

# fiacat

REPORT & RECOMMENDATIONS  
APRIL 2008 – DECEMBER 2009



## UNIVERSAL PERIODIC REVIEW: AN AMBIVALENT EXERCISE

After six sessions  
what has become  
of the principles that were  
supposed to underpin  
the Universal Periodic Review?



# Contents

• INTRODUCTION	5
• FROM PREPARATION TO REVIEW	7
National consultations with ambiguous results	7
Contributions by the NGOs	9
Undertakings made by the States prior to their review	10
• THE CONDUCT OF STATES DURING THEIR REVIEW	13
A process accepted by the States	13
The importance and the quality of the delegations	14
Objectivity of the reviewed States	15
How States use their speaking slots	16
Taking the recommendations on board	18
• PEER REVIEW	21
Use of written questions	22
Non-selectivity principle	22
Quality of statements	23
Impartiality principle	26
• ROLE OF NGOS IN THE PROCESS	29
• CONCLUSION	33
• SOURCES	37
• ANNEX	
Tables of States under review by order of review and by session	39

## LIST OF ACRONYMS:

ACAT: Action by Christians for the Abolition of Torture

UPR: Universal Periodic Review

FIACAT: International Federation of ACATs

GONGO: Government-operated non-governmental organisation

OIC: Organisation of the Islamic Conference

NGO: Non-governmental organisation

UN: United Nations



## RESEARCH AND EDITORIAL TEAM:

**FIACAT :**

**Nathalie JEANNIN**  
[n.jeannin@fiacat.org](mailto:n.jeannin@fiacat.org)  
FIACAT's permanent representative  
at the United Nations in Geneva

**Lauren MICHAUD**  
[l.michaud@fiacat.org](mailto:l.michaud@fiacat.org)

**Report completed on 24 December 2009**

# Introduction

The International Federation of Action by Christians for the Abolition of Torture (FIACAT) is an international human rights non-governmental organisation (NGO) with a mandate to fight for the abolition of torture and the death penalty. It is the umbrella organisation for national associations (ACATs) which have been set up in thirty countries throughout the world.

## The Human Rights Council

The Human Rights Council that was overwhelmingly voted for by the United Nations (UN) General Assembly<sup>1</sup> has replaced the UN Human Rights Commission. The former UN body, which was set up in 1946 and used to hold its meetings each year in Geneva over a six week period, was criticised for having become a hostage to the power struggles between States. The Commission was accused of adopting double standards in reporting human rights violations across the world.

On 29 November, Kofi Annan, then United Nations Secretary-General, addressed the Human Rights Council and asserted that it should “*avoid disappointing*” and lapsing back into “*the divide between North and South, between developed and developing countries*”.

In Resolution 60/251 establishing the Human Rights Council, adopted on 15 March 2006<sup>2</sup>, the General Assembly set out the guiding principles for the Council’s activities: universality, impartiality, objectivity, non-selectivity and international dialogue and co-operation with a view to enhancing the promotion of human rights.

## Universal Periodic Review (UPR)

United Nations General Assembly Resolution 60/251 created a new mechanism: the Universal Periodic Review (UPR). The review is supposed to be based on objective and reliable information that allows the Council to ensure universality of coverage and equal treatment with respect to all States.

It began on 7 April 2008 in an atmosphere of the utmost confusion as to the procedures to follow. The President of the Human Rights Council, Doru Costea<sup>3</sup>, explained that it was impossible to plan all these in advance and that it would take a year or two before the new review found its feet.

The basis of the review, its principles and objectives, its process and modalities and its final outcome are all set out in Human Rights Council Resolution 5/1 adopted on 18 June 2007. While it depends on objective and reliable information, the Universal Periodic Review of a State must be carried out in an “*an objective*,

1. General Assembly Resolution 60/251 of 15 March 2006.

Adopted by a majority with 170 in favour, four against (United States, Israel, Republic of Palau and the Marshall Islands) and three abstentions (Belarus, Iran and Venezuela).

2. United Nations General Assembly Resolution 60/251 establishing the Human Rights Council sets out that the Council is mandated “to undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; it is to be based on cooperation and dialogue with the full involvement of the country concerned and with consideration given to its capacity building needs”.

3. Romanian Ambassador and President of the Human Rights Council from June 2007 to June 2008.

*transparent, non-selective, constructive, non-confrontational and non-politicized manner*” that “*ensure universal coverage and equal treatment of all States*”.

**The goals of the UPR are:**

- The improvement of the human rights situation on the ground;
- The fulfilment of the State’s human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- The enhancement of the State’s capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- The sharing of best practice among States and other stakeholders;
- Support for cooperation in the promotion and protection of human rights;
- The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

Resolution 5/1 provides for an active role for NGOs in this mechanism. It is supposed to “*ensure the participation of all relevant stakeholders, including non-governmental organisations and national human rights institutions*”.

FIACAT has allied itself to this process by training its member associations to enable them fully to participate in the mechanism. FIACAT intervenes each time a country where there is an ACAT is reviewed under the UPR procedure.

Two years and six sessions after the mechanism was first instituted, FIACAT has assessed its work, its strengths and its weaknesses.

The initial review sessions actually brought to light some inherent flaws in the procedure, thereby highlighting that, improvements to the UPR are possible. But the first few sessions also illustrated the progress that this new exercise offers States that play by its rules.

The UPR results are ambivalent. Once States are judge and jury, foreign policy is never far from their thoughts when they take the floor. Indeed, it is not the experts who assess a State but peers. The UPR exercise reflects the new Human Rights Council. It is just one of the signs pointing to a broader crisis in the international system. The question is not whether to withdraw or not from the Council; it is the multilateral body where human rights are discussed. The process itself, however imperfect it may be, must be tackled, in order to make it as efficient as possible.

# From preparation to review

Resolution 5/1 of the Human Rights Council sets out the order in which the States<sup>1</sup> are to be reviewed, stating that this must “*reflect the principles of universality and equal treatment*” and that “*equitable geographic distribution should be respected in the selection of countries for review*”.

The forty-seven initial Member States of the Council, elected for a one - or two - year mandate, are reviewed first. They must be reviewed before the end of their mandate. The first member and observer States to be reviewed are chosen by the drawing of lots within each regional group. The selected countries are then reviewed in alphabetical order “*unless other countries volunteer to be reviewed*”<sup>2</sup> first. Colombia voluntarily put itself forward for review in the first year of the UPR’s establishment.

Of the documentation that makes up the background information from which the State is examined, the national report is important but not compulsory. Therefore, as set out in Resolution 5/1, the information presented by the State can take this form but equally the State may choose to present the information orally. Only two States<sup>3</sup> have not submitted a national written report to date: Cape Verde<sup>4</sup> and Comoros<sup>5</sup>. States are encouraged to put in place a national consultation process involving all stakeholders prior to preparing a report.

## National consultations with ambiguous results

The national report is one of three pillars on which the review is based. It is prepared by the State under review and can be presented orally or in writing, provided that the written text does not exceed twenty pages. Achievements, best practice, problems and constraints, chief priorities and shortcomings should all be included. The General Guidelines<sup>6</sup> on how to prepare information that is to be submitted as part of the Universal Periodic Review were adopted by the Human Rights Council on 27 September 2007. The vast majority of the national reports have followed the guidelines:

Point A: methodology;

Point B: overview of the country and normative framework;

Point C: promotion and protection of human rights “*on the ground*”;

Point D: assessment of achievements and difficulties;

Point E: priorities in order to overcome these difficulties;

Point F: request for technical assistance;

Point G: presentation of the follow-up of the previous review.

1. Resolution 5/1, annex I. C.

2. Resolution 5/1, § 12.

3. 2 out of 96 States reviewed to date.

4. Third session – reviewed on 10 December 2008.

5. Fifth session – reviewed on 13 May 2009.

6. Decision 6/102 of 27 September 2007.

There is a great risk that national reports are nothing more than a summary of national legislation lacking any real analysis on the ways the legal texts are applied in practice. To prevent this, the Human Rights Council encourages States to piece together all the information they intend to include in their national report for the UPR through “a broad consultation process at the national level with all relevant stakeholders”<sup>7</sup>.

The NGOs can therefore ask their governments to organise such consultations, be notified of when they are to take place and participate in them.

The involvement of the NGOs at that stage of the process can be positive for the government. It provides an opportunity of listening and responding to the concerns of civil society at the national level before these questions are raised internationally. A number of States have seen the benefit of this and made reference to these national consultations in their reports or in their introductory statements. In this respect, Guatemala<sup>8</sup> is an especially remarkable example. The Guatemalan government worked closely with the Office of the High Commissioner for Human Rights to consult with members of civil society and inform them about how they could participate in the UPR process. Another positive example is Tonga<sup>9</sup>, where civil society as a whole publicly approved the national report<sup>10</sup>.

Switzerland<sup>11</sup> published the draft national report on its Foreign Affairs Ministry website and invited members of civil society and all Swiss citizens to post their comments. The Finnish government<sup>12</sup> organised a round-table discussion with members of civil society, who were sent the draft report for their comments. In the government’s view, continuous dialogue with civil society during the preparatory stages added considerably to the contents of the report. In addition, a representative of civil society, who sits on the Advisory Board for International Human Rights Affairs, was part of the Finnish delegation.

Some States, such as Israel<sup>13</sup>, admitted during the interactive dialogue not having organised formal national consultations with the NGOs. Other countries, for example the Russian Federation<sup>14</sup>, simply confirmed that they had organised a consultation, without giving any further details. In reply to a question from Japan requesting further information, the head of the delegation made it clear that fruitful dialogue had been organised with key stakeholders of civil society, but did not elaborate further. During the interactive dialogue, in response to a question by the United Kingdom, Dominica<sup>15</sup> regretted that the preparation process had been a little hasty and the consultation with civil society somewhat limited. Chad, on the other hand, made no reference whatsoever to national consultations.

In other instances similar consultations had been organised but had not been useful, according to civil society organisations, either because they had been organised too late or because there had been too few of them. Quebec groups admonished the Canadian and Quebec governments for not having respected the procedures set out by the Council as regards preliminary consultations prior to the UPR. They concluded that the consultations had taken place too late so as not to be able to influence the report. The first consultations organised through the Ministry for International Relations (MIR) took place two weeks before the review. The three other consultations organised directly by the Federal Government all took place in January when the review was set for February 2009. Similarly, civil society associations in Luxembourg were only consulted once before the drafting of Luxembourg’s national report.

One awkward issue which remains surrounding the participation of civil society in these consultations is that certain States only open up their consultations to registered NGOs; this presents serious problems in countries which impose strict criteria on NGO registration, such as Turkmenistan or Cuba.

7. §15(a) of the Annex to Resolution 5/1, Human Rights Council: Institution-building.

8. A/HRC/WG.6/2/GTM/1, §1 to 10.

9. A/HRC/WG.6/2/TON/1, §2 and 3.

10. A/HRC/WG.6/2/TON/1.

11. A/HRC/WG.6/2/CHE/1, IV §81 to 85.

12. A/HRC/WG.6/1/FIN/1, § 2 to 4.

13. Reviewed on 4 December 2008, during the fourth session of the UPR.

14. Reviewed on 4 February 2009, during the fourth session of the UPR.

15. Reviewed on 7 December 2009, during the sixth session of the UPR.

## RECOMMENDATIONS

- Encourage NGOs at national level to participate in drafting the national report and in initiating constructive dialogue with their respective governments prior to, during and after the review.
- Suggest that governments organise broad national consultations in a spirit of openness and cooperation with civil society. These consultations should take place sufficiently in advance of the drafting of the national report for the points of view of civil society to be included in it.
- Encourage States to submit a written national report.

## Contributions by the NGOs

The Universal Periodic Review is based on three reports:

One prepared by the State under review,

- A compilation, put together by the Office of the High Commissioner for Human Rights, containing information taken from reports by treaty bodies<sup>16</sup>, special procedures<sup>17</sup>, including observations and comments from the State in question and other official United Nations documents.
- A compilation of “*additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review*”<sup>18</sup>.
- These documents are available before the review.

