

## COLUMN

# THE UNIVERSAL PERIODIC REVIEW OF THE UN HUMAN RIGHTS COUNCIL – AN NGO PERSPECTIVE ON OPPORTUNITIES AND SHORTCOMINGS\*

When the Human Rights Council (the Council) replaced the Commission on Human Rights (the Commission) in 2005, one of the key issues that this reform measure sought to address was the perception that the work of the Commission in relation to specific country situations had been selective and based on double standards. Far from addressing all situations of serious human rights violations, the Commission addressed just a handful and usually those countries that could not muster sufficient political support to avoid scrutiny.

The Council was therefore equipped with a new tool, the Universal Periodic Review (UPR), under which it reviews, currently on a four year basis, the fulfilment by all UN member States of their human rights obligations and commitments. Keen to avoid the confrontation inherent in most of the resolutions of the former Commission, member States stressed that the UPR should be a cooperative mechanism, ensuring the full involvement of the country under review. The flipside to this high degree of State control is there is a more limited role in the UPR for independent human rights experts and non-governmental organisations (NGOs) – in fact, in a key part of the UPR process, the interactive dialogue with the country under review, neither may participate. This puts the onus of ensuring that each dialogue addresses key human rights issues in a meaningful manner squarely on member States. This is a huge responsibility on State proponents of the UPR, as the credibility of the Council is inextricably linked to the credibility of the UPR.

However, although the UPR has considerably less ‘teeth’ than NGOs had originally hoped for,<sup>1</sup> the UPR provides an unprecedented opportunity to address in the UN’s principal inter-State human rights body the situation of human rights in all 192 UN member States and certainly situations that were never the subject of consideration or action by the Commission.

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<sup>1</sup> During the negotiations of the Human Rights Council Amnesty International campaigned for a review mechanism with human rights expertise at its centre, thorough analysis of each situation, a dedicated follow up mechanism and a greater role for civil society.



It is equally important to note that the Council has other mechanisms through which to address situations of human rights violations, including the adoption of resolutions at regular or special sessions, consideration under the confidential procedure, and through its Special Procedures.

#### *Objectives of the UPR*

The objectives of the UPR, as stipulated in Council Resolution 5/1,<sup>2</sup> emphasises its cooperative and non-confrontational character:

- Improvement of the human rights situation on the ground;
- Fulfilment of the State's human rights obligations and commitments;
- Enhancement of the capacity of the State to protect human rights;
- Sharing of best practice among States;
- Cooperation in the promotion and protection of human rights;
- Encouragement of full cooperation with the Council, its mechanisms and other UN human rights bodies.

#### *Basis for the review*

The review of each State, carried out by the UPR Working Group of the Council,<sup>3</sup> is based on three key documents:<sup>4</sup>

- A report of no more than 20 pages by the State coming up for review.<sup>5</sup> The Council has encouraged States to prepare their information through a broad consultation process at the national level with all relevant stakeholders.<sup>6</sup> In the first two rounds of review, in April and May 2008, many States under review held such consultations although some were held with very short notice and included only a narrow sector of civil society.
- A 10 page compilation, prepared by the Office of the High Commissioner for Human Rights (OHCHR), of information contained in the reports of the treaty bodies, Special Procedures and other relevant UN sources.
- A second 10 page summary, also prepared by the OHCHR, of additional 'credible and reliable information' by other stakeholders, e.g., submissions by NGOs,

<sup>2</sup> Human Rights Council Resolution 5/1, Institution-building of the United Nations Human Rights Council, adopted 18 June 2007.

<sup>3</sup> The UPR Working Group is composed of the 47 members of the Council and chaired by the President of the Council. All other UN member States may participate as observers in the UPR Working Group. NGOs, however, may only 'attend'.

<sup>4</sup> This information is available on the website of the OHCHR at: [www.ohchr.org/EN/HRBodies/UPR/Pages/search.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/search.aspx).

<sup>5</sup> Although the modalities of the UPR stipulate that the State under review may choose to present this information only orally, in the first two rounds of review all 32 States submitted such reports. All but one country submitted their report in advance of the review; South Africa did so only the day before its consideration by the UPR Working Group.

<sup>6</sup> Human Rights Council Resolution 5/1, Annex, para. 15(a).



women's groups, national human rights institutions, labour unions, and church groups.

