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# UNIVERSAL PERIODIC REVIEW

## Varying degrees of participation in reviews of 16 States



Photo: US Mission Geneva

The US delegation was led by Esther Brimmer, Assistant Secretary of State for International Organization Affairs

**T**he Working Group on the universal periodic review (UPR) held its 9<sup>th</sup> session from 1 to 12 November 2010. Sixteen States were reviewed: Andorra, Bulgaria, Croatia, Honduras, Jamaica, Lebanon, Liberia, Libya, Malawi, the Maldives, Marshall Islands, Mauritania, Micronesia, Mongolia, Panama, and the United States of America (US).

The review of the US was a particular highlight, generating intense State, civil society and media interest. The 9<sup>th</sup> session, although mostly free of controversy, nevertheless exposed some tensions. Lebanon's review was overshadowed by arguments with Israel, while the US review involved politically-charged recommendations from numerous States. These included calls by China that the US end restrictions on internet access, and requests by Cuba that the US lift its economic blockade on the island State.<sup>1</sup> However, the reconciliatory approach emphasised between Serbia and Croatia during Croatia's review demonstrated the UPR can also stimulate diplomatic rapprochement.

### ENGAGEMENT BY STATES UNDER REVIEW

The US brought the largest delegation with 35 representatives, while Micronesia brought only two. The majority of States reviewed were represented by high-level delegates, with multiple Foreign Ministers and even a Vice-President attending reviews.<sup>2</sup> It was regrettable that despite many large delegations with diverse expertise, it was often only the head of delegation that responded to comments and questions.

States being reviewed commonly took the floor three times, once to introduce the national report, and twice to respond to questions. There were some exceptions. Lebanon's delegation spoke five times, although once was to interrupt Israel's recommendations. However, the UPR process remains not as much of an 'interactive dialogue' as intended. When States raised contentious questions, the State under review frequently avoided a thorough response, or ignored the question entirely. Lebanon, for example, avoided responding to questions regarding failures to submit its periodic report to the Committee against Torture, due since 2001.

### STATES PARTICIPATING IN THE WORKING GROUP SESSIONS

The level of State participation in reviews remains high with 643 State interventions made during the session. An impressive 115 States took part in at least one of the reviews. The large majority of States (85 percent) spoke more than once,<sup>3</sup> with a quarter participating in over half the reviews.<sup>4</sup> Four States intervened in every single review.<sup>5</sup>

Western States were the most active in the UPR process. Furthermore, States from the same region as the State under review were more likely to participate. For example, during the reviews of Lebanon and Libya, participation by States belonging to the Organisation of the Islamic Conference (OIC) was significantly higher than usual, and during Jamaica's review, participation

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1 Other States to issue politically-charged comments included Venezuela, Iran, Nicaragua, Bolivia and the Democratic People's Republic of Korea.

2 Foreign Ministers from Andorra, Bulgaria, Lebanon, Liberia, Maldives, Marshall Islands, Micronesia, and Mongolia. The Honduran delegation was headed by the State's Vice President, while Malawi sent the country's Attorney General.

3 98 of 115 States spoke more than once.

4 29 of 115 States spoke in eight or more of the 16 reviews.

5 Canada, France, Mexico, and the UK.

from Caribbean States was at its highest. Engagement also varied heavily based on the profile of the State under review. It was no surprise that during the review of the US many States on the speakers' list were unable to speak due to high demand – 80 States had signed up to participate, but only 56 were able to speak. By contrast, a lack of strong interest in the reviews of Andorra, the Marshall Islands, and Micronesia, caused these reviews to end one hour short of the allocated three hours. Long speakers' lists often implied attempts at filibustering, as seen with Lebanon and Libya. However, the review of the US saw the majority of States making valid criticisms rather than 'friendly' States simply filling the time with favourable comments.

The main areas of concern raised by States varied according to the State under review. These ranged from concerns about disabled persons (Bulgaria), freedom of expression (Honduras and Panama), and human rights issues related to sexual orientation (Jamaica and Malawi), to women's rights (Liberia), torture (Libya), and freedom of religion (Maldives). However, common themes were also raised across a number of reviews, such as several European States<sup>6</sup> consistently raising the death penalty with States that had not banned capital punishment. Discrimination based on sexual orientation was a reoccurring theme raised by Australia, Sweden and the Netherlands. Requests that States accede to more human rights treaties, or do better in implementing treaties already signed, were also common throughout the process. Those most frequently referenced were CEDAW, ICCPR, CESC and CAT.<sup>7</sup>

