

UNIVERSAL PERIODIC REVIEW

Institutional stumbling blocks and uncooperative States continue to prevent the UPR mechanism from realising its full potential



Traditional umbrellas from Laos, one of the 15 countries reviewed by the UPR Working Group in May 2010.

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The 8th session of the universal periodic review (UPR) Working Group was held from 3 to 14 May 2010. Fifteen countries were reviewed by the Working Group: Kyrgyzstan, Kiribati, Guinea, Lao People's Democratic Republic (Laos), Spain, Lesotho, Kenya, Armenia, Guinea-Bissau, Sweden, Grenada, Turkey, Guyana, Kuwait, and Belarus. Haiti was also originally scheduled to be under review, however due to the devastating earthquake of January 2010, the Human Rights Council (the Council) in a special session postponed Haiti's review until a later date.¹

The session overall did not raise many controversies. The majority of States under Review participated constructively and openly, with a few key exceptions.² The session also saw the display of the long-standing tensions between Armenia and Azerbaijan, and Turkey and Cyprus, resulting in rejection of recommendations for political reasons.

ENGAGEMENT BY STATES UNDER REVIEW

The number and titles of delegates who represent a State under Review at the Working Group session can be an indication of the seriousness which it attaches to the UPR process. For the most part, States under Review were represented by high-level delegates, for example a Minister of Justice³, or Attorney General.⁴ A few States under Review such as Kyrgyzstan, Laos, Armenia, Sweden, and Turkey were represented by relatively lower level vice-ministers or bureaucrats. Sizes of delegations ranged from three (Grenada, Guyana) to 37 (Kuwait), with the overall average at about 13. However, the number of delegates who actively participated varied. For example with Belarus and Guinea-Bissau (five and seven members respectively), only the head of the delegation took the floor at any time, whereas with Armenia and Laos (13 and 18 members respectively), multiple delegates were given the chance to speak on their various areas of expertise.

As has become the practice in the UPR, the majority of States under Review took the floor three times: once to give an introductory statement, and two additional times to answer questions. For the most part, States under Review responded with scripted answers. The participation of the States under review continues to be a largely non-interactive exercise, and more of a planned and prepared series of statements in response to expected issues.

1 Documents on the Council's special session on Haiti can be found at: <http://bit.ly/9Xi42M> (www2.ohchr.org/english/bodies/hrcouncil/specialsession/13/index.htm). See also ISHR's report at: <http://bit.ly/cXlu8V>.

2 Belarus.

3 Kenya, Guinea.

4 Kiribati.

STATES PARTICIPATING IN THE REVIEW

Over the course of the session, a total of 681 interventions and 2045 recommendations were made.⁵ The level of involvement of States participating in the review of States varied significantly. A small number of States (mostly European) continue to provide a disproportionately large number of recommendations.⁶ Out of the total number of recommendations, approximately 52% were made by members of the Council, indicating that Council members play a significant, though not dominant, role in UPR proceedings.⁷ As has traditionally been the case, States from the WEOG regional grouping made the plurality of recommendations at approximately 37%. Members of the Organization of the Islamic Conference (OIC) made about 26% of all recommendations, confirming their active participation. The States who made the most recommendations over the course of the entire session included Norway (80), Spain (79), Brazil (70), Canada (70), France (67), and the Netherlands (63). Of note is that the Netherlands, Norway, and Spain made interventions in every review at this session. Also, only a small number of States (almost all European) took the opportunity to submit advance questions to most States under Review.⁸

A number of States participating used the opportunity to raise specific concerns across a number of reviews. Examples include: Angola (the *International Convention on the Protection of Migrant Workers and their Families*); Argentina and Tunisia (gender equality); Australia and France (discrimination on grounds of sexual orientation or gender identity); Austria (cooperation with civil society), Bangladesh (poverty and development); Belgium and Italy (death penalty); Brazil and Latvia (standing invitations to UN special procedures); Cuba (health and education); Czech Republic (human rights education and training for law enforcement); Germany (judicial independence and juvenile justice); Hungary and Slovakia (submission of late treaty body reports); Ireland (freedom of association); Libya (HIV/AIDS); Malaysia (violence against women); and Morocco (financial and technical assistance).