The NGOs are thus invited to send a written contribution to the Office of the High Commissioner presented in a strictly defined format. This body undertakes then to summarise all these contributions into a ten-page document called a “*Summary of Stakeholders’ information*”.

The written contributions from the “*other relevant stakeholders*” vary from one State to another and from one session to the next. Thus there were 39 contributions for Tunisia’s UPR, compared to just five for the Netherlands during the first session. There were two contributions for Gabon and Mali, as opposed to 32 for Sri Lanka during the second session. The first session saw the highest number of contributions<sup>19</sup>, with an average of 18 contributions per State, versus 13 during the second session and ten during the third and sixth sessions.

During the course of the third session, two contributions were observed for Liechtenstein, Barbados and Cape Verde, and 30 for Israel.

Leading up to the review of the report on Cuba during the fourth session of the UPR in February 2009, a total of 326 NGOs was counted as having sent contributions to the Office of the High Commissioner for Human Rights, many of them concentrating on the harm caused by the American embargo. Those NGOs hoping to report human rights violations in Cuba found themselves deluged by a flood of contributions in favour of Raul Castro’s regime. For this session there were also 50 contributions for Canada, 46 for China, but only two for Djibouti. Cuba’s record means it is not possible to calculate a representative average for the fourth session of the UPR, since it pushed the total number of contributions up to 555.

Contributions made in the lead up to the fifth session were fewer by and large, with an average of seven contributions per State, but they were more evenly spread among all countries. For the sixth session the number of contributions rose once more, with an average of ten contributions per State. Most notably during this session there were 19 contributions for the Democratic Republic of Congo, 23 for Cambodia and 17 for Eritrea.

<sup>16</sup>. The treaty bodies are committees of independent experts set up in accordance with international human rights treaties that they are responsible for supervising.

<sup>17</sup>. Special Procedures is the generic name given to mechanisms set up by the Human Rights Commission and adopted by the Human Rights Council to deal with a specific situation in a country or with questions of a specific nature throughout the world.

<sup>18</sup>. §15(c) of Resolution 5/1.

<sup>19</sup>. There were 295 contributions in the first session, 208 in the second, 170 in the third, 555 in the fourth, 118 in the fifth and 165 in the sixth.

## RECOMMENDATIONS

- Encourage civil society in countries under review to present written contributions to ensure that the documents being used as a basis for the review are sufficiently diversified to enable an objective review.
- Encourage the NGOs and other relevant stakeholders to meet to discuss common problems and present joint contributions to avoid duplication.
- Prevent States from leaning too heavily on contributions from NGOs that support them. This practice weakens the UPR process by swamping contributions from independent NGOs when the space given to NGOs in the process is already severely limited.

## Undertakings made by the States prior to their review

It has been possible to note a certain connection between the ratification by States of international human rights treaties and their upcoming review as part of the UPR. For example, Pakistan ratified the International Covenant on Political, Social and Cultural Rights and signed the International Covenant on Political and Civil Rights on 17 April 2008 - less than three weeks before its review under the UPR. Cuba ratified the International Convention against Enforced Disappearances on 2 February 2009 before its peer review on 5 February 2009. Senegal ratified the same Convention on 11 December 2008, while its review took place on 6 February 2009. Azerbaijan ratified the Optional Protocol to the Convention against Torture on 28 January 2009 and was reviewed on 4 February 2009.

Some States have also sent out permanent invitations to special procedures mandate-holders at the Council. The Republic of Korea issued such an invitation in March 2008, with its review due to take place two months later; Zambia, which was also reviewed during the UPR second session, acted similarly in May 2008, as did Monaco, which underwent review during the fifth session and made this commitment on 22 October 2008.

Some States have used their twenty-page allowance for their national report to make commitments. This was the case with Tunisia<sup>20</sup>, for example, which announced in its report that a bill was being drafted with a view to withdrawing the statements and reservations made when it ratified the Convention on the Rights of the Child. Other States have waited until the oral presentation of their report to make similar commitments. Chad, for example, made voluntary commitments on 5 May 2009 during its UPR concerning the fight against impunity in cases of human rights violations and other economic crimes, as well as comparable offences. It also undertook to adopt new Codes (Criminal Code, Code of Criminal Procedure and Code of Military Justice) before the third quarter of 2009.

In the introduction to its report to the UPR, Congo made nine commitments on 6 May 2009, in particular to send invitations to mandate-holders and to work closely with them, as well as to adopt the bill guaranteeing protection to victims of sexual violence. Some States used the opportunity to commit to ratifying treaties that had been on hold. This was the case with France, when it undertook in its introductory speech on 14 May 2008 to put to Parliament for ratification at the earliest possible opportunity the Convention on the Rights of the Disabled, the International Convention on the Protection of all citizens against Forced Disappearances and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Punishment or Treatment, and to reconsidering its reservations concerning certain other treaties.

<sup>20</sup> A/HRC/WG.6/1/TUN/1, §12.

Naturally, ratifying international treaties is not enough to effect a change in the human rights situation on the ground, but it is an important first step. These commitments by States before their reviews also show that they take the UPR seriously.



# The conduct of States during their review

The Universal Periodic Review consists of a three-hour interactive dialogue between the State under review and the Human Rights Council's member and observer States. Each State chooses the composition of its delegation.

## A process accepted by the States

The 192 UN member States are all subject to the same procedure as regards their human rights obligations. Civil society as a whole can watch the full webcast of the review live or as a recording. The review documents are all made public.

A few days before the commencement of the first session in April 2008, a letter signed by the Groups of African and Arab countries and by the Organisation of the Islamic Conference asked for each stage of the procedure to be closed to outsiders in advance and, in particular, requested a ban on filming the meetings, despite the fact that they were public. An emergency meeting was called. The parties were reminded that the filmed material constituted an important archive and a working tool for those countries that did not have the means of sending diplomats to observe the process in situ.

As the sessions progressed, it became apparent that many countries from all parts of the world were prepared to fall into line and create a new instrument that would be as efficient as possible. The UPR is the only UN process that obliges every UN member State to be reviewed publicly by its peers.

All the countries selected for the six initial sessions agreed to the process. So States which had not or would not have agreed to be questioned by the Human Rights Council or by other treaty bodies on their human rights situation put themselves forward for this new review. For example, Burkina Faso, whose initial reports had been due for submission to the Committee against Torture, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in 2000 and to the Committee for Migrant Workers in 2005, put itself forward for the UPR on 9 December 2008. Turkmenistan, whose initial reports had been due for submission to the Human Rights Committee in 1998 and the Committee against Torture in 2000, also agreed to be reviewed during the third session of the UPR.

The peers review procedure seems thus to have been unanimously accepted. Even if States may have had disputes on questions of procedure, none of them openly contested the review itself.

## The importance and the quality of the delegations

Those States under review took the exercise seriously, as demonstrated throughout the sessions by the size and the quality of the delegations they sent to represent them during the review.

The delegations were headed by high-ranking individuals. The vast majority of delegations in the six initial sessions were headed by Ministers of State - most of them foreign affairs or justice ministers. The vice President of Colombia, Francisco Santos, came for his country's review in December 2008. Other States chose to have themselves represented by their Ambassadors in Geneva - they included Israel, South Africa and the Democratic People's Republic of Korea.

Many countries brought with them large delegations. Those representing Indonesia, the United Kingdom, Poland, South Korea, Switzerland, Romania, Serbia and Yemen, for example, comprised over 20 individuals. The Mexican and Vietnamese delegations totalled 29. Those of Bahrain and the Philippines numbered over 30, and the Chinese delegation 43.

The attention given by States to the quality and size of their delegations seems to be proof of the extent to which they take the review procedure seriously. That said, the small size of a delegation does not indicate a lack of interest by the State in the process, bearing in mind the expenses involved in the trip. The Comoros<sup>1</sup> and Dominica<sup>2</sup>, for example, were both represented by a single person. Vanuatu, in contrast, delegated four representatives for its review and Tuvalu five.

Some criticism must be levelled, however, at the ratio of men to women within the delegations. Human Rights Council Resolution 5/1 regarding the institution-building recommends that the Universal Periodic Review fully incorporate the issue of gender balance. The consideration of gender balance should in any case be reflected in the composition of the delegations. Looking at the largest delegations<sup>3</sup> for the first six sessions, the male/female breakdown varies greatly between the different States under review.

In some delegations men certainly dominated. The United Arab Emirates delegation comprised 24 men and only 5 women; China's delegation 31 men and 11 women; the Republic of Korea's delegation 19 men and 7 women; Indonesia's delegation 16 men and 5 women; Senegal's delegation 15 men and 5 women; Switzerland's delegation 14 men and 8 women; and Yemen's delegation 20 men and 2 women.

Some delegations, such as those of Chad<sup>4</sup> and Ethiopia<sup>5</sup>, were made up solely of men.

Other States came with more balanced delegations. They included the Philippines (15 men and 12 women), Mexico (15 men and 13 women), Germany (9 women and 12 men), the Former Yugoslav Republic of Macedonia (7 men and 6 women), Serbia (13 women and 10 men) and Albania (13 women and 14 men).

There were very few delegations with the same number of men as women, such as New Zealand's (6 men and 6 women).

Finally, there were some predominantly female delegations, though they were far fewer in number. The Finnish delegation included 12 women among its 15 members; the Romanian delegation 16 women and 8 men; for the Belize delegation 3 women and 1 man; the United Kingdom delegation 14 women and 9 men; the Brunei Darussalam delegation 10 women and 6 men; and the Norway delegation 16 women

1. H E Mr Mohamed Jaffar Abbas, Secretary General of the Ministry for the Civil Service, Administrative and Institutional Reforms and Human Rights.

2. Mr Crispin Gregoire, Permanent Representative of Dominica to the United Nations in New York.

3. Over twenty members in the delegation.

4. The Chad delegation was made up of 10 men during its review on 5 May 2009.

5. The Ethiopia delegation was made up of 6 men during its review on 9 December 2009.

and 10 men. The Burundi delegation was headed by two female Ministers, Immaculé Nahayo, responsible for Solidarity, Human Rights and Gender issues and Clotilde Niragira, Minister for Work and the Civil Service.

## RECOMMENDATIONS

- Encourage States to bear gender issues in mind when putting together the delegations that will represent them during their review.
- Encourage States to follow the practice of choosing qualified individuals to represent them.

## Objectivity of the reviewed States

To recap, the Universal Periodic Review is based on three reports: one prepared by the State under review, a second provided by the UN (special rapporteurs and treaties) and a summary of information from other stakeholders. These documents are available prior to the review. With access to the documentation from a variety of sources, the observer can thereby form a fairly precise idea of the human rights situation in a given country.

As such, a country relying on a self-serving report might expose itself to harsher criticism and more stringent recommendations from other States. A government attempting to marginalise civil society in too ostentatious a way would find itself out of kilter as regards the spirit of transparency underpinning the UPR. The more a country cooperates and recognises its weaknesses concerning the implementation of human rights nationally, the less it is exposed to public criticism.

During the fourth session in February 2009, Mexico indicated that it was prepared to discuss sensitive aspects of human rights in the country. The delegation's introduction was self-critical. The delegation was well-prepared, open and gave detailed answers to almost all the concerns raised in the written questions and during the interactive dialogue. During this review no single geographical group appeared to dominate. Mexico's review was a quality review.

However, the reviews of some countries presented a singular problem: a lack of objectivity. Indeed, on several occasions there was a clear contradiction between the image portrayed of a country at the conclusion of its review before the working group and the issues raised by special procedures, treaty bodies and NGOs.

