

UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

UNIVERSAL PERIODIC REVIEW, OVERVIEW OF FIRST SESSION 7-18 APRIL 2008

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Overview

The first session of the new universal periodic review (UPR) of the Human Rights Council (the Council) took place from 7 to 18 April 2008 with the review of 16 United Nations (UN) member States.¹ The first States to be reviewed under the UPR, in order of review, were:

- Bahrain
- Ecuador
- Tunisia
- Morocco
- Indonesia
- Finland
- United Kingdom
- India
- Brazil
- Philippines
- Algeria
- Poland
- Netherlands
- South Africa
- Czech Republic
- Argentina

The practices developed at this first session were so varied that it is difficult to provide a clear critical appraisal of the process. Initial reactions from States and NGOs have been mixed, and the positive and problematic practices that have been identified may still change over time.

¹ All information related to the UPR is available on OHCHR's UPR page at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx>. Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR/1session/>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at www.un.org/webcast/unhrc/index.asp.

On the one hand an State that would never find its human rights record being discussed at the Council is now at times facing certain difficult questions before its peers, but on the other hand ‘friendly States’ have the ability to collectively present an image that is not reflective of the human rights situation on the ground. In some cases genuinely robust questions are being asked, and are being answered. In other cases they are not. In some cases useful recommendations have been formulated, in other cases recommendations are so vague that they cannot be realistically measured. There has been a clear move away from the Council practice of issuing statements by regional or other groups of States, in favour of individual interventions by States. However many States have applied different standards of scrutiny to States that they have a regional or organisational association with. This has been the practice even of those States who vowed that the UPR would do away with the ‘politicisation’ often associated with the former Commission on Human Rights, and would ensure the equal treatment of all States. These early inconsistencies have led only a few NGOs to roundly criticise or dismiss the UPR at this early stage, and many remain engaged and willing to engage in the hope that the UPR can build on some of the positive outcomes already witnessed.

Background to the session

The weeks and days before the first session of the UPR were marked by an air of nervousness among States. Much of this arose from the uncertainty of how the process would function. At the same time a sizeable degree of the Council’s credibility rested on the UPR’s success. At the same time, many issues related to the working methods of the UPR Working Group had still not been resolved. Despite ongoing bilateral and group meetings with the President of the Council in the weeks before, this confusion lasted right up to the last day before the UPR was scheduled to begin,² into the first meeting on Monday 7 April³ and throughout the first week of the review.⁴ These outstanding issues included: whether reports submitted by NGOs and other stakeholders should be published on the website of the Office of the High Commissioner for Human Rights (OHCHR); whether questions submitted to the State under review via the troika⁵ may also be published on the website at the request of the State under review; how time would be allocated to States under review to present their report and the answer questions, and how the interactive dialogue would be conducted; outstanding issues related to the format of the report of the Working Group; and whether the UPR Working Group meetings should be webcast.⁶ Egypt (on behalf of the African Group), Palestine (on behalf of the Arab Group) and Pakistan (on behalf of the Organisation of the Islamic Conference) presented a non-paper on these issues to the President four days before the first meeting of the Working Group. The late submission of this paper led many States to question the ‘transparency’ of its sponsors and their intentions.⁷

The President informed all States at the organisational meeting three days before the session that no decisions could be made on these issues before the first meeting of the UPR Working Group on Bahrain on the following working day, and that time could not be allocated to discussing these issues during the morning session as it was dedicated strictly to the review of Bahrain. On the first morning of the UPR the President

² See ISHR’s *Council Alert*, 4 April 2008, at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_alert_4_april_2008.pdf

³ For a summary of the President’s opening statement and positions put forward relating to outstanding modalities, see http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_bahrain_final.pdf

⁴ See the adoption of the reports of Bahrain, Ecuador, Morocco and Tunisia, at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008

⁵ For an explanation of the role and purpose of the troika, see *Council Resolution 5/1*, para. 18 (d), at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1. For a full summary of the selection of troikas, see www.ishr.ch/hrm/council/councilalert/council_update_7session.pdf

⁶ For a review of the content of the non-paper and the arguments put forward for and against its content, see ISHR’s *Council Alert*, 4 April 2008, at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_alert_4_april_2008.pdf

⁷ For example, the United Kingdom in the organizational meeting of 4 April was of the view that an informal agreement had been reached on various issues through bi-lateral and group meetings, and that the re-opening of these issues in the non-paper raised questions about the transparency of its signatories.

circulated his final statement on modalities and practices⁸ and declared that no decisions would be taken on issues related to the format of the reports of the Working Group until the adoption of the report on Bahrain two days later. This meant that the five reviews that took place before then would not establish a precedent for the Working Group's working methods. 'Webcasting' of the session proceeded on the basis of that agreement.

