

Two cycles on: Towards a UPR which is accessible, strong, effective and protective

Introduction

The Universal Periodic Review (UPR) is one of the Human Rights Council's key innovations and, after two cycles in which it has been applied to all States, it has emerged as one of the key rallying points for civil society engagement with the UN human rights system. Many civil society organisations and networks have used the UPR successfully to gain the recommendations needed to back their national level advocacy, whilst some have taken advantage of its peer-to-peer nature to ensure buy-in and follow-up from recommending States.

However, a lack of follow-up mechanisms, procedural weaknesses and patchy implementation have exacerbated fears that the mechanism risks degenerating into a purely 'ritualistic' review. Obstacles to safe and effective participation by human rights defenders (HRDs) mean the process is not reaching its full potential.

2016 represents the tenth anniversary of the Human Rights Council (HRC), as well as the year in which the UPR's second cycle will come to a close, presenting an important opportunity to discuss institution strengthening.

This paper identifies what can be done to strengthen the UPR; ensuring its effectiveness, guaranteeing it responds to civil society's concerns and making sure it contributes to real human rights change on the ground.

In 2021, during its third cycle, we would like to see a UPR where:

1. Civil society and HRDs have a central role in the UPR, and are able to contribute substantively, influentially and safely to reviews and their implementation;
2. The UPR's outputs have a more direct and positive impact on the behaviour of States and non-State actors, particularly through better implementation of recommendations; and
3. The standard of State interaction in the UPR is higher, meaning a greater amount and higher level of participation, more clarity of responses and more dynamic follow-up.

Key proposals to strengthen the UPR effectiveness

1. Ensuring an institutionalised reprisals mechanism

It is apparent from the Secretary General's annual report on reprisals that there has been an increase in intimidation and attacks HRDs for having interacted with the UPR. As well as constituting a violation of international human rights law, reprisals – if not tackled – will deter other defenders from interacting with the UPR and prevent civil society from following up on recommendations, thus hindering implementation.

It is therefore imperative people have their right to participate guaranteed through preventative and reactive action on reprisals both at home and at the Human Rights Council.

Human Rights Council [resolution 24/24](#), [existing legal research](#) and a recent cross-regional [joint statement](#) by 62 States have made it clear that the President of the Human Rights Council and his/her Bureau have an established moral and legal duty to tackle reprisals.

To apply this responsibility in the framework of the UPR, the HRC President, Bureau and Secretariat should:

- a) Elaborate a comprehensive policy to prevent, investigate, remedy and promote accountability for cases of intimidation or reprisal;
- b) Establish clear, accessible, secure channels for allegations to be submitted, including online;

- c) Develop a compendium of preventative measures to be taken by States, the President, Bureau and OHCHR, including through strong, clear statements at the commencement of sessions and meetings;
- d) Take proactive steps to investigate and follow up on allegations, adopting the precautionary principle;
- e) In consultation with alleged victims, seek a response from the State concerned, including guarantees of protection, non-recurrence and remediation. Where appropriate, publish correspondence with the State;¹
- f) Ensure that, with the consent of the victim, alleged cases of intimidation and reprisals associated with the UPR are included in the report of the UPR Working Group, together with the concerned State's response;
- g) At the adoption of the Working Group report under HRC Item 6, outline the steps taken to investigate and follow up on any alleged cases, and seek a response and update from the State under review; and
- h) Transmit alleged cases of intimidation and reprisal to the Secretary-General for inclusion in his or her annual report on cooperation with the UN in the field of human rights (the 'reprisals report').

States should:

- a) Abstain from, prevent, investigate, and ensure accountability and remedy for any case of reprisal;
- b) Ask advance questions, and make concrete recommendations during the UPR, about the prevention, investigation, prosecution and remediation of reprisals, both generally and in relation to specific cases;
- c) Use Item 6 to, inter alia, ask follow-up questions or make follow-up recommendations regarding reprisals cases or, in the case of a State to which an allegation was made, report back on steps taken in response.

2. Ensuring civil society space at the Working Group stage of the UPR

Whilst recognising that the UPR is a peer review mechanism and the main aim of civil society is to attain useful recommendations from States, but also noting that the UPR should be a 'cooperative mechanism based on interactive dialogue' (GA 60/251) and 'ensure the participation of all relevant stakeholders, including NGOs' (HRC 5/1), the UPR should introduce civil society space at the Working Group stage for the following reasons:

- a) To reaffirm the central role of civil society in the UPR process;
- b) To allow human rights defenders to exercise their right to freedom of expression.
(The absence of their voice from any international human rights space implicitly undermines that voice);
- c) To increase the quality and utility of State recommendations and responses, due to an awareness that civil society are bearing witness to the process.