During the plenary session devoted to adopting the report on Tunisia, which had already been congratulated by numerous States during the working group session, some NGOs praised the successes of the country in a number of areas<sup>6</sup>. Other NGOs<sup>7</sup> gave different opinions, emphasising the disappointment they felt at the final report of the working group. Certain statements made during the meeting of the working group contradicted the conclusions of special procedures and treaty body reports. Moreover, Tunisia had just been criticised on matters concerning torture, press and internet censorship and other violations during the review by the Human Rights Committee in its fifth periodic review<sup>8</sup>. The Committee's recommendations state that it *"is concerned about serious and substantiated reports that acts of torture and cruel, inhuman or degrading treatment or punishment are being committed in the territory of the State party. According to some of these reports: (a) some judges refuse to register complaints of ill-treatment or torture; (b) some inquiries ordered subsequent to such complaints take an unreasonable amount of time; and (c) some superiors responsible for the conduct of their agents, in violation of article 7 of the Covenant, are neither investigated nor prosecuted"*. Tunisia, however, concluded the plenary session<sup>9</sup> by rejecting the criticisms from the

6. Organisation of Migrant Mothers, National Union of Tunisian Women, Espace Afrique International, Tunisian Association for the Rights of the Child, Foundation for Development and Solidarity, Association for Communication.

7. FIDH (International Federation of Human Rights), OMCT (World Organisation against Torture) and IPA (International Publishers Association).

8. See documents linked to the review from the Human Rights Committee for Tunisia's fifth periodic review: <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>.

9. Mr. Béchir Tekkari, Minister for Justice and Human Rights, closing speech, 9 June 2008.

NGOs and refusing to invite the Special Rapporteur on Torture, on the pretext that there were only a few isolated cases of torture in the country that were being prosecuted.

Similarly, during the plenary session devoted to adopting the report on Pakistan, there was a clear contrast between the statements by the delegation on the state of freedom of expression and religion in the country and the criticisms made by several NGOs.

The objectivity of the exercise was also seriously brought into question in the third session during Israel's review<sup>10</sup>. Israel presented the human rights situation exclusively within its recognised borders but not within the occupied territories. However, both the written contributions from the NGOs and the 54 delegations which took the floor expressed their explicit concerns about the human rights situation in the latter areas.

During Chad's review on 5 May 2009 at the fifth session of the UPR, the head of the delegation called the recruitment of child soldiers in Chad "a myth": "*From a government perspective it is obvious that no child recruitment takes place (...) that's just a myth (...). Since 2004/5 no child has been recruited (...). The situation is identical in the camps for displaced persons*". Thereby Chad rejected recommendations from Spain and Slovenia requesting it to set the minimum age at 18 years for recruitment of soldiers, to demobilise child soldiers and to prevent minors from being recruited from refugee camps.

However, according to several international organisations<sup>11</sup> and international bodies<sup>12</sup>, the presence of child soldiers aged under 18 within the Chad army remains a reality.

Chad also stated, in its oral reply to questions, that it had not been able to find any proof of violence against women at the conclusion of its own enquiry in the east of the country, where the security situation is more critical. It did, on the other hand, accept other recommendations aimed at protecting women from sexual violence.

The discrepancy between the image given by a country at the conclusion of its review and conclusions drawn on the ground by civil society raises the issue of the late involvement of NGOs in the process. In order to gain an objective view of human rights violations in the country under review, the viewpoints both of civil society and of treaty body and special procedure representatives are critical.

## RECOMMENDATIONS

- Encourage States to develop a sense of self-criticism, cooperation and openness during the interactive dialogue.
- Give sufficient space to the NGOs and the independent experts during the review itself to guarantee an objective review.

## How States use their speaking slots

The Universal Periodic Review aims to use time limits to make the process as efficient as possible. In Resolution 5/1, focusing on institution-building, the Human Rights Council outlines that the review must not "*be overly long*"<sup>13</sup>.

During the review by the working group the State has one hour in which to present its report, respond to questions and conclude the meeting.

During the first session, the Netherlands chose not to concentrate on the

10. This occurred one month before the attacks on Gaza in December 2008.

11. In particular the International Federation for Human Rights (FIDH) and Human Rights Watch.

12. The Committee for the Rights of the Child (CRC/C/TCD/CO/2, para.69), the UN Secretary-General (S/2008/532, para 10. See also S/2007/400 (2007) and S/AC.51/2007/16) and the Bureau for the Coordination of Humanitarian Affairs for Chad "Humanitarian action in Chad: Facts and figures snapshot report", 18 September 2008, p. 4, available at [http://www.reliefweb.int/rw/RWFFiles2008.nsf/FilesByRWDocUnidFileName/SHIG-7KLFFQfull\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFFiles2008.nsf/FilesByRWDocUnidFileName/SHIG-7KLFFQfull_report.pdf/$File/full_report.pdf). See also UNICEF, Briefing Book Eastern Chad – September 2008, p.20.

13. Resolution 5/1, §3(i).

information already contained in the report. It succinctly tackled the questions put through the troika<sup>14</sup>, thereby leaving 45 minutes to reply to questions from the floor. Other countries, such as Argentina (during the first session), and Ghana, Peru, Sri Lanka and Romania (during the second session) devoted up to 40 minutes to presenting their reports. Consequently they were unable to tackle all the points raised during the interactive dialogue. However, from the third session onwards, the general practice of spending 30 minutes on the introductory statement was more or less respected for the countries reviewed.

During the fourth, fifth and sixth sessions<sup>15</sup> the majority of States also spent 30 minutes or less on their introductory speech. This division of the speaking time did not, however, guarantee that the country being reviewed responded to the questions asked. So during the fifth session the Central African Republic only spent 12 minutes on its introductory presentation without, nevertheless, responding either to questions that had been raised beforehand or to most of the concerns raised during the debate.

The reviewed countries can choose to reply as they see fit to questions put by other States during the working group's discussions. They can respond to one question as a time, as they go along, or opt for a group response at the conclusion of the statements.

During the first session Ecuador responded every seven or eight questions. This approach seems to be the most suitable and useful so as not to ignore important subjects.

But this practice was far from generally followed by all the States. The Russian Federation, during its review as part of the fourth session, chose to respond to the concerns raised only after the 48th statement and when there were only seven States left wishing to take the floor. The head of the delegation then declared that it would be impossible to reply to all the questions but that it would try to respond to those raised most often. It did so, but in the vaguest terms. During this same session Saudi Arabia opted to reply to questions after 40 interventions and the remaining 26 minutes did not allow the delegation enough time to respond to the numerous questions and recommendations. Other States, such as Chad<sup>16</sup> at the fifth session or China<sup>17</sup> during the fourth, opted to respond to questions when approximately half the speakers had taken the floor, thereby giving only imprecise answers. During the sixth UPR session the practice followed by the Dominican Republic<sup>18</sup>, Albania and Costa Rica to comment at least twice during the interactive dialogue seems to allow for a superior debate.

It would be fair to question whether some States simply use as much of their speaking time as possible to present their report in detail, so as to avoid responding to certain questions, seemingly due to lack of time. The statements by a large number of "friendly" States during the interactive dialogue also limit the scope for a State under review to reply to all the questions raised. When Tunisia was reviewed on 8 April 2008, 65 States took the floor, leaving the head of the delegation very little time to respond to the plethora of questions raised. Thus many questions remained unanswered.

When a working group's report is adopted the States have twenty minutes to comment. States under review have used this speaking time in different ways. Most countries have set out the UPR recommendations which have been on hold and which in the end they had adopted or rejected. During the first session Switzerland, Finland, Benin, Republic of Korea, Ukraine, Romania, Mali, Sri Lanka and the United Kingdom concentrated on the recommendations that they felt unable to accept, offering justifications for their decision. During subsequent sessions, most States set out in detail the efforts that they would make to implement the recommendations and commitments they had voluntarily accepted. Many States also chose to respond to sensitive questions raised by their peers during the interactive dialogue in their working group. Examples are Indonesia on its Ahmadiyah minority, India on discrimination stemming from the caste system, France on the wearing of religious

14. According to Resolution A/HRC/RES/5/1, the troika comprises three rapporteurs who assist the working group during a country's review.

15. **Fourth session:** Germany, Canada, Bangladesh, Russian Federation, Azerbaijan, Cameroon, Cuba, Saudi Arabia, Senegal, China, Mexico, Mauritius, Jordan, Malaysia.

**Fifth session:** Monaco, Belize, Chad, Uruguay, Chile, Vietnam, Vanuatu, Comoros, Slovakia, Afghanistan, New Zealand, Yemen, Central African Republic.

**Sixth session:** Eritrea, Cyprus, Cambodia, Norway, Albania, Portugal, Bhutan, Democratic People's Republic of Korea, Brunei Darussalam, Costa Rica, Equatorial Guinea, Ethiopia.

16. Response after the 28th of 49 statements.

17. Response after the 33rd of 60 statements.

18. During its review on 1st December 2009, the Dominican Republic has chosen to comment initially after the first twelve statements, a second time after the tenth and to conclude after fifteen new interventions.

symbols, Canada on its indigenous populations, Chad on Korotoro prison, and Slovakia on the sterilisation of Roma women. Some States, such as Gabon, Guatemala and Pakistan, did nothing more than repeat those parts of the statements made during the working group meetings and confirm their commitment to the UPR process.

The freedom afforded to countries as regards the management of their speaking time as well as the number of points raised during the debates affect the way in which they respond to concerns and questions raised. Despite the current tendency to spend 30 or so minutes, or less, to introduce the debate, the quality of the responses still depends on the political will of the State to give clear answers to questions raised or to avoid certain topics mentioned.

## RECOMMENDATIONS

- Encourage States wishing to use this mechanism as a real tool to strengthen human rights to use their introductory speeches to respond to questions that have been raised in writing beforehand and to outline the latest developments as to human rights in their countries as well as the problems they are facing concerning their implementation.
- Encourage the States under review to make a brief introductory statement so as to allow sufficient time for meaningful dialogue.
- Find an acceptable compromise between the speaking time given to States and the number of States given the opportunity to take the floor. The Council must maintain a balance between allowing enough time for constructive dialogue with the country being reviewed, full participation of States in the process and equal treatment between States wishing to express their opinions.

## Taking the recommendations on board

The recommendations made at the conclusion of the UPR, as a cooperative mechanism, should be enforced chiefly by the State in question and, as necessary, by other relevant stakeholders. The recommendations upheld by the State concerned are an important means of prompting changes to national legislation and practices as well as a useful point of reference with which to gauge the evolution of the situation.

The question of selectivity arises with regard to recommendations. Indeed, States can decide to accept or reject recommendations made regarding them. Although this principle guarantees the respect of a State's sovereignty, it also highlights the limits of the review. A State's acceptance of the recommendations is a precondition for their implementation on the ground. In reality, some countries reject a large number of the recommendations.

It is as such difficult to build a global picture of the way in which States take into consideration or reject the recommendations made to them by their peers. Certain States accept all the recommendations at once; others comment at the review stage on all the recommendations; some accept and/or reject some of the recommendations and reflect on others; still others make no comment whatsoever on the recommendations but reserve the right to comment later. Some countries choose to give very detailed responses about the reasons for which they accept or reject the recommendations, while others respond summarily.

Although the attitude of States vis-à-vis the recommendations varies from one to the next and depends largely on the quality of the recommendations themselves, certain trends can be observed.

Canada<sup>19</sup> set a positive precedent when, during the adoption of its report in June 2009, it responded to recommendations from States which had not been able to voice their comments due to lack of time during the review. In fact Canada's review generated a great deal of interest, as 65 States applied in writing to take the floor. Only forty or so of them were able to intervene despite their speaking time being limited to two minutes each. It was a shame that in many cases, due to lack of time or because so many “friendly” countries had asked in writing to make a statement and headed the list of speakers, many recommendations were not able to be presented and considered.

