

# Unprecedented challenge to the Universal Periodic Review

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On 3 May 2013, the Universal Periodic Review (UPR) suffered its second major assault of 2013. After Israel's failure to attend its own UPR last January, at this session the Russian Federation tried to remove two recommendations, both made by Georgia, from the official list of recommendations. The Russian delegation, using the argument that the recommendations '[did] not comply with the basis of the review stipulated in resolutions 5/1 and 16/21 [of the Human Rights Council]', succeeded in having the recommendations added as footnotes rather than as official recommendations in the United Nations (UN) report which is published following the review. The consequent danger is that these recommendations will not be considered a valid basis for holding Russia accountable for implementation.

As a response to this as yet unique step taken by Russia, the Georgian representative took the floor during the adoption of this UN report to criticise this 'serious deviation from the principles and working methods of the UPR process' which 'could open Pandora's box'. Georgia was not alone in raising its voice over this unprecedented setback to the UPR. Estonia, the United Kingdom and the United States expressed their concerns, the latter stressing that the UN report should 'reflect what was actually said in the room' and that this action was 'contradicting the common understanding and the widely accepted practices by allowing the State under review to alter the report of recommendations'.

This precedent created by Russia is one of the most challenging threats to the UPR since its inception in 2008, as it opens the door for other States to remove any recommendation they perceive as being political. It is worth noting that no legal disposition of the UPR provides for the opportunity for a State under review to remove recommendations. The UN report should consist of a 'summary of the proceedings of the review process, conclusions and/or recommendations'. The State under review is only allowed to 'communicate its positions on all received recommendations' by identifying the recommendations it supports and by noting those it does not.

All countries should have the right to suggest any recommendation. In general, of course, politically motivated recommendations should not be encouraged, as States should ideally focus on recommendations which can improve the human rights situation within the reviewed country. Given the historic relations between Georgia and Russia it is hardly surprising that recommendations from one to the other are naturally seen as politicised. However, the principle of universality promoted by the UPR comes with a price: all States should be allowed to have the recommendations they made included in the UN reports. The UPR operates on the basis that all States should participate in the process on an equal footing, this being seen as a way to encourage participation, and ensure that all countries play by the rules and appear to be reviewed in their turn. The almost 100 per cent participation rate in the process to date bears out the validity of this approach.

## **Record-breaking number of recommendations**

During what could be considered a heavy 16th session of the UPR, the review of Cuba broke the record of the number of countries taking the floor to ask questions and make recommendations to the State being reviewed. Each of the 132 speakers had 51 seconds to make recommendations. As a consequence, Cuba received 293 recommendations, the highest number of recommendations that a State under review has ever received at the UPR. The previous record was held by the United States, with 280 recommendations in November 2010. Despite this impressive number it is important to point out that, of the 293 recommendations received by Cuba, 121 started with the verb 'continue', thus requiring minimal action to be taken by the Government. Interestingly, Cuba is also the infamous record-holder for the number of reports sent by NGOs to the Office of the High Commissioner for Human Rights (OHCHR). More than 450 reports, many of them without any criticisms of the human rights situation in the country, were sent to the UN to be used to assess Cuba's human rights situation. Such a high number of reports makes it difficult for OHCHR to produce a summary of the information provided and involves extensive staff resources. Moreover, the overwhelmingly positive views

contained in these reports skew the balance of the summary prepared by OHCHR.

### **Other negative trends**

Finally, in what has seemingly become another negative trend, Uzbekistan reiterated its practices of the UPR first cycle by rejecting 14 recommendations pertaining to the issues of, inter alia, freedom of religion, arbitrary detention, and human rights defenders, on the grounds that it considered them to be 'factually wrong'. In addition, another 44 recommendations on issues such as sexual orientation and gender identity, torture and freedom of movement were rejected for 'not [being] part of its obligations under internationally agreed human rights standards'. In December 2008, 16 recommendations had been rejected using those same two responses. Uzbekistan is the only country, together with Egypt and Singapore, which has used the argument that the recommendations were 'factually wrong' or 'based on incorrect assumptions or premises' in order to reject them. This is problematic because this assertion comes from the State under review and cannot be disputed.

The success of the UPR is due to the cooperation among States, between governments and civil society. Such cooperation is achieved thanks to the equal treatment offered to all UN member States. If States are not treated equally, their readiness to cooperate with the UPR will weaken.

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