
This essay critically assessed the effectiveness of the United Nations' Universal Periodic Review process in compelling member countries to promote and protect human rights.

“Critically assess the effectiveness of the Universal Periodic Review (UPR) process of the Human Rights Council (HRC)”

I *Introduction*

The Universal Periodic Review (UPR) is a relatively new human rights mechanism. Launched in 2005, the mechanism employs a unique approach to promoting and protecting human rights. This essay aims to assess whether this approach has achieved what it has set out to do – establish a cooperative review process, in which states engage equally, and independently, in a manner which complements the work of treaty bodies and includes consideration of information provided by key stakeholders.

In determining this, the author considers the following issues: is the UPR's cooperative approach to addressing human rights issues effective, and is such an approach more effective than an overly confrontational approach? In addition to this, has the UPR found a way to complement the work of treaty bodies, or has it hindered their progress? Likewise, is the process effective at ensuring the engagement of key stakeholders, such as civil society organisations?

The way in which states are perceived within the UPR is also considered. Are the formal mechanisms ensuring equality effective at enabling all states to actively engage in the review process? Does the independent framework of the review process also enable states to

participate without external influence? Each of these issues will be considered in order to ascertain the true effectiveness of the UPR.

II *An Overview of the Universal Periodic Review*

The UPR was launched in 2005 as a review mechanism for monitoring the human rights conditions in each country.¹ The mechanism was outlined in a General Assembly resolution, which required the Human Rights Council to:

“... [u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment of each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies[.]”²

Such a mechanism was deemed necessary by Secretary-General Kofi Annan in order to overcome the shortfalls of the Council’s predecessor, the Human Rights Commission. The Commission faced severe problems, including “declining credibility and professionalism...which casts a shadow on the reputation of the United Nations system as a whole”.³ According to Annan, a new peer-review mechanism “would accord human rights a

¹ Human Rights Council, *In larger freedom: towards development, security and human rights for all*, Add, 59th Sess, Agenda Items 45 and 55, UN Doc A/59/2005/Add1 (26 May 2005) [6] – [7].

² Human Rights Council, GA Res 60/251, 60th Sess, Agenda Items 46 and 120, UN Doc A/Res/60/251 (3 April 2006) para 5(e).

³ Human Rights Council, *In larger freedom: towards development, security and human rights for all*, Add, 59th Sess, Agenda Items 45 and 55, UN Doc A/59/2005/Add1 (26 May 2005) [182].

more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations.”⁴

The review process takes place in three stages. The first stage involves a review of the human rights situation of the state under review. This process lasts about three and a half hours, and consists of a presentation by the state of its National Report, an interactive dialogue between the state and the working group and the development of recommendations.⁵ Three documents form the basis of this dialogue: the report of the state under review; a compilation of reports by treaty bodies, special procedures and any other UN official documents; and a summary prepared by the Officer of the High Commissioner on Human Rights outlining information provided by key stakeholders.⁶ Once the dialogue is concluded, the working group submits an “Outcome Report” to a subset of the group known as ‘the troika’.⁷ This report is then worked on by the troika in collaboration with the state under review and the Office of the High Commissioner on Human Rights.⁸

The second stage takes place between a state’s reviews. In the four and a half years between a state’s previous review and their future review, they are required to “follow up” on the report by implementing the recommendations it has received.⁹ The success of this stage plays a key role in determining the efficacy and credibility of the UPR mechanism, as well as the state’s engagement in the promotion and strengthening of human rights. The third stage takes place at the state’s next review; at this point, they are required to report on the ways and extent to which they have implemented the recommendations made at the previous review.¹⁰

⁴ Ibid [183].

⁵ Office of the High Commissioner, *Basic facts about the UPR*, (10 June 2016) United Nations Human Rights Office of the High Commissioner <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

Overall, these stages illustrate the ongoing commitment required by state members to continue to improve the human rights conditions domestically. However, despite this noble aim, various critiques argue that the UPR is not as effective as it aims to be. The effectiveness of the UPR will now be discussed.

