

Bolivia

Mid-term

Implementation

Assessment



*Promoting and strengthening
the Universal Periodic Review*
<http://www.upr-info.org>

Introduction

1. Purpose of the follow-up programme

The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.

A/HRC/RES/16/21, 12 April 2011 (Annex I C § 6)

The Universal Periodic Review (UPR) process takes place every four and half years; however, some recommendations can be implemented immediately. In order to reduce this interval, we have created an update process to evaluate the human rights situation two years after the examination at the UPR.

Broadly speaking, *UPR Info* seeks to ensure the respect of commitments made in the UPR, but also, more specifically, to give stakeholders the opportunity to share their opinion on the commitments. To this end, about two years after the review, *UPR Info* invites States, NGOs, and National Institutions for Human Rights (NHRI) to share their comments on the implementation (or lack thereof) of recommendations adopted at the Human Rights Council (HRC) plenary session.

For this purpose, *UPR Info* publishes a Mid-term Implementation Assessment (MIA) including responses from each stakeholder. The MIA is meant to show how all stakeholders are disposed to follow through on, and implement their commitments. States should implement the recommendations that they have accepted, and civil society should monitor that implementation.

While the follow-up's importance has been highlighted by the HRC, no precise directives regarding the follow-up procedure have been set until now. Therefore, *UPR Info* is willing to share good practices as soon as possible, and to strengthen the collaboration pattern between States and stakeholders. Unless the UPR's follow-up is seriously considered, the UPR mechanism as a whole could be adversely affected.

The methodology used by UPR Info to collect data and to calculate index is described at the end of this document.

Geneva, 22 November 2012

Follow-up Outcomes

1. Sources and results

All data are available at the following address:

<http://followup.upr-info.org/index/country/bolivia>

We invite the reader to consult that webpage since all recommendations, all stakeholders' reports, as well as the unedited comments can be found at the same internet address.

15 stakeholders' reports were submitted for the UPR. 14 NGOs were contacted. 1 UN agency was contacted. The Permanent Mission to the UN was contacted. The domestic NHRI was contacted as well.

5 NGOs responded to our enquiry. The UN agency did not take part in the Programme. The State under Review did not respond to our enquiry. The domestic NHRI did not respond to our enquiry either.

IRI: 14 recommendations are not implemented, 10 recommendations are partially implemented, and 8 recommendations are fully implemented. No answer was received for 87 out of 122 recommendations.

2. Index

Hereby the issues which the MIA deals with:

rec. n°	Issue	page	IRI
1	Justice, Corruption,	page 9	partially impl.
2	Justice	page 9	not impl.
3	Torture and other CID treatment, Rights of the Child, Labour,	page 12	not impl.
4	Minorities	page 5	not impl.
5	Justice	page 9	not impl.
9	Women's rights	page 12	fully impl.
10	Justice	page 10	not impl.
13	Migrants	page 5	fully impl.
17	International instruments, ESC rights - general,	page 9	partially impl.

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20	Technical assistance, Disabilities,	page 6	-
22	Indigenous peoples	page 6	partially impl.
24	Indigenous peoples	page 7	partially impl.
25	Women's rights, Rights of the Child,	page 12	partially impl.
27	Indigenous peoples	page 7	fully impl.
29	Women's rights, Rights of the Child, Indigenous peoples,	page 7	-
31	Indigenous peoples	page 8	partially impl.
48	Indigenous peoples	page 8	fully impl.
53	Justice	page 10	fully impl.
54	Justice	page 10	fully impl.
59	Justice	page 10	fully impl.
61	Indigenous peoples	page 8	not impl.
63	International instruments, Indigenous peoples,	page 8	not impl.
68	General	page 13	not impl.
69	Justice	page 10	not impl.
70	Trafficking, Rights of the Child,	page 12	not impl.
77	Sexual Orientation and Gender Identity, Human rights education and training,	page 11	partially impl.
78	Special procedures, Racial discrimination,	page 5	partially impl.
83	Rights of the Child, Detention conditions,	page 13	not impl.
86	Women's rights, Trafficking, Rights of the Child,	page 13	not impl.
89	Treaty bodies, Racial discrimination,	page 5	partially impl.
90	Impunity, Justice,	page 10	fully impl.
92	International instruments, Death penalty,	page 9	not impl.
94	Women's rights	page 13	partially impl.
115	Justice	page 11	-
119	International instruments, Indigenous peoples,	page 8	not impl.