Outstanding issues relating to the report of the Working Group overshadowed the process in the first week and created an uneasy beginning to the UPR. These issues are addressed below.

Working methods

Presentation by the State under review

The President's final statement on modalities established that States would have a maximum of 60 minutes for their initial presentation of the national report and responses to written questions received through the troikas, to reply to questions from the floor during the dialogue, and to offer concluding comments. While the President had initially proposed that the State would be given 30 minutes to introduce its report and respond to written questions, and did not detail how much time would be allocated to the interactive dialogue, he noted the strong support for the proposal made in the non-paper of the African Group and others described above,⁹ and this was finally agreed. The President also clarified at the organisational meeting that the State under review could choose to take questions individually, in clusters of its choosing, or at the end of the interactive dialogue.

States under review were generally represented by high level delegates, usually at ministerial level,¹⁰ and large delegations,¹¹ which seemed to signify that they took the process seriously. Invariably, the head of the delegation gave the presentation, although on occasion ambassadors turned to other delegation members to speak on particular issues.

The allocation of one hour for the State under review worked reasonably well for the first session, although there were variations in practice and there remains the possibility of misuse in the future. For instance, the Netherlands chose not to focus on information already provided in the State report, and instead succinctly addressed questions submitted via the troika, thus ensuring that 45 minutes was left to engage in answering questions from the floor. Others, such as Argentina used up to 40 minutes to present their report and were unable to answer questions raised during the interactive dialogue due to time constraints. In the latter case, it appeared to be a genuine case of poor time management, but in the future it may also be conceived of as a means to 'run down the clock'. On average, however, States took up to half of the time available for their initial presentation.

⁸ A/HRC/8/L.1, available on the extranet of the UPR.

⁹ 'The SuR will be given a maximum of 60 minutes in the WG to be used for: a) initial presentation of the national report/responses to written questions; b) replies to the questions raised from the floor during the interactive dialogue, if desired; and: c) concluding comments at the end of the review'.

¹⁰ India – Solicitor General, Netherlands – Secretary of State, Bahrain – Minister for Foreign Affairs, Ecuador – Minister of Justice, Tunisia – Minister of Justice, Morocco – Minister of Justice, Indonesia – Deputy Minister of Multilateral Affairs, Finland – Secretary of State, United Kingdom – Minister of State, Brazil – Executive Secretary of the special secretariat for human rights of the Presidency, Philippines – Executive Secretary of the Presidential Human Rights Committee, Algeria – Minister of Foreign Affairs, Poland – Under-secretary of State, Netherlands – State Secretary for Justice, Czech Republic – Government Agent before the European Court of Human Rights. The delegation of South Africa, led by its Permanent Representative to the United Nations, was the exception.

¹¹ Bahrain's and Poland's delegations each consisted of 27 delegates.

One of the clearer critical questions arising from the first session of the UPR relates to the questionable value of submitting written questions to the troika for each country under review, and by extension the value of the troika *per se*.¹² Less than half the States under review allocated time to address questions submitted to them via the troika, with only the Netherlands referring to the authors of specific questions submitted. It was clear that a far higher proportion of questions and/or recommendations presented orally during the interactive dialogue were likely to receive a response, or were at least recorded in the summary report of the Working Group. The high number of questions that were left unanswered through the troika process were not addressed in any manner.¹³ This also created an impression that some States were not engaged in the UPR, whereas they may have decided to submit their questions through the troikas for the first session. It is highly likely, therefore, that States are less likely to submit questions to troika members in the future and will instead reserve their questions for the interactive dialogue.