III *Cooperation Over Confrontation*

As stated in Resolution 60/251, the UPR is a cooperative mechanism based on interactive dialogue.¹¹ This approach is unique to the UPR process; all other human rights mechanisms are confrontational in nature, and rely on naming and shaming states which violate their obligations. Naturally, the non-confrontational approach of the UPR has been met with some scepticism. Many equate the approach with ‘softness’:

“...the UN has little need for another toothless mechanism for “cooperative dialogue”. We call on Council members to fashion a mechanism that will, in a fair manner, apply *real* security, to hold government to account and cite them for violations and abuses.”¹²

This scepticism is likely due to suspicions surrounding the lack of sanctions placed on violating states, which are perceived as necessary to compel compliance. The fact that the UPR is “wholly dependent on the good will of the state under review” raises concerns that it will have little impact on “those who are not really willing to participate”.¹³ This rationale reflects what Dominiguez-Redondo refers to as judicial fetishism - a reliance on the imposition of penalties

¹¹ Human Rights Council, GA Res 60/251, 60th Sess, Agenda Items 46 and 120, UN Doc A/Res/60/251 (3 April 2006) para 5(e).

¹² UN Watch, ‘UN Watch Statement on the UN Human Rights Council’ (Statement, 15 May 2006, UN Watch) B(1).

¹³ Olivier de Frouville, ‘Building a Universal System for the Protection of Human Rights: The Way Forward’ in M Cherif Bassiouni and William Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia, Cambridge, 2011) 241, 253.

for non-compliance and the availability of remedies for those affected.¹⁴ If not for these features, judicial fetishists perceive the law as not binding and worthless.

At times, confrontational mechanisms can be detrimental to the development of human rights law. Mechanisms which aim to name and shame states, such as judicial bodies, tend to encourage states to defend their behaviour and shy away from open discussion about issues at hand. For this reason, many violations are not heard by judicial bodies such as the International Court of Justice and the Inter-American Court of Human Rights, as states are reluctant to grant individuals direct access to these committees.¹⁵ This means that, ultimately, there are very few judicial avenues available for individuals who wish to address violations of their human rights. It is therefore questionable whether another confrontational mechanisms would add benefit to existing human rights procedures.

It has also been argued that the cooperative nature of the UPR process has the potential to effectively bring about the promotion and protection of human rights. The engagement rates during the first review cycle illustrate this. 100% of states participated in the process, and there was also a high degree of ministerial-level participation.¹⁶ This indicates that states have wholeheartedly adopted the UPR process.

The potential for the UPR to bring about the promotion and protection of human rights can be seen in its role in decriminalising same-sex relationships. Despite the process being relatively slow, the UPR has enabled states to openly discuss their concerns in relation to the matter. These obstacles have then been tackled specifically in the recommendations provided to each state. Cowell and Milon argue that this is more effective than categorising states as either ‘pro’ or ‘anti’-LGBT, as it grants states the opportunity to address their issues as opposed to viewing

¹⁴ Dr Elvira Dominguez-Redondo, ‘The Universal Periodic Review – Is There Life Beyond Naming and Shaming in Human Rights Implementation?’ (2012) 4 *New Zealand Law Review*, 673, 683.

¹⁵ *Ibid* 685.

¹⁶ *Ibid* 705.

them as barriers.¹⁷ This cooperative approach effectively reduces the impact of resistance, allowing for speedier adoption of new obligations.

The high level of state engagement during the first review has also enabled the collection of comprehensive and extensive information on their human rights record. Each and every state member can now be scrutinised in a manner and to an extent unprecedented through other human rights mechanisms. Such information will make it much easier for human rights bodies to monitor human rights progress on a state-by-state basis.