Even during the first session, South Africa, followed by many other States during the subsequent sessions, did not immediately respond to the recommendations emanating from the working group. This practice should enable States to consult, at a national level, their ministries and members of civil society before responding. This, in turn, could guarantee efficient implementation of the accepted recommendations. Another good practice adopted by States is that of communicating in writing beforehand their response to the recommendations and justifying their choice, as this allows a more focused debate when the report is actually adopted. This practice is not, for now, followed by the majority of States. So during the adoption of the working groups' reports in the fifth session of the UPR, the responses of twelve of the sixteen States reviewed were not communicated in writing before the final report was adopted. In order to be of any use these responses must be clear and unambiguous and this is not always the case. It is sometimes difficult to understand which recommendations are being supported by the State and which are not.

Moreover, it is worrying that some States continue to reject certain recommendations, arguing that they do not reflect the real situation in the country – as was the case, in particular, with China<sup>20</sup>, Djibouti<sup>21</sup> and the Central African Republic<sup>22</sup> – or because they did not conform to national legislation, as was argued by Botswana<sup>23</sup>, Djibouti and Saudi Arabia<sup>24</sup>. Turkmenistan, for its part, rejected the recommendations made by Sweden and the Czech Republic concerning “*decriminalising sexual relations between consenting adults of the same sex and taking steps to promote tolerance in this area*”<sup>25</sup> by invoking the right of all societies to accept laws based on their own moral standards and national traditions. The aim of the UPR is to promote and protect human rights. Cultural relativism and national legislation cannot be put forward to justify a refusal to accept international commitments on human rights. It is equally important to remind States that, in accordance with Article 27 of the Vienna Convention<sup>26</sup> on the Law of Treaties, countries may not cite national legislation to justify non-compliance with their international commitments.

The lack of coherence in accepting or refusing certain recommendations is also debatable. Botswana made a commitment for 2009 to provide free housing to its poorest citizens. However, it refused, “*on financial grounds*”, to ratify the International Pact on Economic, Social and Cultural Rights. China<sup>27</sup> accepted recommendations inviting it in vague terms to: “*Create conditions for an early ratification of the International Covenant on Civil and Political Rights (ICCPR) (Sweden); In accordance with its imperatives dictated by its national realities, to proceed to legislative, judicial and administrative reform as well as create conditions permitting the ratification, as soon as possible, of the ICCPR (Algeria); Analyse the possibility of ratifying/consider ratifying/ratify ICCPR (Argentina, Brazil, Austria)*”. On the contrary, it refused Australia's recommendation that invited it clearer terms to do the same thing, i.e. to “*ratify the International Covenant on Civil and Political Rights (ICCPR) as quickly as possible and with minimal reservations*”.

The speed with which certain major recommendations for the promotion and protection of human rights are rejected can lead one to fear the worst as to the protection of certain rights. At the conclusion of its review in February 2009, China had already refused about fifty recommendations made there.

19. Marius Grinius, Ambassador and permanent representative for Canada, Introductory speech, 9 June 2009.

20. Ambassador Li Baodong, Introductory speech, 11 June 2009.

21. H.E. Mr. Mohamed Siad Doualeh, Ambassador and permanent representative of Djibouti at the United Nations in Geneva, Introductory speech, 9 June 2009.

22. H E Leopold Ismael Samba, Introductory speech, 23 September 2009: “cultural hindrances” prevent the CAR from ratifying the Convention on the Elimination of all forms of Discrimination towards Women.

23. Written responses to the recommendations, A/HRC/10/69/Add.1

24. A/HRC/11/23, 588: “Saudi Arabia believes that the recommendations at paragraphs 44 e), 54 b), 79 c), 46 b), 49 b), 65 d), 75 b), 47 e), 46 a), 65 b), 71 b), 48 d), 74 c), 65 a), 27 c), 44 c) and 74 b) did not gain the support of Saudi Arabia because they did not conform either to existing legislation or to promises and commitments or else did not concern practices that exist in Saudi Arabia”.

25. A/HRC/10/79.

26. Vienna Convention on the Law of Treaties. Concluded in Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331.

27. A/HRC/11/25.

### Requests for technical assistance provided by Resolution 5/1

At the second session of the UPR, Benin was the first country to request technical assistance to help it improve the human rights situation in the country. Benin was also the first of the “less developed” countries, according to the UN classification, to be reviewed by the UPR. At the third session the increase in the requests for technical assistance by, among others, Botswana, Barbados, Burkina Faso, Burundi and Tuvalu, reflected the increase in the number of smaller countries being reviewed. Burundi’s national report explicitly set out a list of areas in which international assistance was needed. In the majority of cases working group States were led to make recommendations so that the international community offered its help. In a small number of cases - that of Tuvalu for instance - States offered direct assistance in specific areas in order to increase the country’s ability to protect human rights. Congo accepted 50 of the 59 recommendations made in its regard, reserving the right to reply to one and rejecting the remaining eight that already exist in national legislation or for sociological reasons. It concluded by asking for the support of the international community in implementing these commitments.

### Links with the recommendations made by the United Nations treaty bodies

The Universal Periodic Review can help draw greater attention to treaty body recommendations and special rapporteurs’ reports. From a procedural point of view, many States made commitments during their presentations to hand their late reports to the different treaty bodies, sometimes giving a precise timeframe. This was the case for Congo during the adoption of the working group report at the twelfth session of the Council, when it undertook to present its initial report to the United Nations Committee against Torture during the following session in October 2009.

However, the relationship between the UPR and the treaty bodies is also a source of concern. The possibility given to every State which undergoes the Universal Periodic Review to “reject” publicly the recommendations stemming from the deliberations of the working group responsible for the review is worrying when identical or similar recommendations have been made in the past by treaty bodies. All the more so given that this practice of publicly rejecting part or all the recommendations has been relatively frequent.

In view of the wide power of States to choose the recommendations they accept, the UPR is perhaps not the most efficient mechanism to improve the human rights situation in countries where these rights are extensively violated. It underlines the importance of maintaining the geographical mandates of the Council that allow for a continual and systematic review undertaken by independent experts.

## RECOMMENDATIONS

- Encourage all States to follow good practice that involves issuing their responses to the recommendations in advance and in writing, so as to ensure better comprehension and a quality debate.
- Encourage States not to adopt a stance on recommendations until they have consulted the national NGOs on how they can be applied.
- Encourage States clearly to identify those recommendations they accept, to give reasons for this where possible and reject any recommendations that undermine human rights.
- Encourage reviewed States to bear in mind those recommendations not made due to lack of time and to respond to them nonetheless. These recommendations should be included in the working group report, by way of an annex, and taken into consideration at the next review.
- Ask States to ensure that reports on the UPR and the recommendations made at the conclusion of the review are widely distributed at a national level.

# Peer review

Since the Council's composition must be based on fair geographical distribution, its seats are allocated as follows:

- 13 for the Group of African States,
- 13 for the Group of Asian States,
- 6 for the Group of Eastern European States,
- 8 for the Group of Latin American and Caribbean States,
- 7 for the Group of Western European and other States.

All UN Member States may put themselves forward to sit on the Council. Member States must bear in mind “*the contribution each candidate has made to the cause of promoting human rights and the commitments made voluntarily to that end*”<sup>1</sup>. A Council member's right to a seat may be suspended by a two-thirds majority vote of members present and voting if it commits gross and systematic human rights violations. Once elected, States must fully cooperate with the Council and respect the strictest standards as regards promoting and defending human rights.

Since the first UPR session Council Member States have always been extremely active in the sessions. During the sixth UPR session, only two Member States of the Council did not take the floor<sup>2</sup>. During the fifth session, speeches by Council members accounted for over half all speeches. Forty-four of the 47 member States took the floor, compared with 77 of the 147 observers. Only Madagascar, Uruguay and Zambia did not take the floor. It is also to be noted that certain observers, such as Algeria, Morocco, the Czech Republic, Turkey and the United States, are among those States which spoke most often during this session.

In the first and third UPR sessions, 46 Council Member States out of 47 intervened during the review<sup>3</sup>.

By comparing these figures on the participation of States during the different sessions, it becomes apparent that the fourth session was the most intense, with 856 statements<sup>4</sup> given by 128 States. While there had been approximately 40 speakers per review during previous sessions, they numbered 53 during this session. This heightened interest may be due to the geopolitical importance of a certain number of the States reviewed during this session, in contrast to the preceding session - which, on the contrary, had betrayed a level of disinterest by States.

Due to the ever growing number of States wishing to speak, some were unable to do so through lack of time. Those statements which could not be given during the review are posted on the Council's Extranet.

One can note a gradual increase in the spread of States wishing to take the floor: 118 States at the sixth UPR session, compared to 98 at the first<sup>5</sup>.

These figures as a whole illustrate the growing and firm implication of States in the UPR process.

Globally, since its inception, the UPR has seen a fall in the number of indulgent speeches given by “*friends*” of the State under review. The space accorded to recommendations has gained in volume and quality.

1. A/RES/60/251, §8.

2. Madagascar and Zambia.

3. During the **first session**: 46 Member States spoke, as opposed to 52 out of 145 observers. Gabon was the only country not to take the floor.

**Second session**: 45 Member States spoke, as against 60 of 145 observers. Only Bolivia and Gabon did not take the floor.

**Third session**: 46 Member States plus 64 of 147 observers. Only Madagascar did not intervene.

**Fourth session**: 45 Member States and 83 of 147 observers. Cameroon and Zambia were alone in not taking the floor.

**4 Sixth session**: 750 statements. Fifth session: 671 statements. Fourth session: 856 statements. Third session: 604.

Second session: 647. First session: 610 statements.

**5**. 105 at the second, 110 at the third, 128 at the fourth and 121 at the fifth.

## Use of written questions

Council Member States can send in advance to the troika a list of questions or points to be examined to enable a State to prepare itself to discuss specific issues. These questions must abide by the principles and objectives of the review and be based primarily on the three documents underpinning the review process. They must be sent to the Council Secretariat, which, in turn, sends the document to the State under review within ten working days of the review date. Following the principle of transparency of this process, these questions are then distributed to the member and observer States and posted on the Internet.

During the sessions it has become clear that almost always the same States submit written questions before a State's review. The Czech Republic, the United Kingdom, Germany, Denmark, the Netherlands, Sweden and Latvia often figure among them. Since the fifth session Argentina has joined them. Other States make use of written questions only for certain countries - for example, Cuba for Israel's review or Nepal for Bhutan's review - or only during certain sessions. Liechtenstein asked a great number of written questions<sup>6</sup> during the fourth session of the UPR.

These written questions are treated differently by the States receiving them. Some States begin their oral intervention by responding to them. At the third session, Botswana, Luxembourg, Burkina Faso and the Bahamas set aside time to deal with the written questions in this way. Germany and Nigeria gave detailed replies to these questions at the fourth session and Congo did the same at the fifth session. During the sixth UPR session, Cambodia and Norway gave detailed replies in a specific part of their introductory statements. Other States, however, do not deal with the written questions at all, or do so only very sketchily.

## Non-selectivity principle

In principle the Universal Periodic Review procedure makes it possible to guarantee non-selectivity and equal treatment between States. As such each State reviewed has the right to the same speaking time within the working group, the geographical distribution of Council members is fair, the first Member States and observers being reviewed are chosen at random from within each regional group and the speakers during the plenary sessions are, according to their Statute<sup>7</sup>, given the same speaking time.

In reality, States seem often to select those for whom they will speak, especially in terms of their regional group. Thus, during Liechtenstein's review during the third session, 11 of the 26 countries which spoke belonged to the Group of Western Europe and other States. Similarly, when Colombia was reviewed in December 2008, only two of 43 States belonging to the African group spoke. The prevalence of statements for a reviewed State from other members of its regional group was similar for Luxembourg, Burkina Faso, Uzbekistan, Israel and the United Arab Emirates.

When Bangladesh was reviewed, during the fourth session, 20 of the 48 countries which took the floor belonged to the Group of Asian States. Statements from regional group members of the State under review also dominated in the cases of Germany, Canada, Azerbaijan, Cameroon, Saudi Arabia, Senegal, China, Nigeria, Mauritius, Jordan and Malaysia. This same tendency was apparent during the reviews of the Central African Republic, Monaco, Chad, Congo, Malta, New Zealand, Afghanistan, Vietnam and Yemen during the fifth session of the UPR in May 2009.

