

**“TOWARDS IMPLEMENTATION: AN ANALYSIS OF THE
UNIVERSAL PERIODIC REVIEW MECHANISM OF THE HUMAN
RIGHTS COUNCIL”**

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This paper is about the Universal Periodic Review. As a new mechanism of the Human Rights Council, it has as its major goal the implementation of human rights standards and mechanisms created by the UN, including those enshrined in the Universal Declaration of Human Rights. Coming under the mandate of the Human Rights Council, the elaboration of this mechanism has been negotiated by the members and non-members of the Council and these negotiations are still continuing. As a consequence of these negotiations, NGOs have been given a more limited role to play in the UPR process. Understanding and working with this new process has been the preoccupation of most participants up to and including the first two sessions that have taken place in April and May of 2008. This paper provides a perspective of the UPR thus far and by highlighting some of the key problems of the mechanism, suggest ways NGOs and other stakeholders can work with the mechanism to increase their influence and participation in the this new and complex mechanism of the Human Rights Council.

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I. INTRODUCTION

The United Nations ('UN'), since 1948, has created conventions, declarations and principles concerning the promotion and protection of human rights. The *standards* created have contributed significantly to international human rights and humanitarian law. Over time, the UN has similarly created *mechanisms* to promote and protect human rights by monitoring the respect of states towards their international obligations. Yet *implementing* these human rights obligations is the responsibility and sovereign right of the country itself. These control mechanisms do not ensure states fulfil their responsibilities, as they are merely a tool to assist in the process of implementation. Within the framework of the UN reform process that began in 1997, the General Assembly ('GA') created a new *Human Rights Council* ('HRC', '*the Council*') in March 2006 to replace the existing Commission on Human Rights ('the Commission').¹

A. *The Human Rights Council in its context*

A major element to the reform process of the UN and within the context of the creation of the HRC, was the focus on states implementing their human rights obligations. The Office of the High Commissioner for Human Rights (OHCHR) took over a large part of this initiative under the leadership of their High Commissioner Ms. Mary Robinson. The initiative focuses on states implementing recommendations of the Special Rapporteurs and the final observations of the treaty bodies after the examination of the States' reports. Recently their initiative includes the new '*universal periodic review*' mechanism of the Council. All of these initiatives focus on implementing human rights on the spot.

B. *The Universal Periodic Review ('UPR')*

When the GA created the HRC, it handed to it all of the tasks and responsibilities of the Commission. In addition, it was decided the Council would refocus its efforts on improving human rights through dialogue and cooperation with the states. Therefore the GA provided the Council with a mechanism of a '*universal periodic review*' to encourage implementation by examining regularly the human rights situation in all

¹ *Resolution of the Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen. mtg, UN Doc. A/60/L.48. The Commission, on the other hand, had 53 members before its abolishment.

states, on an equal basis. This is to be done through cooperation and dialogue with the state.

This paper is about the UPR. As the GA did not provide specific procedures for the UPR, it has been left to the Council to negotiate.² Negotiations of these procedures began with the creation of the mechanism and will continue well into the future. It is therefore important to summarize and give an analysis of the work of the Council on the UPR up to its present 8th session. Since only the first two examinations have taken place, such an analysis cannot draw definite conclusions as the process is evolving and both states and NGOs are still working out how to adapt the mechanism to their needs and interests. The ultimate objective of this paper is to provide a perspective and analysis of the UPR to assist NGOs and other stakeholders in their use of this mechanism.³

² *Resolution concerning the Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, gen. mtg [5(e)], UN Doc. A/HRC/RES/5/1.

³ This analysis will be based on the observations of the author who observed both reviews, took note of the observation of others who were also present during the review (formal and informal interviews) and discussions that have taken place during the Geneva Course provided by *Geneva for Human Rights – Global Training*, held during the 7th and 8th Regular Session of the Human Rights Council in Geneva, Switzerland.

II. THE HUMAN RIGHTS COUNCIL (HRC)

Implementation of human rights standards and tools is the priority of the Council. One way the Council has attempted to achieve this has been through its membership criteria. The HRC consists of 47 member-states elected by the majority of the members of the GA.⁴ Under the HRC the number of terms a state can serve is limited. After two consecutive terms sitting on the Council, a state cannot re-apply immediately for a third term.⁵ The principles behind rotating membership are to prevent permanent-membership, to create an incentive for human rights-violating states to improve their human rights situation in order compete for membership on a regular basis and to guarantee the integrity of the Council by ensuring all states have a fair opportunity to participate.

The GA elects members by regions but on an individual basis.⁶ Previously, under the Commission, each regional group would present candidates for election into the seats allocated to their regional group. If the candidates exceeded the seats allocated then the Commission would vote on the membership. Common practice in the UN saw regional groups presenting ‘clean slates’ for election: precisely the same number of candidates as there are seats, thus ensuring that every nominee was successful. This meant states with problematic human rights records could be elected to the Commission if determined so by their respective regional groups. This drawback was particularly noted in May 2004 when Sudan was elected to the Commission at a time when it was being accused of crimes against humanity in its Darfur region.

Theoretically individual candidature prevents regional groups from determining membership of regions in the Council, though in practice this still occurs.⁷ Yet in May 2008 the African and Latin American Groups each had candidates equalling the

⁴ *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen. mtg, [14], UN Doc. A/RES/60/251. The Commission, on the other hand, had 53 members before its abolishment.

⁵ *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen mtg, [7], UN Doc. A/RES/60/251. As Annex A indicates, States such as the Netherlands who have been elected for two consecutive terms since the creation of the Council cannot seek immediate re-election in 2010

⁶ The regional groups and their seat distribution are as follows: Latin American and Caribbean States (eight seats), African Group (thirteen seats), Asian Group (thirteen seats), Eastern European Group (six seats) and Western European and other States (seven seats).

⁷ For an analysis of the former Commission on Human Rights Phillip Alston ‘Reconceiving the UN Human Rights Regime: Challenges confronting the new UN Human Rights Council’, (2006) 7, *Melbourne Journal of International Law* 185.

number of seats available, thus making elections for those regions uncontested.⁸ This means that states with problematic human rights records can still be elected to the Council. However the Council has added membership criteria that have seen well-known rights-violating States such as Sudan and Zimbabwe, refrain from applying for membership. This includes pledges and commitments, suspension of membership and the UPR.⁹

Importantly, membership criteria now include the voluntary *pledges and commitments* undertaken by a candidate state.¹⁰ The formula for both was set by the OHCHR and includes, for example, ratification of the core human rights instruments and whether the state has issued a ‘standing invitation’ to UN Special Procedures.¹¹ In turn, the Council under paragraph 5(d) of Res.60/251 will, inter-alia, undertake the *implementation* of a state’s human rights obligations, including pledges and commitments.¹²

Of the pledges that have been made so far, many have fallen short of the OHCHR ‘suggestions’ or states have refused to submit pledges altogether. For example, Indonesia, who is currently a member of the HRC, committed itself in 2007 to submission of its national reports to treaty bodies and to the ‘implementation of their respective recommendations thereon.’¹³ This can be seen as a step back as voluntary pledges are a weaker commitment than a legal commitment, despite submitting treaty body reports being the latter under international law. Moreover, in 2006, 11 states running for membership did not submit to the Secretariat (OHCHR) voluntary

⁸ See United Nations, *Elections (21 May 2008): Human Rights Council* (2008), United Nations <http://www.un.org/ga/62/elections/hrc_elections.shtml> at June 1 2008.

⁹ See Amnesty International, ‘UN: Governments Must Act Promptly and Effectively on Important Human Rights Commitments in the 2005 World Summit Document’ (Press Release, 26 September 2005).

¹⁰ *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen. mtg, [8], UN Doc. A/RES/60/251.

¹¹ OHCHR, *Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council* (2006) <<http://www.ohchr.org/english/13042006.pdf>> at 22 May 2008.

¹² *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen mtg, [24 (5d)], UN Doc. A/RES/60/251.

¹³ See *Note verbale dated 12 April 2007 from the Permanent Mission of Indonesia to the United Nations addressed to the President of the General Assembly*, GA NV. 61/855, UN GA OR, 61st sess, Agenda Item, 105 (e), UN Doc. A/61/855.

Similar commitments can be found in the statements of other states applying for a seat on the Council. For further pledges and commitments of States see the NGO ‘UPR-info’ available at <www.UPR-info.org> which contains a compilation of the documents by states, of their pledges and commitments when presenting as a candidate to the HRC.

pledges.¹⁴ Yet for the May 2008 election of the Council all candidate-states had submitted pledges to the Secretariat.¹⁵ This increase in participation is a positive change from only two years before and indicative of the influence it has had on the election process.

Despite the existence of such criteria Council membership still includes former Commission members criticized for violating human rights to a great extent, such as Cuba, China, Sri Lanka, Tunisia, Russia and Pakistan.¹⁶ Yet unlike the Commission, a member-state can be *suspended from the Council* if two-thirds vote that it has not lived up to its commitments.¹⁷ Such criterion is theoretically a disincentive for violating states to apply for membership, though there is yet to be a Council member suspended under such grounds.

The Council is also mandated to ensure member-states are first to have *their human rights record reviewed*. Under the UPR, states who are elected initially for a term of 1 year will be subjected to an immediate review of their human rights records followed by all Council-members and then UN member-states.¹⁸

The Review is in principle an incentive for all States, particularly Council-Members, to *implement* their obligations. Yet it is the Council that was given the mandate, under Res. 60/251, to determine the modalities of the Review itself. Consequently States were able to decide *how* they could be reviewed and the incentive to implement is limited by the extent that the States themselves want to be scrutinized by their peers.

¹⁴ These States were: Cameroon, Gabon, Guatemala, Honduras, Indonesia, Iraq, Malaysia, Mali, Senegal, South Africa, United Republic of Tanzania. See Human Rights Watch '27 NGOs Write to HRC Candidates who have Not Submitted a Pledge to the U.N. Secretariat' (Press Release, May 15 2008).

¹⁵ See The Office of the High Commissioner for Human Rights, *Making A Difference Where It Matters Most: OHCHR's Support to Implementation at Country Level* (2007) <<http://www2.ohchr.org/english/countries/field/pledges-commitments.htm>> at May 17 2008.

¹⁶ As was noted by an observer of the Council in the Geneva Course, all States violate human rights to some extent. Course conducted by Adrien-Claude Zoller, *Geneve Course – Geneva International for Human Rights – Global Training* (Discussions taking place during the Course, 3 June, 2008)

¹⁷ *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen mtg, [8], UN Doc. A/RES/60/251.

¹⁸ *Resolution concerning the Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, gen. mtg [5(e)], UN Doc. A/HRC/RES/5/1.

III. THE WORK OF THE COUNCIL TOWARDS THE UPR

The elaboration of the UPR mechanism can be found in Council Res. 5/1 of 18 June 2007. It involves the review of all 192 UN members over a 4 year ‘cycle’. This will involve reviewing 48 states a year spread over t3 review sessions of 2 weeks each.¹⁹ The Review is conducted by a Working Group consisting of all 47 Council-members and chaired by the President. Non-members and observer states are given the chance to speak during the Review.²⁰ It is only at the end of the Review at the plenary level that stakeholders, including NGOs, will be given the opportunity to take the floor.²¹

The Review is divided into three steps. First, the State under Review (SuR) will be reviewed by the Working Group of the HRC during a three-hour session. The second step is the adoption of the Report of the SuR over thirty minutes within the first two weeks of the Review but no earlier than 48 hours after the review. The third step involves the adoption of the report over one hour at the plenary level of the Human Rights Council during its regular session.²² Even as an elaboration of the UPR mechanism, Res. 5/1 lacks detail. Consequently, establishing and ‘clarifying’ practices within each of these three steps has been the preoccupation of the Council during its first UPR sessions.