3. Feedbacks on recommendations

ESC Rights

Recommendation n°4: *Adopt the measures necessary to ensure that its social programmes reach the most vulnerable groups of society* (Recommended by Panama)

IRI: *not implemented*

Capacitación y Derechos Ciudadanos (CDC) response:

Estas medidas no cubren siempre la totalidad del territorio nacional, es necesario ampliar la cobertura y adaptar a las condiciones propias de cada región

Recommendation n°78: *Include the criminalization of all forms of racial discrimination in the draft bill on the elimination of all forms of discrimination, expected to be adopted by the Legislature, as recommended by the Special Rapporteur on indigenous people, the High Commissioner for Human Rights and the United Nations country team, if that has not yet been done* (Recommended by Guatemala)

IRI: *partially implemented*

CDC response:

En esta materia se ha avanzado en cierto modo, falta su fiel cumplimiento.

Recommendation n°89: *Promote the adoption, on a priority basis, of the draft bill for the prevention and elimination of all forms of discrimination and to consider favourably the criminalization of racial discrimination, in keeping with recommendations made by the Committee on the Elimination of Racial Discrimination and other international mechanisms* (Recommended by Mexico)

IRI: *partially implemented*

CDC response:

En esta materia se ha avanzado algo, hace falta trabajar la discriminación desde la educación.

Indigenous & Minorities

Recommendation n°13: *Consider intensifying its efforts to eliminate discrimination against migrants* (Recommended by Egypt)

IRI: *fully implemented*

Agua Sustentable (AS) response:

El gobierno boliviano ha institucionalizado una instancia de coordinación y vinculación con movimientos sociales denominado Viceministerio de Coordinación

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con Movimientos Sociales. Se ha desarrollado varios talleres en las ciudades de Potosí, La Paz, el Alto y otras localidades del interior del país, donde, entre otras organizaciones, asistió la Federación Sindical de Trabajadores en Carritos y Estibadores (migrantes indígenas originarios en las ciudades).

Recommendation n°20: *Continue active cooperation with international organizations on the provision of technical assistance to support people with disabilities (Recommended by Kyrgyzstan)*

IRI: -

AS response:

En el marco de la Ley N° 045 de fecha 8 de octubre de 2010, y su Decreto Reglamentario N° 762 de fecha 5 de enero de 2011, se ha conformado el Comité Nacional Contra el Racismo y toda forma de Discriminación, instancia presidida por el Viceministerio de Descolonización y conformada por

a) Instituciones Públicas:

1. Órgano Ejecutivo: Ministerio de Culturas, Ministerio de la Presidencia, Ministerio de Justicia, Ministerio de Gobierno, Ministerio de Educación, Ministerio de Economía y Finanzas Públicas, Ministerio de Planificación del Desarrollo y Ministerio de Defensa;
2. Órgano Judicial;
3. Órgano Electoral;
4. Órgano Legislativo: Comisión de Derechos Humanos de la Cámara de Diputados;
5. Gobiernos Autónomos Departamentales;
6. Gobiernos Autónomos Municipales;
7. Autonomías Indígenas Originario Campesinas.

b) Organizaciones Sociales;

c) Organizaciones Indígena Originario Campesinas;

d) Comunidades Interculturales y comunidades afrobolivianas;

e) Organizaciones Defensoras de los Derechos de las Mujeres, la juventud, la niñez y adolescencia, personas con discapacidad y sectores vulnerables de la sociedad;

f) Otras instituciones y/o organizaciones defensoras de los derechos humanos y de la sociedad civil.

Recommendation n°22: *Continue efforts to eliminate discrimination against indigenous peoples (Recommended by Azerbaijan)*

IRI: *partially implemented*

AS response:

El Comité Nacional contra el Racismo ha elaborado un diagnóstico de situación del Racismo en Bolivia cuyo resultado desemboca en un Plan de Acción del Estado Plurinacional contra el Racismo y toda forma de Discriminación, documento que se encuentra en pleno proceso de revisión para su posterior aprobación por las instancias correspondientes. Dicho plan contempla acciones específicas y generales en favor de la población vulnerada y en riesgo de vulneración de sus derechos por Racismo y/o Discriminación. Contiene las políticas públicas, que deben ser implementadas por el Estado Plurinacional, contemplando diversos ámbitos de acción, las cuales han sido trabajadas en talleres de consulta participativa de alcance departamental, regional y nacional.

