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## Reviewing the Review

### **The First Session of the Universal Periodic Review, the Human Rights Council**

The Universal Periodic Review (UPR) is the mechanism established under General Assembly *Resolution 60/251*, which also created the Human Rights Council (the HRC). Arguably, unlike its predecessor, the HRC's UPR mechanism was intended to undertake a review of countries 'based on objective and reliable information [and] of the fulfillment 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'. In addition, the Resolution states that 'the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.'<sup>i</sup> However, having seen the first sessions of the UPR unfold and approaching the time in which the country reports will be released, mixed feelings remain around the process, its ability to be manipulated and whether it is an effective mechanism for assessing human rights situations and in which civil society can have valuable input.

The first session of the UPR took place from 7 to 18 April 2008, with the review of 16 United Nations (UN) member States, three of which being Commonwealth members. The first States to be reviewed under the UPR were: Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherlands, South Africa, the Czech Republic and Argentina.

As pointed out by the International Service for Human Rights (ISHR),<sup>ii</sup> on the one hand States that would never have found their human rights records being discussed at the Council have, at times during review, found themselves facing difficult questions before their peers. However, the process has also been vulnerable to consummate manipulation, where 'friendly States' have had the ability to collectively present, or represent, an image that is not reflective of the human rights context in the specific country under review. In some cases genuinely robust questions have been asked, and have received a response. In other cases they have not. In some cases useful recommendations have been formulated, in other cases recommendations are so vague that they cannot be realistically measured and at times appear to show that background research has not occurred in order to formulate useful lines of enquiry. In this regard, many States have applied different standards of scrutiny to States with whom they have a regional or organisational allegiance.<sup>iii</sup>

Up to the beginning of the First Session of the UPR States exhibited degrees of nervousness; much of which arose from the uncertainty around the functioning of the process and the many outstanding issues related to the working methods of the UPR Working Group.<sup>iv</sup> During March 2008, such concerns<sup>v</sup> led to a meeting in Geneva of Commonwealth countries in an attempt to alleviate concerns and find practicable solutions for those Commonwealth countries that may not have the resources or expertise to produce a Government report for the review. At this meeting, the United Kingdom, a co-host, provided their experience of preparing for the review as an example of the processes of report writing and stakeholder consultations. CHRI was invited to present its

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experiences, as a stakeholder in the consultation process, and provided recommendations to Commonwealth governments to not see the finalization of the government report for UPR as the end point in stakeholder consultation, but rather the beginning of an ongoing process including the implementation of recommendations from the review.

### Review processes and the questions they raise

During the First Session, States taking part in the interactive dialogue developed a general practice of first noting positive developments in the country under review, then (if they chose to progress beyond compliments) to issues of concern, leading then to questions and to possible recommendations. Generally, the degree of positive comments far outweighed criticisms, and recommendations made were at times so broad and vague that it may prove difficult to measure their implementation in the future. During the interactive dialogue certain States continued a practice of asking the same standard thematic questions to all States.<sup>vi</sup> In some respects, this lowered the standard of dialogue and the weight of the response during the interactive session, insofar that it inevitably reduced the degree of enquiry into the actual human rights situation of those countries being reviewed. Nevertheless, the interactive dialogue proved to be useful in drawing attention to the recommendations of treaty bodies and of special procedures of the Council, in addition to recommending their implementation. And, whilst direct reference to the information submitted by other stakeholders was sporadic, it was apparent in certain cases that the vast majority of issues raised in the submissions of NGOs were raised by States during the interactive dialogue.

A question can be posed as to how the apparent inconsistencies produced and played out during the First Session will impact not only on the future sessions of the UPR, but the credibility of the HRC itself?

Despite the inevitable criticisms that such inconsistencies have and will continue to draw, the fact remains that the UPR has been utilized by certain States to ask important and difficult questions to States on issues that would have been unlikely to have been raised through the Council or other intergovernmental bodies. Likewise, States under review are on occasion answering questions that they would not consider to answer before the Council or in other fora. This has opened new opportunities for NGOs to enter into dialogue with particular States that would not have existed in the past. The process has also generated a new avenue for engagement at the domestic level, particularly in terms of developing plans for engagement in the future. In addition, the comments, questions and recommendations (and States commitment to implement them) presented during the dialogue are also being recorded in official UN documents; when combined with the compilation of information submitted for the review, it amounts to a useful compendium on the situations of human rights in the country under review. However, it can also be argued that the information submitted for the review has so far been of more value than the outcome, in providing a more comprehensive overview of the human rights situation in the country.<sup>vii</sup> Questions could also be raised around the value of the Troika, where less than half the States under review allocated time to address questions submitted to them via the troika.