The number of States submitting written questions in advance remains low. Although 134 submissions were made in total, they were provided by a limited group. Only 15 States used this opportunity during the session, and most of those that did were European.<sup>8</sup>

## NGO ENGAGEMENT IN THE UPR PROCESS

The session saw wide disparities in the level of engagement by NGOs, with the US attracting a record 103 submissions, while small countries, such as Andorra and Micronesia, received just four.<sup>9</sup> International NGOs were the largest contributors to the stakeholder compilation, although some countries received an impressive number of submissions from national NGOs, notably the US, Croatia, Lebanon, and

Jamaica. There was a worrying absence of local stakeholder information in the case of Libya and Mauritania. Submissions from national human rights institutions (NHRIs) only came from Croatia, the Maldives and Mongolia.

The 9<sup>th</sup> session saw a new record in terms of NGO side events, with 15 taking place for the US alone, and one for Lebanon, Honduras and Panama, respectively. With more than 70 NGO representatives from the US coming to Geneva to attend the review, they were able to host meetings on a wide range of human rights issues in the country, including indigenous rights, corporate accountability, and racial discrimination.

## OUTCOMES AND RECOMMENDATIONS

The number of recommendations ranged from 228 (USA) to 38 (Marshall Islands), with the average number of recommendations at 116.<sup>10</sup> This large disparity reflects the varying degrees of State participation in the process, with islands and small States receiving significantly fewer recommendations during sessions to date.<sup>11</sup> Overall, Western States continued to make the majority of recommendations<sup>12</sup>, followed by members of the OIC.<sup>13</sup> The trend towards increased participation of States belonging to the same regional group as the State under review was also seen in the number of recommendations. For example, the reviews of Panama, Andorra, Libya, and Mauritania, saw States from the relevant region making the majority of recommendations.<sup>14</sup>

The responses by States under review to recommendations continued to be marked by huge variation. Bulgaria, the Maldives, Marshall Islands, Micronesia, and the US left all recommendations pending until the Council adoption of the outcome in March 2011. The rate of rejected recommendations was highest for Malawi and Lebanon.<sup>15</sup> No State under review accepted all recommendations made to it, although Croatia, Honduras and Mongolia distinguished themselves by accepting the majority of recommendations and rejecting none.<sup>16</sup> The practice by some States under review, of considering many recommendations as 'already implemented'

6 For example United Kingdom, Germany, France, and Switzerland.

7 States to whom these treaties were referenced: CEDAW: Jamaica, Lebanon, Liberia, Libya, Maldives, Marshall Islands, Mauritania, Micronesia, and Mongolia; ICCPR: Liberia, Libya, Malawi, Maldives, Marshall Islands, Micronesia, and Mongolia; CESC: Andorra, Liberia, Marshall Islands, Mongolia, Panama, and US. CAT: Jamaica, Lebanon, Libya, Mauritania, and Panama.

8 Bolivia, Czech Republic, Denmark, Germany, Ireland, Japan, Latvia, Mexico, Monaco, Netherlands, Norway, Russian Federation, Slovenia, Sweden, Switzerland, and the UK.

9 The number of stakeholder submissions varied as follows: 0-5: Andorra, Micronesia; 6-10: Jamaica, Liberia, Libya, Malawi, Maldives, Marshall Islands, and Mauritania; 11-15: Bulgaria, Croatia, Mongolia, and Panama; 16-25: Honduras and Lebanon; 100 or more: US.

10 States under review that received above the average number of recommendations were: Malawi (127), Mongolia (129), Maldives (126), Honduras (129), USA (228), Croatia (128), Jamaica (121), Lebanon (123), and Mauritania (139).

11 Panama (92), Andorra (55), Marshall Islands (38), and Micronesia (73) received a significantly smaller number of recommendations.

12 Approximately 36 percent of recommendations made came from Western States.

13 Members of the OIC provided 22 percent of recommendations made. Out of a total of 1854 recommendations, WEOG (Western European and Others Group) made 665; OIC (Organisation of Islamic Conference) made 408; GRULAC (Latin American and Caribbean States) made 376; EEG (Eastern European Group) made 219; and other (African Group, Asian Group, Holy See, USA, excluding States overlapping with OIC) made 187.