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CDC response:

Se ha avanzado de esta tarea, falta realizar más actividades.

Recommendation n°24: *Continue efforts to ensure a life of dignity for members of indigenous communities* (Recommended by *Pakistan*)

IRI: *partially implemented*

AS response:

Se ha avanzado en el área de educación. En el marco de la Ley Educativa Avelino Siñani – Elizardo Pérez y respondiendo principalmente a las demanda de los pueblos indígenas originario campesinos se 2 formulo y consensuó el “Curriculum Base Plurinacional” de carácter intracultural, intercultural, plurilingüe, descolonizador, comunitario, territorial, productivo y participativo que será aplicado a partir de la gestión 2012 (que comienza el 6 de febrero de este año). Este curriculum toma en cuenta los ejes articuladores de armonía y equilibrio con la Madre Tierra, valores socio comunitarios, y la educación para la producción. Asimismo las lenguas indígenas originarias son tomadas en cuenta como instrumentos de comunicación, desarrollo y producción de saberes y conocimiento en todo el sistema educativo y el rescate de las tecnologías de las Naciones y Pueblos Indígena Originarios NyPIOs.

CDC response:

Se avanzó algo pero resta por hacer más por los indígenas

Recommendation n°27: *Continue efforts to implement the provisions of the new Constitution in order to ensure that indigenous peoples fully enjoy their rights* (Recommended by *Slovenia*)

IRI: *fully implemented*

AS response:

El Ministerio de Autonomías está promoviendo la constitucionalidad y compatibilización jurídica de los estatutos autonómicos indígena originario campesino en función de la Constitución Política del Estado (CPE) y el desarrollo legislativo, relacionado a los temas de producción agrícola y seguridad alimentaria, jurisdicción indígena, autodeterminación, no discriminación, respeto y promoción de lenguas originarias, con igualdad y equidad de género.

Por otra parte se dio cumplimiento a la CPE, a través del referéndum de acceso a la conversión desde la base municipal a la Autonomía Indígena Originaria Campesina (AIOC) referéndum, en el que participaron 12 municipios, de los cuales 11 se pronunciaron por el SÍ a la conversión a la AIOC. En ese marco, el gobierno ayudo a dichos municipios brindándoles capacitación en torno a la ruta que debían de seguir, como es la conformación de su órgano deliberativo para la elaboración del estatuto autonómico.

CDC response:

Se les otorgo derechos, ahora se deben respetar esos derechos.

Recommendation n°29: *Continue its work to eliminate discrimination against women and children among indigenous peoples* (Recommended by *Kyrgyzstan*)

IRI: -

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AS response:

El Programa Matrimonios Colectivos desde Nuestra identidad con el objetivo de constituir un nuevo modelo de familia basado en los valores indígenas de complementariedad y reciprocidad entre hombres y mujeres, padres e hijos, como instancia donde se trabaje la erradicación de la violencia contra las mujeres indígenas, en cuanto esposas, en cuanto madres y en cuanto hijas

Recommendation nº31: *Continue to consolidate the rights of indigenous peoples both in practice and within its legal framework, thereby guaranteeing their participation and consultation* (Recommended by Venezuela)

IRI: *partially implemented*

AS response:

Se han desarrollado algunos procesos de consulta, sin embargo por los conflictos del Tipnis, el gobierno ha aprobado la Ley de Consulta, donde se está llevando a cabo este proceso, pero con dificultades por la resistencia de algunos grupos indígenas de la zona.

