

# UNIVERSAL PERIODIC REVIEW

UPR 7<sup>th</sup> session and adoption of reports from the 6<sup>th</sup> session.  
Iran and DPRK fail to cooperate with the UPR as other negative precedents are set



The 7th session of the universal periodic review (UPR) Working Group took place from 8 to 19 February. The Working Group reviewed the human rights situation in the following countries: Angola, Bolivia, Bosnia and Herzegovina, Egypt, El Salvador, Fiji, Gambia, Iran, Iraq, Italy, Kazakhstan, Madagascar, Nicaragua, San Marino, Slovenia, and Qatar.

## Performance of States under Review

Most of the States under Review (SuRs)<sup>1</sup> were represented by high-level delegations,<sup>2</sup> although ranging two representatives in the case of Fiji up to 32 in the case of Iran. States generally used 20 to 30 minutes to present their current human rights situation, with the exception of El Salvador, which used 42 minutes to effectively repeat the State report. A number of States used the opportunity, however, to update the Working Group on new legislation or other new measures.<sup>3</sup> Italy, San Marino, and Slovenia also addressed advance written questions in detail, whereas Angola and Iran made no reference to advance questions. Others simply avoided sensitive questions related to sexual orientation, abortion, and the death penalty.<sup>4</sup>

Many members of the Working Group did not make full use of the opportunities available for engaging with SuRs. Only European States,<sup>5</sup> and Argentina and Canada submitted advance written questions to SuRs, thus limiting the opportunity to receive more comprehensive answers and allowing the members of the Working Group to receive necessary clarifications before making concrete recommendations.

Most SuRs participated constructively in the dialogue with other States, taking the floor twice and trying to duly address all the questions. Iran, Slovenia and Egypt took the floor three times.<sup>6</sup> However, Nicaragua, San Marino, Angola, and Madagascar only took the floor once to respond to clusters of questions thus avoiding the above-mentioned sensitive issues.

<sup>1</sup> In order of review: Qatar, Nicaragua, Italy, El Salvador, Gambia, Bolivia, Fiji, San Marino, Kazakhstan, Angola, Iran, Madagascar, Iraq, Slovenia, Egypt, and Bosnia and Herzegovina.

<sup>2</sup> Only Fiji was an exception as the head of the delegation was the Permanent Representative to the Mission in Geneva.

<sup>3</sup> Nicaragua, Italy, Bolivia, San Marino, Angola, Madagascar, Iraq, Slovenia, and Bosnia and Herzegovina.

<sup>4</sup> Countries which avoided these issues when answering questions submitted in writing were: Qatar, Nicaragua, El Salvador, Bolivia, Fiji, Kazakhstan, Iraq, Egypt and Bosnia and Herzegovina.

<sup>5</sup> In particular Denmark, Latvia, Sweden, Norway, UK, Czech Republic, Germany, and the Netherlands.

<sup>6</sup> Even though Fiji took the floor twice during the interactive dialogue their responses were very brief and avoided answering concrete questions. It claimed that most of the questions and remarks were addressed partly if not fully during the presentation of the State report.

A recurring defence by SuRs related to tradition, culture and the 'will of the people' for the failure to protect all human rights. The Gambia ascribed traditional values to criminalisation of homosexuality and Nicaragua argued that its people want abortion to be prohibited. Nicaragua blamed 'the West' and unjust international trade for its lack of development and thus the lack of full enjoyment of human rights, Bolivia blamed previous governments for poverty and lack of employment, and Iran expressed dissatisfaction with the sanctions adopted against it as a hindrance to the realisation of human rights. Others explained lack of progress as a consequence of the poor economic situation (Gambia and Fiji), or a lack of human resources (Qatar and San Marino).

### NGO engagement in the process

There were significant differences in the level of engagement by NGOs in the UPR processes, with submission of information by over 30 relevant stakeholders for Egypt, Iran and Iraq,<sup>7</sup> to five or less in the cases of Madagascar, Qatar and San Marino.<sup>8</sup> Qatar, Gambia, Madagascar and Slovenia witnessed a significantly higher proportion of international submission.<sup>9</sup> In the case of Iran it was also noteworthy that a high number of international stakeholders contributed to the report.<sup>10</sup>

While NGO side events also serve to highlight current issues in SuRs, it remains not widely used and at the 7<sup>th</sup> session such events were only held with regard to Fiji, Kazakhstan, Iran and Iraq.

### The speakers list

Demand to speak by members of the Working Group was high in the case of most SuRs; statements were not delivered due to time constraints in eight of the 16 States reviewed.<sup>11</sup> High demand was largely symptomatic of supportive statements made by friendly States in order to 'filibuster' the dialogue, particularly where there is international interest in the SuR.<sup>12</sup>

The trend of filibustering is problematic as laudatory and vague comments crowd critical comments and recommendations out of the discussion. In the case of Qatar only five States made critical comments, while the majority commended

Qatar's progress in areas of social development and urged Qatar to 'continue' current efforts.

