
UNIVERSAL PERIODIC REVIEW

10th Session of the UPR – An Overall Positive Outcome



Photo: Dominic Alves

Origami lotus flowers created to represent political prisoners currently held in Myanmar (Brighton Festival 2011, United Kingdom). A recommendation by the Working Group on the Universal Periodic Review (UPR) calling for the immediate release of political prisoners in Myanmar was rejected by the State.

The Working Group on the UPR held its 10th session from 24 January to 4 February 2011, during which 16 States were examined: Australia, Austria, Estonia, Georgia, Mozambique, Myanmar, Namibia, Nauru, Nepal, Niger, Oman, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, and Sao Tome and Principe.

While mostly free of controversy, the 10th session witnessed some instances of tension based mainly on territorial disputes and use of proper UN terminology when referring to States. The former involved disputes between Georgia and the Russian Federation regarding whether or not the human rights situation in Abkhazia and South Ossetia should be discussed during Georgia's review.¹ The latter related to Myanmar's objection to the term 'Burmese delegation' used by the United States. The President of the Human Rights Council (the Council) had already encouraged all delegations to use the term officially recognised by the UN, following the use of 'Burma-Myanmar' by the Czech Republic.

ENGAGEMENT BY STATES UNDER REVIEW

Austria brought the largest delegation with 36 representatives, followed by Oman (35) and Myanmar (28), while Sao Tome and Principe and Saint Lucia brought only three and two respectively. High-level representatives, including several foreign ministers, attorney generals and ministers of justice, headed the majority of delegations. Despite the predominance of large delegations with different areas of expertise, questions were often responded to entirely by the head of the delegation, limiting the utility of specialised delegates.²

The level of interaction varied across the dialogues with States examined; while some States under review strove to respond to all the questions submitted in advance and raised during the review,³ others failed to provide thorough responses or even completely ignored the questions posed. Oman, for instance, avoided responding to questions on the death penalty and the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. In a similar vein, Nepal avoided answering questions regarding future steps to ratify the *Optional Protocol to the Convention Against Torture*, the *Convention on Enforced Disappearances*, and the *Convention on the Status of Refugees*. Moreover, in response to multiple concerns raised over the existing culture of impunity, the delegation claimed that 'there is no systematic torture in Nepal'. The delegation of Myanmar, following extensive criticism of its grave human rights record, called upon the international community to also take positive steps into account and to respond 'with encouragement, support and understanding'.

1 In a similar vein, during its intervention at Saint Lucia's review, China complained about the reference made earlier by Saint Lucia to Taiwan as a country.

2 During the reviews of Austria and Oman, it was only the head of the delegation who spoke. Delegation members were more involved during the reviews of Georgia, Myanmar, Australia, and Paraguay.

3 Austria acknowledged all the comments made and the questions raised during its review. Austria is currently seeking membership of the Council for the period 2011 to 2014.

HIGH LEVEL OF INTEREST IN THE WORKING GROUP

The level of State engagement remained high, with 718 interventions made by 127 States during the 10th session.⁴ Seven States intervened in all of the 16 reviews.⁵ The majority of the States (83 percent) spoke more than once and 32 percent spoke during more than half of the reviews. The number of States submitting written questions in advance increased slightly for the 10th session. Eighteen States, the majority of which were European as already observed at previous sessions, submitted 106 questions in advance.⁶

For some reviews, there was very active participation by ‘friendly States’. During the review of Oman, for example, more than half of the participating States belonged to the Organisation of the Islamic Conference (OIC),⁷ most of whom either praised the areas of progress or simply encouraged the continuation of measures already undertaken. In addition to these attempts at filibustering, the length of speakers’ lists continued to remain largely dependent upon the profile of the State examined. While countries such as Austria, Australia, Myanmar, and Nepal benefitted from the highest levels of engagement by other States, smaller States continued to see limited participation, with the reviews ending one hour earlier than the allocated three hours.