Recommendation nº48: *Continue to strengthen the rights of indigenous peoples, placing priority on the adoption of a law to prevent and eliminate all forms of discrimination and criminalizing such offences* (Recommended by Venezuela)

IRI: *fully implemented*

AS response:

Aprobación Ley de antidiscriminacion y no racismo

Recommendation nº61: *Ensure that all judgments and sentences handed down by indigenous courts respect international provisions and, in that regard, to establish an appeals system and an independent monitoring system* (Recommended by Switzerland)

IRI: *not implemented*

+

Recommendation nº63: *Ensure that the implementation of indigenous systems of justice conforms to international human rights standards, including those set out in the Convention on the Elimination of All Forms of Discrimination against Women* (Recommended by Canada)

IRI: *not implemented*

+

Recommendation nº119: *Take the measures necessary to ensure that the traditional indigenous justice system complies with the provisions of the international human rights treaties that Bolivia has ratified* (Recommended by Netherlands)

IRI: *not implemented*

AS response:

Todavía no se está implementando

International Instruments

Recommendation nº17: *Consider ratifying, as early as possible, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Second Protocol thereto (Recommended by Argentina)*

IRI: *partially implemented*

World Coalition Against the Death Penalty (WCADP) response:

We sent letters and organised a lobbying mission in fall 2011 to ask the government to implement this recommendation to ratify the Second Optional Protocol to the ICCPR. Our delegation was received by officials of the Ministry of Foreign Affairs who showed its support for the ratification. The process seems to be underway.

Recommendation nº92: *Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (Recommended by Switzerland)*

IRI: *not implemented*

CDC response:

Hay que ratificarlo.

Justice

Recommendation nº1: *Accelerate judicial reforms in order to ensure the independence and impartiality of the system and a corruption-free environment (Recommended by Slovakia)*

IRI: *partially implemented*

CDC response:

Aunque se llevó a cabo la elección por voto directo de estas autoridades y el reconocimiento de la justicia comunitaria, todavía está en cuestionamiento la independencia e imparcialidad del sistema judicial.

Recommendation nº2: *Adopt legislation, fill vacancies and provide adequate resources to ensure that institutions such as the judiciary, which play a vital role in protecting and implementing human rights, are independent and effective (Recommended by Canada)*

IRI: *not implemented*

CDC response:

No se aprobó la legislación necesaria, recién se están completando la designación de autoridades y los recursos económicos no son suficientes.

Recommendation nº5: *Adopt the measures necessary to ensure the independence of the judicial branch from the executive branch in order to promote the rule of law and guarantee the proper functioning of the Constitutional Court and the Supreme Court (Recommended by Italy)*

IRI: *not implemented*

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CDC response:

Hacen falta más pruebas contundentes que prueben la independencia del Tribunal Constitucional y de la Corte Suprema

Recommendation nº10: *Conclude a thorough and impartial judicial investigation into the acts of violence in Pando* (Recommended by United Kingdom)

IRI: *not implemented*

+

Recommendation nº69: *Expedite impartial investigations into the violent incidents in Santa Cruz and Pando with a view to identifying those responsible and bringing them to justice in a fair trial before an independent court* (Recommended by Austria)

IRI: *not implemented*

CDC response:

Han pasado cerca de cinco años y aún no se encontró a los responsables de ambas acciones violentas.

Recommendation nº53: *Delay no longer in appointing members of the highest judicial authorities and to ensure the impartiality of those members* (Recommended by Denmark)

IRI: *fully implemented*

CDC response:

Recientemente se hizo el nombramiento.

Recommendation nº54: *Designate members of the Supreme Court and the Constitutional Tribunal who are of proven technical ability and are independent of any external influence* (Recommended by Norway)

IRI: *fully implemented*

CDC response:

Esto se hizo aunque se cuestiona su independencia

Recommendation nº59: *End the paralysis of the Constitutional Tribunal by appointing new judges* (Recommended by Germany)

IRI: *fully implemented*

CDC response:

Se eligieron estas autoridades aunque el proceso electoral fue muy cuestionado.

Recommendation nº90: *Promptly adopt effective measures to ensure that the judicial authorities are elected by direct universal suffrage, in order to guarantee the independence and impartiality of the judicial bodies, often represented by members of elite classes as a result of unsound management by previous Governments, which has caused impunity and delays in the area of justice* (Recommended by Nicaragua)

IRI: *fully implemented*

CDC response:

Esto se ha llevado a cabo en el país aunque fueron elecciones muy cuestionadas.

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Recommendation n°115: *Take measures to ensure that the Constitutional Court, which is provided for under the Constitution, becomes functional as soon as possible (Recommended by Algeria)*

IRI: -

CDC response:

Se eligieron a las autoridades judiciales aunque las elecciones fueron muy cuestionadas por la propia ciudadanía, eso por lo menos dicen los resultados electorales.