However, in most cases critical States were also able to take part in the review. The UPR of Iran exhibited a new development in this area, as the first States to speak were the United States, Canada, France, Slovenia, Israel, Australia and the United Kingdom, States who sharply criticised Iran on civil and political rights violations. These States made significant efforts to secure their spots on the list, demonstrating that strategic usage of the speaker's list occurs on all sides. It was also noteworthy that the United States' statement was delivered by its Under-Secretary of State for Democracy, Human Rights and Labour.

By contrast, members of the UPR Working Group exhibited a lack of interest in States such as San Marino (26 interventions) and Madagascar (24), where statements were made nearly exclusively by States from the 'Western Europe and other States' block. While lack of interest in Madagascar was the result of a deliberate political message by States in the African Union following a coup d'état in that country,<sup>13</sup> the case of San Marino conforms to previous trends of shorter speakers lists in small European and Pacific Island States.

### Questions and recommendations to States under Review

This session also continued to reflect the political nature of the mechanism and its use as a forum for bilateral exchange rather than multilateral dialogue. States asked stock questions on issues of national interest.<sup>14</sup> There also remained considerable repetition of questions or recommendations by members of the Working Group that were already addressed by the SuR.<sup>15</sup>

The number of recommendations ranged from 189 (Iran), Egypt (165) and Iraq (156) to 56 (San Marino). Five of the SuRs left all recommendations pending, including Bosnia and Herzegovina, Italy and Slovenia in accordance with standing European Union (EU) practice.<sup>16</sup> Latin American States continued to be among the most cooperative in their engagement; Bolivia accepted all recommendations while Nicaragua and El Salvador accepted most recommendations and rejected none.<sup>17</sup> Bolivia and El Salvador also continued the trend among

<sup>7</sup> In the case of Egypt 37 stakeholders contributed to the report, in the case of Iran 67 stakeholders and in the case of Iraq 50 stakeholders.

<sup>8</sup> In the case of Madagascar and Qatar only five stakeholders contributed to the report and in the case of San Marino only three stakeholders contributed to the report.

<sup>9</sup> In the case of Qatar five international and no national stakeholders contributed to the report, in the case of Gambia 11 international and one joint statement of four national NGOs contributed to the report, in the case of Madagascar where four international and only one national stakeholder contributed to the report, and in the case of Slovenia where five international and two national stakeholders contributed to the report.

<sup>10</sup> 24 international stakeholders submitted information (as did 43 national stakeholders).

<sup>11</sup> In sessions with high demand, a largely ineffective two-minute time limit was placed on statements in order to accommodate more statements.

<sup>12</sup> It is noteworthy that in the case of Egypt 34 statements were not delivered and in the case of Iran 27 statements were not delivered.

<sup>13</sup> Current Head of State, Didier Ratsiraka seized power in a military coup in 2009.

<sup>14</sup> France and Argentina, on the ratification of International Convention on the Protection of all Persons from Enforced Disappearances, Armenia on religious discrimination, Denmark on issues related to torture, etc.

<sup>15</sup> See ISHR's statement in the General Debate on Item 6 during the 13th session of the Human Rights Council, available at [www.ishr.ch/component/docman/doc\\_download/875-ishr-statement-during-the-general-debate-on-the-upr](http://www.ishr.ch/component/docman/doc_download/875-ishr-statement-during-the-general-debate-on-the-upr)

<sup>16</sup> Angola and Fiji also left all recommendations pending.

<sup>17</sup> Nicaragua accepted 68 out of 110 recommendations, El Salvador accepted 77 out of 118 recommendations, and Bolivia accepted all 78

Latin American States of making ‘voluntary pledges and commitments,’ beyond the scope of recommendations received from the Working Group. Iraq also made voluntary pledges and commitments.

Iran (45 out of 189), the Gambia (32 out of 141) and Iraq (27 out of 156) rejected the most recommendations. Iran, Egypt and San Marino provided some explanation for rejecting recommendations. Iran classified 28 of these as ‘inconsistent with the institution-building text and/or not internationally recognised human rights, or not in conformity with its existing laws, pledges and commitments.’<sup>18</sup> Egypt simply specified that 14 of its 21 rejected recommendations ‘did not enjoy [its] support since Egypt considers they are inaccurate and/or factually incorrect.’ Alternatively, San Marino provided an explanation in paragraph form beneath each recommendation it rejected, a good practice exhibited by very few States in previous sessions.<sup>19</sup>