<sup>6</sup>. Prior to the reviews of Azerbaijan, Bangladesh, Canada, China, Cuba, Germany, Malaysia, Mexico and the Russian Federation.

<sup>7</sup>. Three minutes for Human Rights Council member States and two minutes for observers. During the sixth session the speaking time was reduced to two minutes for all speakers.

This trend continued during the sixth UPR session in December 2009. The non-selectivity principle appears not to be well-respected. This apparently illustrates a certain disinterest by States in the human rights situations in regions other than their own.

Real disparities exist in the statements made. Indeed, while certain States systematically intervene, others seem to be altogether absent from the debates. It would be tempting to justify these absences through the procedure itself, which sets out a limited amount of time for the speeches by States, only allowing those States that are the first to request to do so to take the floor. However, in reality, certain States intervene almost systematically during the reviews<sup>8</sup>, whereas others do not get involved. Thus Algeria, Brazil, Canada, France, Mexico, the Netherlands and the United Kingdom have intervened at least 13 times at each session. In contrast, Namibia, Tajikistan, Tonga, Costa Rica and the Principality of Andorra have not intervened at all during six sessions.

During the first six sessions the State which has intervened the most often is the United Kingdom (95 times), followed by Mexico (94 times), Canada and France (93 times), Algeria and the Netherlands (91 times), Slovenia (89 times), Brazil and China (88 times).

The room for manoeuvre left to States as regards the composition of the troika also limits the non-selectivity principle. Indeed, as Human Rights Council Resolution 5/1 states, members of the troika are selected at random from among Council members. They must also belong to different regional groups. However, the State under review may request that one of the three members belong to its own regional group or, once only, request that one of the troika members be replaced.

However, it can be seen from the first two sessions that, with the exception of Ghana, all the States from the Group of African States requested that one of the troika members be part of their regional group. A third of the Group of Asian States did the same, only one State<sup>9</sup> from the Group of Latin American and Caribbean States made the same request, whereas the Group of Western European and other States made it clear that it rejected making any such request.

At the third and fourth sessions, seven countries from the Group of African States made this request, together with nine countries from the Group of Asian States and one State<sup>10</sup> from the Group of Latin American and Caribbean States. Lastly, during the fifth session, four States from the Group of Asian States, three from the Group of African States, two from the Group of Eastern European States and only one from the Group of Latin American and Caribbean States asked for one of the members of the troika to be from its regional group. Before the sixth session, ten of the sixteen countries due to be reviewed made this same request: four from the Group of African States, two from the Group of Latin American and Caribbean States, three from the Group of Asian States and one from the Group of Eastern European States.

Thus a majority of States took advantage of the opportunity of having a member from their own regional group as part of the three-member troika. Countries from the Groups of Asian and African States chose this option most often. The Group of Western European and other States did not choose this option at all.

## Quality of statements

Interest in the UPR lies in the quality of the statements and recommendations made in respect of the country under review. The quality varies from one session to the next and from State to State. The most successful reviews were those at which the discussions were the least politicised.

<sup>8</sup>. At least 13 times during a session.

<sup>9</sup>. Ecuador.

<sup>10</sup>. Cuba.

### Interactive dialogue should offer the opportunity of raising serious human rights issues in the country being reviewed

The Peruvian Ambassador, Jose Eduardo Ponce Vivanco, United Nations permanent representative, emphasised on 12 June 2008 during the Council plenary session devoted to adopting the working group's report on Peru, that it is “essential to avoid both politicisation and disproportionate words of praise and it is advisable to refrain from repetitious statements which ignore the specific characteristics of each country and each case. Rather, we should focus on the actions and facts that can objectively help to improve the human rights situation in the State under review. We believe that it is a responsibility incumbent on all States who want the Universal Periodic Review to be an effective instrument to improve the situation of human rights in the countries being reviewed”.

Some statements from delegations which are too consensual do not enable those difficulties encountered by States in implementing human rights in their respective countries to be tackled thoroughly. For other States, however, the review has provided the opportunity of getting to the heart of their human rights problems.

In the multilateral forums and before addressing the criticisms, the experts generally began their speeches with diplomatic formulas that praised certain aspects of the policies of the government under review. This was the case for the majority of the government representatives who took the floor during the UPR session dedicated to reviewing Colombia in December 2008. More than 40 speakers recognised the efforts made by the Colombian government to guarantee human rights in the country. However, none of them came out exclusively in favour of the Colombian government. Most of the gravest problems were raised during the debate. Eighteen of the 44 States which intervened during the interactive dialogue reminded listeners that an internal conflict was still being waged within Colombia, something that President Álvaro Uribe had denied. European countries acknowledge some improvements in the human rights situation in Colombia, before emphasising that serious concerns persisted. The Uruguayan representative recommended that the Colombian government give the security forces strict orders to stop them from treating human rights activists and NGO members as “terrorists”. Calling activists “terrorists” had been encouraged by the highest echelons of power, with tragic consequences, said the Montevideo delegate. Chile, Mexico, Uruguay, Brazil, Bolivia and Guatemala, supported by Spain, demanded new and urgent measures from Colombia to put an end to impunity in the wake of serious human rights violations allegedly carried out by State officials.

When Turkmenistan was reviewed on 9 December 2008 during the third session, a number of delegations raised issues of ill treatment meted out in prisons and against human rights activists (France, Slovakia, Norway, Denmark and Sweden), of forced disappearances (Canada), of using confessions obtained under torture in legal proceedings (Germany), of harassment of journalists (Italy), of violence against women (Japan), of discrimination against the Russian, Turkish, Kurdish, Uzbek and Cossack minorities (Uruguay and Korea), and of religious intolerance (Belgium and France).

### Vague recommendations that make follow-up difficult

As stated in Human Rights Council Resolution 5/1 on institution-building, the review process must be “action-oriented<sup>11</sup>”. The principal aim of the review is the improvement of the human rights situation on the ground. It should thus be a rolling programme during which it must be possible to assess to what extent a State is respecting its obligations and commitments. However, it appears to be impossible to follow this up if the statements made by the States being reviewed and States which take the floor remain so vague.

During its review on 8 April 2008, Tunisia<sup>12</sup> accepted all the 12 recommendations<sup>13</sup> made in its regard. However, for the most part, they remained very vague and

11. Resolution 5/1, §3(d).

12. A/HRC/B/21.

13. Tunisia accepted the 12 recommendations listed in the report, but it is important to note the problem of format raised during adoption of its report: the recommendations which Tunisia did not support did not feature in the report.

related to pursuing its programmes and consolidated approach in the promotion and protection of all human rights, including in the field of education, health and the promotion of the status of women, as formulated by Syria, and to continuing working for the promotion of international solidarity and eradication of poverty, as requested by Chad and Madagascar. These recommendations are ambitious, of course, but do not in any way spell out the ways and means that would enable Tunisia to apply them concretely; nor do they enable the Council to follow real advances made by the country in human rights matters. In the same vein, the recommendations made to Morocco<sup>14</sup>, for example by Saudi Arabia to continue with its progress in human rights or by Mexico to continue to respect the human rights of migrants, or the recommendation from Palestine to Chile<sup>15</sup> to “*pursue its commitments to the promotion and protection of the universal values of human rights, especially through the strengthening of the rule of law*” do not allow for qualitative or quantitative follow-up.

Certain formulations such as create the conditions for; pursue its efforts towards; step up its efforts; continue to improve; envisage; continue in its cooperation; pursue its action in order to; and continue to reinforce should not be used by States because they make the ensuing recommendation too vague.

#### Recommendations which do not conform to international human rights or are contradictory

During the first session, and quoting from recent opinion polls in the Netherlands indicating that 72% of respondents were in favour of reinstating the death penalty, Egypt recommended that the Dutch government open up the debate on “*such a popular demand*”<sup>16</sup>. When Chad was reviewed in May 2009, Egypt recommended that it “*continue exercising its sovereign right of implementing its penal code in conformity with the universally agreed human rights standards, including the application of the death penalty*”<sup>17</sup>.

When Tonga<sup>18</sup> was reviewed during the second session, the Netherlands, the Czech Republic and Canada recommended that it amend its legislation penalising certain types of sexual activity between consenting adults and decriminalise sexual relations between consenting adults. Conversely, Bangladesh recommended that it continue to punish sexual relations between partners of the same sex - as set out in its national legislation - even if they were indeed consensual, as this matter had nothing to do with universally accepted standards. The Bangladesh representative stated that the Universal Periodic Review did not aim to impose the values of one society onto another and that if traditional Tongan society did not allow sexual relations between two consenting men or women then it was only right to refrain from imposing a rule on it which did not figure among universally accepted standards on human rights. This was the first example of a State being faced with two diametrically opposed recommendations.

However, very solid and precise questions and recommendations were raised in almost all the reviews. Hence Denmark’s recommendation to Chad<sup>19</sup> as regards “giving the International Committee of the Red Cross access to all detention facilities, including [the prison of] ‘Korotoro’” and that of Austria to Azerbaijan<sup>20</sup> to “*take concrete steps to make other forms of alternative care more accessible, i.e. promote guardianship and foster care systems as well as develop community-based family support services that prevent the abandonment of children from their families*”.

Certain recommendations also have the advantage of reinforcing final observations from the treaty bodies, such as Denmark’s recommendation to Chad<sup>21</sup> to take all the necessary steps to implement the recommendation of the Committee for the Rights of the Child advocating preventing and banning all forms of torture and cruel, inhuman and degrading treatment towards children and protecting the latter from such actions or Italy to Cameroon<sup>22</sup> to implement the recommendations of the Human Rights Committee so as to guarantee the rights of homeless children.

14. A/HRC/8/22.

15. A/HRC/12/10.

16. A/HRC/8/31, §23 and 7B(2).

17. A/HRC/12/5, §63(d) and 83(13).

18. A/HRC/8/48.

19. A/HRC/12/5.

20. A/HRC/11/20.

21. A/HRC/12/5.

22. A/HRC/11/21.

## RECOMMENDATIONS

- Encourage States to be active, to ask their questions quickly and to make recommendations clear and assessable.
- See that the recommendations made are realistic and have real added value, while refraining from both condemnation and praise.
- Avoid all recommendations that undermine human rights and see that they conform to international tenets on the promotion and protection of human rights.

## Impartiality principle

The first UPR sessions illustrated a continuing bloc mentality within certain regional groups. The lack of bias by States and fair treatment by parties intervening during a review were not always respected. States, once called upon to assess each other, are interested in dealing tactfully with one another. There is a great risk that the rules of the game are dictated by bilateral reports or by country alliances.

The first session saw a very active role being played by the Group of Asian States (175 statements by 27 countries), followed by the Group of Western European States and other States (156 statements by 18 countries). During the second session the latter group was most active, with 200 statements by 22 countries.

During the third session, the regional groups played a fundamental role, since the geographical group which participated the most was always that to which the State being reviewed belonged.

At the fourth session all regional groups saw their interventions rise, except for the Group of Western European States and other States, which lost pole position after the first three sessions. The Groups of African and Asian States actually doubled their participation and the Group of Asian States took the lead in terms of participation.

During the fifth session the Group of Western European States and other States once again became the most active, with 209 statements from 25 States taking the floor. The regional groups clearly have a fundamental influence on States taking the floor. Indeed, in 14 out of 16 countries reviewed, the regional group that accumulated the greatest number of interventions<sup>23</sup> was the group to which the reviewed state belonged. By way of illustration, when Chad was reviewed, 20 out of the 49 interventions came from members of the Group of African States. The ratio was 21 out of 44 for Congo's review. When Monaco was reviewed, 11 interventions out of 28 came from the Group of Western European States and other States.

The lack of impartiality was blatant during the reviews of countries known for systematically violating human rights. They were repeatedly praised without being properly criticised or questioned.