SOGI

Recommendation n°77: *Include sexual orientation and gender identity in all laws and initiatives combating discrimination and promoting equality, and to develop public education and sensitivity programmes and make them available, including to police, military, judicial, prison and other authorities (Recommended by Netherlands)*

IRI: *partially implemented*

Manodiversa response:

a) Si bien el Artículo 14 Inciso II de la Constitución Política del Estado aprobada en el 2009 el Estado prohíbe y sanciona toda forma de discriminación incluida la orientación sexual e identidad de género, sin embargo el artículo 63 de la misma Constitución Política del Estado solo reconoce el matrimonio y las uniones libre y de hecho solo entre un hombre y una mujer, lo que se contradice con el artículo 14 de esta misma CPE.

b) El DS 29851 Plan Nacional de Acción denominado “Bolivia digna para Vivir Bien 2009 – 2013” el mismo en el Capítulo 7 contempla acciones a favor de los Derechos de las personas con diferente orientación sexual e identidad de género de los cuales se han cumplido solo las siguientes acciones: Ley contra la discriminación, promover mediante la Cancillería de Bolivia u otras instancias gubernamental el apoyo y la defensa a la inserción de la no discriminación por orientación sexual e identidad de género, reconocer mediante decreto supremo el 17 de mayo y 28 de Junio como fecha conmemorativas de la población LGBT, quedando por hacer más del 70% de las acciones comprometidas por el Estado Plurinacional de Bolivia.

c) Se ha aprobado y La Ley 045 contra el racismo y toda forma de discriminación en su artículo 5 define los conceptos de homofobia y transfobia y en su artículo 281ter y 281quarter penaliza la discriminación incluida la ejercida por orientación sexual e identidad de género.

d) El Estado Plurinacional de Bolivia y en especial el Ministerio de Justicia no ha brindado capacitaciones en derechos humanos tanto al ejército como a la policía boliviana para reducir la homofobia y la transfobia en estos sectores, la sociedad civil LGBT organizada ha realizado algunas actividades dirigido a estos sectores.

e) El Estado Plurinacional de Bolivia y en especial El Ministerio de Educación no han desarrollado programa educativos y de sensibilización acordados para la disminución

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de la discriminación por orientación sexual e identidad de género, la homofobia y la transfobia.

Women & Children

Recommendation n°3: *Adopt specific measures to protect boys, girls and adolescents from all violence against them, to eradicate child labour, to combat the exploitation of boys, girls and adolescents and to prohibit all forms of corporal punishment* (Recommended by *Costa Rica*)

IRI: *not implemented*

CDC response:

Todas estas medidas se están implementadas pero de manera parcial, aún resta demasiado por hacer.

Global Initiative to End All Corporal Punishment of Children (GIEACPC) response:

Since the initial UPR of Bolivia in 2010, no new legislation has been enacted to prohibit corporal punishment of children. The law protects children only from corporal punishment which reaches a threshold at which it is considered to be harmful; less severe corporal punishment is legally defensible under article 276 of the Criminal Code. Furthermore, with regard to juvenile justice the Children and Adolescents Code states that traditions and customs of indigenous communities should be taken into account. These have traditionally included sentences of corporal punishment.

Recommendation n°9: *Approve, as soon as possible, the draft law against assault and gender-based political violence* (Recommended by *United Kingdom*)

IRI: *fully implemented*

CDC response:

Esto se ha efectuado, aún resta realizar la reglamentación

Recommendation n°25: *Continue efforts to ensure equal opportunities for girls and women in terms of education, access to employment, housing and working conditions* (Recommended by *Egypt*)

IRI: *partially implemented*

CDC response:

Se dieron algunos pasos y algunas instituciones también trabajan con estos sectores sociales.

Recommendation n°70: *Expediently adopt, implement and monitor policies and programmes aimed at combating the sale of children and sexual exploitation and trafficking* (Recommended by *Slovakia*)

IRI: *not implemented*

CDC response:

En esta materia se hizo muy poco, se debe trabajar más y mejor.