The good practice of cross-referencing human rights treaty body recommendations also continued with CEDAW recommendations mentioned most frequently.<sup>20</sup> Working Group members also recommended many SuRs to submit their overdue reports to treaty bodies<sup>21</sup> and to extend open invitations to all special procedures of the Council.<sup>22</sup>

The 7<sup>th</sup> session regrettably saw a continuation of SuRs rejecting recommendations that contradict their existing international obligations, such as Egypt’s blatant rejection of Israel’s recommendation to ‘Conduct a wide-ranging review of Egyptian human rights law in order to bring them into line with Egypt’s international commitments, as so pledged in its Human Rights Council candidature and within its National Report,’ or Qatar’s rejection of Sweden’s recommendation ‘To end discrimination against women by amending its legislation to guarantee women equal rights, in accordance with its international obligations, including with regard to marriage and divorce.’ Iran also rejected recommendations in blatant contradiction of its international legal obligations.<sup>23</sup> The Gambia rejected a particularly large number of recommendations that contradict international human rights standards, particularly in the areas of women’s rights and freedom of expression.<sup>24</sup> Of

the Gambia’s 30 rejected recommendations, three contradict its obligations under CEDAW, and 16 contradict its obligations under ICERD.

SuRs rejected a large number of recommendations on issues of women’s rights and the rights of lesbian, gay, bisexual and transgender persons (Egypt, the Gambia, Qatar, Iran, San Marino, Iraq) and on the abolition of the death penalty (Gambia, Egypt, Qatar, Iran and Iraq). 22 of Iraq’s 27 rejected recommendations involved the establishment of a moratorium on the death penalty.

### Adoption of final reports

Adoption of draft reports of the UPR Working Group was, for the most part, highly procedural with Working Group members only commenting to make small technical edits to draft reports. Yet the adoption of draft reports on Egypt and Iran became a forum for debate on procedural and more substantive issues.

Egypt objected to the practice of recording the original wording of a recommendation in a footnote in the case of a specific recommendation by Chile, which it refused to accept unless the footnote was edited to clarify that Chile had requested the change.<sup>25</sup> This practice has been employed since the 5<sup>th</sup> session of the UPR in order to establish a record of modifications to recommendations. Pakistan, Nigeria and Cuba supported Egypt’s objection to the footnote on the grounds that all parties could agree, and that citing the original text of the recommendation would be redundant and add unnecessary length to the report. The United States and the Netherlands objected that the previous practice is important for preserving a faithful record of proceedings, and removing the footnote would tamper with that record. The Chairperson accepted the change, given that ‘all relevant’ parties agreed. Though he clarified that it would not stand as a precedent, this may be the emergence of a problematic new practice.

At the adoption of the draft report on Iran, the United Kingdom, the United States and several European States sought explanation from Iran on rejected recommendations that fall within basic international human rights obligations<sup>26</sup> on the grounds that they were ‘inconsistent with the institution-building text and/or not internationally recognised human rights...’ Iran’s rejections were even more inconsistent given its acceptance of Kuwait’s recommendation to ‘continue to respect international humanitarian law and international law

recommendations made to it.

<sup>18</sup> This last cause is particularly problematic as it cites domestic law as a justification for non-adherence to international human rights standards.

<sup>19</sup> Including Colombia and Costa Rica.

<sup>20</sup> El Salvador, the Gambia, Angola, Iraq, Slovenia, and Bosnia and Herzegovina.

<sup>21</sup> The reviews of Gambia, Fiji, Angola, Iraq, and Egypt.

<sup>22</sup> The reviews of Qatar, El Salvador, Fiji, Angola, Iran, Madagascar, Iraq, Egypt, and Bosnia and Herzegovina.

<sup>23</sup> To be discussed in greater depth in the section on the adoption of draft reports.

<sup>24</sup> For example; the Netherlands’ recommendation to ‘Guarantee equal treatment and non discrimination of women also with regard to areas concerning personal status, particularly, adoption, marriage, divorce and inheritance according to international human rights standards,’ and Canada’s recommendation to ‘Amend legislation to comply with

international obligations to guarantee freedom of expression.’

<sup>25</sup> Recommendation 85 by Chile reads, ‘Advance in the promotion of the status of women in society in order to achieve full equality in rights between women and men in all matters,’ with the text ‘especially in relation to marriage, divorce and inheritance,’ removed from the end of the original recommendation.

<sup>26</sup> Rejected recommendations included allowing the Special Rapporteur on torture to visit the country, releasing political prisoners and taking measures to end discrimination and harassment against persons belonging to ethnic and religious minorities.

in general,' and other recommendations that contain similar content to those rejected.<sup>27</sup> Iran responded that it refuses to support recommendations produced by an 'organised clique' using 'poisonous language' and disrupting the cooperative spirit of the UPR.