For instance, when Bahrain was reviewed during the first session in April 2008, Palestine, on behalf of the Arab Group and twelve “friendly” States, congratulated the country on its report, its successes and its record in the field of human rights. Not one country made a criticism, asked a question or made any recommendations. On 8 April 2008, during Morocco's review, over half of the 55 countries which spoke during the interactive dialogue congratulated the State on its openness during the process and on its reforms. In the same vein, of the ten States<sup>24</sup> wishing to comment on the final report during the plenary session, nine belonged to the Organisation of the Islamic Conference (OIC) and praised Morocco for its report, its commitment towards human rights and progress already accomplished.

During the review of Tunisia on 8 April 2008, of the 64 States that spoke, 30 belonged to the Organisation of the Islamic Conference and three were observers.

<sup>23</sup>. In relation to the total number of group members.

<sup>24</sup>. Netherlands, Tunisia, Qatar, Pakistan, Bahrain, Republic of Syria, Saudi Arabia, Jordan, Egypt and United Arab Emirates.

During the interactive dialogue, over 50 countries congratulated Tunisia on its human rights performance. Japan was heard calling Tunisia a model of democracy and Indonesia even held the country's government up as an example of freedom of expression and judicial independence. France proved itself accommodating by only mentioning the rights of the child and carefully avoiding torture, press and internet censorship and other violations. In contrast, other countries, such as South Korea, Mexico, Ghana, Angola and a number of western and Latin American delegations, demonstrated greater rigour by asking real questions. Romania, basing its words on the Committee against Torture's recommendations, asked whether the Tunisian government was envisaging revising its criminal code in order to guarantee that torture would not be used during questioning. Other countries asked about the criteria used to block internet content or prevent company registrations.

During the plenary session devoted to adopting the working group report, eight of the nine delegations able to speak<sup>25</sup> congratulated Tunisia for committing itself so openly to the review process. Six<sup>26</sup> of the nine States that took the floor belonged to the Organisation of the Islamic Conference.

Only Belgium expressed its discontent. It regretted the general way in which the themes of freedom of speech, press freedom and the situation of human rights activists had been tackled. Moreover, while welcoming positively the announcement that Tunisia would be receiving the African Commission's Special Rapporteur on human rights defenders in Africa, Belgium encouraged the government also to receive the Council's Special Rapporteur for human rights defenders.

During Algeria's review on 14 April 2008, 24 of the 46 States that took the floor belonged to the Organisation of the Islamic Conference and one was an observer.

During the Council's plenary session devoted to adopting the report on Algeria, nine of the ten States<sup>27</sup> that made comments - seven of them members of the OIC - unanimously congratulated Algeria on its exemplary cooperation with the review. Belgium was the only country to issue a criticism. It regretted that the Algerian authorities had not taken into consideration in the working group's report the recommendations by Belgium concerning the deterioration of freedom of religion and of belief in Algeria. It also asked Algeria to ensure full respect of the principle of freedom of religion and belief, to undertake a re-evaluation of the text of the 2006 Ordinance determining the conditions and rules for the exercise of religions other than Islam, and in the meantime, to suspend its application.

The review of Benin, itself a member of the OIC, on 7 May 2008 during the second session of the UPR, offers a further example of the bloc mentality. During the interactive dialogue, 40 countries made comments. Among them, 18 were members of the OIC and, of these 18 States, only Pakistan voiced a criticism<sup>28</sup>.

During Pakistan's review, the 26 OIC States that spoke only did so by making positive comments. This pattern repeated itself during the plenary session, when of the eight speakers, five OIC member States and China congratulated the country on its participation in the process.

During the fourth session in February 2009, while refraining from commenting on the human rights realities on the ground, many States preferred to speak in order to praise a country, such as China or Cuba. During the adoption of the working group's report on Djibouti, 12<sup>29</sup> of the 13 States which had spoken belonged to the Organisation of the Islamic Conference.

Thus in several cases the interactive dialogue which ought to have taken place during the first sessions of the Universal Periodic Review took the form of a tribute, in contrast to the very aim of the review.

The number of States able to participate in the interactive dialogue is limited. It is fair to ask whether the intervention of so many States singing the praises of certain countries does not amount to a strategy aimed at avoiding criticism and questions or having to respond to them.

25. Algeria, Morocco, Qatar (on behalf of the Arab Group), Belgium, Indonesia, Pakistan, Angola, Bahrain and Cuba.

26. Algeria, Morocco, Qatar (on behalf of the Arab Group), Belgium, Indonesia, Pakistan, Angola, Bahrain and Cuba.

27. China, Tunisia, United Arab Emirates, Bahrain, Qatar (on behalf of the Arab Group), Cuba, Nigeria, Indonesia, Belgium and Pakistan.

28. On the pressures caused by the lack of resources in the country!

29. Qatar, Algeria, United Arab Emirates, Egypt, Bahrain, Saudi Arabia, Indonesia, Morocco, Yemen, Senegal, Nigeria and Burkina Faso.

Certain countries also seem to give each other a helping hand. During Sri Lanka's review on 13 May 2008, India avoided any sensitive issues and merely asked the government about the status of education in minority languages for schoolchildren. Sri Lanka returned the favour when India was reviewed on 10 April 2008.

On 14 May 2008 France was questioned on its treatment of minority groups, prison overcrowding and the ban on wearing the Muslim headscarf in schools. No question, however, was asked about its policies on migration by "friendly" countries from the southern hemisphere. Algeria and Tunisia, which had been spared by France, abstained.

Lastly, on the other hand, certain States only generate very limited interest from their peers. For instance, during the fifth session there were only 20 interventions for Belize, compared to 62 for Yemen; during the fourth session, 43 interventions were counted for Mauritius, versus 60 for Cuba, Senegal, China, Nigeria and Malaysia.

During the third session, 24 States intervened for Cape Verde, compared to 57 for the United Arab Emirates. During the adoption of the working group report on Luxembourg, no country took the floor. During the second session there were 29 interventions for Peru against 70 for Pakistan. During the adoption of the working group report for Peru, no State spoke.

And finally, during the first session, 21 statements were made for the Czech Republic and Finland, as opposed to 65 for Tunisia. During the adoption of the working group's report for the Czech Republic, Finland, Poland, the Netherlands and Argentina, no State took the floor.

During Congo's review on 6 May 2009, low participation by States was apparent, perhaps due to it taking place so early<sup>30</sup>, as the room did then fill up gradually. But this also certainly reflects the relative importance that States attach to different reviews.

These apparent trends damage the UPR's objectives and fly in the face of certain principles that are supposed to guide the Human Rights Council's work, namely: "universality, impartiality, objectivity and non-selectivity".

## RECOMMENDATIONS

- Encourage States to prevent these political machinations from interfering with their obligation to carry out the UPR "in an objective, transparent, non-selective, constructive, non-confrontational and non-politicised manner".
- Encourage Human Rights Council Member States to take part in working group sessions and to arrive on time. The question of time is one of the major challenges facing the Council since the UPR's inception.

<sup>30</sup> Nine o'clock.

# Role of NGOs in the process

The report adopted within the framework of the working group must also be adopted during an ordinary session of the Human Rights Council. An hour-long plenary session is set aside for analysis and adoption of the report.

The Universal Periodic Review sets out two stages for the participation of NGOs: a compilation of their comments figures among the principal documents used to study a country - together with the national report and UN experts' report; these same NGOs can add any “*general remarks*”<sup>1</sup> ahead of the final conclusions of the review.

## The place of NGOs in the procedure

In line with the provisions of Resolution 5/1, NGOs cannot intervene during the working group sessions. Although NGOs do not participate fully in the three hours allocated for each review, they can be present at the discussions and can involve the media within the Palais des Nations, via the United Nations Correspondents Association.

Having obtained the agreement of the State under review, the NGOs can organise public meetings at the Palais des Nations during the country's review. If States object to this, they risk undermining their credibility as accountable and transparent.

The representatives of civil society can formulate general remarks before the final document is adopted in plenary. At this stage, however, the working group's report has already been prepared and the NGOs' comments can only have limited impact. The “*other stakeholders*” have twenty minutes to have their say, as do the State under review and the other States. Many organisations try to be one of the privileged few that are allowed to intervene during the two-minute slots given to each organisation.

## Difficult debates on the question of the content of NGO statements

The working group reports on the 32 countries reviewed during the first two sessions of the UPR in April and May 2008 were adopted during the eighth ordinary session of the Human Rights Council in June 2008. The first day of the session saw very heated exchanges on the place that ought to be given to NGOs in the process.

The main debate centred on the contents of NGOs' statements. What could NGOs say and not say during their speaking time? In other words, are human rights activists empowered to highlight the gaps in the final report on their country or must they merely make a few technical comments of no consequence? Behind this debate lies the question, once more, of the actual role of civil society within the Human Rights Council.

It was the notion of “*general comments*” that saw Egypt and Pakistan in direct opposition to Slovenia, Switzerland, Mexico, Canada and France.

1. § 31 of Human Rights Council Resolution 5/1 of 18 June 2007: “*Other interested stakeholders will have the opportunity to make general remarks before the adoption of the outcome by the plenary*”.

The first group<sup>2</sup> used different tactics to try to limit NGO participation. So it regularly intervened during the first session of the UPR when it considered that the NGOs were stepping outside the framework in place for their comments, that is, when they did not just remark on the results from the working group's review. The other group<sup>3</sup>, on the contrary, stated that Resolution 5/1 allowed NGOs to make "general comments" that did not only have a bearing on the results from the working group. The President of the Council, Doru Costea, for his part called to order any speaker who strayed outside the contents of the report, seemingly giving credence to the first group. This detail opened up a breach, thereby allowing certain countries, such as Egypt and Pakistan, to interrupt the NGOs on several occasions on the pretext that they were returning to discussions that had already taken place during the working group's sessions or that their statements were not linked to the review that had taken place.

These interruptions occurred during adoption of the reports on Bahrain (four points of order), Tunisia (two points of order), Morocco (seven points of order), Indonesia (one point of order), Algeria (one point of order) and Pakistan (two points of order). So for six of the nine OIC member countries whose reports were adopted during this session, comments by NGOs were interrupted.

This type of interruption was repeated during the twelfth ordinary Human Rights Council session in September 2009, when it was examining the reports adopted for the sixteen countries reviewed during the fifth session of the UPR. On 24 September 2009, Egypt raised five points of order during adoption of the UPR working group's report on Yemen. The delegate gave as a pretext the fact that the statements by the four NGOs<sup>4</sup> did not relate to the report as they should. The Egypt representative confirmed that he would not attempt to silence the NGOs but that they did not understand how to take the floor. Sweden argued that paragraph 31 of Council Resolution 5/1 allows NGOs to make "general remarks" and that this was to be interpreted in the wider sense of the expression. Sweden was supported by the United States, which called for greater freedom for the NGOs. Yemen was the only country for which points of order were called during this session.

It should be noted that States only criticised NGO comments when the countries being reviewed belonged to the OIC. The most outspoken countries did not intervene over NGO criticisms of other countries, even if such comments were not directly linked to the working group's report.

One can equally see that statements by certain NGOs in favour of countries under review were not interrupted, even when their comments had nothing whatsoever to do with the conclusions of the working group's report. For instance, on 9 June 2008, during a session devoted to Tunisia, the Council heard a joint speech<sup>5</sup> praising the equality principle and referring just once to Tunisia, but making no reference to the working group's report. Similarly another organisation<sup>6</sup> expressed its support of Tunisia's policies on the promotion of women without once referring to the working group's report, and yet was not interrupted on a point of order. On 11 June 2009, at the session devoted to adopting the working group's report on China, several organisations<sup>7</sup> made favourable comments about the Chinese authorities without making any reference to the working group's report or being interrupted.

#### Other difficulties

In order to avoid repeated interruptions from certain States, the NGOs have adapted their oral presentations by linking them to the working group's report. The NGOs have remained active<sup>8</sup>, even though their participation dropped slightly during the second and fifth sessions.