Perhaps in the end, for those civil society members disenchanted with the process thus far, one positive can be seen whereby States that did not respond to questioning on areas of concern are easily identifiable through the process. So too are the cases of State-based alliances and their pre-agreed and self-serving compliments. Unfortunately, the recent departure of the United States from HRC does raise inevitable credibility concerns for the future of the UPR, particularly the timing of departure. However, with more positive developments, such as the formation of a Commonwealth grouping in Geneva, in the long-run the HRC and the UPR stands potentially to benefit from many of the Commonwealth core human rights principles, particularly those principles that promote the role of civil society; whilst also offering an opportunity for Commonwealth civil society to undertake layered advocacy both directly with the Commonwealth Secretariat, with the HRC via the UPR, and in wider collaborative frameworks.<sup>viii</sup>

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<sup>i</sup> Para 5 (e), General Assembly *Resolution 60/251* [The Resolution does not set out the details of how the process will work but instead asks the Council to “develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session”].

<sup>ii</sup> International Service for Human Rights, UPR Monitor, Human Rights Monitor Series *UNIVERSAL PERIODIC REVIEW, OVERVIEW OF FIRST SESSION 7-18 APRIL 2008* (2008) at [www.ishr.ch](http://www.ishr.ch) (last accessed on 12 June 2008) [CHRI has relied on information published by ISHR on the First Session of the UPR in the absence of being able to attend all of the reviews. In addition, CHRI would like to give its appreciation to ISHR who provided CHRI with the necessary means to be able to enter and attend any of the UPR and HRC sessions. In this regard, special consideration should be given to the ISHR Advanced Geneva Training Course team].

<sup>iii</sup> This has been the practice even of those States who vowed that the UPR would do away with the ‘politicisation’ often associated with the former Commission on Human Rights, and would ensure the equal treatment of all States.

<sup>iv</sup> See ISHR’s *Council Alert*, 4 April 2008, at [http://www.ishr.ch/hrm/council/upr/upr\\_1st\\_session\\_2008/upr\\_alert\\_4\\_april\\_2008.pdf](http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_alert_4_april_2008.pdf). For a summary of the President’s opening statement and positions put forward relating to outstanding modalities, see [http://www.ishr.ch/hrm/council/upr/upr\\_1st\\_session\\_2008/upr\\_001\\_bahrain\\_final.pdf](http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_bahrain_final.pdf)

<sup>v</sup> Many of the questions related to the concerns certain countries appeared to hold were around the apparent transparency of the process. In this regard, the inclusion of NGO and stakeholder reports publication on the website of the Office of the High Commissioner for Human Rights (OHCHR); whether questions submitted to the State under review via the troika would also be published on the website; how time would be allocated to States under review to present their report and answer the questions, and how the interactive dialogue would be conducted; and whether the UPR Working Group meetings should be webcast.

<sup>vi</sup> In its questions sent to the troika, the UK addressed the role of national human rights institutions and civil society to the troikas. Australia enquired whether the State under review had a national human rights institution. While the intention may have been to avoid selectivity, and the practice was in certain cases positive, the latter example of Australia also unfortunately illustrated a perfunctory approach to the process, as it was clear in many cases that Australia had not first checked whether the State under review did already have a national institution.

<sup>vii</sup> International Service for Human Rights, UPR Monitor, Human Rights Monitor Series *UNIVERSAL PERIODIC REVIEW, OVERVIEW OF FIRST SESSION 7-18 APRIL 2008* (2008) at [www.ishr.ch](http://www.ishr.ch) (last accessed on 12 June 2008).

<sup>viii</sup> CHRI will continue to provide updates of Commonwealth performance during the UPR. For further information on Commonwealth performance at the HRC refer to the soon to be published ‘Easier Said Than Done: Commonwealth Countries Performance at the Human Rights Council’ (2008).

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