### Human Rights Council debate and action in relation to the UPR

The 13<sup>th</sup> session of the Council in March 2010 witnessed the adoption of the reports from the 6<sup>th</sup> session of the UPR of December 2009, although not without controversy.<sup>28</sup> Most notable was adoption of the report on the Democratic People's Republic of Korea (DPRK) and the State's failure to accept a single recommendation, setting the harmful precedent of allowing States to merely 'note' all recommendations without any explanation,<sup>29</sup> which is clearly not in line with the Council's institution-building text.<sup>30</sup> In similar fashion, some States left recommendations pending at the adoption.<sup>31</sup> One other disruption of note related to Cyprus' allegation that it had 'not been treated by its peers [that is, Turkey] in accordance with the principles of the UPR',<sup>32</sup> although this ultimately did not affect the adoption of its UPR report.

Other issues related to the adoption of reports included the low number (six of 16) of written responses to pending recommendations, the overwhelming tendency of member and observer States to commend the SuR for engaging in the UPR, without reference to substance, and the comparatively more critical engagement by predominantly international NGOs.

The general debate on Item 6 was notable for the sizeable increase in participation of both States and NGOs from the previous general debate, and provided a good opportunity to outline priority areas for the UPR's review in 2011, including

translation of reports (Nigeria), the need to address issues surrounding the speakers list (India), the need to ensure the clear acceptance and rejection of recommendations (Norway and the United States, who used the time to express strong concern at the practice of the DPRK in particular); and criticism of the rejection of recommendations on the alleged basis of not being factually correct or in accordance with national law or practice (Canada, Israel).<sup>33</sup>

NGOs also used the general debate to draw attention to areas requiring future improvement, including the rejection of recommendations based on treaty obligations,<sup>34</sup> clarification of accepted and rejected recommendations,<sup>35</sup> strengthening national consultations after UPR reviews,<sup>36</sup> and fixing the speakers list.<sup>37</sup>

Positive examples of follow-up in the general debate included a grid document from the United Kingdom and Colombia's action plan. The United States, on the other hand, used the general debate to inform States of its planning for the UPR, including a website to receive comments from any stakeholders.

Overall, the general debate proved reasonably useful as a means to provide follow up and as a measurement of States' initial priorities in relation to improving (as they interpret it) the functioning of the UPR. ■

<sup>27</sup> 'Fully implement the standing invitation extended to the United Nations human rights special procedures (Chile),' 'Respect the human rights of prisoners and detainees, and investigate and stop immediately any alleged abuses (Ireland)'.

<sup>28</sup> For a more detailed summary of the adoption of reports than the one provided here, see [www.ishr.ch/council-news/740-human-rights-council-adopts-6th-session-upr-reports-holds-half-way-general-debate](http://www.ishr.ch/council-news/740-human-rights-council-adopts-6th-session-upr-reports-holds-half-way-general-debate)

<sup>29</sup> This had also happened with the adoption of the report on Israel. For a more detailed summary of the adoption of the report of the DPRK, see 'The Democratic People's Republic of Korea accepts none of UPR's 167 recommendations' at [www.ishr.ch/council-news/725-the-peoples-democratic-republic-of-korea-accepts-none-of-uprs-167-recommendations](http://www.ishr.ch/council-news/725-the-peoples-democratic-republic-of-korea-accepts-none-of-uprs-167-recommendations)

<sup>30</sup> Council *Resolution 5/11* provides that 'Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.' The provision does not allow States to take note of a recommendation and instead they should provide a clear response as to whether they accept it or not.

<sup>31</sup> Albania, Bhutan, Brunei, Costa Rica, Cote d'Ivoire, DPRK, DRC, Ethiopia, Iran. See [http://www.upr-info.org/IMG/pdf/Responses\\_to\\_Recommendations\\_S6.pdf](http://www.upr-info.org/IMG/pdf/Responses_to_Recommendations_S6.pdf)

<sup>32</sup> For a more detailed explanation of the controversy surrounding Turkey's comment and Cyprus' response, see [www.ishr.ch/upr/630-cyprus-disassociates-itself-from-upr-outcome](http://www.ishr.ch/upr/630-cyprus-disassociates-itself-from-upr-outcome)

<sup>33</sup> For a more detailed summary of the general debate, see [www.ishr.ch/council-news/740-human-rights-council-adopts-6th-session-upr-reports-holds-half-way-general-debate](http://www.ishr.ch/council-news/740-human-rights-council-adopts-6th-session-upr-reports-holds-half-way-general-debate)

<sup>34</sup> ISHR, FIACAT.

<sup>35</sup> Canadian HIV/AIDS Legal Network (including the proposal that the President compile a list of best practices in a Presidential statement).

<sup>36</sup> ISHR.

<sup>37</sup> Amnesty International, Cairo Institute for Human Rights Studies.