A. Clarification versus interpretation

Firstly, it is necessary to explain why the Council ‘clarifies’ rather than ‘interprets’ the terms of Res. 5/1. ‘Clarification’ and ‘interpretation’ describe the process of reaching an understanding. Yet both processes differ and therefore the understandings drawn differ. Within a state a judge who is in principle independent and impartial ordinarily carries out the *interpretation* of a legal text. At the international level, however, governments that *clarify* a resolution to benefit their respective States are neither independent of the subject, nor impartial to the outcome. Political considerations dictate their process of understanding a text. Mary Chinery-Hesse

¹⁹ In accordance with *Resolution concerning the Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [IC], UN Doc. A/HRC/RES/5/1.

²⁰ In accordance with *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [18(a & b)], UN Doc. A/HRC/RES/5/1.

²¹ In accordance with *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [ID], UN Doc. A/HRC/RES/5/1.

²² In accordance with *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [22], UN Doc. A/HRC/RES/5/1.

points out the obvious yet fundamental flaw to inter-governmental organizations: ‘To expect countries to disregard their own interests, and to perform objectively over human rights over whose very definition they disagree, is highly unrealistic.’²³

This expectation is not unrealistic within a State when institutional integrity requires judges to remove themselves from political influence and to take into account broader policy considerations, without letting such consideration dictate the interpretation of the text. At the level of the Council, however, political considerations dictate their process of understanding a text. Therefore, Res. 5/1 was created and clarified in light of the need of states to maximise their interests including limiting their obligations towards the individual.

B. *Basis, principles and objectives of the Review*

According to *Res. 5/1, Part IA₂* the review is based on *existing* human rights law including: The Universal Declaration of Human Rights, human rights instruments to which a state is a party, and the voluntary pledges and commitments made by states. The review ‘shall also take into account applicable international humanitarian law’²⁴. This means the UPR does not create new obligations for a SuR; rather it reinforces and aids the state in *implementation* of these existing obligations. As the Organization of the Islamic Conference stated in its paper on the guidelines for the UPR: ‘The aim should be reciprocal altruism: to help states help themselves’.²⁵

The 19 principles and objectives of the review are outlined in *Res. 5/1*.²⁶ However it is unclear whether some or all should be considered in the review.²⁷ For example one objective is ‘The sharing of best practice among States and other stakeholders’.²⁸

²³ No. 4.

²⁴ In accordance with *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [IB], UN Doc. A/HRC/RES/5/1.

²⁵ Organization of Islamic Countries Group on Human Rights and Humanitarian Affairs Geneva, ‘Paper on the Guidelines for the Universal Periodic Review’ (Press Release, August 14, 2007)

²⁶ There are, in short, many, and to discuss all would go beyond the scope of this paper. In *Res 5/1* two are worthy of noting: The improvement of the human rights situation on the ground’ and ‘The fulfilment of the State’s human rights obligations and commitments and assessment of the developments and challenges faced by the State’. See *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [4.(a & b)], UN Doc. A/HRC/RES/5/1.

²⁷ The outcome of the Review is closely related to the objectives of the Review. As noted ‘[i]ts outcome may [author’s emphasis] include’: *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [27], UN Doc. A/HRC/RES/5/1.

²⁸ *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [D], UN Doc. A/HRC/RES/5/1.

This means that during each review a state intervention can concern only the objective of sharing of best practices, as opposed to the objective of an assessment undertaken of the human rights situation in the SuR. Granted sharing best practices can be informative and useful for other states. Yet if there is only a focus on the positive aspect of a SuR, it is difficult to see how the negative aspects within that state be adequately addressed.²⁹

C. Modalities of the Review in the Working Group

The modalities of the UPR were established in general terms and have consequently been the most debated aspect. The modalities are outlined in *Res. 5/1, Part I.D* and are divided into two sections: Documentation and Modalities.³⁰ The latter will be discussed in three sections: Stakeholder participation, the role of the Troika and the report of the Working Group.

1. Documentation

The UPR is based on three reports³¹: (a) The National Report provided by the SuR; (b) The compilation of treaty and other bodies recommendations and conclusion; and (c) a summary of stakeholder reports submitted to the OHCHR.³²

The National Report is a document of 20 pages and follows the General Guidelines adopted at the 6th HRC Session.³³ A negative aspect of the Guidelines is its lack of specificity, an aspect pointed out by several observers.³⁴ One observer noted the large amount of States that contacted the office querying how to compose their Report.³⁵ For example Guidelines A-G do not state the amount each part of the report should

²⁹ The author noted such conduct by *Sudan* in the review of Romania where their interventions were solely the subject of the Rights of the Child and the Sharing of best practices: Watch the statement by the delegation of Sudan available by webcast at UN Human Rights Council, *Archived Video: Second Universal Periodic Review [Romania]* (15 May 2008) <<http://www.un.org/webcast/unhrc/archive.asp?go=080515#am>> at 8 June 2008.

³⁰ *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.1 & I.D.2], UN Doc. A/HRC/RES/5/1.

³¹ According to *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.1], UN Doc. A/HRC/RES/5/1.

³² See *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.1 (a),(b) &(c)], UN Doc. A/HRC/RES/5/1.

³³ The guidelines were adopted without a vote on 27 September 2007 meaning they received widespread support from member-states of the Council. See “General Guidelines for the Preparation of Information under the Universal Periodic Review” in *Human Rights Council Decision 6/102: Follow-up to Human Rights Council Resolution 5/1*, UN HRC DEC, 6th sess, 20th mtg, HRC Dec. A/HRC/DEC/6/102.

³⁴ Interviews with observers included diplomats, NGOs and staff members of the OHCHR.

³⁵ Interview with Mylene Bidault, Officer of the Office of the High Commissioner for Human Rights, (Palais des Nations, Geneva, 20 May 2008). It was also noted during the interview that many states complained about the vagueness of the guidelines.

dedicate to each criteria. This means that 0-20 pages can be dedicated to the ‘broad consultation process’ (criteria A) or on the ‘promotion and protection of human rights on the ground’ (criteria C). The content is at the discretion of the state, as the Guidelines were state-determined. Therefore the focus of each report can differ depending on the willingness and the initiative of each state. This means a State with a high-level of human rights violations who undertakes the UPR could focus primarily on the ‘requests for capacity building’ and this would legitimately fall within the parameters of the Guidelines.³⁶

The latter two documents are prepared by the OHCHR, as mandated under Res. 5/1.³⁷ *The compilation of treaty and other bodies* is a document of no more than 10 pages containing: information included in reports of treaty bodies, special procedures, observations and comments by the State concerned. A positive aspect noted by several observers was the increase in public awareness of extensive treaty body recommendations through the summarized compilation that otherwise might not have looked at. One problem with this, however, is the issues left out of the compilation. Recommendations and conclusions in the treaty body are included in the original document because the issue is present in the state and relevant. Exclusion detracts from the relevance of the treaty body report as a whole.

The third document is a *summary of stakeholder reports* submitted to, and then summarised by, the OHCHR. This summary is by far the most contentious basis of the review as it is the only direct avenue for stakeholders to participate *before* the adoption of the Report at the plenary level.³⁸ The process of creating the summary itself, according to a staff member of the OHCHR, does not yet have a solid formula.³⁹ The summary is done according to the General Guidelines but its

³⁶ *Human Rights Council Decision 6/102: Follow-up to Human Rights Council Resolution 5/1*, UN HRC DEC, 6th sess, 20th mtg, HRC Dec. A/HRC/DEC/6/102.

³⁷ *Human Rights Council Decision 6/102: Follow-up to Human Rights Council Resolution 5/1*, UN HRC DEC, 6th sess, 20th mtg, HRC Dec. A/HRC/DEC/6/102.

³⁸ ‘Stakeholders’ is a purposefully broad term used to ensure a wide-range of non-state participants in the UPR process. Stakeholders include National Human Rights Institutions (NHRIs), individuals (such as academics) and Non-Government Organizations (NGOs). An NGO is a non-profit organization within a state that is independent from the government. GONGOs are government financed NGOs. As was discussed by several observers during the *Geneva Course*, during the creation of Res. 5/1 the then President of the HRC, Mexican Ambassador Alfonso De Alba purposefully used the term ‘Stakeholder’ to ensure broad participation of civil society in the summary.

³⁹ Importantly as with the compilation of treaty and other body reports, the summary of stakeholders reports also has the problem of excluding a great deal of information. For example in the report of Sri Lanka 32 NGOs reports were included in the summary provided by the OHCHR. While observers from OHCHR noted that issues can be

formulation is uncertain, as the disclaimer of the OHCHR present in each stakeholder summary indicates.⁴⁰

2. Modalities

(a) Stakeholder Participation

One of the *first clarifications* was who could submit a report to the OHCHR.⁴¹ They stated that only stakeholders that enjoy consultative status with the UN might participate in the review.⁴² This request was an attempt to narrow the role of stakeholders to NGOs with consultative status in order to restrict participation.⁴³ Crucially, the OHCHR did not state specifically who stakeholders were. Res. 5/1 allows for the participation of stakeholders including individuals, NHRIs and NGOs.⁴⁴ As an officer of the OHCHR pointed out, it was better to leave the role of stakeholders as open as possible, and this meant avoiding clarifying in writing their exact role.⁴⁵ If it were the case that both the States and the stakeholders were interested in protecting the rights of individuals, there would be no need to avoid clarification. As it currently stands both consultative and non-consultative NGOs may contribute, at a minimum, to the summary.⁴⁶

clustered, the detail on issues such as enforced disappearances and the independence of the judiciary is reduced to the detail of a 10 page summary, which is hardly sufficient: See the website of the Office of the High Commissioner for Human Rights, 'Summary of other stakeholders' submissions' (including NGOs, NHRIs and UN agencies, funds and programmes) (2008) <http://www.upr-info.org/IMG/pdf/srilanka_summary_A_HRC_WG6_2_LKA_3.pdf> at 8 June 2008.

⁴⁰The disclaimer states the following: 'It [the report] does not contain any opinions, views or suggestions of the OHCHR, nor any judgement or determination in relation to specific claims.'; Disclaimer of the OHCHR present on the Summary of Stakeholder Reports for the Universal Periodic Review. Attempts to reduce the credibility of the OHCHR have been carried out previously. Most notably in the *Resolution on the Composition of the Office of the High Commissioner for Human Rights*, UN HRC RES, 7th sess, HRC Res. A/HRC/7/2. The resolution was sponsored by Cuba and adopted by a recorded vote of 34 to 10 council-members, with 3 abstentions.

⁴¹This clarification was requested by the African Group, the Arab Group and the Organization of the Islamic Conference Group ('OIC Group') 'Non-Paper on remaining UPR Modalities' (Press Release, 3 April 2008) <<http://www.upr-info.org/IMG/pdf/nonpaper3april.pdf>> at 3 May 2008.

⁴²Consultative Status can be granted by the Committee on Non-governmental Organizations. There are three types of Consultative Status: General Consultative Status, Special Consultative Status and Roster Consultative Status. The Consultative Committee for NGOs is a state-run mechanism. The current chair is Sudan.

⁴³*Article 71 of the UN Charter* allows for NGO participation in the work of the UN.