Patterns and trends in the interactive dialogue

It was agreed from the first modalities non-paper of the President of 27 March 2008 that member and observer States would be given 3 and 2 minutes respectively to provide comments, questions and recommendations to the State under review. The State could address these questions individually, in clusters of its choosing, or at the end. The prevailing practice was to answer questions in clusters, although in the case of India and Brazil, for example, the clusters were so large that specific questions and/or recommendations were left unanswered, intentionally or otherwise. The approach of Ecuador of responding after each grouping of seven or eight interventions appeared to be a more workable practice.¹⁴

The first list of speakers for Bahrain included 36 States. After the smooth completion of the first interactive dialogue the President announced that the figure of 36-38 interventions would be optimum for the interactive dialogue. However, during the review of Tunisia, 61 States requested to speak. Due to the resulting impossibility of all States to intervene, it was decided thereafter that the cut-off point would be 45 interventions. The number of speakers varied from as high as 61 for Tunisia to as low as 21 for Finland and the Czech Republic.

The first negative trend in the interactive dialogue became apparent at the very outset of the review of Bahrain. Palestine (on behalf of the Arab Group) and twelve ‘friendly States’¹⁵ commended Bahrain for its comprehensive report and for its ‘range of achievements’ and ‘wealth of experience in human rights’.¹⁶ However, none of them put forward critical comments, questions or recommendations. The practice reached a dangerous low in the review of Tunisia, when the list of speakers was so dominated by ‘friendly States’ that it appeared an orchestrated exercise in filibustering.¹⁷ The lack of critical comments and recommendations resulted in a report of the Working Group that was less likely to reflect the reality of the situation of human rights on the ground, diminishing the possibility that the first objective of the UPR, namely ‘the improvement of the human rights situation on the ground’, could be realised.¹⁸ This was clearly one of the most discouraging reviews of the first session of the UPR.

¹² For an explanation of the role and purpose of the troika, see Council *Resolution 5/1*, para. 18 (d), at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1. For a full summary of the selection of troikas, see www.ishr.ch/hrm/council/councilalert/council_update_7session.pdf

¹³ These questions are now available on the OHCHR extranet at <http://portal.ohchr.org/portal/page/portal/UPR/1session/>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password.

¹⁴ Review of Ecuador available at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf

¹⁵ Palestine, India, Pakistan, Qatar, Tunisia, United Arab Emirates, Saudi Arabia, Turkey, Malaysia, Algeria, Libya, Cuba.

¹⁶ Palestine.

¹⁷ For example, the first fifteen countries to speak in the interactive dialogue were Kuwait, Palestine, Pakistan, Philippines, Chad, Saudi Arabia, Russian Federation, Slovenia, China, India, Madagascar, Ghana, Mauritania, Bangladesh, Angola. Review of Tunisia available at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_tunisia_final.pdf

¹⁸ Council *Resolution 5/1*, para. 4(a), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1

The practice across the sixteen States under review was more varied, however. During the first session States taking part in the interactive dialogue developed a general practice of first noting positive developments in the country under review, then (if they chose to progress beyond compliments) to issues of concern, leading then to questions and to possible recommendations. However, it became clear at the outset that if a State wished for a recommendation to be registered as such in the report of the Working Group, it had to use the word ‘recommend’ in its statement. Overall, the percentage of positive comments far outweighed criticisms. In the case of Brazil for example positive comments were approximately ten times more numerous than critical observations. Questions and recommendations were also of such variable quality that it is difficult to give an overall assessment. However, it is worth noting that while States were selective about who they directed their questions to (which in itself raises obvious questions about the ‘non-selectivity and universality’ of the process), genuinely robust questions and recommendations were raised in almost all meetings.¹⁹ Nonetheless, recommendations were often made that were so broad and vague that it will be very difficult for States and other stakeholders to measure their implementation.²⁰

A wide range of thematic issues were addressed by the Working Group over the course of the first UPR session. As could be expected, member and observer States focused on issues of interest for themselves. However, the issue of discrimination on the basis of sexual orientation drew significant attention on account of the position of Egypt that sexual orientation did not fall under the ‘basis of review’²¹ of the UPR unless it was included in a particular State’s ‘voluntary pledges and commitments’, including those taken by the State upon seeking membership to the Council.²² As the State in question, Ecuador, had taken up the issue in its voluntary pledges, the procedural issue was passed over, but it is a question that is certain to arise again at future sessions.

Several issues, including that of sexual orientation also served to illustrate the positive and negative aspects of States speaking in an individual capacity. As mentioned above, the move away from regional or other group statements and positions was a very positive development of the UPR in allowing States to not be constrained by a lowest common denominator approach. However, in certain cases these individual statements led to repetition. For instance several EU States lined up to ask Poland to criminalise discrimination on the basis of sexual orientation. There is clearly a need to strengthen coordinated planning among States so that duplication of questions could be avoided in the future.