Formal civil society participation in the Working Group could have a positive impact upon the clarity of the response by the State under review and upon the level of immediate acceptance of recommendations;

- d) To ensure an immediate focus upon implementation.

Many NGOs currently hold side events or press conferences immediately after the Working Group session to propose practical steps for effective implementation of recommendations. Greater attention would be paid to these messages, which would also be officially recorded, if they were transmitted formally in Room XX;

- e) To harness the energies of civil society actors who often travel to Geneva for the Working Group anyhow;
- f) To ensure a more rounded and up-to-date picture of the human rights situation in a given State;

¹ Presidential actions may include, but should not be limited to: sending written requests for State protective measures, privately addressing the case with the State, making public statements regarding the allegation, and requesting actions from other UN and regional human rights mechanisms. The Secretariat should maintain a compendium of good practices and experiences in preventing and reacting to reprisals.

- g) To enhance the legitimacy of HRDs and open a space for dialogue when that space is often absent at home;
- h) To increase civil society buy-in to the process and its outcomes, which is essential for national level follow-up.

Civil society should be granted up to ten 2-minute long interventions after the interactive dialogue with States; the modalities for which would replicate those for NGOs at the Human Rights Council. The Secretariat should ensure a transparent sign-up process and list of speakers. NGO interventions should be recorded in the Working Group report, in the form of comments rather than recommendations, under a new section III.

3. Ensuring greater follow-up to, and implementation of, recommendations.

Implementation of UPR recommendations remains varied. Nonetheless, the following concrete steps could be taken to guarantee formal follow-up and monitoring of State compliance between cycles, thus enhancing the probability of effective implementation:

- a) The OHCHR should ensure that NGO mid-term reports are visible on the UN website;
- b) The OHCHR should publish, two months prior to Working Group sessions, an evaluation of UPR recommendation implementation since the previous cycle, in order to inform recommending States. Civil society and other UN mechanisms must be properly consulted in the development of this report; and
- c) The OHCHR should ensure that, in the Working Group report, greater emphasis is placed upon those recommendations that have been reiterated since the first cycle.

4. Increasing the standard of UPR proceedings.

Feedback from a range of local civil society organisations suggest that the following initiatives would enhance the UPR's process and, consequently, its impact:

- a) The programme of work of HRC sessions should be rearranged to ensure that Item 6 moves to the end of the agenda. In ensuring that debates on UPR Working Group reports happen once resolutions are mostly agreed upon, it is likely that the number, quality and candour of interventions by States will increase;²
- b) States should use the HRC Item 6 Debate to both update the Council on implementation of recommendations they have previously received through the UPR, and to seek information regarding implementation by States to which they have made recommendations previously on priority issues;
- c) States should focus their attention on the quality of recommendations, not the quantity, in line with a [statement](#) made by 47 NGOs at the Human Rights Council's 28th session;
- d) States under review must respond by supporting or noting recommendations and be clear in doing so. Likewise, States must make clear recommendations which foster clarity of response and implementation;
- e) Guidelines should request States to respond to recommendations at least two weeks before the beginning of the HRC session at which their Working Group report will be adopted. This will make it easier for NGOs and States to prepare their responses to the Working Group report, including through statements;

² Note that another option which should be evaluated together with civil society, would be to remove Item 6 from the agenda of HRC regular sessions, and instead convene additional plenary sessions of the Council, two days following the UPR Working Group session. This may lessen the workload upon the OHCHR, ensure high-level participation by the State under review and ensure local civil society need not make two journeys to Geneva to advocate around the UPR.

- f) Reviewing States should increase the seniority of their participation in the Working Group and adoption stages, thereby giving additional weight to their recommendations;
- g) The Secretariat should explore, together with all stakeholders – and in particular with HRDs – how to improve the format of the Working Group reports and recommendations in order to promote implementation.
- h) It is imperative that national NGOs are not disadvantaged by the system. The Secretariat should ensure the sign up system for statements during Item 6 of HRC sessions can be easily accessible and navigated by national NGOs not familiar with the system.

5. *Enhancing expert involvement in the UPR.*

- a) Replace the Troika with a 'panel of experts', which can be drawn from existing Treaty Body and Special Procedures mandate holders. In addition to the existing responsibilities of the Troika, this panel should identify priority recommendations which are expected to be prioritised by the State under review. Periodic updates should be provided by States under review in respect of these priority recommendations.