⁴⁴*Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [3(m)], UN Doc. A/HRC/RES/5/1. In accordance with *Res. 60/251* and *ECOSOC Resolution concerning the consultative relationship between the United Nations and non-governmental organizations*, UN ECOSOC OR, 49th plen. mtg., UN Doc.1996/31 of 25 July 1996. There are currently 3,052 NGOs in consultative status, yet there are millions of NGOs world-wide: United Nations Department of Economic and Social Affairs, *Non-Governmental Organisations* <<http://www.un.org/esa/coordination/ngo/>> at 8 May 2008.

⁴⁵Interview with Mylene Bidault, Officer of the Office of the High Commissioner for Human Rights, (Palais des Nations, Geneva, 20 May 2008).

⁴⁶*Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.1.C], UN Doc. A/HRC/RES/5/1. However, under *Res. 5/1* only NGOs with consultative status may be present in the room during the working group and can only take the floor at the end of the adoption of a report at the plenary level of the HRC. Therefore restriction of an already restricted role is unnecessary.

A *second clarification* requested was for only the three documents to be placed on the extranet of the OHCHR without any additional documents/reports.⁴⁷ This would have meant the background reports included in the summary would not be present on the website. As the summary is just that, a summary, most of the material from each contributing document is left out. Limiting the visibility of NGOs information is another way for states to reduce criticism of their human rights violations. The President clarified in his official statement on the modalities that the three documents would be posted on the extranet of the OHCHR website, along with the contributing stakeholder reports.⁴⁸

(b) *Interactive Dialogue*

Initially the three-hour review was to consist of the SuR having 30 minutes to introduce its report and answer replies to written questions transmitted to it via the Troika.⁴⁹ Council member-states were to be given 3 minutes and non-member states 2 minutes to intervene. Ideally this would mean 46 member states and 10 non-member states could intervene during the session. Some states clarified whether the SuR could have instead 60 minutes speaking time during the review, meaning a maximum of 40 member-states could speak during the review. The President upheld this clarification.⁵⁰ In reducing the time for interactive dialogue, the opportunity of a state to ask critical questions and give recommendations has been significantly reduced.⁵¹

⁴⁷ See African Group, the Arab Group and the Organization of the Islamic Conference Group ('OIC Group') 'Non-Paper on remaining UPR Modalities' (Press Release, 3 April 2008) <<http://www.upr-info.org/IMG/pdf/nonpaper3april.pdf>> at 3 June 2008.

⁴⁸ See *Presidential Statement on modalities and practices for the Universal Periodic Review Process*, HRC PS, 8th sess, Agenda Item 8/PRST/1, UN doc. A/HRC/8/L.1. Presidential Statement of 9 April 2008. The OHCHR is the secretariat to the HRC. Its job, mandated by the General Assembly, is to service the Council. It also has the responsibility to promote and protect human rights.

⁴⁹ As stated in the Proposal of the President 'The Review Process: Modalities and Practices' (Press Release, 28 March 2008) <<http://www.upr-info.org/IMG/pdf/modalitiesHRCPRESIDENT27March.pdf>> at 3 June 2008.

⁵⁰ *Presidential Statement on modalities and practices for the Universal Periodic Review Process*, HRC PS, 8th sess, Agenda Item 8/PRST/1 [2.2], UN doc. A/HRC/8/L.1.

⁵¹ In addition, it was requested in the *Non-Paper* that the SuR could choose not to have the written questions circulated to other states before the review: African Group, the Arab Group and the Organization of the Islamic Conference Group ('OIC Group') 'Non-Paper on remaining UPR Modalities' (Press Release, 3 April 2008) <<http://www.upr-info.org/IMG/pdf/nonpaper3april.pdf>> at 3 May 2008. In the final Presidential Statement, however, the choice to not circulate the questions was removed 'As the UPR is, inter-alia, a transparent process, the questions and/or issues will be circulated': *Presidential Statement on modalities and practices for the Universal Periodic Review Process*, HRC PS, 8th sess, Agenda Item 8/PRST/1 [1.4], UN doc. A/HRC/8/L.1. According to this current modality, the SuR still has the choice not to answer the written questions but now it will be visible to other states and the public in general.

(c) *Role of the Troika*

The role of the Troika in the review has had several ‘clarifications’. The Troika consists of three state members of the Council allocated to a SuR.⁵² Their role is to facilitate the review and assist in the preparation of the final report of the Working Group.⁵³ Their facilitation of the review includes the receipt and clustering of written questions submitted by States in advance and then transmitting them to the SuR via the OHCHR. The clustering of questions was clarified by the President as involving the transmission of questions without their meaning being altered in any way: ‘As the UPR is, inter-alia, a transparent process, the questions and/or issues will be circulated’.⁵⁴ According to this current modality, the SuR still has the choice not to answer the written questions but now other States and the public in general will clearly see which questions were ignored. Moreover, the troika can choose to be active in the interactive dialogue or to remain silent. For example, in the review of Peru in the Second UPR Session, Cuba, Mali and India were all Troika Members and none of them took the floor. Consequently in the case of Peru and other states reviewed, the Troika have been reduced to an administrative capacity.⁵⁵

(d) *The Report of the Working Group*

The report of the Working Group is the most important document in the UPR process as it forms the basis for follow-up in the review.⁵⁶ The initial proposal of the President was to include a ‘assessment’ – both the good and bad, of the human rights situation in the SuR. Some states sought clarification of this process by requesting the Report to be adopted *ad referendum* until the SuR has had time to communicate its decision regarding all the recommendations and conclusions put forward.⁵⁷ The President held all recommendations/conclusions enjoying and not enjoying the support of the State

⁵² Done via the drawing of slots by the SuR in order to ensure impartiality in the designation of troika members.

⁵³ *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.2.18(d)], UN Doc. A/HRC/RES/5/1.

⁵⁴ As stated in paragraph 1.3 of the Proposal of the President ‘The Review Process: Modalities and Practices (Press Release, 28 March 2008) <<http://www.upr-info.org/IMG/pdf/modalitiesHRCPRESIDENT27March.pdf>> at 3 June 2008.

⁵⁵ See the summary of the review of Peru provided by UPR-info.org available at <http://www.upr-info.org/IMG/pdf/Perus_review_in_the_Working_Group.pdf> at 1 June 2008.

⁵⁶ Follow up is contained in *Res. 5/1* and is an obligation of the Working Group in the subsequent review to consider what the SuR has, and has not, adequately addressed: *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [24], UN Doc. A/HRC/RES/5/1.

⁵⁷ African Group, the Arab Group and the Organization of the Islamic Conference Group (‘OIC Group’) ‘Non-Paper on remaining UPR Modalities’ (Press Release, 3 April 2008) <<http://www.upr-info.org/IMG/pdf/nonpaper3april.pdf>> at 3 May 2008.

would be noted separately, as well as the recommendations on which the State is not yet ready to give an opinion on.⁵⁸ Whilst the SuR can choose to ignore those recommendations that do not enjoy its support, they will still be included in the Report and, hopefully, re-emphasised in the interactive dialogue of the following Review.

⁵⁸ *Presidential Statement on modalities and practices for the Universal Periodic Review Process*, HRC PS, 8th sess, Agenda Item 8/PRST/1 [3.3], UN doc. A/HRC/8/L.1.

IV. USING THE UPR: PROBLEMS AND PERSPECTIVES

It should be emphasised that the UPR is a new mechanism. It is a process and therefore constantly evolving. The functioning of the mechanism will be better understood as each Session progresses and at present clarifying the practices and procedures has been the preoccupation of most participants. The Review is therefore not a well-understood process at present. Yet understanding the mechanism and the problems associated with it based on the practices, both legal and non-legal, is a useful tool to effectively accessing the UPR. It is not the position of the author to conclude that the UPR will in certainty be an effective or ineffective mechanism for the victims of human rights violations as the process is never certain, particularly when such a mechanism has only just begun and its potential not yet fully realized. It has evolved significantly over the first two review sessions held in April and May 2008. With this evolution several significant practices, problems and perspectives can be drawn.

A. Problems

According to a footnote in Res. 5/1, the periodicity and modalities of the UPR can be altered after the first cycle of the review, based on ‘best practices and lessons learned’.⁵⁹ Therefore identifying problems with the mechanism and working around it are essential for the short term, with the long-term view of having these problems remedied. Yet those reviewing the modalities are human rights violating States.⁶⁰ Therefore learning to work around the problems of the mechanism is in the view of the author a long-term situation.

1. Not a serious dialogue

A notable observation from the interventions of the member and non-member States in both UPR sessions is the choice of several States to ask questions based on the Res. 5/1 objectives of the review that concern the achievements of a State, their sharing of best practices on selected themes, requests for capacity building and technical

⁵⁹ See the footnote in *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex, UN Doc. A/HRC/RES/5/1.

⁶⁰ Under International Law states are the only human rights violators.

assistance, or to speak but not to ask questions at all.⁶¹ The other objectives, including improving the situation on the ground, were not as widely discussed.

For example an analysis of the interventions of states shows that in the *First Review*:⁶²

- Benin, Tunisia, Djibouti, Ghana, Gabon, Czech Republic, Botswana, Chad, Azerbaijan, Jordan, Malaysia, Sri Lanka, Lebanon, Oman, Palestine, Yemen, Cuba and Uruguay all spoke but did not ask a question on one or more occasions.
- Of these countries, South Africa received the highest amount of interventions (4) that did not contain a question.
- Questions concerning the ‘sharing of best practices’ were given by: Sudan, Syrian Arab Republic, United Kingdom, China, Pakistan, Lebanon and Thailand.
- Of the States who did not ask a question, the majority came from the African or Asian Group. The Western European and Other Group did not intervene without asking a question.⁶³

However, for those states that did intervene, their choice to ask non-critical questions meant the most important criteria, the improvement of the situation on the ground, was not adequately addressed. For example, Algeria intervened on 17 separate issues over 11 of the 16 States reviewed in the first session. The most common question raised by the delegation related to the ratification or accession of core human rights conventions, despite having not taken action themselves on 9 of the 16 relevant Conventions and their Amendments.⁶⁴

Focusing on questions concerning ratification, though important, is less practical for the individuals on the ground than inquiring into whether a State has implemented, for

⁶¹ See ‘Objectives of the Review’ in *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [I.D.1], UN Doc. A/HRC/RES/5/1 Res 5/1 I.D.1.

⁶² Analysis conducted by clustering the questions asked by states through the reporting of each SuR provided by the author and other participants of *Geneva for Human Rights – Global Training*. An extensive table was constructed concerning the intervention topics of every State that intervened during the First Review and can be provided upon request, as the document exceeds 50 pages.

⁶³ Ibid.

⁶⁴ See *UPR-info.org* ‘International Human Rights Treaties’ <<http://www.upr-info.org/-Algeria-.html>> at 16 May 2008.

example, their National Action Plan. India and Indonesia received a majority of questions concerning ratification. Both delegations were therefore able to legitimately address the issue of ratification instead of dealing with more critical human rights issues in their State such as discrimination against West Papuans in Indonesia or Caste-based discrimination in India.