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Recommendation n°83: *Intensify efforts to improve the situation in detention centres and prisons, with a special focus on ensuring the separation of juvenile convicts from adult inmates* (Recommended by Slovakia)

IRI: *not implemented*

CDC response:

Las condiciones de vida en las cárceles son inhumanas, deben mejorarse.

Recommendation n°86: *Make greater efforts to protect children and women from all forms of abuse, in particular trafficking and domestic violence* (Recommended by Slovenia)

IRI: *not implemented*

CDC response:

La violencia contra las mujeres y niños se ha intensificado en el último tiempo se debe luchar contra la violencia doméstica.

Recommendation n°94: *Repeal without delay all legislation that discriminates against women, including discriminatory provisions in its criminal and civil law* (Recommended by Netherlands)

IRI: *partially implemented*

CDC response:

En el país se hizo algo en esta materia, debe hacer más.

Other

Recommendation n°68: *Expand its ongoing policies and programmes in order to consolidate the realization of a Bolivia that is plurinational and based on equality and social justice for all* (Recommended by Cuba)

IRI: *not implemented*

CDC response:

Hay que trabajar bastante en esta temática, no se hizo lo suficiente aún.

Methodology

A. First contact

Although the methodology has to consider the specificities of each country, we applied the same procedure for data collection about all States:

1. We contacted the Permanent Mission to the UN either in Geneva (when it does exist) or New York;
2. We contacted all NGOs which took part in the process. Whenever NGOs were part of coalitions, each NGO was individually contacted;
3. The National Institution for Human Rights was contacted whenever one existed.
4. UN Agencies which sent information for the UPR were contacted.

We posted our requests to the States and NHRI, and sent emails to NGOs and UN Agencies.

The purpose of the UPR is to discuss issues and share concrete suggestions to improve human rights on the ground. Therefore, stakeholders whose objective is not to improve the human rights situation were not contacted, and those stakeholders' submissions were not taken into account.

However, since the UPR is meant to be a process which aims at sharing best practices among States and stakeholders, we take into account positive feedbacks from the latter.

B. Processing the recommendations

The persons we contact are encouraged to use an Excel sheet we provide which includes all recommendations received by the State reviewed.

Each submission is processed, whether the stakeholder has or has not used the Excel sheet. In the latter case, the submission is split up among recommendations we think it belongs to. Since such a task is more prone to misinterpretation, we strongly encourage stakeholders to use the Excel sheet.

If the stakeholder does not clearly mention neither that the recommendation was “fully implemented” nor that it was “not implemented”, UPR Info usually considers the recommendation as “partially implemented”, unless the implementation level is obvious.

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UPR Info retains the right to edit comments that are considered not to directly address the recommendation in question, when comments are too lengthy or when comments are defamatory or inappropriate. While we do not mention the recommendations which were not addressed, they can be accessed unedited on the follow-up webpage.

C. Implementation Recommendation Index (IRI)

UPR Info developed an index showing the implementation level achieved by the State for the recommendations received at the UPR.

The **Implementation Recommendation Index (IRI)** is an individual recommendation index. Its purpose is to show an average of stakeholders' responses.

The *IRI* is meant to take into account stakeholders disputing the implementation of a recommendation. Whenever a stakeholder claims nothing has been implemented at all, the index score is 0. At the opposite, whenever a stakeholder claims a recommendation has been fully implemented, the *IRI* score is 1.

An average is calculated to fully reflect the many sources of information. If the State under Review claims that the recommendation has been fully implemented, and a stakeholder says it has been partially implemented, the score is 0.75.

Then the score is transformed into an implementation level, according to the table below:

Percentage:	Implementation level:
0 – 0.32	Not implemented
0.33 – 0.65	Partially implemented
0.66 – 1	Fully implemented

Example: On one side, a stakeholder comments on a recommendation requesting the establishment of a National Human Rights Institute (NHRI). On the other side, the State under review claims having partially set up the NHRI. As a result of this, the recommendation will be given an *IRI* score of 0.25, and thus the recommendation is considered as “not implemented”.

Disclaimer

The comments made by the authors (stakeholders) are theirs alone, and do not necessarily reflect the views, and opinions at UPR Info. Every attempt has been made to ensure that information provided on this page is accurate and not abusive. UPR Info cannot be held responsible for information provided in this document.

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