¹⁹ See for example the UK and Peru in the case of Brazil (at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_brazil_final.pdf). Senegal in the case of Tunisia, the Democratic Republic of the Congo in the case of South Africa (at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_south_africa_final.pdf). Algeria in the case of the Netherlands (at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_netherlands_final.pdf), Russia and Cuba in the case of Poland (at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_poland_final.pdf), Belgium in the case of Algeria (at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_algeria_final.pdf)

²⁰ Some examples include the following recommendations to Tunisia: ‘Recommends that Tunisia pursue its programmes and consolidated approach in the promotion and protection of all human rights including in the field of education, health and the promotion of the status of women (Syrian Arab Republic) as well as the empowerment of women (Cuba).’ Several vague recommendations were made to Morocco, such as ‘to continue its achievements in the field of Human Rights (Saudi Arabia)’, ‘while recognizing the efforts of Morocco to promote a culture of human rights and human rights education and training, to carry on with its efforts to disseminate and consolidate the human rights culture in the country (Syrian Arab Republic)’, ‘to continue, as it has done, to ensure respect for the human rights of all migrants (Mexico)’. The following recommendation was also made to India: ‘Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria).’

²¹ The ‘basis of review’ of the UPR is (a) the Charter of the United Nations; (b) the Universal Declaration of Human Rights; (c) human rights instruments to which a State is party; (d) voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council; and applicable international humanitarian law. Council Resolution 5/1, para. 1(d), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1

²² For a summary of this debate, see the adoption of the report of Ecuador at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf

The interactive dialogue also witnessed the practice by certain States of asking the same standard thematic questions to all States. In its questions sent to the troika, the UK addressed the role of national human rights institutions and civil society to the troikas. Slovenia raised the gender perspective of the UPR, France queried the ratification of the *International Convention for the Protection of All Persons from Enforced Disappearance*, and Australia enquired whether the State under review had a national human rights institution. While the intention may have been to avoid selectivity, and the practice was in certain cases positive, the latter example of Australia also unfortunately illustrated a perfunctory approach to the process, as it was clear in many cases that Australia had not first checked whether the State under review did already have a national institution. Moreover, the question had in some cases already been answered by the State under review.²³

Finally, in accordance with the requirement that the UPR not duplicate but complement the work of treaty bodies, the interactive dialogue proved to be quite useful in drawing attention to the recommendations of treaty bodies and of special procedures of the Council, and recommending their implementation. In this instance it could be stated that the UPR has succeeded thus far in not duplicating, but complementing the work of treaty bodies. It remains to be seen how the recommendations of the UPR will be taken by the treaty bodies in their examination of States.²⁴ Direct references to the information submitted by other stakeholders were more sporadic, although the lack of reference to NGO submissions does not mean that points were not duly taken up by States. In certain cases, it is clear in fact that the vast majority of issues raised in the submissions of NGOs were also raised by States in the interactive dialogue.²⁵

Format and content of the final report

During the last days of the March session of the Council, the President formally proposed modalities and practices for the UPR²⁶, including on the report of the Working Group to the Council. However, it merely recalled that the report should follow the format of the outcome as set out in Council *Resolution 5/1*, which ‘will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.’

The above-mentioned non-paper by the African Group, OIC, and the Arab Group on modalities also recalled that the outcome would consist of a summary of the proceedings, conclusions and recommendations *agreed and not agreed* (emphasis added), and voluntary commitments by the State under review. The non-paper further suggested that the State under review could withhold its position on certain recommendations and make its position and any comments known at a later stage, to be included in the final report of the Working Group. The paper also indicated that only the recommendations supported by the State under review be subject to follow-up.

Consultations and negotiations in the build up to the session led the above-mentioned groups to revise their non-paper. The revised non-paper of 3 April 2008 is largely identical to the compromise reached in a President’s statement dated 9 April 2008.²⁷ The non-paper established that the report will be a factual summary of the proceedings in the Working Group reflecting the recommendations made. The State under review is then expected to examine all the recommendations. The recommendations that enjoy the support of

²³ See for example the case of Brazil, after Brazil had detailed its various institutions responsible for human rights protection and promotion, at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_brazil_final.pdf

²⁴ Indonesia and Algeria are due to appear before the Committee against Torture in May 2008. See <http://www2.ohchr.org/english/bodies/cat/cats40.htm>

²⁵ This can be seen by cross referencing the summary reports and the OHCHR summary of information of ‘other stakeholders’ in the reviews of the Philippines and the Netherlands, for example.