This information, together with the outcome report of the review and the response by the reviewed State following the review, provides a unique snapshot of the situation of human rights in the country concerned – from its own perspective, that of the UN's human rights experts and civil society, as well as from that of other member States. These documents have a shelf life well beyond the review in the UPR Working Group, both in the Council itself using other means at its disposal of addressing the human rights situations, as well as in other forums.

#### *The interactive dialogue with the State under review*

Thorough analysis of the rich information basis for the country review would seem to be a key element of the UPR – yet hardly any is envisaged in the review process.

Resolution 5/1 stipulates that three rapporteurs, a *Rapporteur Troika*, be selected from among the members of the Council 'to facilitate each review' in the UPR Working Group. However, in subsequent decisions the Council has reduced the role of the rapporteurs to a mainly procedural one: the rapporteurs may receive questions in advance of the review from other member States and transmit these to the country under review; however, they are not to direct the review in any way. As a consequence, the 'review' is reduced to a question and answer session in the UPR Working Group between the State under review and other member States. There is no formal structure to the dialogue, no deliberate focus on the key human rights challenges in the country reviewed and measures to address these; rather interventions by member States in the Working Group come in the order their names have been entered on the list of speakers. Neither NGOs nor the Council's own human rights experts, the Special Procedures, are allowed to speak during the interactive dialogue. The State under review is given the floor at regular intervals to respond to issues and questions raised, and at the end of the session the State is again given the floor to sum up.

In turn, the outcome of the review consists of a report, prepared by the *Rapporteur Troika* in consultation with the reviewed State, summarising the interventions made in the Working Group and listing the recommendations made in the course of the dialogue. The State under review may indicate which of the recommendations it supports. This lack of a proper process to focus the dialogue would seem to be a missed opportunity to more effectively assist the State under review to enhance the fulfilment of its human rights obligations and commitment.

#### *Adoption of the outcome of the review*

The outcome of a country review is adopted in two stages: first in the UPR Working Group and subsequently in the Council plenary.<sup>7</sup>

<sup>7</sup> There is a standing item on the UPR, item 6, on the Council's agenda.



The adoption in the UPR Working Group of the outcomes of the first two rounds of review, in April and May 2008, went smoothly in the majority of cases. However, in some instances, certain States, and not always those under review, objected to inclusion of particular recommendations made during the dialogue.<sup>8</sup> This was particularly disappointing given the decision earlier in the review process, itself disappointing, that any recommendations made in the course of the review were to be considered as made by individual member States and not as enjoying the endorsement of the UPR Working Group as such.

After adoption in the UPR Working Group, the outcome reports are forwarded to the Council for formal adoption under the standing item on the UPR on the agenda. Up to one hour is set aside for the adoption of each outcome report, and in a welcome decision at the eighth session of the Council in June 2008 it was agreed, although not without some resistance from certain States, to divide the 60 minutes evenly between the State under review, other member States, and other stakeholders including NGOs. Having been excluded from taking the floor in the UPR Working Group, this was NGOs' first and only opportunity to comment in the Council on the dialogue and the outcome of the review before the Council's formal adoption. However, despite this certain States repeatedly tried to limit interventions by NGOs to those issues that had been addressed in the interactive dialogue in the Working Group, whereas many NGOs wanted in particular to raise some of those issues that had been dealt with only briefly or omitted altogether. It is crucial that this space, limited as it is, is retained for civil society voices.

#### *Implementation of the outcome of the reviews*

The ultimate measure of the effectiveness of the UPR as a human rights mechanism lies in the degree to which its recommendations are implemented by States. This is still to be seen.

However, there are also other risks to the effectiveness of the UPR: its emphasis on achievements and good practice, which some States used to heap much unwarranted praise on their friends, risks overshadowing the key human rights challenges which must be addressed to give effect to the first objective of the UPR: the improvement of the situation of human rights on the ground.

The greatest value of the UPR is undoubtedly as a catalyst to a national process of self-examination and improvement. The UPR must therefore be firmly anchored at the national level, including in consultation with civil society, throughout the process. The Council has encouraged States to hold inclusive, broad national consultations prior to the review in the UPR Working Group. It is equally important that States continue to consult about the implementation of the review's outcome.

<sup>8</sup> For example, Egypt objected to a recommendation concerning sexual orientation made during the review of Ecuador; however, in the end the objection was overcome when Ecuador stated that it supported the recommendation in question.