However, the States that made the highest number of recommendations were more likely to tailor those recommendations

specifically to the State under Review. This suggests that some States approach the UPR as an opportunity to promote an issue that may be of domestic importance (such as Angola, Bangladesh, or Cuba), or an issue the State has chosen to promote internationally (such as France or Belgium). Others use the UPR as a bilateral exercise (such as Canada, Mexico, the Netherlands, or a significant number of States that only participated in a single review).⁹

The constructive practice of following up on human rights treaty body recommendations was used by several States. For example, CEDAW recommendations were highlighted with respect to Guinea (Israel, Mexico), Guinea-Bissau (Mexico), and Laos (Hungary) while CRC recommendations were highlighted with respect to Spain (Israel), Sweden (Netherlands) and Grenada (South Africa, Slovenia).

Notably, three States under Review at the 8th session (Guinea, Kyrgyzstan, and Kenya) were in the midst of constitutional reform or preparations for upcoming elections. Kyrgyzstan's review saw States from all regions not only comment on ongoing and systemic human rights issues, but also make calls for return to democracy and rule of law. Similarly Kenya witnessed wide-ranging participation from both African States and States of other regions alike. However, similar to the UPR review of Madagascar at the 7th session, only four States from the African Union participated in the review of Guinea.¹⁰ It seems a lost opportunity for States not to use the UPR process to press for respect for democratic principles in countries where they do not recognise the Government.

OUTCOMES AND RECOMMENDATIONS

The number of recommendations to States under Review ranged from 83 (Kiribati) to 168 (Kyrgyzstan), with the average number of recommendations at 124.¹¹ However the total number of recommendations remains skewed due to inconsistent formulation of Working Group reports by the troikas. While some Working Group reports listed recommendations individually followed by the State who proposed the recommendation,¹² other Working Group reports clustered similar recommendations by several States into a single item,¹³ and some reports used a mix of these two systems.

5 The total number of actual recommendations listed in Working Group reports is 1860, however due to clustering of recommendations in certain reports, the total number of individual recommendations made by States is higher.

6 While the mean number of recommendations made by States was roughly 18, the median was about 11, indicating that a small number of States participated disproportionately more often than others. Ten States made only a single recommendation, five States made two recommendations, and another six States made just three recommendations.

7 However, five Council members did not participate in a single review (Cameroon, Gabon, Madagascar, Mauritius, and Zambia) and India participated on only once, presenting a single recommendation to Sweden.

8 For example, Argentina, Czech Republic, Denmark, Germany, Ireland, Latvia, Netherlands, Norway, Slovenia, Sweden, Switzerland, and the United Kingdom submitted advance questions to a number of States under Review. This same group of States also followed the same practice at the 7th session of the UPR.

9 For example, Cote d'Ivoire (Guinea), Mozambique (Guinea-Bissau), Ethiopia (Lesotho), Cambodia and Myanmar (Laos), Jamaica (Grenada).

10 Madagascar and Guinea are both currently under the rule of transitional governments not recognised as legitimate by all members of the African Union. No African State took part in the review of Madagascar.

11 States under Review that received more than the average number of recommendations were: Kyrgyzstan (168), Spain (166), Kuwait (159), Turkey (152), Kenya (150), and Sweden (149). States under Review that received fewer than the average number of recommendations were: Lesotho (122), Guinea (114), Guyana (112), Guinea-Bissau (108), Laos (107), Belarus (93), Grenada (92), Armenia (85), and Kiribati (83).

12 For example Kenya and Kiribati.

13 For example Laos and Belarus.

For example, Belarus accepted two recommendations on trafficking which in fact included 11 separate (though similar) recommendations from States. With such inconsistent formatting of reports, the total number of recommendations (and the number accepted, rejected, or otherwise) remains a only rough tool for comparison of State reviews. The formatting of reports and included recommendations has changed several times over the course of the first cycle of the UPR. Consistent guidelines and practices would enable the Working Group reports to provide a clearer basis for implementation and follow-up of recommendations.