14 This trend came close to being realised in the case of Liberia and Honduras.

15 Malawi rejected 39 of 127, and Lebanon 40 of 123 recommendations.

16 Mongolia accepted 118 of 129 recommendations, Honduras accepted 117 of a 129 recommendations, and Croatia accepted 94 of 116 recommendations.

or 'in the process of implementation'<sup>17</sup>, continued in the 9<sup>th</sup> session. However, the validity of these claims was sometimes uncertain. For example, Honduras used this response to recommendations addressing severe restrictions on freedom of expression and the killings of journalists during and after the coup d'état of 28 June 2009. Although the State claims to have investigated and prosecuted violence against journalists by security forces, other delegations said widespread impunity in this regard still exists, as do cases of disciplinary proceedings against and dismissal of judges who are critical of the State.

Excuses for not accepting recommendations were common. Small States, such as Micronesia, Marshall Islands and Andorra, cited lack of resources as a reason for not becoming party to certain international human rights treaties. Other popular explanations related to cultural relativism and the untenable argument that domestic law takes precedence over international obligations, in clear disregard of obligations under the Vienna Convention on the Law of Treaties.<sup>18</sup> Mauritania, for example, referred to Sharia law to legitimise criminalising homosexuality. Liberia and Mauritania attributed their reservations to CEDAW to Sharia law and defended harmful traditional practices, such as female genital mutilation (FGM), as deeply entrenched values. Andorra refused to change its strict abortion policy, since the right to life is enshrined in its constitution. Other interesting examples included Lebanon's rejection of all three recommendations made by Israel, on the grounds these were made by 'occupants of Lebanese territory' and 'infringed on Lebanese sovereignty', and were therefore illegitimate. Jamaica admitted being unable to implement CAT and other international instruments was the reason for not ratifying them.

## CONCLUSION

Recommendations are the cornerstone of the UPR process, setting the bar for the State under review's human rights progress in the years to come. Studies have pointed to the trend<sup>19</sup> of regional allies predominantly making recommendations that require a low level of commitment by the State under review. For example, in the case of Libya 67 percent<sup>20</sup> of limited-action recommendations made to it were by OIC States, whilst Western States made the majority of more specific recommendations.<sup>21</sup> Out of the recommendations actually accepted

by Libya, only 11 percent were specific, while the remaining recommendations accepted were significantly more general, with few specific action points.<sup>22</sup> This trend presents a real risk to the UPR's relevance and effectiveness. Whilst general recommendations make it easy for the State under review to accept a large number of recommendations, they are unlikely to have a significant impact on the ground.

### Review of the UPR

The functioning of the UPR is currently being assessed as part of the review of the Human Rights Council. Consensus is emerging that the length of the review should be increased by one hour, allowing an extra 20 or 30 States to speak; but there is disagreement as to whether a four- or five-year cycle should be followed, and whether the second cycle should immediately follow the first.

Views are converging on having a separate section for NHRIs in the stakeholder report. However, there is opposition to the Office of the High Commissioner for Human Rights presenting the summary report of stakeholder submissions and the compilation document. No agreement has been reached as to whether technology should be used to facilitate stakeholder participation.

Suggestions to improve the utility of recommendations have received a mixed response, with limited support for a legal expert to ensure conformity with international human rights law. Although there is agreement that States should provide clear positions on recommendations, there is opposition to a proposal that this should form an addendum to the final report.

Mandatory midterm reports and consultations with civil society on follow-up are not widely supported, but States agree that both should be encouraged. However, proposals that States should develop implementation plans for accepted recommendations, or to receive financial or technical assistance, have not received support.

Further information on the review of will be made available at [www.ishr.ch](http://www.ishr.ch). ■

17 Panama considers 33 recommendations made to it as already having been implemented or are in the process of implementation; Honduras 112, Croatia 86, Jamaica 35, Lebanon 28, and Mauritania 24.

18 Andorra, Bulgaria, Jamaica, Lebanon, Liberia, Libya, Maldives, Mauritania, and Mongolia.

19 Backed by a study by Prof. Edward R. McMahon from the University of Vermont in collaboration with UPR Info, who developed a scale that categorises UPR recommendations according to the action contained in them. For further information, see [www.upr-info.org/IMG/pdf/Action\\_Category.pdf](http://www.upr-info.org/IMG/pdf/Action_Category.pdf).

20 Limited-action recommendations: calling on the State under review to request technical assistance, share information, or to continue an effort. In the case of Libya, limited-action recommendations were received as follows: OIC 24; other 6; GRULAC 3; EEG 2; WEOG 1.

21 Sources of the 47 specific-action recommendations given to Libya were as follows: WEOG 23; OIC 6; GRULAC 6; EEG 5; other (African group, Asian group, USA, Holy See) 8.

22 54.5 percent contain limited action and 27.3 percent containing general action.