The most controversial human rights issues, namely those not widely recognised, were raised primarily by the Latin American and Caribbean Group and the Western European Group. For example, sexual orientation was raised most often by Belgium, Brazil, Canada and Slovenia. This issue was criticized by Egypt in the review of Tonga, who cautioned the inclusion of norms not universally agreed upon, ‘to do so would defeat the purpose of the review’.⁶⁵ This is despite the OHCHR recognizing the rights of sexual minorities as a basic tenet of non-discrimination.⁶⁶

States that took seriously the mechanism tended to intervene on issues their country paid particular attention to, irrelevant of the SuR. For example Slovenia in the First and Second Review addressed gender perspective in every intervention. Australia similarly, addressed NHRIs in all of their interventions of the First Session, and some interventions in the Second. On the other hand, the interventions by Russia in the review of Bahrain, Algeria and Pakistan were largely congratulatory. For example Russia in the review of Pakistan spent 1 minute and 36 seconds on achievements and 53 seconds on the rights of the child.⁶⁷ While in the review of the UK, the Russian Federation, as a Troika member, spoke for all of the 3.36 minutes on the subject of respect for slow-transitioning democratic States, colonialism, torture, impunity of their forces in Iraq, the imprisonment of infants and anti-terrorism laws. Listening to the debate one gets the impression the situation in the UK is far more serious than in Pakistan. The same could be noted for Tunisia, whose review led many NGOs to

⁶⁵ Watch the statement by the delegation of Egypt available by webcast at UN Human Rights Council, *Archived Video: Second Universal Periodic Review [Tonga]* (14 May 2008) <<http://www.un.org/webcast/unhrc/archive.asp?go=080514#pm>> at 8 June 2008.

⁶⁶ *The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity* (March 2007) <<http://www.yogyakartaprinciples.org/index.php?item=25>> at 8 June 2008.

⁶⁷ Watch the statement by the delegation of the Russian Federation available by webcast at UN Human Rights Council, *Archived Video: Second Universal Periodic Review [Pakistan]* (12 May 2008) <<http://www.un.org/webcast/unhrc/archive.asp?go=080508#pm>> at 8 June 2008.

describe the UPR exercise as a ‘farce’.⁶⁸ Therefore, in spite of some critical issues being raised, the absence of States asking critical questions remains a major obstacle to the UPR being an effective mechanism.⁶⁹

2. *Standard Setting needs to be more specific and less abstract*

Many aspects of Res. 5/1 are unclear. Firstly, time put aside for *interactive dialogue* varies depending on the time taken for the SuR to present its report. For example *Annex B* indicates that Finland took 20 minutes to present its report, including their achievements, problems and initiatives. This allowed 40 minutes for the State to reply to questions, despite only 21 States intervening. On the other hand Sri Lanka took 33 minutes to present its report when 56 countries were to take the floor (66 requested but were unable to do so due to time constraints).⁷⁰ This meant that the ability of the delegation to answer the questions was significantly reduced. Without responses being given to the majority of questions, no dialogue is actually taking place. The President needs to better define the time limit for the SuR to present its report and remove the discretion of the State to use, if it so chooses, the entire 60 minutes to filibuster the review.⁷¹ As the basis of the review is an ‘interactive dialogue’ there should be sufficient time for the State to respond to questions asked.⁷²

Secondly, the process of *adoption of the report by the working group*, both the substance and the format of the report received various ‘clarifications’. The use of ‘recommendations’ in the report was controversial as Res. 5/1 stated that recommendations and conclusions were to be included in the report as a factual recount of the proceedings. The President ‘clarified’ this as including differentiating between those that do and do not enjoy the support of the SuR.⁷³ In the report of

⁶⁸ This was noted by several NGOs at a CONGO (Coalition of NGOs) attended by the author (Palais des Nations, 9 April 2008). See also Duparc, Agathe, ‘A l’ONU, l’étrange examen des atteintes aux droits de l’homme’, *Le Monde* (France), 19 May 2008, at <http://www.lemonde.fr/organisations-internationales/article/2008/05/19/a-l-onu-l-etrange-examen-des-atteintes-aux-droits-de-l-homme_1046812_3220.html?xtor=RSS-3210>. "Nous avons l'impression qu'il s'agit d'un autre pays" [We have the impression that they are describing another country].

⁶⁹ *Ibid.*

⁷⁰ See summary of the review of Sri Lanka for more detail available at UPR-info. Org ‘Summary of the Review’ (21 May, 2008) <http://www.upr-info.org/IMG/pdf/Sri_Lanka_s_review_in_the_Working_Group.pdf> at 8 June 2008.

⁷¹ This has not yet occurred in either the First or Second Review Session.

⁷² See the ‘Basis of the Review’ in *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex, UN Doc. A/HRC/RES/5/1.

⁷³ See paragraph 3.3 of *Presidential Statement on modalities and practices for the Universal Periodic Review Process*, HRC PS, 8th sess, Agenda Item 8/PRST/1 [3.3], UN doc. A/HRC/8/L.1. Paragraph 32 of Res. 5/1 also provides for the integration of both types of recommendations into the report of the Working Group: *Institution*

Bahrain, the recommendations accepted had the countries that proposed them listed at the end of the chapter.⁷⁴

In the adoption of Ecuador's Report, Egypt, Pakistan, Algeria and others initiated a debate over whether the recommendations, wholly supported by Ecuador, were a factual recount or a reflection of the working group as a whole.⁷⁵ Including the State next to their recommendations is the current format. Such a format means the recommendations are not seen as a collective endorsement but rather a series of individual agreements between the SuR and the State corresponding to each recommendations.

In the same report of Ecuador, *the substance of the recommendations* was debated. Res. 5/1 gives the State sovereignty to accept and decline recommendations of the Working Group.⁷⁶ Yet Egypt raised the question whether recommendations concerning sexual orientation could be inadmissible due to it not being considered a widely recognised human right. This issue was raised despite Ecuador accepting the recommendations concerning sexual orientation. Egypt claimed that if sexual orientation was regarded as a human right then states could intervene on anything including the 'right to parking' as a human right.⁷⁷ Such comparison was completely misplaced yet the President validated its inclusion as a basis of the review if it was included in the 'voluntary pledges' of the SuR. However it is unclear what will happen if a SuR accepts a recommendation concerning sexual orientation despite not being in their voluntary pledges beforehand.

By requesting the exclusion of sexual orientation through consensus of the Council (taking it to a vote) Egypt was trying to remove the sovereign right of a State to

Building of the Human Rights Council, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [32], UN Doc. A/HRC/RES/5/1.

⁷⁴ See the *Working Group of the Human Rights Council*, Report of Bahrain (9 April 2008) <http://www.upr-info.org/IMG/pdf/Summary_of_Bahrain_review-2.pdf> at 9 June 2008.

⁷⁵ Adoption attended and observed by the author. For a summary of the adoption of the Report of the Working Group on Ecuador see *International Service for Human Rights* 'UPR Monitor: Ecuador' (10 April) <http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf> at 9 June 2008.

⁷⁶ As stated in paragraph 32 of *Res. 5/1*: 'Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.' *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [1.E.3.32], UN Doc. A/HRC/RES/5/1.

⁷⁷ See the *International Service for Human Rights* 'UPR Monitor' (10 April) <http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf> at 9 June 2008.

accept its own recommendations. Egypt is the current co-ordinator of the African Group in the HRC.⁷⁸ Combined with the Asian Group, both form the majority in the Council. If the practice of putting UPR modalities to a vote is established, the UPR process will be greatly derogated.

Moreover there is *no set format to the presentation of the report of the Working Group*, as it is dependant on the SuR. The recommendations not agreed upon can be included only in the narrative of the report and this will be cross-referenced in the final paragraphs of the report. Or all the recommendations can be included in the report and the State can decide at a later stage to accept or reject these.⁷⁹ In any case, all recommendations will be noted in the plenary.

3. *Expectations of NGOs*

Adapting to their changed role within the UPR process has been *a challenge for NGOs* involved. The UPR is an inter-governmental exercise and governments have fought through the ‘clarification’ process to reduce the role of NGOs. For instance, Res. 5/1 states that NGOs can only monitor the Working Group and not take the floor.⁸⁰ Normally, during the regular Council Sessions NGOs take the floor under specific items. Consequently, during the first two review sessions, NGOs expressed disappointment at specific issues not being raised during the interactive dialogue that they would have otherwise directly raised.⁸¹

A case in point is the review of Tunisia where NGOs, at a meeting attended by the author, expressed disappointment that many of their issues were not raised during the review. NGOs produced 36 submissions to the stakeholder’s summary yet no NGO was specifically mentioned in the interactive dialogue.⁸² In fact 64 States intervened in

⁷⁸ Pakistan, in their report of the Working Group noted that the right to sexual orientation was not a universally recognized human right and could not be accepted by the delegation as a valid basis for the report. See the Office of the High Commissioner for Human Rights, *Report of Pakistan* (15 May 2008) <http://www.upr-info.org/IMG/pdf/A_HRC_WG6_2_L8_Pakistan.pdf> at 10 June 2008.

⁷⁹ See *Annex B* for a full list of countries that accepted recommendations and those that deferred.

⁸⁰ See paragraph 18 of the *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [18], UN Doc. A/HRC/RES/5/1.

⁸¹ This was noted by several NGOs at a CONGO (Coalition of NGOs) attended by the author (Palais des Nations, 9 April 2008). In particular Amnesty International, Human Rights Watch and UN Watch stated this on several occasions.

⁸² To see the full list of stakeholders go to <<http://www.upr-info.org/Reports-for-the-review,20.html>> accessed on 18 May 2008.

the review and over 50 States used their time to praise Tunisia.⁸³ Many observers have noted that stakeholders were, at a minimum, still able to guide the issues in the interactive dialogue on Tunisia, as was the case with other SuRs.⁸⁴ Though by the Second Review NGOs were being specifically mentioned on several occasions by intervening states. For example Australia specifically referenced Amnesty International's submission in the review of South Korea.⁸⁵

Therefore it is primarily through the stakeholder's report, along with lobbying before, during and after the Review itself, that NGOs can effectively engage in the Review process. The problem is NGOs understanding that lobbying States is the best way to exercise their involvement granted to them under Res. 5/1.

4. Addressing the 'real' situation

A major fault of the mechanism is its *lack of focus on the 'real' situation in a country*. Major human rights issues that affect millions of citizens within any given State seem marginally significant when observing a Review. Listening to the review of Sri Lanka, Tunisia, Algeria, South Africa and other well-know rights-violating countries, it is clear the extent of human rights violations are not revealed.⁸⁶ For example in the report of South Africa, the delegation dedicated a significant portion of their report to the achievements in the field of human rights post-apartheid and a smaller section to the problems that currently exist in their country.⁸⁷

Cuba, in a similar fashion, stated during the review of South Africa that they would merely note others recommendations 'because we [the State] could always do more

⁸³ the *International Service for Human Rights* 'UPR Monitor: Tunisia' (13 April)

<http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_tunisia_final.pdf> at 9 June 2008.

⁸⁴ Interview with Mylene Bidault, Officer of the Office of the High Commissioner for Human Rights, (Palais des Nations, Geneva, 20 May 2008).

⁸⁵ See Report by Tiffany Henderson, 'Summary of the Review of the Working Group on South Korea' UPR-info.org (7 May 2008) <http://www.upr-info.org/IMG/pdf/South_Korea_Report.pdf> at 9 June 2008. For Trafficking and Impunity the Review of Guatemala, 'Summary of the Review of the Working Group of Guatemala' (6 May 2008) <http://www.upr-info.org/IMG/pdf/Guatemala_review_in_the_working_group.pdf> at 9 June 2008.

⁸⁶ In discussions with several observers throughout the course of this research, it was noted to the author that South Africa is not commonly cited as being amongst the worst human rights violating States. In the viewpoint of the author, whilst South Africa has had series of successes in the field of human rights, particularly in the years following apartheid, the government is still yet to protect adequately the human rights of the majority of the population particularly with regards to HIV/AIDS, access to housing and the protection of refugees, to name but a few. For a summary of the Report of South Africa during the Review, see Tiffany Henderson, 'Summary of the Review of the Working Group on South Africa' (15 April 2008) <http://www.upr-info.org/IMG/pdf/Summary_of_South_Africa_s_review.pdf> at 9 June 2008.