As with previous sessions, small island States received the least amount of attention with Kiribati (28 interventions, 83 recommendations) and Grenada (27 interventions, 92 recommendations). These were also the only two States to leave all recommendations pending.¹⁴ The States which received the greatest amount of attention were Kyrgyzstan (51 interventions, 168 recommendations), and Spain (56 interventions, 166 recommendations). The large number of recommendations on Kyrgyzstan revolved around recent civil unrest, as States called upon Kyrgyzstan to ensure the rule of law, follow through with the proposed constitutional referendum and election, and ensure freedom of assembly and expression in that regard. In contrast, the large number of recommendations on Spain highlighted discrimination against migrant workers and ethnic minorities, as well as concerns over Spain's anti-terrorism activities and legislation. Spain, along with Sweden, broke with what had been the informal practice among European Union (EU) States to leave all recommendations pending until adoption by the Council, with Spain rejecting 18 recommendations, and Sweden 12.¹⁵

Only a small number of States provided justification for their rejection of recommendations. Turkey rejected nine recommendations from Cyprus on the grounds that Turkey 'does neither recognize Republic of Cyprus nor accept its claims to represent the whole island', despite some of Cyprus's recommendations being similar to recommendations made by other States and others clearly reflecting Turkey's international obligations.¹⁶ Similarly, Armenia explained its rejection of the Azerbaijani recommendation to 'eliminate discrimination against Yezidis' by noting that it is 'inaccurate and does not correspond to the actual situation.' The only State under Review to give explicit reasons for rejection was Kenya, providing detailed substantive explanations to all seven recommendations rejected.¹⁷

14 At the 7th session, five States left all recommendations pending.

15 Other EU States that have broken with this practice in the past include the Czech Republic and Germany.

16 The recommendation by Cyprus for Turkey to 'swiftly accede to the Rome Statute of the International Criminal Court' was rejected, while similar recommendations by Brazil and Chile were accepted.

17 However, such explanations were not all necessarily in line with international commitments. Kenya's rejection of the recommendation by the Netherlands to 'take concrete steps to provide for the protection and equal treatment of lesbian, gay, bisexual and transgender persons' was rejected on the grounds that 'same-sex unions were culturally unacceptable in Kenya.'

The 8th session saw continuation of the troubling practice of rejecting recommendations that contradict a State's existing international obligation. Examples included Kuwait, which rejected several recommendations in contradiction of CEDAW and ICESCR,¹⁸ and Guinea-Bissau, which also rejected recommendations on eliminating discrimination against women and children despite being a party to CEDAW and CRC.

Additional voluntary pledges and commitments were generally absent from all Working Group reports. However, Kuwait, Laos, and Lesotho included such commitments in their respective national reports prior to the UPR session, which were referred to in the outcome report.¹⁹

NGO ENGAGEMENT

As with previous sessions, NGO engagement varied greatly. The OHCHR compilations of stakeholder information included submissions ranging from just three organisations (Grenada) to 29 (Belarus) with the average number of submissions at about 14.²⁰ In almost all cases, the bulk of civil society submissions were from international NGOs, the exceptions being Spain, Lesotho, Sweden, and Belarus.²¹ Out of all stakeholder reports, only three included submissions from national human rights institutions (NHRI).²²

Only two NGO side events were held during the 8th session, in regard to Guinea, Kenya and Belarus. The side event on Kenya was particularly well organised, featuring a panel consisting of representatives from the Kenya National Commission on Human Rights (the NHRI), and several domestic NGOs. A document prepared by the Kenya Stakeholders Coalition for the UPR²³ was distributed that highlighted 'key human rights concerns in Kenya for purposes of the UPR process'. While only two States took the floor during the event (Hungary and Norway) they both raised concerns and asked questions on

18 These included recommendations to criminalise violence against women (by Israel), to review and amend laws to ensure gender equality and equal access for women to their social and economic rights (by the Netherlands), to take measures to promote women's participation in the judiciary, and the public administration (by Greece and the Netherlands), and to end discriminatory provisions in the housing programme (Norway). It was not surprising that Kuwait rejected recommendations on reforming the nationality law to allow women to pass nationality to their children as it has entered a reservation to CEDAW in this regard.

19 Commitments by Kuwait and Lesotho were relatively specific, while commitments by Laos were vague and general.

20 The number of organizations submitting stakeholder information varied as follows: 0-5 (Lesotho, Guinea-Bissau, Grenada), 6-10 (Kiribati, Guinea, Guyana, Kuwait), 11-15 (Kyrgyzstan, Laos, Spain, Armenia, Sweden), 16-20 (Kenya), 21 or more (Turkey, Belarus).

21 Submissions by international organizations as a rounded percentage of total stakeholder submissions, in descending order: Grenada (100%), Guyana (88%), Guinea (86%), Kyrgyzstan (80%), Kuwait (80%), Armenia (77%), Turkey (76%), Kiribati (75%), Guinea-Bissau (75%), Kenya (68%), Laos (64%), Lesotho (50%), Belarus (48%), Spain (46%), Sweden (43%).