Common issues were raised during all reviews despite the particularities of the States examined: numerous calls for ratifying and/or implementing core international human rights treaties (all States examined), discrimination against minorities and ethnic groups, excessive use of force by public officials and the persistence of a culture of impunity,⁸ over-crowded detention centres,⁹ the death penalty,¹⁰ and restrictions on freedom of expression including harassment of journalists and human rights defenders.¹¹ Other concerns raised included LGBTI rights,¹² the lack of comprehensive legislation on human rights

protection,¹³ hate speeches by politicians against Muslims and other minorities,¹⁴ harmful traditional practices against women and girls,¹⁵ de facto discrimination against women,¹⁶ widespread violence against children including sexual violence,¹⁷ and recruitment of children under 15 years old by the army.¹⁸

NGO ENGAGEMENT IN THE UPR PROCESS

A total number of 161 stakeholder submissions were made, with Myanmar attracting the most (24) and Sao Tome and Principe the least (two). In terms of side events, a number of international and national non-governmental organisation (NGOs) hosted meetings on Estonia, Mozambique, Myanmar, Nepal, and Rwanda prior to their reviews. Moreover, several briefing sessions by the Australian NGO coalition – representing 70 human rights organisations – and the Australian Human Rights Commission were held ahead of Australia’s review. Representatives from the Burma Forum on the UPR, a coalition of 14 human rights and civil society organisations, held a public event immediately after Myanmar’s review, expressing disappointment with the delegation’s categorical denial of ongoing State-orchestrated human rights violations and with the approval of Myanmar’s November elections by members of the Association of Southeast Asian Nations (ASEAN).

OUTCOMES AND RECOMMENDATIONS

The number of recommendations ranged from 73 (Rwanda) to 190 (Myanmar), with an average number of 131 recommendations per review.¹⁹ Small States continued to receive fewer recommendations.²⁰ Reflecting the higher level of participation by ‘friendly States’ in some reviews, the number of relatively weak recommendations made by these States was also higher. During the review of Oman, for example, OIC members made 45 percent of the recommendations.

State responses to recommendations were marked by significant disparity. Australia, Nauru and Saint Lucia left all recommendations pending until the 17th session of the Council in June 2011. While Sao Tome and Principe accepted the majority of recommendations and rejected none,²¹ Myanmar, Estonia and Nepal had the highest rate of rejected recommendations.²² Among the recommendations rejected by Myanmar were calls

4 The 10th session witnessed a higher level of State participation compared to the 9th session, in which 643 interventions were made by 115 States. Myanmar received the largest number of State interventions (57), followed by Nepal (55), Austria and Georgia (each 54), and Australia (53). By contrast, the review of Nauru had the lowest number of interventions (30) followed by Sao Tome and Principe (31).

5 Canada, China, France, Germany, Sweden, UK, and USA.

6 Canada, Czech Republic, Denmark, France, Germany, Ireland, Japan, Latvia, Lithuania, Maldives, Netherlands, New Zealand, Norway, Russian Federation, Slovenia, Sweden, Switzerland, and the UK. Sweden submitted written questions to all the 16 States under review, followed by Netherlands (12), Czech Republic, Denmark, and Germany (each 11). Myanmar received the largest number of submissions (13), followed by Nepal (11), and Austria and Oman (seven each).

7 Twenty-six out of 51 participating States during the review.

8 Austria, Estonia, Georgia, Mozambique, Myanmar, Namibia, Nepal, Niger, Paraguay, Saint Lucia, Sao Tome and Principe.

9 Australia, Georgia, Mozambique, Namibia, Paraguay, and Rwanda.

10 Myanmar, Niger, Oman, and Saint Lucia.

11 Georgia, Myanmar, Namibia, Nauru, Nepal, Oman, Rwanda. The Genocide Ideology Law in Rwanda was criticized for limiting freedom of expression.

12 Austria, Namibia, Oman, Saint Lucia. Austria was criticised over inequalities concerning family rights i.e. limiting the right to adopt a child to heterosexual couples.

13 Australia

14 Australia and Austria.

15 Mozambique and Niger.

16 Oman and Rwanda.

17 Namibia, and Sao Tome and Principe.

18 Myanmar and Rwanda.

19 A total of 2094 recommendations were made during the 10th session. States receiving an above-average number of recommendations were: Nepal (135), Australia (145), Austria (161), Georgia (163), Oman (166), Mozambique (169), and Myanmar (190).

20 Sao Tome and Principe (82), Nauru (102), Niger (112), Saint Kitts and Nevis (113), and Saint Lucia (116).

21 Sao Tome and Principe accepted 72 out of 82 recommendations.

22 Myanmar rejected 70 of 190, Estonia 20 of 124, and Nepal 15 of 135 recommendations.

for the immediate release of 2,200 political prisoners, and for renewed cooperation with the International Committee of the Red Cross (ICRC).²³ Estonia rejected the majority of recommendations calling for the ratification of the *International Convention on the Protection of All Migrant Workers and Members of their Families* (CMW), as well as those calling for the recognition of same-sex partnerships. Nepal rejected multiple recommendations on amending legal provisions that grant immunity to State officials for acts of torture, arguing that neither such legal provisions nor any systematic torture exist. In addition, Nepal rejected the recommendations contained in OHCHR's 2010 report on extrajudicial killings in the Terai region, indicating it objects to the report in its entirety.

