
UNIVERSAL PERIODIC REVIEW

11th Session of the UPR – majority of recommendations remain pending



Photo: Brad Smith

Migrant workers in Skagit Valley, Washington, USA.

The Working Group on the Universal Periodic Review (UPR) held its 11th session from 2 to 13 May 2011, during which 16 States were examined: Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone, Singapore, Suriname, Greece, Samoa, Saint Vincent and the Grenadines, Sudan, Hungary, and Papua New Guinea.

As was seen at the last session, there were again some instances of tension based on territorial disputes and use of proper United Nations (UN) terminology when referring to States. The latter involved China objecting to the Solomon Islands' reference to 'Taiwan', requesting that it be referred to as 'China'. The President of the Human Rights Council (the Council) had encouraged all delegations to use the term officially recognised by the UN. There was also anticipation surrounding the UPR of Sudan ahead of Southern Sudan's upcoming independence in July 2011.

ENGAGEMENT BY STATES UNDER REVIEW

Hungary was represented by the largest delegation (13 members) while Saint Vincent and the Grenadines had only two representatives. Most delegations demonstrated gender parity in the selection of their representatives for the UPR. One positive illustration of representation was shown by Sudan whose delegation was made up of representatives from both North and South regions. The majority of States reviewed were represented by high-ranking government officials such as ministers of foreign affairs and a few ministers of justice. The delegation of Singapore was made up of representatives from the ministries of health, law, home affairs and community development.

Although Hungary had the largest delegation, the questions posed were answered solely by the Minister of State for Social Inclusion at the Ministry of Public Administration and Justice. Many other States followed this practice of having only one member answer all questions, including the Solomon Islands, Papua New Guinea, Belgium, the Seychelles, and Saint Vincent and the Grenadines. Palau, Latvia and the Solomon Islands, on the other hand, were amongst those delegations that ensured that representatives with the most relevant expertise on the subject answered questions.

Most States responded to previously submitted written questions during the presentation of their report and to new questions raised in the dialogue throughout the remainder of the review. Many Small Island Developing States (SIDS) called on the international community to be patient and understanding, and to continue their support for the Island States in regard to financial and climate change issues.

ENGAGEMENT BY THE WORKING GROUP

Some States under review received a considerable amount of participation from 'friendly' or less critical States or from those located in a common regional area to the State under review. For example, during the review of SIDS,¹ an increase in participation of other island States was seen. Because of the small number of States overall that participated in the UPR reviews, the comments of 'friendly' States were more prominent. This contrasted with reviews of EU countries, where there was limited or less obvious participation by 'friendly' States. The indication seems to be that States with more problematic human

¹ SIDS under review at this session were Palau, Seychelles, Solomon Islands, Singapore, Suriname, Samoa, Saint Vincent and the Grenadines, and Papua New Guinea.

rights records demonstrate loyalty towards those with similar human rights problems, presumably in expectation that they will receive similar support when the time comes for their own review.

Sudan, Singapore and Somalia had the highest number of speakers during their reviews. These were the only reviews in which not all members of the Working Group were able to speak.

The main issues raised by States varied highly and ranged from concerns about stateless persons (Denmark), migration (Greece), and corporal punishment (Singapore), to the issue of child soldiers (Somalia) and the treatment of Roma (Hungary).

Cuba made recommendations regarding education and health in many of the reviews. The following subjects were also brought up at the majority of the reviews: violence against women, human trafficking, female representation in national decision-making, citizenship, and racial and religious discrimination. Some recommendations were made irrespective of region, such as the recommendations to ratify international treaties, while others showed regional patterns. For instance, there were many recommendations concerning migration directed at the European countries under review, such as Greece.

There were also recommendations made specific to certain countries, such as in the case of Sudan. The UPR review for Sudan was particularly interesting considering the independence of South Sudan on 9 July this year. States emphasised the link between encouraging peace in troubled areas, such as Darfur and Abyei, and the long term stability of South Sudan. The UPR recommendations for South Sudan could have a great impact on the peaceful future of the independent State. The representative of South Sudan said the State is committed to improving the human rights situation and added that the civil and political rights in Southern Sudan are centered on the bill of rights in its constitution. Useful recommendations included the implementation of policies to decriminalise apostasy, and retention of human rights protections in the new constitutions of the North and South.

The events of the Arab Spring also had an impact on the recommendations made by a number of countries. Due to the growing number of refugees from the Middle East and North Africa (MENA) regions, a number of countries, such as Pakistan, criticised the disproportionate burden of refugees on MENA countries. Recommendations were made for European countries to ensure the opening of their borders to refugees escaping repression in countries such as Libya, Syria and Bahrain.

As issues regarding the UN human rights system as a whole were raised, the delegation of Saint Vincent and the Grenadines highlighted the lack of standing open invitations to special procedures issued by members of the MENA region. The delegation said European countries issued the majority

of standing invitations. However, it argued the absence of standing invitations from SIDS should not be seen as a lack of political will, but as a consequence of many countries lacking the funds and capacity to receive special procedure mandate holders. This issue was raised by a number of other SIDS and African countries under review.

NGO ENGAGEMENT IN THE UPR PROCESS

A total number of 172 stakeholders' submissions were made, with Somalia attracting the most (26 submissions), while Saint Vincent and the Grenadines along with the Seychelles only attracted three submissions each. All SIDS had a low number of NGO submissions, ranging from three to ten. This could be linked to a low number of NGOs in these States and a lack of government capacity to promote the UPR to civil society, but also points to a lack of capacity on the part of NGOs to engage.