It is also possible that the non-confrontational approach of the UPR is able to achieve something that confrontational mechanisms cannot. In the first review cycle, 73% of about 20,000 recommendations made were accepted by the states under review.¹⁸ This high adoption rate can arguably be used as evidence of *opinio juris*, which could eventually be used by the Human Rights Council to establish customary law and combine existing customary standards.¹⁹ This is likely to be possible if states continue to engage to the extent visible in the first review cycle.²⁰

It is therefore arguable that the cooperative nature of the UPR has effectively promoted state involvement, as well as improved state's awareness of how to fulfil their human rights obligations. Whether or not this will lead to higher rates of protection and promotion of human rights remains to be seen; this will become visible after several review cycles. It is also possible that state promises based on UPR recommendations will eventually become binding obligations through customary law. For these reasons, the cooperative, overly non-

¹⁷ Frederick Cowell and Angelina Milon, 'Decriminalisation of Sexual Orientation through Universal Periodic Review' (2012) 12(2) *Human Rights Law Review* 341, 352.

¹⁸ UPR Info, 'Analytical Assessment of the Universal Periodic Review' (Report, UPR-info.org, 2008), <http://www.upr-info.org/sites/default/files/general-document/pdf/upr-info_analytical_assessment_of_the_upr_2008-2010_05-10-2010.pdf>.

¹⁹ Roger Lloret Blackburn, 'Cultural Relativism in the Universal Periodic Review of the Human Rights Council' (Working Paper No 2011/03, Institut Catala Internacional, September 2011) 36.

²⁰ Dr Elvira Dominguez-Redondo, above n 14 at 703.

confrontational nature of the UPR shows potential for effectively increasing state compliance with international human rights law.

IV *Complementing the Work of Treaty Bodies*

Since the proposal of the UPR, concerns have been raised over whether the process could avoid replicating the work of U.N. treaty bodies. Resolution 60/251 requires that the UPR procedure ‘...complement and not duplicate the work of the treaty bodies.’²¹ Interpretations of what this means exactly have been discussed in numerous Council meetings. From these meetings, it was established that the requirement to ‘complement and not duplicate’ should be centred around the elements listed in the resolution: the obligations that each state must fulfil, ensuring the equal treatment of states and universality of coverage, the nature of a ‘cooperative mechanism’ and ways to ensure the development of state capacity.²²

A study by Gaer argues that the UPR has the potential to effectively achieve this aim.²³ The fact that it involves the examination of each and every state periodically, she argues, is something that none of the treaty bodies have been able to do.²⁴ She also stresses the importance of analysing information provided during the process, instead of substantively reassessing the information.²⁵ Reassessing the information provided by treaty bodies would involve questioning the conclusions established previously. Doing so would not only duplicate the work of treaty bodies, but also potentially diminish their efforts. Reassessing information provided by stakeholders or countries may also lead to an overflow of information and require

²¹ Human Rights Council, GA Res 60/251, 60th Sess, Agenda Items 46 and 120, UN Doc A/Res/60/251 (3 April 2006) para 5(e).

²² Felice D. Gaer, ‘A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System’ (2007) 7(1) *Human Rights Law Review* 109, 112.

²³ *Ibid.*

²⁴ *Ibid* at 139.

²⁵ *Ibid* at 136.

a large amount of the UN's limited resources.²⁶ Instead, analysing the information is something that treaty bodies tend to do minimally. Generally, they will analyse information to the extent necessary to establish an extensive, but potentially disorganised, list of issues. Being able to analyse information, especially with the input of civil society, will allow the UPR to substantially add to the efforts of treaty bodies. A thorough, focussed analysis of human rights issues in each state will arguably effectively complement the work of treaty bodies.

Others suggest that the UPR complements the work of treaty bodies beyond the collection and analysis of information. Sweeney and Saito have found that many states viewed the first review cycle as an impetus to submit overdue reports to treaty bodies within a fixed period of time.²⁷ Various states have also used the process to declare their intention to ratify treaties or do so shortly before being reviewed. Pakistan, for example, signed the International Covenant on Civil and Political Rights and ratified the International Covenant on Economic, Social and Cultural Rights just three weeks before facing review under the UPR.²⁸ This behaviour arguably illustrates the UPR's ability to complement the work of treaty bodies.