The voice of NGOs is also curtailed in other ways, especially by time constraints. As a result of delays accumulated earlier by the Council during the sessions, NGOs' speaking time is almost always reduced to two minutes, even when there are fewer than ten of them wishing to take the floor.

- 
2. Pakistan, Egypt, Nigeria.
  3. Slovenia, Germany, Mexico, Canada and Switzerland.
  4. Al-Hakim Foundation, Cairo Institute for Human Rights Study, Amnesty International, Human Rights Watch.
  5. Organisation de la Mère Maghrébine (OMMA) [Maghrebin Mothers' Organisation], Femmes Africa Solidarité (FAS) [Solidarity for African Women] and the Association Tunisienne des Mères (ATM) [Tunisian Mothers' Association].
  6. Espace Afrique International [International Africa Space].
  7. Women's International Democratic Federation, United Nations Association of China, Federation of Cuban Women, China NGO Network for International Exchanges.
  8. 77 NGOs intervened during the first session, 45 during the second, 72 during the third, 63 during the fourth and 47 during the fifth session.

During the adoption of the report on Canada on 9 June 2009, due to it being so late, only six of the ten NGOs that had put their names down were able to speak. The same problem occurred the following day, when the report on Saudi Arabia was adopted. During the general debate on the UPR held on 12 June 2009, the Czech Republic, on behalf of the European Union, and the United Kingdom maintained that the time allotted to NGOs had to be strictly respected. Australia underlined that the NGOs ought to carry on benefiting from the real possibility of contributing to the UPR. The Russian Federation, for its part, stated that it was unacceptable for comments from NGOs that had not been given during the session to be included in the final document. In Amnesty International's opinion, difficulties encountered by countries wishing to put their names on the list of speakers were minor compared to those encountered by NGOs; it also criticised the fact that certain governments helped compliant NGOs in their bid to take the floor.

Since NGOs can only speak at the beginning and end of the process, only a part of the problems that they are illustrating and submit to the group can be dealt with. For example, questions of torture, religious discrimination and detention conditions in Bahrain were raised by the NGOs that sent them in writing to the Human Rights Council. However, these questions cannot be found in the working group's report.

There is also material discrimination between the NGOs themselves. The lobbying and physical presence during working group meetings and plenary sessions indicates that members of the NGOs wishing to speak are in Geneva for these sessions. However, these journeys can become very expensive for the smallest NGOs. Only the large NGOs can afford to intervene on a regular basis. The majority of NGOs, therefore, must select those States in respect of which they intend to take the floor. The first session serves as an example of the material difficulties NGOs face. Several of them<sup>9</sup> complained in a statement on 13 June 2008<sup>10</sup> about the lack of clarity and the tendency to make last-minute changes to the arrangements under which they could take the floor. This was preventing some NGOs from obtaining funding or a visa to get to Geneva.

Another alarming tendency is the attempt by certain States to question the objectivity and reliability of non-governmental sources of information eligible to intervene during the plenary session of the review. For example, during the plenary session devoted to adopting the report on Algeria on 10 June 2008, the Algerian Ambassador questioned whether certain statements by NGOs were "*politically motivated*" before asking about the legitimacy of certain comments and referring to others as "*crocodile words*".

During the general debate on the UPR on 12 June 2009, Cuba violently attacked the NGOs by stating that some of them had abused their influence as a result of support and funding received from "*powerful sources*". It asked who was able to confirm that the international NGOs give the UPR process legitimacy by participating. Cuba also said it wanted to know who had given NGOs - for whom human rights are a "*lucrative activity*" - the right to "*insult governments and national NGOs*". It then went on to state that national NGOs with direct experience of the situation in the country being reviewed ought to have priority during the UPR debates. Sri Lanka also took the "*well-funded*" NGOs to task for being repetitive and stated that, for the mechanism to work, it was better for the NGOs to stay outside the room unless they had "*something new to say*".

A still more worrying tendency is that in parallel to the discredit heaped by certain States on the reliability of NGO statements, we are witnessing the emergence of NGOs put in place by governments - the so-called "GONGOS"<sup>11</sup> - as was the case under the former Human Rights Commission.

Machinations by Cuba and China to gag the independent NGOs during their reviews are the most blatant examples.

Before the adoption of the working group's report on Cuba during the eleventh ordinary Council session, dozens of NGOs rushed to register - the majority of them

9. Asian Legal Resource Centre, Ba'hai International Community, the Cairo Institute for Human Rights Studies, the Centre for Housing Rights and Evictions (COHRE), Conectas (Brazil), Asian Forum for Human Rights and Development (FORUM-ASIA), Franciscans International, Human Rights Watch, the International Service for Human Rights (ISHR), Pax Romana, and Rights and Democracy.

10. [http://www.ishr.ch/lca/statements\\_council/otherngos/upr\\_statement\\_final\\_13\\_june\\_2008.pdf](http://www.ishr.ch/lca/statements_council/otherngos/upr_statement_final_13_june_2008.pdf).

11. Government-operated non-governmental organisation.

had been set up by the Cuban government or could be counted on to relay its positions. Well before the official moment<sup>12</sup> for preparing the list of speakers, these organisations had brought unacceptable pressure to bear to be registered and had thus been allocated almost all of the speaking slots. Only two independent NGOs were eventually able to speak. The case of Cuba illustrates the limits of the Universal Periodic Review and casts doubt on its efficiency in countries that will not brook any contradiction.

## RECOMMENDATIONS

- Ask the Council Secretariat to strictly respect the procedures put in place to allow equal treatment between NGOs.
- Encourage States to always authorise, without the need for their express consent, the contents of meetings held in parallel to the UPR sessions along the lines of information sessions given by treaty bodies. Until now these parallel meetings can only take place if the State being reviewed authorises them.
- Ask States to interpret in a broad sense the possibility of making general comments before the final document is adopted in plenary, in line with Resolution 5/1. It is important, in order to show that a review was comprehensive and useful, to be able to raise questions that were not addressed during the review itself.
- Strengthen the provisions of Resolution 5/1 regarding the participation of NGOs in the UPR process by allocating more time and space to all stakeholders in advance. The NGOs should be authorised to take the floor during the interactive dialogue that takes place within the UPR's working groups. This change could be implemented during the review due to take place in 2011, five years after the adoption of General Assembly Resolution 60/251 establishing the Human Rights Council.

12. All these "NGOs" had arrived at the UN at 6.30 a.m., thanks to diplomatic help, which is not within the rules.

# Conclusion

The provisional assessment of the Universal Periodic Review set up by the Human Rights Council is mixed.

It is an exercise that allows for the gathering of an inestimable quantity of information on the human rights situation in each UN Member State. This information can then be used by the NGOs and other stakeholders better to target their strategies of defence and follow-up. It can equally be used by the treaty bodies and special procedures of the Human Rights Council. Moreover, for those States seeking help in improving their human rights situations at home, the UPR a process seems to be having a positive impact. Some States have also seized this opportunity to ask their peers serious and delicate questions about topics that would probably not have been aired at the Council itself or before other intergovernmental bodies.

However, even though the working practices used over the six first sessions of the UPR were varied and it is hard to provide a clear assessment of the process at this stage, there are already inherent weaknesses. The practice by certain States of using their speaking time to praise their “*friends*” and paint a positive picture of human rights in that country, and the selectivity of many countries in the questions they have chosen to address both fly in the face of the fundamental principles of the UPR: “*universality of coverage and equal treatment with respect to all States*”.

Furthermore, there are two challenges to be dealt with by the Human Rights Council.

The first is the question of how to divide up the speaking time. This issue was discussed again at the general debate on the UPR on 25 September 2009, at the twelfth session of the Human Rights Council. Japan expressed its concern about the limits imposed on the list of speakers because it maintained that the largest possible number of States should be able to participate and that the time should not be divided between the regional groups. Russia, for its part, believed the queuing to register to speak was no more than a technical problem that did not warrant urgent action. The Republic of Korea then stated that all States should be able to make a statement and the United States expressed its concern as to the non-participation of a group of States and suggested, as had the Republic of Korea last June, dividing up the time according to the number of speakers. Bangladesh shared this view, saying that the list of speakers was only a procedural problem. Turkey insisted on the fact that the note from the Secretariat of 26 August 2009 did not provide a definitive solution, as it gave power to the regional groups, and suggested a full division of time among States wishing to take the floor, provided that there was not less than one minute for each country. This question must be resolved swiftly by the Council by guaranteeing enough time for constructive dialogue with the State under review, strong participation by the States in the process and equal treatment between States wishing to express their opinions.

The question of translating the documents into all the UN's official languages presents another challenge. There were numerous complaints over the course of the sessions that the translations had not arrived in time. To ensure the proper functioning of the UPR, it is vital that the final results of reviews be translated before being adopted. On Mexico's initiative the Council adopted, by consensus, at its eleventh ordinary session in June 2009, a Resolution<sup>1</sup> on the "*Issuance of reports of the Working Group on the Universal Periodic Review in all the official languages of the United Nations*", insisting that all the necessary information at the review be translated and asking the Secretary-General to provide the necessary funding to ensure proper distribution of these reports in good time.

### The importance of follow-up of a State

The question at the heart of the process is the length of time that is deemed necessary for States to implement the commitments made in dialogue with their peers.

The recommendations made by other States at the conclusion of the Universal Periodic Review should, in principle, be used as tools to monitor the human rights situation in the countries involved. Within the framework of a mechanism that aims to be cooperative<sup>2</sup>, these recommendations should be put in place primarily by the State in question and, if suitable, by "*other relevant stakeholders*", such as NGOs. However, NGOs on the ground are often disappointed because they expect immediate change and would like to see concrete action arising from the review in the country.

It will be realistically possible to gauge the impact and efficiency of the process in four years, when States are reviewed for a second time as part of the second cycle of the Universal Periodic Review. But follow-up must not be left up to the NGOs alone; it is above all the responsibility of the Council. The subsequent review should thus be centred chiefly on the implementation of the conclusions and recommendations resulting from the previous review. In order to prepare for their subsequent reviews, States should organise nationwide consultations on the follow-up to the UPR in which members of civil society should participate in order to define general policy measures to be taken to conform to the recommendations.

Certain countries have already begun their follow-up phase to the recommendations. For example, on 12 June 2009, during the general debate on the UPR at the eleventh session of the Human Rights Council, several States reviewed in 2008 presented information on their follow-up to recommendations. Bahrain presented a plan of action one year on from being reviewed, in line with the commitment made at the conclusion of its review. The United Kingdom announced that it would provide a progress report in 2010, at the half-way stage of implementation of recommendations from the UPR. Switzerland, for its part, indicated that it had implemented the United Kingdom's recommendation calling on it to "*continue to consult stakeholders in the follow-up to the Universal Periodic Review outcome*"<sup>3</sup> by holding a meeting with these same stakeholders to agree an assessment of the first year. Colombia committed itself to report every four months on the implementation of UPR recommendations and voluntary undertakings. It recently released its second report<sup>4</sup> and will present an official report to the Human Rights Council during its 13th session in March 2010. Four special rapporteurs have been invited<sup>5</sup>. As regards human rights activists, a consultation has taken place between the State and civil society. France volunteered to prepare an update for the Human Rights Council on the implementation of the recommendations before the next cycle of the Universal Periodic Review. These practices, if they are carried through, could bode well for the next stages of this exercise.

Basically, since the review depends on the sovereign will of the State to commit itself, it will be easier after two or three reviews to distinguish those States that are not toeing the line - which will turn out to be unfavourable to them in the long

1. Resolution 11/117, Issuance of reports of the Working Group on the Universal Periodic Review in all official languages of the United Nations, adopted without a vote on 18 June 2009.

2. One of the Council's aims is to be a cooperative mechanism between Council members and the State under review, basing its work on objective and reliable information and on dialogue. (Resolution 5/1 §3b).