NGOs displayed particularly strong interest in the reviews of Somalia and Sudan, as both countries are dealing with conflict and transitional governments. The review of Singapore also attracted a high level of submissions from NGOs, especially on the issues of corporal and capital punishment.

With regard to European countries, a number of NGOs highlighted concerns regarding flawed migration policies. Overall however, European countries under review prompted less NGO engagement. Denmark had a relatively high number of NGO submissions (15) – the most amongst European countries. One concern brought up by a number of NGOs in the stakeholder report of Denmark was the lack of ratification of international human rights conventions in the Faroe Islands and Greenland, regions that are partly under Denmark's jurisdiction. Several States also raised this concern during the review of Denmark.

The Danish delegation stated the Government's strong desire to include NGOs in the UPR cycles, stressing its appreciation and hope for NGO engagement with regard to future reviews. It stood out as the only delegation to specifically mention its readiness to take into account recommendations made by NGOs.

Moreover, the head of the Danish delegation said he desired for the Danish Institute for Human Rights, a national human rights institution (NHRI), to have an opportunity to speak as part of the review. As part of the outcome of the review of the work and functioning of the Council, NHRIs will be able to speak immediately after the State under review, but only during the adoption of the report in plenary. However, this provision will come into force at the beginning of the second cycle of the UPR in June 2012 and will therefore not apply to the Danish NHRI in this round.

OUTCOMES AND RECOMMENDATIONS

The number of recommendations made to States under review varied. SIDS received nearly equivalent numbers of recommendations, amounting to an average of approximately 100 per State. Larger States received between 120 and 190 recommendations.

There was no significant disparity in State responses to recommendations at this session, with many leaving decisions pending until the 18th session of the Council in September 2011. States that left all recommendations pending were Denmark, Palau, Solomon Islands, Seychelles, Sudan, and Somalia, which shows a change from previous sessions. For example, at the 10th session of the UPR (January – February 2011), only three States left all recommendations pending. Considering this is a cross-regional phenomenon, it could potentially indicate a trend towards States not giving positions on any recommendations until the Council adoption of the report. Hungary, Papua New Guinea, Sierra Leone and Suriname left more than 20 recommendations pending. Nevertheless, the higher rate of pending recommendations also resulted in a lower rate of immediately rejected ones. It is hoped discussions in capital over the coming months will result in constructive responses to the pending recommendations. In addition, the higher rate of pending recommendations provides NGOs with extra space to lobby governments and push for their acceptance.

Certain questions and recommendations, such as the ratification of outstanding human rights conventions, were either not addressed or sidelined, mostly by SIDS or less developed countries. Other States raised concerns that lack of capacity was used by some countries as a pretext for this refusal. European countries received many recommendations related to the ratification of the *International Convention on the Protection of All Migrant Workers and Members of their Families* (CMW). However, none agreed to ratify this convention as most governments claimed the rights therein were already enshrined in their legislation and guaranteed by the European Convention on Migrants. States appear to be fearful that opportunities to change migrant policy will be reduced if they ratify the CMW, particularly the implications this may have for being able to remove migrants who lose or leave the employment for which permission to enter the country was granted.

Similar to previous sessions, many recommendations were considered by the States examined to be either 'already implemented' or 'in the process of implementation.' This was especially the case for Samoa and Sierra Leone, who both considered 50 recommendations to be already implemented out of 102 and 129 recommendations respectively. Recommendations made to Sierra Leone that were already considered by the State to have been implemented included the elimination of female genital mutilation and the abolition of the death penalty.

Other prominent recommendations were related to the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and same-sex relationships, and the treatment of women and children. These came up frequently during the reviews of SIDS. Particularly prominent as reasons for rejecting these recommendations was the appeal to traditional and religious beliefs. Saint Vincent and the Grenadines, for instance, stressed it was unable to accept recommendations to decriminalise same-sex relations, claiming this would contradict traditional values.

Saint Vincent and the Grenadines also immediately gave a negative response to recommendations concerning the abolition of the death penalty. Some countries, in particular Suriname, Samoa and the Solomon Islands, were recommended to raise the minimum age of criminal responsibility. However, all of them replied within the session that they were not willing to do so.

The delegation of the Transitional Federal Government of Somalia was quick to blame the problem of impunity within the country on the fact that many human rights violations are committed by actors not under the government's control, such as non-government militant factions. One such violation was the recruitment of child soldiers.

The protection of national identity was another reason States used to rationalise negative responses to recommendations. For example, the delegation of Latvia cited this as its reason for promoting Latvian over minority languages, such as Russian. This was in response to the Russian Federation's concerns about the lack of citizenship and language rights afforded to ethnic minorities in the country.

The delegation of Singapore unapologetically stated its position not to ratify any further international human rights conventions without first investigating the practical steps required to implement them. In a similar vein, the State was blunt in its refusal to ban corporal punishment, claiming it to be necessary to ensure national security and stability. Despite this, Singapore was praised by a number of States for its successful promotion of economic, social and cultural rights. Many States referred to Singapore's success in enabling the majority of its population to access these rights, and demonstrated an interest in learning from these achievements to benefit their own people.

With so many States under review opting to leave their positions on recommendations pending until the 18th session of the Council, it is difficult to judge at this stage how fruitful the review was in terms of accepted recommendations. However, as the first cycle draws to a close it will also be important to keep in mind that rejected recommendations remain important. Human rights defenders will get an opportunity in the course of the second cycle of the UPR, starting in 2012, to encourage States to reconsider their positions on those recommendations. ■