²⁶ Proposal of the President, dated 27 March 2008, ‘the review process: modalities and practices’, available on the OHCHR extranet.

²⁷ A/HRC/8/L.1

the State under review are to be listed, and other recommendations should be ‘noted’.²⁸ The State under review can inform the Working Group of its position regarding outstanding recommendations ‘whenever it is in a position to do so’ until and including during the plenary session of the Council when the report of the Working Group will be considered. However, right up to the adoption of the first report of the Working Group, on Bahrain, there was still no agreement on the issue.

Disagreements focussed on how the recommendations should be reflected in the report. Egypt, Pakistan, Nigeria and Algeria argued that the recommendations in the report should only reflect the views of the individual State and should not be attributable to the Working Group as a whole. These States, with the support of the Russian Federation and China, argued that each recommendation should therefore be followed by the name of the State that had formulated it.²⁹ Others argued that this was not necessary. Mexico suggested that all States that had made recommendations could be listed in an introductory paragraph to the list of recommendations. Cuba and the Russian Federation argued that only recommendations accepted by the State under review and which enjoyed ‘broad support’ should be included in the report’s section on conclusions and recommendations. Slovenia (on behalf of the EU) insisted that some of these proposals seemed to run counter Council *Resolution 5/1* in that it would not provide for a full listing of recommendations, and argued that this basic text should continue to guide the UPR process. This view was echoed by other States during discussions of the subsequent reports, including for example Canada and Switzerland on the report on Tunisia.

The discussion on the format of the report continued when the Working Group considered the report on Tunisia. While Tunisia had accepted all of the recommendations in the report, many States complained that their recommendations were not in fact adequately reflected in the draft. An agreement could only be reached on a standard format after the suspension of the session by the President to allow for consultations. This standard provided that, if the State under review so wished, recommendations that it could not accept or had not yet agreed upon would be reflected only in the summary of the meeting and not in the list of recommendations. A separate paragraph after the list of agreed recommendations would then cross-reference the recommendations not yet agreed upon.³⁰ Alternatively, the State could ask for a list of all recommendations made to be included in the report and decide at a later stage whether to accept or reject any of these. In both cases, all recommendations, whether accepted or not, ‘should be duly noted in the outcome document’ that is adopted by the Human Rights Council.

The report on Indonesia also caused controversy in terms of its format, with States divided over whether the report could refer to conclusions and recommendations reached during the interactive dialogue or only to recommendations.³¹ The report did not mention the name of the State that had made the recommendation. Nigeria, the Russian Federation and China expressed dissatisfaction with this and argued that the authors of recommendations should be clearly stated. After another suspension, the President announced that an agreement had been reached on including a new standard phrase in all reports. The paragraph reads: ‘All conclusions and/or recommendations contained in this report reflect the position of the submitting state(s) and/or the State under Review thereon. They should not be construed as endorsed by the working group as a whole.’ The report on Indonesia was then adopted without the attribution of States to the recommendations as a ‘last exception’ to the template that has now been agreed.

²⁸ *Resolution 5/1*, para. 32: ‘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.’

²⁹ Supported by the Russian Federation, China.

³⁰ The report on Morocco was used as an example of this, where a paragraph was included reading ‘Other recommendations noted in the report in paragraph 72 and paragraph 65 will be examined by Morocco, who will provide responses, if any in due time. Both will be noted in the outcome report to be adopted by the Council’.

³¹ Pakistan, Nigeria, Russian Federation, China argued that there was no room for conclusions in the report as States had only made recommendations.

During this first session, States already adopted different approaches to the recommendations. While some States agreed to all recommendations made,³² others could only agree to some recommendations while leaving others to be ‘considered’.³³ Others States, still, decided to only review the recommendations, reserving their decision for later.³⁴ Only Algeria rejected out of hand some of the recommendations.