22 Spain, Kenya, Sweden.

23 A group of 97 NGOs in Kenya facilitated by the Kenya National Commission on Human Rights.

issues that they later presented during Kenya's review.²⁴ The side event on Kenya could provide a model for other NGOs, NHRIs, and stakeholder coalitions in the future.

THE SPEAKERS' LIST

The time limitation set on the UPR review prevented States from participating in eight of the 15 reviews.²⁵ As with the review of Qatar in the 7th session, the review of Kuwait witnessed a large number of States taking the floor to praise its human rights record, or merely present mild recommendations.

In an attempt to find a solution to the list of speakers problem, at the Council's Bureau meeting in February 2010 the President suggested a new way forward. Under the proposed system, States would inscribe themselves on the list of speakers, the list would then be put in alphabetical order, and a random starting point on the list would be chosen. The proposal was however abandoned. The issue was again not dealt with at the following Bureau meeting in May, at the request of the African Group. At the closing of the 8th session, the President of the Council publically lamented 'that the various attempts by the Bureau to find a solution' were unsuccessful. Additionally, the informal and entirely non-transparent practice of trading spots on the speakers list is raising potential concerns about politicisation of the UPR process.²⁶

ACTIONS ON UPR REPORTS AT THE COUNCIL'S 14TH SESSION

At the 14th session of the Council in June 2010, 16 reports from the 7th session of the UPR were considered and adopted. The adoptions were for the most part routine, with the expected exception of Iran. Iran failed to provide further explanation for those recommendations it had rejected during the 7th session on the grounds that they were 'inconsistent with the institution-building text and/or not internationally recognized human rights'. Around 20 States were wished to comment on the outcome of the UPR of Iran, with only half being able to do so. Some States, including the United States expressed serious concerns about the situation in Iran and its continued failure to cooperate with UN mechanisms. This led Iran to accuse the US of advancing 'malicious political objectives' and of being full of 'prejudice, racism and phobias'. In turn, Iran was rebuked by the President of the Council and told to focus on the UPR of Iran only. The adoption largely looked to make a farce of the UPR process. However, a good number of NGOs were able to critically comment on the UPR outcome on Iran, largely by physi-

cally out-running government sponsored NGO representatives to get onto the restricted speakers' list.

In a positive development, the President of the Council made attempts to ensure clear responses to recommendations. For example, in regard to the adoption of the Working Group report on Bosnia and Herzegovina, a series of recommendations marked as 'partially accepted' were clarified as 'already implemented or in the process of implementation'. Unfortunately this did not prevent States from merely 'noting' recommendations, such as in the case of Fiji which, after a request for clarification from the President, 'noted' four recommendations that had been previously marked as 'impractical'.

In the general debate on the UPR that took place on 11 June during the Council's 14th session, concerns over the list of speakers again dominated discussion, with the United States calling the current system 'untenable and undignified'. Another major concern was raised in regard to recommendations not being clearly accepted or rejected (leading to the unconstructive practice of 'noting' a recommendation) and the common problem of providing no justification when a recommendation is rejected. The interactive dialogue during State reviews was also described as 'not interactive' by Singapore, which also encouraged States to better attend UPR sessions and send higher level delegates with the authority to participate dynamically.²⁷ Many other States also took the opportunity to present progress they had made on UPR recommendations since their own reviews.²⁸ Despite concerns raised, the general debate showed that States from all regions continue to consider the UPR a valuable process. ■

24 Hungary raised issues surrounding constitutional reform, and Norway raised its concerns over protection of human rights defenders.

25 Number of States unable to participate in descending order by State under Review: Kuwait (22), Turkey (21), Belarus (20), Kenya (15), Laos (9), Spain (6), Sweden (6), Kyrgyzstan (3).

26 During the review of Laos, due to an apparent misunderstanding with the Council President, it was made clear that Iran and China had traded their spots on the list. The issue of trading spots was also referred to during the Council's debate on item 6 at its 14th session, for more information, see <http://bit.ly/afdIIB>.

27 An issue that was raised by ISHR during an intervention at the Council's 13th session, see <http://bit.ly/9RlnFm>.

28 France, Netherlands, Morocco, Switzerland, Finland, Canada, Columbia, Bahrain.