⁸⁷ See *Annex B* 'South Africa'.

and there is always still more to be done'.⁸⁸ The report of the Stakeholders, in contrast, indicates that while South Africa has made some achievements, there are many human rights issues that need to be adequately addressed including water, indigenous peoples and arbitrary detention. Why would Cuba not ask a critical question of South Africa? Because it does not want critical questions asked to it when their review takes place. It is a policy of protection.

The SuR is only obligated, according to Res. 5/1 and the subsequent Presidential Statement, to follow-up on the recommendations that it supported in the previous review(s).⁸⁹ Therefore it is essential for intervening States to recommend a State address certain human rights issues, in order to have those recommendations placed in the report of the working group. While the SuR can ignore or not support such recommendations, both will be included in the report of the Working Group and in turn make it more difficult in the follow-up for the State to ignore the real, significant problem in their country.

B. Perspectives of the UPR process

1. The UPR will be effective in the long term

This truth was echoed by the High Commissioner Louise Arbour who stated it would take 'two whole cycles of reviews... before we can fully measure the added value and real impact of the UPR'.⁹⁰ However living with this dogma goes against the fundamental objective of the UPR: to encourage a state implement its human rights obligations. The state is *encouraged* but *not obligated* to report on its progress before its next review. Bahrain committed to reporting before it's next review, though such action has not been popularly followed.

⁸⁸ Watch the statement by the delegation of Cuba available by webcast at UN Human Rights Council, *Archived Video: Second Universal Periodic Review [South Africa]* (15 April 2008) <<http://www.un.org/webcast/unhrc/archive.asp?go=080415#pm>> at 9 June 2008.

⁸⁹ In accordance with *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex, UN Doc. A/HRC/RES/5/1.

⁹⁰ See the Speech by Ms. Louise Arbour - The High Commissioner for Human Rights (Speech delivered at the opening of the 8th Regular Session of the Human Rights Council), Palais des Nations, Monday 2 June 2008.

After two review cycles, in eight years time, the most important aspect of this mechanism: *the follow-up to the review*, will be utilised by the Working Group. The review will then *focus* on the *implementation* of the preceding review.⁹¹ It is at this point that serious dialogue should occur as the SuR and Working Group will be pressured to focus less on achievements of the rights-violating State and instead address *why* implementation has not occurred. Yet focusing on achievements is not entirely negative, as a state will have to, at its subsequent review, present its *actual* improvements.⁹²

2. *The UPR draws attention to human rights issues*

The UPR is an important tool in increasing worldwide the profile and understanding of human rights. By summarising the human rights situations in a State into a 40-page document, ordinary individuals are more inclined to read about the human rights situation within the SuR. Moreover, instead of a treaty body drawing attention to one human rights obligation in a state, *all of the human rights obligations are under the umbrella of one State*. It gives the SuR an opportunity to engage in genuine dialogue, including the inviting of special rapporteurs and therefore does not *replace* other mechanisms but brings attention to them.⁹³

Similarly, a SuR will find it much easier to ignore human rights issues when the world is not watching. *The guarantee of live web-casting*, while not guaranteed in the modalities but rather through the practice of recording the first two reviews, have numerous benefits: accessibility to the UPR, especially by NGOs that are unable to be present in Geneva, visibility of the SuR and an increase in the profile of the mechanism. *NGOs need to encourage individuals to access the web cast during and after the review.*

⁹¹ See paragraph 33 ‘Follow-up’ under ‘Outcomes of the Resolution’ *Institution Building of the Human Rights Council*, HRC Res. 5/1, UN HRC OR, 5th sess, Annex [33], UN Doc. A/HRC/RES/5/1.

⁹² It was also noted by several observers during the *Geneva Course* that the ‘follow-up’ to the review, permanently under Item 6 of the Agenda of the HRC, can be reviewed under Item 4 of the Agenda ‘Human Rights Situations that require the Councils Attention’ when States consistently do not implement recommendations: *Human Rights Council*, GA Res. 60/251, UN GA OR, 60TH sess, 72nd plen mtg, UN Doc. A/RES/60/251.

⁹³ Such a sentiment was expressed by the President of Slovenia, H.E. Danilo Turk, (Speech delivered at the opening of the 8th Regular Session of the Human Rights Council), Palais des Nations, Monday 2 June 2008.

3. NGOs need to lobby the States

The role of NGOs extends beyond their submission of reports and taking the floor at the plenary level. In fact according to *Annex B*, 19 of the 32 SuR have deferred their decisions on recommendations given by States to the adoption at the plenary meeting. During this time, NGOs that were able to have their issues addressed as a recommendation could lobby the SuR to accept them at the plenary level. With over half choosing to defer, this could be a likely trend in the future and an opportunity for NGOs to work within their mandate to achieve results.

Similarly, there is no rule stipulating that NGOs cannot lobby whilst being present in the meeting of the Working Group. States such as Brazil, Guatemala, Mexico, The Republic of Korea and the Western Group in general have been receptive during the first two reviews to NGOs.⁹⁴ The table below indicates which regional groups intervene the most during the First Review in April 2008, ranked by the number of recommendations given.⁹⁵ States within these regional groups may have used any one of the three reports the review is based on, therefore NGOs should take this not as an indication of their receptiveness to rely on NGO reports but rather their willingness to ask questions and recommendations:

Average of Interventions by Regional Group for the First UPR Session (Ranked from highest to lowest average recommendation)		
Regional Group	Average Question	Average Recommendation
Latin American and Caribbean Group	5.64	4.93
Western European and Other Group	8.42	4.79
Eastern European Group	2.70	3.20
African Group	3.60	0.70
Asian Group	5.44	0.52

⁹⁴ Facts provided by an observer in an unpublished internal paper on the 'Preliminary Conclusions of the UPR'.

⁹⁵ This table was compiled by the author based on a manual notation of all the questions and recommendations asked throughout the review session. The author took from her own reports of Bahrain, Morocco, South Africa and Argentina and for the rest used the reports compiled by Geneva for Human Rights and accessible on the website <www.upr-info.org>. The method was as follows for all groups: The number of interventions was noted and the number of States making the interventions per regional group was noted. These were then divided into Recommendations and Questions. Each group of interventions was then divided by the number of states participating in the review. For example the African Group had 27 State interventions. They asked 99 questions and gave 19 recommendations. Therefore the average question per state was $99/27 = 3.6$, and so on. A full list of the questions and recommendations of the States who intervened and what issues they intervened on during the First Session of the UPR can be provided by the author upon request.

The Latin American Group were able to provide more recommendations during the First Review than the Western Group, but only marginally. This is surprising as observers of the review noted the significant gap between both groups gave an overall impression the Western Group intervened the most. The African and Asian Group, on the other hand, produced the least amount of recommendations, despite forming the majority of the Working Group and requesting the most ‘clarifications’. The above table indicates which regional groups NGOs can prioritise their lobby time and their resources during the review. It indicates that the Asian Group would be the last resort, as it is the least willing to give recommendations.

In addition, *the interactive dialogue* is lacking interventions that place emphasis on the duty of a state to protect, a duty that comes necessarily with state sovereignty. Several SuRs, such as Finland and Argentina, acknowledged immediately during their interventions their problems and how they would be addressed. Emphasising the duty of the SuR to protect, through the interventions of other states and NGO reports, could pressure the SuR to be self-critical, though it is unlikely states would like to emphasise their duty.

The tendency of the SuR to answer written questions during the presentation of their report is another way to influence the dialogue. Yet at present not many states are willing to supply written questions in advance. Those who have done so consistently are: Canada, Denmark, France, Germany, Ireland, Latvia, Netherlands, Sweden, UK, Finland, Italy, Romania and Portugal.⁹⁶

4. NGOs resources need to be refocused

Firstly, the use of NGO resources should not focus on their taking the floor at the plenary adoption of the Working Group Report, as it will be difficult to influence the report at this stage. The earliest involvement of NGOs as stated in Res. 5/1 is through civil society involvement in the preparation of the National Report.

Moreover, *resources can be diverted* to ensure NGO submissions to the OHCHR are translated into all of the official languages. Each report can be sent to each delegation,

⁹⁶ This fact was provided to the author by an observer from the NGO: UPR-info.org.

member or non-member, before the review, along with a suggested set of questions and recommendations that could be asked.⁹⁷ As NGO reports have to be submitted at least 4 months before the review, NGOs can submit these translated reports to all delegations well before the review takes place.⁹⁸

The problem of *inconsistency in the contributions of Stakeholders* has meant the OHCHR summary itself is inconsistent. For example the report of Tunisia had 36 NGO contributions, whilst Tonga had only 3.⁹⁹ If NGOs want to push to have their voice heard it is necessary to ensure States can utilize the summary report for every review. Coalitions and joint reports is a more effective way for NGOs to minimize the reports and maximise the strength behind the reports. If it is repetitively seen as a valuable source of information, states will more readily use NGO reports in their interventions. Similarly, between the reviews taking place, NGOs can follow-up on the recommendations and commitments of the SuR to ensure implementation is taking place.

Finally, a *State policy of non-interaction with the UPR process* can affect their candidature to the HRC. For example, recent elections to the HRC held on 21 May 2008 saw Sri Lanka lose their election bid for a seat on the Council. The review of Sri Lanka took place a few weeks before the election. NGOs such as Human Rights Watch lobbied to prevent the election of Sri Lanka. The uncritical approach taken by Sri Lanka in their report and in the questions asked to other SuR could have been used by NGOs as a tool to illustrate the extent of a State's commitment to their obligations. Both a states participation as a SuR and it's interventions could be a significant indicator when considering candidacy in the future. NGOs should use the UPR as a tool to lobby against candidate-states that do not co-operate with the mechanism.

⁹⁷ Official languages of the United Nations are: English, French, Spanish, Chinese, Arabic and Russian. See also the document provided by the NGO *Conectas Direitos Humanos* which submitted to various delegations suggested questions and recommendations for delegations to use in the Review of Brazil: *Conectas Direitos Humanos, 'Questions and Recommendations'* <http://www.upr-info.org/IMG/pdf/UPR_Brasil_ConectasandGajop.pdf> at 9 June 2008.

⁹⁸ According to 'General Guidelines for the Preparation of Information under the Universal Periodic Review' in *Human Rights Council Decision 6/102: Follow-up to Human Rights Council Resolution 5/1*, UN HRC DEC, 6th sess, 20th mtg, HRC Dec. A/HRC/DEC/6/102.

⁹⁹ The three reports were provided by: The Global Initiative to end all corporal punishment of children; International Gay and Lesbian Association and the Legal Literacy Project, and all are available at <<http://www.upr-info.org/Reports-for-the-review,90.html>> at 10 June 2008.

V. CONCLUSION

A fundamental aim of the Council and more so the UPR is to achieve *implementation* of states human rights obligations through cooperation and dialogue. Yet as the review has shown, for a state to actually allow interference in its internal affairs, criticism will have to be kept to a minimum. Therefore the review, in its very nature, will not be successful in the short term.

It is on this basis that participants should use the UPR to reinforce the existing mechanisms that work to uphold human rights, such as the special procedures, a mechanism that can provide a better short-term solution to individuals whereas the UPR cannot.

The UPR is not yet able to effectively encourage governments to use the tools of the UN system to *implement* their obligations. It is the start of an ever- evolving process with no ultimate solution to the constant violation of human rights. This process will improve through promoting *real* dialogue, understanding the shortcomings of the mechanism and maintaining the perspective that it will improve the implementation of human rights standards and tools in the long term. NGOs can contribute to improving the mechanism by participating effectively in this process, even if it may be a decade before real results will be seen.