The attribution of States to individual recommendations allows the inclusion of recommendations that would not be able to enjoy the support of the Working Group as a whole, or would be weakened if they had to be subjected to negotiations. A good example of an issue that has been included in the reports, despite some heated discussion, is recommendations on sexual orientation.³⁵ While there are concerns about the lack of collective ownership by the Working Group of the review process, the value of having these recommendations would appear to surpass the likely alternative of an endlessly negotiated text that would ultimately contain very few strong consensus recommendations.

Concluding comments

Several positive elements can be drawn from the first session of the UPR. States that would not be questioned before the Council or any other intergovernmental body on its human rights record have to consider questions and criticism of their practice. The fact that it is an intergovernmental process has on occasion been a positive factor in spurring States to challenge the human rights records of others. Certain States have used the opportunity to ask important and difficult questions to States on issues that would most likely not find a platform through the Council or other intergovernmental bodies. Likewise, States under review are on occasion answering questions that they would not consider to answer before the Council or in other fora. In so doing, this has opened new opportunities for NGOs to enter into dialogue with particular States that would not have existed in the past. The comments, questions and recommendations presented during the dialogue are also being recorded in official UN documents, as well as the States commitment (or lack thereof) to implement these recommendations if they agree with them. Combined with the compilation of information submitted for the review (namely the national report, compilation of UN documents and summary of submissions by other stakeholders), this amounts to a useful compendium on the situations of human rights in the country under review. However, it could also be argued that the information submitted for the review has so far been of more value than the outcome, as it provides a more comprehensive overview of the human rights situation in the country. In certain cases, concrete recommendations were proposed and a genuine political will was evident in accepting criticism and incorporating recommendations. The process has also generated a new avenue for engagement at the domestic level, both in preparation for the UPR and in terms of developing plans for the future.

Many areas of concern can also be identified. The debates around the modalities of the process were very negative and sought to reverse agreements already contained in Council *Resolution 5/1*. The role of the troika was undermined by the fact that very few States referred to questions submitted to them by many States under review in their presentations, and subsequently in the role it played in ensuring that the outcome report adequately reflected the Working Group discussions without undue interference by the State concerned. The practice of some States filling the speaking time to praise their allies also provided a excessively positive picture of the human rights situation in particular States and was contrary to the purpose of the UPR. Similarly, the selectivity exhibited by many States what they chose to address and to which States under

³² Ecuador, Finland, Argentina, Tunisia.

³³ Algeria, Bahrain, Morocco, Indonesia.

³⁴ UK, India, Philippines, Poland, Netherlands, South Africa, Czech Republic.

³⁵ For the debate on the inclusion of these issues, see ISHR’s report on Ecuador, at http://www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf.

review, and the manner in which they chose to address it, belied any collective commitment to adhere to a fundamental principle of the UPR, namely the ‘universal coverage and equal treatment of all States’. The lack of clear coordination among States also resulted in questions and recommendations being repeated. The vagueness of recommendations formulated by many States also required improvement.

It remains to be seen what bearing the attribution of recommendations to individual States may have at the adoption of the reports of the Working Group at the next session of the Council in June 2008. While this may result in a lack of ownership, by the Working Group as a whole, to the recommendations, it is nonetheless likely to ease the adoption of the report and of its recommendations by the Council. A final broad and very serious concern remains whether States will attempt to argue at forthcoming Human Rights Council sessions that the UPR replaces any need for discussing country situations, including country specific resolutions and country mandates of special procedures.³⁶ Recommendations of the UPR are usually very general and are not endorsed by the Working Group as such but reflect individual State’s concerns. Moreover, a country is only reviewed for three hours every four years under the UPR cycle, unlike the country mandates of the Human Rights Council, which provide ongoing and systematic scrutiny. Attempts to replace such a system by deferring to the UPR would therefore constitute a serious setback to the relevance of the work of the Council.

In conclusion, the UPR has not yet settled sufficiently to warrant a final judgment, although patterns have emerged that hint at its possibilities and shortcomings. On that basis, the UPR should still benefit from the full engagement of all stakeholders.

³⁶ This was already attempted by the People’s Democratic Republic of Korea during the adoption of the resolution to continue the mandate of the UN Special Rapporteur on the DPRK at the 7th session of the Council. For a summary of the discussion, see ISHR’s Daily Update of 27 March 2008 at http://www.ishr.ch/hrm/council/dailyupdates/session_007/27_march_2008.pdf, p. 11.

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