Reasons cited for not accepting recommendations varied between States. Small States²⁴ pointed to financial and capacity constraints as the main reason for not becoming party to additional human rights treaties. On the other hand, as many States have argued before, Australia maintained that it only joins treaties once the necessary legislation is in place. Austria defended its reservations to some international conventions as a means to harmonise its international obligations. Moreover, it stated that it has no intention to ratify CMW, as it considers the Convention to be in contradiction with other international obligations. Certain States used 'public opinion' as a pretext for not accepting certain recommendations (on the decriminalisation of homosexuality in Mozambique and the abolishment of the death penalty in Saint Lucia).

Similar to previous sessions, many recommendations were considered by the States examined to be either 'already implemented' or 'in the process of implementation'.²⁵ Rwanda rejected several recommendations, considering them 'either inapplicable or irrelevant'. The validity of these claims remained questionable in some cases. For instance, while Rwanda maintained that steps are already being taken to ensure journalists are neither harassed nor intimidated, concerns were raised by some delegations about threats to and murders of journalists. While countries including Mozambique, Myanmar, and Nepal claimed to have already undertaken sufficient measures to combat impunity and extrajudicial killings, numerous concerns were raised over the persistence of such issues in the States examined.

Despite the rejection of several recommendations, the majority of States under review made good use of the process by accepting most recommendations. A critical examination by the State under review of its own human rights record and the acceptance of constructive guidance by its peers constitute

key elements of the UPR process. However, follow-up to and implementation of recommendations is equally important, as it leads to the concrete realisation of the UPR's ultimate goal of improving the human rights situation on the ground. While implementation remains the main responsibility of the respective governments, civil society organisations and other relevant stakeholders play an important role both in promoting and supporting this implementation. This is also recognised in the outcome of the five-year review of the Council's work and functioning, which encourages all stakeholders to include information on implementation in their submissions for the second cycle.²⁶ With the UPR approaching the end of its first cycle, States, national human rights institutions and NGOs will need to shift their focus to develop concrete assessments of the level of implementation of previous UPR recommendations.

The UPR and the Review of the Human Rights Council

The outcome of the review of the work and functioning of the Human Rights Council (the Council)²⁷ was adopted at the Council's 16th session. While the outcome as a whole was disappointing, the UPR in some ways epitomises the missed opportunity represented by the review.

Many interesting and practical suggestions relating to the UPR were presented during the first meeting of the Working Group, including appointing a legal expert to ensure recommendations made are in accordance with international human rights law, having the High Commissioner verbally present the compilation report and the stakeholders report from OHCHR, and making midterm reporting and the submission of implementation plans compulsory. None of these made it into the outcome document. Instead States are merely 'encouraged' to submit midterm reports and implementation plans.

Those proposals that were included in the outcome document are mostly technical in nature, including an extension of the cycle from four years to four and a half years. There will also be an extension of the time allocated for each State review (specific modalities to be decided at the 17th session of the Council) and a solution to the problem of the speakers' list, ensuring that all States that want to speak during a State review are able to do so.

There was however one significant gain for national human rights institutions (NHRIs), perhaps the only really new element of the entire outcome. This is that any 'A-status'²⁸ NHRI of the country being reviewed will now be able to speak immediately after the State under review. ■

23 The delegation mentioned that the so-called 'political prisoners' are in prison for having breached the law and not for their political opinions. In addition, the delegation claimed that despite the absence of an MOU between ICRC and the Government, ICRC made 406 visits to camps and prisons between 1999 and 2005.

24 Nauru, Saint Kitts and Nevis, and Sao Tome and Principe.

25 Mozambique considered 92 of the recommendations to have been already implemented, or in the process of implementation; Paraguay 73, Rwanda 35, and Nepal 28.

26 See <http://bit.ly/gnNa5T> and the article on the review of the Council on p. 7 of this publication.

27 For more information see the article on the Review of the Council on p. 7.

28 As assessed by the International Coordinating Committee of NHRIs.