**Annex A:
Membership of the Human Rights Council
(By Year of Expiration)**

2007	2008	2009	2010	2011
Algeria	Brazil*	Azerbaijan	Angola	Argentina
Argentina	France	Bangladesh	Bolivia	Bahrain
Bahrain	Gabon*	Cameroon	Bosnia and Herzegovina	Brazil*
Czech Republic	Ghana*	Canada	Egypt	Burkina Faso
Ecuador	Guatemala	China	India*	Chilli
Finland	Japan*	Cuba	Indonesia*	France
India*	Mali	Djibouti	Italy	Gabon*
Indonesia*	Pakistan*	Germany	Madagascar	Ghana*
Morocco	Peru	Jordan	Netherlands*	Japan*
Netherlands*	Republic of Korea*	Malaysia	Nicaragua	Pakistan*
Philippines*	Romania	Mauritius	Philippines*	Republic of Korea*
Poland	Sri Lanka	Mexico	Qatar	Slovakia
South Africa*	Ukraine*	Nigeria	Slovenia	Ukraine*
Tunisia	United Kingdom*	Russian Federation	South Africa*	United Kingdom*
	Zambia*	Saudi Arabia		Zambia*
		Senegal		
		Switzerland		
		Uruguay		

* Indicates that the State was elected twice in a row and therefore cannot run for immediate re-election.

**Annex B:
Table Concerning the policy of each SuR during the First and Second UPR**

SuR	States that took the floor during SuR Review	Problems as identified by the NGO Summary	Problems as identified by the SuR in their report during the review	Problems as identified by State interventions during the review	SuR reaction to States recommendations given during the review (Accepted/Deferred)	Questions/ Recommendations asked by the SuR to other SuRs**
First Universal Periodic Review April 2008						
Bahrain	36	<ul style="list-style-type: none"> - Death Penalty - Freedom of Opinion - Freedom of Religion - Human Rights Defenders - Impunity - Women - Independence of Judiciary - Arbitrary Detention - Torture - Indigenous People 	<ul style="list-style-type: none"> - Did not identify problems of their own initiative, delegation only responded to issues raised by written questions submitted by States in advance 	<ul style="list-style-type: none"> - Migrant Workers - NHRIs - Women - Co-operation with civil society in the preparation of the national report - Unemployment - Justice - Prison conditions - Human rights defenders - Rights of the Child - Press Freedom - Trafficking - Impunity 	Accepted	<ul style="list-style-type: none"> - Implementation of HR Standards (Morocco)
Ecuador	33	<ul style="list-style-type: none"> - Enforced Disappearances - Torture - Independence of Judiciary - Human Rights Defenders - Social, Economic Rights - Arbitrary Detention - TNCs - Freedom of Opinion - NHRIs 	<ul style="list-style-type: none"> - Political instability - New constitution 	<ul style="list-style-type: none"> - Torture - Impunity - Judiciary - Prison conditions - HR defenders - Disabilities - Indigenous peoples - Asylum seekers 	Accepted	<ul style="list-style-type: none"> - Human rights defenders (Argentina) - ESC Rights (India) - Child homelessness (Brazil) - Ratify/Join Migrant Convention (Finland, UK)
Tunisia	65	<ul style="list-style-type: none"> - Arbitrary 	<ul style="list-style-type: none"> - Terrorist threats 	<ul style="list-style-type: none"> - Freedom of expression 	Accepted	<ul style="list-style-type: none"> - Indigenous Peoples (South

		<ul style="list-style-type: none"> - Detention - Freedom of Assembly - Freedom of Opinion and Expression - Terrorism, - Torture - Women - Human Rights Defenders 		<ul style="list-style-type: none"> and association - Women's rights - Death penalty - Terrorism - NHRIs - Rights of the Child - Judicial independence - Globalisation - Religious intolerance - Poverty 		<ul style="list-style-type: none"> Africa) - No question (Morocco, Ecuador) - Terrorism (Algeria)
Morocco	56	<ul style="list-style-type: none"> - Counter – Terrorism - Death Penalty - Impunity - Freedom of Opinion - Refugees - Migrants - Torture - Rendition 	<ul style="list-style-type: none"> - None. Stated only achievements, implementation of human rights and prospects for the future 	<ul style="list-style-type: none"> - Right's of the child - Women's rights - Migrants rights - Implementation - Terrorism - Judiciary - Impunity - Development - Human Rights education - Freedom of Opinion and expression - Prison conditions and torture 	Accepted	<ul style="list-style-type: none"> -Urban & rural disparity (Tunisia) - Join Migrants Convention; racial & religions hatred; Islamophobia (The Netherlands) - Migrant workers (Indonesia) - HR training (UK); Migrants (India) - Poverty (Brazil)
Indonesia	43	<ul style="list-style-type: none"> - Adequate Housing - Children - Death Penalty - Arbitrary Detention - Enforced Disappearances - Slavery - Terrorism - Freedom of Opinion - Indigenes 	<ul style="list-style-type: none"> - None. States only achievements and responded to written questions given in advance. 	<ul style="list-style-type: none"> - National Action Plan - NHRIs - Special Procedures - Migrants - Minorities - Timor Leste - Judicial System - Trafficking - Freedom of Expression - Ratification of treaties - Women's Rights - Children's Rights - Economic, Social and 	Accepted	<ul style="list-style-type: none"> - Advancement of human rights (Bahrain) - Migrant's Rights (Ecuador) - NHRI (Tunisia) - Discrimination (Netherlands); Racism (UK) - Religious Hatred & Islamophobia (Netherlands) - Reservations on CRC (UK) - Migrants (UK) - Impunity of police (Brazil) - Migration (Algeria) - <i>Reservations on CERD (UK)</i>

		<ul style="list-style-type: none"> - Peoples - TNCs - Racism - Children - Torture - Human Rights Defenders - Self-Determination 		<ul style="list-style-type: none"> - Cultural Rights - Poverty - West Papua - Human Rights Defenders 		
Finland	21	<ul style="list-style-type: none"> - Conscientious objectors - Sexual orientation - Indigenous peoples - Violence against women - Disability - Migration - Trafficking - Detention 	<ul style="list-style-type: none"> - Racism and intolerance - Education of Roma - Discrimination of Roma - Violence against women - Cultural rights of Sami people - Rule of Law - NHRIs 	<ul style="list-style-type: none"> - Discrimination against minorities - Discrimination against women - Racial discrimination - Migrants - Education 	Accepted	No questions asked during the First Review
United Kingdom	38	<ul style="list-style-type: none"> - Torture - Asylum/Refugees - Impunity - Children's Rights - Human Rights Defenders - Terrorism - TNCs - Right to Privacy - Justice - Minorities - Health - Collective punishment - Women's Rights 	<ul style="list-style-type: none"> - Northern Ireland 	<ul style="list-style-type: none"> - Counter - terrorism laws - Rights of the Child - Racism and Racial Discrimination - Training and HR education - Obligations of UK's armed forces overseas 	Deferred	<ul style="list-style-type: none"> - Ratify OP CAT (Argentina, Czech Republic) - Freedom of Speech (& ICCPR, Bahrain) (Morocco) - Ratify ILO Convention 169 (Finland) - Special Rapporteur recommendations (HR Defenders, Torture, Indonesia) - Women's Rights (Poland) - Reporting to treaty bodies (Philippines) - Corruption (Philippines) - Judicial independence (Ecuador) - Children's Rights (Ecuador) (child soldiers, Philippines) - Prison Conditions (Ecuador) - Human Rights Training

						<ul style="list-style-type: none"> (legislation, India) - Discrimination (cast, India) - <i>Human Rights Training (Ecuador)</i> - <i>Death Penalty (Indonesia)</i> - <i>Ratify OP CAT (South Africa, Indonesia, India, Philippines) & CAT (India)</i> - <i>Civil Society in follow-up to UPR (Indonesia, Philippines)</i>
India	42	<ul style="list-style-type: none"> - Land Rights - Human Rights Defenders - Indigenous Peoples - Criminal Justice - Impunity - Freedom of Expression - Children's Rights - Refugees - Caste-based discrimination - Right to food and work - Self-determination - Violence against women - Enforced disappearances - Minorities 	<ul style="list-style-type: none"> - Terrorism - Poverty 	<ul style="list-style-type: none"> - Impunity (delegation stated that it did not exist) - Torture - Women's Rights - Caste-based discrimination 	Deferred	<ul style="list-style-type: none"> - Migrant Workers (Bahrain) - Women's Rights (Morocco) - NHRI (Morocco) - NGOs (Philippines) - Poverty reduction (Philippines) - NHR Action Plan (Indonesia) - Racial Discrimination (UK) - Migration (Philippines) - <i>Reservations on CERD (UK)</i> - <i>44Freedom of Religion (Netherlands)</i>
Brazil	44	<ul style="list-style-type: none"> - Freedom of Expression - Sexual Orientation - Violence against 	<ul style="list-style-type: none"> - Large population: fulfilment of human rights - Reducing extreme poverty 	<ul style="list-style-type: none"> - Extra-judicial killings - Discrimination against women - Condition against women - Human rights defenders 	Accepted	<ul style="list-style-type: none"> - Women's Reproductive Rights (South Africa) - Impunity (Argentina) - Women's Rights (Morocco, Algeria)

		<ul style="list-style-type: none"> - women - Trafficking - Indigenous Peoples - Housing/Land Rights - Detention Conditions - Human Rights Defenders - Reproductive Rights - Discrimination - Sexual Orientation - Minorities - Children's Rights - Health - Violence - Impunity - Press Freedom 		<ul style="list-style-type: none"> - Poverty and Development - Racial Discrimination - Rights of the Child - NHRIs - Excessive use of police force - Detention conditions - Human Rights Defenders - Women's Rights - Poverty - Indigenous People - Right to Information 		<ul style="list-style-type: none"> - Judicial Integrity (Finland) - Roma People (Czech Republic) - Sexual Orientation – Discrimination (Poland) - Trafficking (Netherlands) - Terrorism (Netherlands) - Judicial Independence (Indonesia) - East Timor (Indonesia) - Children's Rights (criminal responsibility) (UK) - Racial Minorities & Profiling (UK) - Extra-Judicial Killings and writ of amparo (Philippines) - Enforced disappearances (Philippines) - Children's Rights (India, Algeria) - Freedom of Expression (Algeria) - <i>Ratification OP CAT, CESC, OP CESC (South Africa)</i> - <i>Sign OP CEDAW (Tunisia)</i> - <i>Sign OP CAT and OP CRC (Netherlands)</i> - <i>Ratify ILO Conventions 138,182 & OP CEDAW (India)</i> - <i>Standing invitation to Special Procedures (Philippines)</i>
Philippines	41	<ul style="list-style-type: none"> - Arbitrary arrest - Summary executions - Impunity - Torture - Detention conditions - Enforced disappearances - Women 	<ul style="list-style-type: none"> - Human rights abuses during war times - Equal distribution of economic growth - Security threats - Internal active insurgencies - Migrants abroad 	<ul style="list-style-type: none"> - Violence against women - Trafficking of women and children - Women's Right - Migrant Women - Migrant children - NHRIs - Cooperation with civil society - Poverty 	Deferred	<ul style="list-style-type: none"> - Indigenous people (Finland) - <i>Capacity building measures to implement HR programs (Indonesia)</i>

