recommendations presented in this analytical assessment are all based on the practical aspect of the UPR mechanism and are aimed to add real and sensible value into the UPR functioning. Covering the roles played by each actor of the process (the States, the Troika, the Treaty Bodies/Special Procedures, OHCHR, NGOs and other stakeholders), this analytical assessment proposes recommendations which strengthen the very essence of the UPR process without leaving behind the importance of its procedural part.

This analytical assessment based on the past seven UPR sessions demonstrates that conducting the UPR process in an efficient and cooperative manner can bring noticeable results, and that it is crucial to tackle the aspects of the UPR that do not work or that prevent the UPR from fulfilling its mandate.

The findings presented herewith show that the real efficiency of the UPR depends on all the actors involved and their full collaboration with each other. By dedicating a significant part of this analytical assessment to the UPR recommendations, its current challenges have been highlighted as well as States' attitude to them and solutions were suggested to make recommendations more structured and provide for constructive responses from States.

The application of this analytical assessment could reinforce the very idea of the UPR process and help strengthen the mechanism by making it more efficient and better organised. The recommendations on enhancing the UPR would help fulfil the mandate of this unique mechanism and may be potentially reflected in amending or changing the UPR modalities and practices to ensure that real differences are taking place globally and on the ground for robust protection and promotion of human rights and freedoms.

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[30] Op.cit, HRC, 5/1 Institution-building of the United Nations Human Rights Council, B 1 (3) g.

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