3. A/HRC/8/41.

4. <http://www.derechoshumanos.gov.co/epu/documentos/Segundolnforme.pdf>.

5. Special Rapporteur on extrajudicial, summary and arbitrary executions, Special representative of the Secretary-General on the situation of human rights activists, Special Rapporteur on human rights and the basic freedoms of indigenous populations and Special Rapporteur on the independence of judges and lawyers.

term. However, for States going along with the UPR process and whose governments are used to dialogue with civil society, the review can have an immediate impact on the human rights situation in these countries.

**Moving towards an assessment of the Council's work in 2011  
- impact and risks for the UPR**

In 2011 the Human Rights Council will review its work and functioning in accordance with General Assembly Resolution 60/251<sup>6</sup>. The twelfth session in September 2009 decided to set up an intergovernmental working group with an unlimited composition, responsible for reviewing its work and functioning<sup>7</sup>. According to the terms of this resolution the working group will hold two sessions, each lasting five working days, which will take place in Geneva after the fourteenth Council session in June 2010. The Council, moreover, has asked the High Commissioner for Human Rights to present a report at its fifteenth session in September 2010 on the means of strengthening the conference and secretariat services to be used by the Council. This review could also be the opportunity to correct certain weaknesses in the UPR and bolster the provisions of Resolution 5/1 concerning the participation of NGOs in the process, by making provision for more space for all stakeholders. The NGOs should be authorised to take the floor during the interactive dialogue that takes place within the framework of the working group. However, reopening the discussions on Resolution 5/1 carries a major risk: that of seeing those States which, back in 2006, wanted to restrict access to the procedure, go back on the attack, drawing on the experience of the past four years of the UPR.

<sup>6</sup> Paragraph 16 of Resolution 60/251, adopted by the General Assembly and leading to the setting up of the Human Rights Council: "the Council shall review its work and functioning five years after its establishment and report to the General Assembly".

<sup>7</sup> A/HRC/12/L.28.



# Sources

The observations and conclusions made in this document are based on FIACAT's participation in the reviews of States where an ACAT exists and on the presence of the authors of ACAT reports at the reviews of the majority of countries reviewed during the six first sessions of the UPR.

**In drafting this document, FIACAT drew on the following sources:**

- Live webcasts of the 6th sessions:  
<http://www.un.org/webcast/unhrc/index.asp>
- The extranet web page of the Human Rights Council:  
<http://portal.ohchr.org/portal/page/portal/OHCHRExtranet>
- The documentation on the 96 States reviewed during the six sessions:  
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>
- The reports made by the International Service for Human Rights:  
<http://www.ishr.ch/content/view/170/240/>
- The reports made by UPR-Info : <http://www.upr-info.org/-fr-.html>
- FIACAT's Practical guide for ACATs participating in the Universal Periodic Review: [http://www.fiacat.org/fr/IMG/pdf/Fiacat.info\\_70\\_supplement-VF.pdf](http://www.fiacat.org/fr/IMG/pdf/Fiacat.info_70_supplement-VF.pdf)
- General Assembly resolution 60/251 establishing the Human Rights Council - 15 March 2006:  
[http://www2.ohchr.org/french/bodies/hrcouncil/docs/A.RES.60.251\\_Fr.pdf](http://www2.ohchr.org/french/bodies/hrcouncil/docs/A.RES.60.251_Fr.pdf)
- Institution-building of the United Nations Human Rights Council - Resolution 5/1 - 18 June 2006:  
[http://ap.ohchr.org/documents/F/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/F/HRC/resolutions/A_HRC_RES_5_1.doc)
- Universal Periodic Review - Decision 6/102 - 27 September 2007 :  
[http://ap.ohchr.org/documents/F/HRC/decisions/A\\_HRC\\_DEC\\_6\\_102.pdf](http://ap.ohchr.org/documents/F/HRC/decisions/A_HRC_DEC_6_102.pdf)
- Establishment of funds for the universal periodic review mechanism of the Human Rights Council Resolution 6/17 - 28 September 2007:  
[http://ap.ohchr.org/documents/F/HRC/resolutions/A\\_HRC\\_RES\\_6\\_17.pdf](http://ap.ohchr.org/documents/F/HRC/resolutions/A_HRC_RES_6_17.pdf)
- Modalities and practices for the universal periodic review process PRST/8/1 - 9 April 2008 : [http://ap.ohchr.org/documents/E/HRC/p\\_s/A\\_HRC\\_PRST\\_8\\_1.pdf](http://ap.ohchr.org/documents/E/HRC/p_s/A_HRC_PRST_8_1.pdf)
- Follow-up to President's statement 8/1 PRST/9/2 - 24 September 2008:  
[http://ap.ohchr.org/documents/E/HRC/p\\_s/A\\_HRC\\_PRST\\_9\\_2.pdf](http://ap.ohchr.org/documents/E/HRC/p_s/A_HRC_PRST_9_2.pdf)



# Tables of States under review by order of review and by session

## First session of the Working Group on the Universal Periodic Review (7-18 April 2008)

STATE UNDER REVIEW (in order of review)	TROIKA		
Bahrain	Slovenia	United Kingdom	Sri Lanka
Ecuador	Italy	Mexico	India
Tunisia	Bosnia and Herzegovina	Mauritius	China
Morocco	Romania	Madagascar	France
Indonesia	Jordan	Canada	Djibouti
Finland	Azerbaijan	Bolivia	Republic of Korea
United Kingdom	Egypt	Russian Federation	Bangladesh
India	Indonesia	Netherlands	Ghana
Brazil	Gabon	Saudi Arabia	Switzerland
Philippines	Malaysia	Mali	Germany
Algeria	Uruguay	Philippines	Senegal
Poland	Brazil	Japan	Angola
Netherlands	Peru	Pakistan	Nigeria
South Africa	Zambia	Guatemala	Qatar
Czech Republic	France	South Africa	Nicaragua
Argentina	Ukraine	Cuba	Cameroon

## Second session of the Working Group on the Universal Periodic Review (5-16 May 2008)

STATE UNDER REVIEW (in order of review)	TROIKA		
Gabon	Nigeria	China	Azerbaijan
Ghana	Netherlands	Bolivia	Sri Lanka
Peru	Mali	India	Cuba
Guatemala	Gabon	Slovenia	Brazil
Benin	Nicaragua	Madagascar	Germany
Republic of Korea	Peru	Egypt	Jordan
Switzerland	Uruguay	Pakistan	South Africa
Pakistan	Saudi Arabia	Ghana	Azerbaijan
Zambia	Senegal	Switzerland	Philippines
Japan	France	Indonesia	Djibouti
Ukraine	Republic of Korea	Russian Federation	Guatemala
Sri Lanka	Ukraine	Cameroon	Bangladesh
France	Zambia	Italy	Malaysia
Tonga	Nigeria	Qatar	Mexico
Romania	Angola	Canada	Bosnia and Herzegovina
Mali	Mauritius	Brazil	Japan

## Third session of the Working Group on the Universal Periodic Review (1-15 December 2008)

STATE UNDER REVIEW (in order of review)	TROIKA		
Botswana	Uruguay	Senegal	Slovakia
Bahamas	Djibouti	Malaysia	The Netherlands
Burundi	Mauritius	India	Cuba
Luxembourg	Canada	Slovenia	Bangladesh
Barbados	South Africa	Japan	United Kingdom
Montenegro	Russian Federation	China	Brazil
United Arab Emirates	Indonesia	Argentina	Cameroon
Israel	Republic of Korea	Azerbaijan	Nigeria
Liechtenstein	Germany	Mexico	Jordan
Serbia	Ukraine	Pakistan	Ghana
Turkmenistan	Philippines	Chile	Gabon
Burkina Faso	Switzerland	Qatar	Madagascar
Cape Verde	Angola	Bolivia	Saudi Arabia
Colombia	Burkina Faso	Bahrain	Italy
Uzbekistan	Egypt	Indonesia	Nicaragua
Tuvalu	Qatar	Zambia	Azerbaijan

## Fourth session of the Working Group on the Universal Periodic Review (2-13 February 2009)

STATE UNDER REVIEW (in order of review)	TROIKA		
Germany	Cameroon	Republic of Korea	France
Djibouti	Russian Federation	Bolivia	Indonesia
Canada	United Kingdom	Azerbaijan	Bangladesh
Bangladesh	Argentina	Egypt	Philippines
Russian Federation	Ghana	Chile	Bahrain
Azerbaijan	Saudi Arabia	Slovenia	Mauritius
Cameroon	China	Cuba	Senegal
Cuba	Gabon	Bosnia and Herzegovina	Uruguay
Saudi Arabia	Germany	Madagascar	Qatar
Senegal	Italy	Brazil	Angola
China	India	Canada	Nigeria
Nigeria	Japan	Djibouti	Switzerland
Mexico	South Africa	Pakistan	Nicaragua
Mauritius	Zambia	Malaysia	Slovakia
Jordan	Burkina Faso	Mexico	Japan
Malaysia	Nicaragua	Qatar	Egypt

## Fifth session of the Working Group on the Universal Periodic Review (4-15 May 2009)

STATE UNDER REVIEW (in order of review)	TROIKA		
Central African Republic	Gabon	Bolivia	Bosnia and Herzegovina
Monaco	Switzerland	China	Uruguay
Belize	Russian Federation	Malaysia	Brazil
Chad	Zambia	France	Slovenia
Congo	The Netherlands	Bahrain	Madagascar
Malta	Saudi Arabia	Ukraine	Egypt
New Zealand	Philippines	Italy	Mauritius
Afghanistan	Azerbaijan	Republic of Korea	Cameroon
Chile	Senegal	Qatar	Cuba
Viet Nam	Burkina Faso	Japan	Canada
Uruguay	Nigeria	Jordan	Argentina
Yemen	Nicaragua	Indonesia	South Africa
Vanuatu	Chile	Djibouti	India
The former Yugoslav Republic of Macedonia	Slovakia	Bangladesh	Germany
Comoros	Ghana	United Kingdom	Mexico
Slovakia	Chile	Angola	Pakistan

## Sixth session of the Working Group on the Universal Periodic Review (30 November - 11 December 2009)

STATE UNDER REVIEW (in order of review)	TROIKA		
Côte d'Ivoire	Italy	Angola	Saudi Arabia
Democratic Republic of the Congo	Senegal	Philippines	The Netherlands
Equatorial Guinea	Bosnia and Herzegovina	Bangladesh	Argentina
Eritrea	Cameroon	Bahrain	Nicaragua
Ethiopia	Pakistan	Ukraine	Nigeria
Bhutan	United States of America	Mauritius	Russian Federation
Brunei Darussalam	Slovenia	Gabon	Japan
Cambodia	Slovakia	Ghana	Bolivia
Cyprus	Qatar	Belgium	Hungary
Democratic People's Republic of Korea	India	Madagascar	Uruguay
Costa Rica	Djibouti	Brazil	China
Dominica	Mexico	South Africa	Norway
Dominican Republic	Zambia	France	Indonesia
Norway	United Kingdom	Burkina Faso	Republic of Korea
Portugal	Jordan	Egypt	Cuba
Albania	Chile	Kyrgyzstan	Italy



FIACAT is an international human rights NGO whose mandate is to fight for the abolition of torture and the death penalty.

The FIACAT network today consists of around thirty ACATs around the world – 25 of them are affiliated.

## UNIVERSAL PERIODIC REVIEW: AN AMBIVALENT EXERCISE

United Nations General Assembly Resolution 60/251 created a new mechanism: the Universal Periodic Review (UPR).

Two years and six sessions after the mechanism was first instituted, FIACAT has assessed its work, its strengths and its weaknesses.

27, rue de Maubeuge  
75009 Paris  
France

Tel. : 33 (0)1 42 80 01 60  
Fax : 33 (0)1 42 80 20 89  
[fiacat@fiacat.org](mailto:fiacat@fiacat.org)



INTERNATIONAL FEDERATION OF  
Action by Christians for the Abolition of Torture