		<ul style="list-style-type: none"> - Trafficking - Independence of the judiciary - Housing (forced evictions) - Children's rights - Freedom of assembly - TNCs 		<ul style="list-style-type: none"> - Migrant Workers - Extra-Judicial killings - Enforced disappearances - Child soldiers - Human Rights Defenders - Special Rapporteurs - Security Forces - Justice System - Education in human rights - Indigenous people 		
Algeria	40	<ul style="list-style-type: none"> - Women (violence, discrimination) - Impunity - Terrorism - Torture - Human Rights Defenders - Summary and Arbitrary Executions - Enforced Disappearances - Minorities - Indigenous Peoples - Children's Rights - Freedom of Expression - Independence of the judiciary - Rendition - Arbitrary Detention - Sexual Orientation 	<p>- Did not mention challengers or any negative aspect of human rights situations.</p>	<ul style="list-style-type: none"> - Arbitrary Detention - Civil Society - Enforced Disappearances - Freedom of Expression - Freedom of Religion - Migrants - MDGs - Poverty Reduction - Rights of Women - Rights of Children - Mandate-holders - Terrorism - Unemployment - Economic, Social and Cultural Rights 	Accepted	<ul style="list-style-type: none"> - ESCR (Housing & Water)(South Africa) - Durban and succession (Argentina) - Ratify Migrants Convention (Finland) - Roma, CEDAW and Migrants Convention, racial violence, housing access, victims compensation (Czech Republic) - Prisons (Argentina) - Council of Europe obligations (Poland) - Convention on Migrant Workers, CESCR reservations, education (The Netherlands) - Freedom of expression (Indonesia) - Migrant Women (Philippines) - Anti-terrorism laws (UK) - Realization of HR (India); - Right to food and security (Brazil) - <i>Curb discrimination and succeed to international commitments (Argentina)</i> - <i>Roma, CEDAW and Migrants</i>

						<i>Convention, racial violence, housing access, victims compensation (Czech Republic)</i> - Prisons, Council of Europe obligations (Poland) - Convention on Migrant Workers, CESCR reservations, education (The Netherlands) - Convention on Migrant Workers (UK)
Poland	26	- Rendition - Sexual Orientation - Racism - Discrimination - Women's Rights - Migration - Freedom of Expression - Poverty - Education	- Persons with disabilities - Education for minority groups	- Detention conditions - Racial Discrimination - Torture - Gender Equality - Sexual Orientation - Rights of the Child - Rendition	Deferred	No interventions during the First Review Session.
Netherlands	37	- Detention conditions - Terrorism - Torture - Migrant - Discrimination - Children - Disability - Enforced disappearances - Asylum seekers - Women - Disabilities - Enforced disappearances - Racism	- Terrorism - Human Trafficking & Prostitution - Discrimination - Women's Rights - Children's Rights	- NHRIs - Euthanasia - Children's Rights - Minority Rights - Migrants - Refugees - Religious Hatred - Xenophobia - Death Penalty - Violence against women - Counter-terrorism - Cyber crime	Deferred	- Migrant's Rights (South Africa) - Special Rapporteurs – standing invitation (Morocco) - Discrimination (ethnic, Indonesia) (caste, India) - Human Rights Defenders (Indonesia) - NHRI (Brazil) - Freedom of Expression (Algeria) - Women's Rights (India) - Children's Rights (labour, India) - Ratify OP CAT (Indonesia, Philippines), Implementing (Argentina) - Special Procedures standing invitation (Indonesia)

		<ul style="list-style-type: none"> - Minorities - Health - Education 				<ul style="list-style-type: none"> - <i>Women's Rights (violence, South Africa)</i> - <i>Ratify ILO Convention 138 and 182 (India)</i> - <i>Criminalize Torture (Indonesia)</i> - <i>Extra-judicial killings and enforced disappearances (Philippines)</i> - <i>Follow-up: HR Defenders and Migrant Workers legislation (Bahrain)</i> - <i>Reform prison conditions (Ecuador)</i> - <i>Gender equality (Algeria)</i> - <i>Minorities (discrimination, Finland)(Roma, Czech Republic)</i> - <i>Sexual Orientation (Finland)</i>
South Africa	51	<ul style="list-style-type: none"> - Women - Health - Torture - Migrants - Health - Poverty - Access to Justice - Disability - Asylum Seekers - Children - Trafficking - Refugees - Independence of Judiciary - Water - Internal Displacement - Indigenous Peoples - Racism - Education - Freedom of 	<ul style="list-style-type: none"> - Root causes of violence - Discrimination against women - Educational Shortcomings 	<ul style="list-style-type: none"> - Truth and Reconciliation Tribunal - Torture - Freedom of Information - Racism - Migrants - Women's Rights - Education - Prison conditions - Economic, Social and Cultural Rights - Health - NHRIs - Co-operation and Dialogue - Indigenous People - Treaties and Justice - Development 	Deferred	<ul style="list-style-type: none"> - CRC Reservations, racial profiling & propaganda (The Netherlands) - Children: trafficking & illiteracy (Indonesia) - Minority rights & right to food (India) - Family allowance program (Brazil) - Poverty reduction & unemployment (Algeria) - <i>Advancement of women (The Netherlands)</i>

		Opinion and Expression - Sexual Orientation				
Czech Republic	21	- Minorities - Mental Health - Women - Minorities - Housing - Property - Racism - Women - Education - Employment - Public Defenders Rights	- Education of minority groups: Roma - Racial and Ethnic Violence	- Detention and Rendition - Minorities - Torture - Women's Conditions - Rights of the Child - NHRIs - Migrant Workers	Deferred	Did not speak during first review session
Argentina	32	- Terrorism - Women - Sexual Orientation - Torture - Arbitrary Executions in prisons - Detention Condition - Poverty - Arbitrary Detention - Impunity - Justice - Disability - Children - Migrants - Indigenous People - Housing - ESC Rights	- Impotence of public policy making in Argentina - Limitations of the Truth and Justice Program - Impunity still in operation: for example the case of Julio Lopez. - Dismantling of Economic, Social and Cultural Rights in the 1990s such as deterioration in labor relations and economic policies and labor relations.	- Truth and Reconciliation Tribunal - Torture - Trafficking - Sexual Orientation - Discrimination - Racism - Migrants Rights - Women's Rights - Education - Prison Conditions - Children's Rights - Justice - Co-operation and Dialogue - Indigenous People - Implementation - Human Rights Defenders - MDGs - Impunity - Development	Accepted	- Truth Commission (achievement (Ecuador)) - British Imperialism (UK) - Violence against women (Brazil)
Average	39				Accepted	

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Gabon	36	<ul style="list-style-type: none"> - Indigenous People (Society for Threatened Peoples) - 	<p>Merely highlighted achievements rather than existing problems within their country.</p>	<ul style="list-style-type: none"> - Rights of the child - HIV/AIDs - Indigenous Peoples - Women’s Rights - Freedom of opinion and expression - Human Trafficking - International human rights bodies - Ritual killings - Public health - Corruption - Torture - Prison conditions - Civil society - Migrant workers 	Deferred	Did not speak during the first review session.
Ghana	44	<ul style="list-style-type: none"> - Death Penalty - Housing and forced evictions - Women’s rights - Impunity - Adequate housing - Forced evictions - Civil and political rights - Justice - Land rights - Employment - Displacement - Right to water - Poverty - TNCs 	<ul style="list-style-type: none"> - Better budgeting for education - Social Protection - Human Trafficking - Corruption - Better trained medical practitioners - Constitutional Amendments 	<ul style="list-style-type: none"> - Rights of the Child - Civil Society - Women’s Rights - Justice - Death Penalty - HIV/AIDS - Right to Food - Health - Prison Conditions - Witches Camps - Water - NHRIs - MDGs - Elections - Poverty - Torture - Justice - Rule of Law - Impunity 	Accepted	<ul style="list-style-type: none"> - Socio-economic inequalities (South Africa) - No question (Morocco and Tunisia) - Terrorism (UK) - Youth violence (Brazil) - <i>Ratification (UK)</i> - <i>Stakeholders and HR goals (India)</i> - <i>Domestic Violence (South Africa)</i>
Peru	29	<ul style="list-style-type: none"> - Sexual orientation 	<ul style="list-style-type: none"> - Reduce poverty - Improve their 	<ul style="list-style-type: none"> - National Plan of Action 	Deferred	<ul style="list-style-type: none"> - Human rights education (Argentina)

		<ul style="list-style-type: none"> - Intellectual property - Children - National human rights action plan - Health - Death penalty - Impunity - Justice - Prison conditions - Human rights defenders - Forced labour - Trafficking - Child labour - Abortion - ESC Rights - Access to justice - Sexual violence - Torture 	<p>submission rate to treaty bodies</p>	<ul style="list-style-type: none"> - Indigenous Peoples - Women's Rights - Children's Rights - Impunity - Health Care - Human Rights Defenders - Independence of the Judiciary - Detention Centres - Special Procedures - Access to Water - Mercenaries - Civil Society participation - Torture - Economic and Social Rights 		<ul style="list-style-type: none"> - Access to information (Ecuador) - Due Process (Ecuador) - HR training of police (UK) - <i>Sin Convention on Migrant Workers (Netherlands)</i>
Guatemala	44	<ul style="list-style-type: none"> - Impunity - Violence against women - Land disputes - Human rights defenders - Children - Health - Right to food - Education - Indigenous peoples - Impunity - Extra judiciary, summary and arbitrary executions - Detention conditions 	<ul style="list-style-type: none"> - Impunity - Recognition of civil and political rights - Discrimination of indigenous people 	<ul style="list-style-type: none"> - Indigenous people - Impunity - Women's Rights - Implementation - Discrimination - Trafficking - Rights of the Child - Death Penalty - Human Rights education - Economic, Social and Cultural Rights - Racism - NHRIs - Sexual Orientation 	Deferred	<ul style="list-style-type: none"> - Prison systems and the ombudsman (Argentina); Prison Conditions (Ecuador) - Civil Society involvement (Ecuador) - Migrant Workers (Philippines) - <i>Sign Convention on Migrant Workers (Netherlands)</i>

		<ul style="list-style-type: none"> - Freedom of opinion and expression - Justice - Poverty - Water - Domestic violence - Indigenous women 				
Benin	39	<ul style="list-style-type: none"> - Death penalty - Implementation of the Rome Statute - Prison Conditions - Excessive use of police force - Prison conditions - Torture - Detention conditions - Excessive use of force - Torture - Rights of the Child - Sexual Orientation 	<ul style="list-style-type: none"> - Torture - Implementation of national human rights instruments 	<ul style="list-style-type: none"> - Education - Literacy - Rights of the Child - Water - Prison Conditions - Food - Disabled Persons - Torture - Death Penalty - Prison Conditions - Justice - Housing - International human rights instruments - Corruption - Sexual Orientation - NHRIs - Police 	Deferred	<ul style="list-style-type: none"> - No question (Morocco) - Women & children (Algeria)
South Korea	33	<ul style="list-style-type: none"> - Death Penalty - Migrant Workers - National Security Law - Sexual Orientation - Freedom of Assembly - NHRIs - Prison Conditions 	<ul style="list-style-type: none"> - Extreme poverty - Adapting their domestic laws with international standards - Rights of migrant workers 	<ul style="list-style-type: none"> - Freedom of Association and Peaceful Assembly - Implementation - Migrants - Rights of the Child - Detention Centres - Death Penalty - Women's Rights - Economic, Social and 	Deferred	<ul style="list-style-type: none"> - Migrant Rights (Argentina) - Indigenous peoples rights (Ecuador) - Torture (Ecuador) - CAT comments (Poland) - Women's Rights (Poland) - Euthanasia (Netherlands) - Minority Rights (Indonesia) - Armed Forces (UK) - Impunity (India)

		<ul style="list-style-type: none"> - Marriage - Disabilities - Refugees - Women - Children - Education - Housing - Right to Life 		<ul style="list-style-type: none"> - Cultural Rights - Access to Justice - Minority Rights - Freedom of Expression and Opinion - Special Procedures - Refugee Rights 		<ul style="list-style-type: none"> - Women's Rights (India, Philippines) - Indigenous People (India, Philippines) - Trafficking (Philippines) - Accession to OP CAT and Convention on Enforced Disappearances (Philippines) - <i>Human Rights Education (Netherlands)</i> - <i>Indigenous People (Argentina)</i>
Switzerl and	42	<ul style="list-style-type: none"> - Asylum Law - Diplomatic Assurances - Pre-Trial Detention - OP CAT - Torture - Migrants - Discrimination - Women's Rights - Poverty - Minorities 	<ul style="list-style-type: none"> - Integration of Foreigners - Unequal access to employment - Better statistics needed on violence against children - Suicide 	<ul style="list-style-type: none"> - Rights of the Child - Migrants and Refugees - Racial Discrimination - Economic, Social and Cultural Rights - Women's Rights - Suicide - NHRIs - Torture - Freedom of Religion and Expression - Development Assistance - Treaty Ratification - Implementation - Civil and Political Rights - Sexual Orientation 	Accepted	<ul style="list-style-type: none"> - Racism, xenophobia (South Africa) - Impunity (Argentina) - Human Rights Education (Netherlands, UK) - Terrorism (UK) - <i>Women's Rights (discrimination, Bahrain)</i> - <i>Human Rights Education (Bahrain) (officials training, Morocco, Philippines)</i> - <i>CAT Recommendations (South Africa)</i> - <i>Migrant Rights (Bahrain)</i> - <i>Ratify Rome Statute to ICC (Morocco)</i> - <i>Extra-judicial killings (Philippines)</i> - <i>Ratify CAT & OP CAT (India)</i> - <i>Special Rapporteur standing invitation (India)</i> - <i>Terrorism (Netherlands)</i> - <i>Armed Forces (Philippines)</i>
Pakistan	70	<ul style="list-style-type: none"> - Rule of Law - Independence of Judiciary - Women's Rights 	<ul style="list-style-type: none"> - Transform institutional progress into reality - Terrorism - Women's Rights 	<ul style="list-style-type: none"> - Minorities - Women's Rights - Education - Freedom of Opinion 	Deferred	<ul style="list-style-type: none"> - Racism (South Africa) - Migrants (South Africa) - Best Practices (Tunisia) - Terrorism (Morocco)

		<ul style="list-style-type: none"> - Death Penalty - Freedom of Religion and Belief - Freedom of Assembly - Slavery - Terrorism - Impunity - Arbitrary Arrest and Detention - Extra Judiciary - Minorities 		<ul style="list-style-type: none"> - and Expression - Rights of the Child - Labour - Refugees - Freedom of the Press - Housing - NHRIs - National Action Plan - Civil Society - Human Rights Defenders - Poverty - Terrorism - IDPs 		<ul style="list-style-type: none"> - Minorities (Ecuador) - Xenophobia (Poland) - Discrimination against women (Poland) - Special Procedures (Indonesia) - Terrorism (UK) - Human Rights Advocacy (Algeria) - NHRIs (Philippines) - <i>Racial and Religious hatred (Netherlands)</i>
Zambia	39	<ul style="list-style-type: none"> - Children's rights - Freedom of opinion - Right to education - Children Trafficking - Environment - Sexual orientation - Women's rights - Detention conditions 	Did not mention any problems that existed within its country. Answered questions submitted in advance.	<ul style="list-style-type: none"> - Women's Rights - Minorities - Detention Conditions - Health - Cooperation with human rights mechanisms - Rights of the Child - Access to water - Family Laws - Freedom of Opinion and Expression - Training of law enforcement officials - Poverty - Pre-Trial Detention - Civil Society - ESC Rights - Trafficking 	Accepted	<ul style="list-style-type: none"> - Overcrowded prisons (South Africa) - Torture (Morocco) - Independence of media (Tunisia) - Torture in Report of WG (Morocco)
Japan	42	<ul style="list-style-type: none"> - Impunity - NHRI - Death penalty - Torture - Pre-trial detention - Sexual 	Did not mention any problems that existed within its country. Answered questions submitted in advance.	<ul style="list-style-type: none"> - Indigenous Peoples - Women's Rights - Slavery - Bullying in Schools - Death Penalty - Internet Violations 	Deferred	<ul style="list-style-type: none"> - Education (Ecuador) - Freedom of Association (Finland) - NGOs (Finland) - Prison Conditions (Poland) - Rights of the Child (Poland)

		<ul style="list-style-type: none"> - orientation - Poverty - Discrimination - Indigenous peoples - Criminal justice - Minorities - Asylum seekers/refugees - Disabilities - Discrimination against foreigners 		<ul style="list-style-type: none"> - Refugees - Ageing Population - Racial Discrimination - Right to Development - Torture - Human Rights Education - Trafficking - Minorities - NHRIs - Sexual Orientation - Migrants 		<ul style="list-style-type: none"> - Trafficking (Indonesia) - Ratification of OP CRC (Indonesia) - Terrorism (UK) - Reservations to CRC, OP-CRC and OP CAT (UK) - Civil society (Philippines) - Extra-Judicial Killings and writ of amparo (Philippines)
Ukraine*	26	<ul style="list-style-type: none"> - Criminal justice - Impunity - NHRI - Women's rights - Health - Migrants - Freedom of opinion and expression - Refugees (Refoulement) - Sexual Orientation - Indigenous Peoples - Minorities - Children's Rights 	<ul style="list-style-type: none"> - Prison Legislation - Rule of Law - Racism - Victim Protection 	<ul style="list-style-type: none"> - NHRIs - Women's Rights - Human Trafficking - Prison Conditions - Racial Discrimination - Minorities - HIV/AIDs - Rights of the Child - Refugees - Freedom of Expression - Independence of the Judicial System - Employment Legislation - Asylum Seekers - Refugees 	Accepted	<ul style="list-style-type: none"> - Justice (Ombudsman and government) (Argentina) - Prison Officers & Migrant Workers (Czech Republic) - <i>Prisoners Rights: access to justice (Argentina)</i>
Sri Lanka*	66 (56 could speak)	<ul style="list-style-type: none"> - Freedom of Expression - Enforced Disappearances - Impunity - Arbitrary Arrest and detention - Torture - Children's Rights 	<ul style="list-style-type: none"> - Strengthen their NHRI through technical support - Terrorism - Decline in the countries rank on World Press Freedom Index 	<ul style="list-style-type: none"> - Extra-Judicial, summary or arbitrary killings - Arbitrary detention - Human Rights Defenders - Child Soldiers - Torture - Impunity 	Accepted & Deferred	<ul style="list-style-type: none"> - Spoke, no question (South Africa & Ecuador) - Implementation of Res 5/1 (Morocco) - Child Labour (Indonesia) - Civil Society (India) - Minority Rights (India) - Rights of Women & Children (Algeria)

		<ul style="list-style-type: none"> - IDPs - Human Rights Defenders - Extra-judicial killings - NHRIs - Corruption - Minority - Women - Independence of Judiciary - Poverty - Freedom of Assembly - Child Soldiers 		<ul style="list-style-type: none"> - Minorities - NHRI - Freedom of Expression - Women's Rights - Rights of the Child - Protection of Witnesses and Victims - Caste-based discrimination - Migrants - Impunity 		
France	39	<ul style="list-style-type: none"> - Asylum Procedure - Non-Refoulement - Terrorism - Torture - Impunity - Racial Discrimination - Children's Rights - Detention - Sexual Orientation - Indigenous People's 	<ul style="list-style-type: none"> - Discrimination on the grounds of religion - Prison Conditions - Cooperation with UN Human Rights 	<ul style="list-style-type: none"> - Immigration/Immigrants - Minorities - Racial Discrimination - Women - Asylum Seekers - Religion - Poverty - Detention Conditions - Overseas Territories - NHRIs - Torture - Counter-Terrorism - HR Action Plan - Violence - Judiciary - Indigenous Peoples 	Deferred	<ul style="list-style-type: none"> - Migrants Rights (Argentina) - Technical needs (Morocco) - Impunity (police) (Ecuador) - Rights of Immigrants (Netherlands) - Sexual Orientation (Poland) - Facilitation of NGO participation (Tunisia) - Enforced disappearances (Philippines) - Human Rights Defenders (Philippines) - Rights of the Child (Tunisia, Algeria) - Torture (law enforcement, Indonesia) - Convention on Enforced Disappearances (Indonesia) - Minority Rights (West Papua, Indonesia) - Child's Rights (child soldiers) (Philippines) - Human Rights Education (judiciary, Indonesia)

						<ul style="list-style-type: none"> - Ratify CAT & OP CAT (India) - Discrimination (Caste, India) - CERD Recommendations (India) - Women's Rights (discrimination, India, Algeria) - Extra-Judicial Killings and writ of amparo (Philippines) - NHRI (India, Philippines) - Freedom of Expression (Algeria) - <i>Ratify Rome Statute of ICC (Czech Republic)</i> - <i>Corporal Punishment of children (UK)</i> - <i>Judicial Independence (Bahrain)</i> - <i>Ratify/Sign Convention on Enforced Disappearances (South Africa, Bahrain, Netherlands, Czech Republic, Algeria)</i>
Tonga	34	<ul style="list-style-type: none"> - Children's Rights - Violence against Children - Sexual Orientation - Detention Conditions - Women's Rights - Human Rights Defenders - Freedom of opinion and expression 	<ul style="list-style-type: none"> - Discrimination of women: land ownership - Reporting to treaty bodies 	<ul style="list-style-type: none"> - Human Rights Education - Civil Society - Representation in Geneva - Freedom of Speech - Anti-Corruption Commission - Ratification of Treaties - Death Penalty - Impunity - Women's Rights - Development - Human Rights Defenders - Children - Special Procedures - Sexual Orientation - Economic, Social and Cultural Rights 	Accepted	Did not speak during the first review session.

Romani a	38	<ul style="list-style-type: none"> - Sexual Orientation - Freedom of Assembly - Freedom of Expression - Mental Health - Racism - Discrimination - Impunity - Minorities - Freedom of Religion - Trafficking - Labour - Migration 	<ul style="list-style-type: none"> - Minority rights - Discrimination - Independence of the judiciary - Women's Rights - Domestic Violence - Rights of the Child - Mental Health - Prison Conditions - Maternal Mortality 	<ul style="list-style-type: none"> - Freedom of Expression - National Action Plan - Gender Perspective - Implementation - Rights of the Child - Property Restitution - Roma People - Mental Health - Independence of the Judiciary - Rights of Women - HIV/AIDS - Trafficking - NHRIs - Corruption - Enforced Disappearances 	Deferred	Did not speak during first review session
Mali	43	<ul style="list-style-type: none"> - Women - Economic Rights - TNCs - Environment - Health - Discrimination 	Did not mention any problems that existed within its country. Answered questions submitted in advance	<ul style="list-style-type: none"> - Discrimination - Violence against women - Rights of the Child - Health - Women's Rights - Trafficking - Migrants - Minority Rights - Sexual Orientation 	Accepted & Deferred	<ul style="list-style-type: none"> - Rights of the Child (Morocco) - No question (Tunisia) - Migration (Algeria)
Average	41					