However, the extent to which treaty bodies are adopting UPR materials is variable. Some treaty bodies have referred to UPR reports when examining state members. An example of this is when Finland came before the Committee on the Elimination of Discrimination against Women in 2008.²⁹ In several cases, treaty bodies have also mentioned the usefulness of UPR reports in preparing to examine states.³⁰ Apart from these cases however, there is little indication that treaty bodies are making use of UPR documents. This suggests that more needs to be done to ensure that UPR documents are complementary and able to be utilised by treaty bodies.

²⁶ Ibid at 136.

²⁷ Gareth Sweeney and Yuri Saito 'An NGO Assessment of the New Mechanisms of the UN Human Rights Council' (2009) 9(2) *Human Rights Law Review* 203.

²⁸ Ibid at 213.

²⁹ CEDAW Concluding Observations, *Draft concluding observations of the Committee on the Elimination against Women: Finland*, UN Doc CEDAW/C/FIN/CO/6 (15 July 2008)

³⁰ Gareth Sweeney and Yuri Saito above n 28 at 214.

Perhaps more concerning are allegations that the UPR is undermining the work of treaty bodies. At several Inter-Committee Meetings from 2008 to 2011, states brought forward concerns relating to the UPR allowing states to reconsider their responsibilities under treaties.³¹ The UPR process may enable this by suggesting recommendations that states are already obliged to observe. If states choose to reject these recommendations, it causes an inconsistency that cannot be easily cleared up. State members also expressed concern in relation to the generality and unenforceability of UPR mechanisms, as well as blatant inconsistencies between treaty body recommendations and UPR recommendations. These issues have led certain states to believe that the work of the UPR does not complement that of treaty bodies, and that the two processes should be separated completely.

The above research suggests that the UPR has had mixed success in complementing the work of treaty bodies. While the process has the potential to substantively add to the work of treaty bodies through extensive analysis, it appears that some recommendations reached by the UPR conflict with those made by treaty bodies. This is reflected in the lack of enthusiasm of treaty bodies towards the work of the UPR, as well as the lack of references to UPR recommendations in treaty body reports. It therefore appears that the UPR has yet not effectively fulfilled its aim of complementing the work of treaty bodies.

V *The Equal Treatment of All State Members*

As stated in resolution 60/251, each state is to be treated equally under the review process.³² This is formally enforced by the uniform way in which each review is carried out. Several examples can be used to illustrate this uniformity: every review, and every speaker contributing

³¹ Report of the Seventh Inter-committee Meeting of Human Rights Treaty Bodies, GA Res 57/202, 20th sess, UN Doc A/63/280 at Annex, 22(3) (13 August 2008)

³² Human Rights Council, GA Res 60/251, 60th Sess, Agenda Items 46 and 120, UN Doc A/Res/60/251 (3 April 2006) para 5(e).

to the review, is given a fixed amount of time.³³ All document on which the review is based must also fall within the maximum number of pages allowed.³⁴ The ordering of speakers is left to ‘fair play’, in that it is determined by the speaker’s position in a queue. The selection of the troika is also left to chance.³⁵ These processes illustrate that The Human Rights Council has made a strong attempt at ensuring states are treated fairly and equally.

However, various critics argue that these regulations are inefficient at establishing equality under the UPR. Cowan and Billaud go as far as saying that a focus on formal, logistical equalities implicitly disregards other sources of inequality.³⁶ By treating states as isolated entities, the UPR process obscures a state’s position in history and within the current global political system.³⁷ International relations are ignored, as are the current economic and political inequalities between states.³⁸ Ignoring these inequalities arguably allows them to continue to infiltrate the UPR process.

A sign of this inequality is evident in the behaviour of certain states during the first review cycle. Western states such as the UK and the USA showed an inclination to ‘set an example’ by attending all reviews, drafting quality reports and providing recommendations frequently.³⁹ Other states, like Mexico, Kenya, Ghana and Morocco showed an eagerness to accept human rights issues and commit to addressing them. On the other hand, certain states have been perceived as corrupting the ‘fair play’ nature of the process. Cuba, for example, is reputed for organising with its allies to ensure that they are first in the queue to sign up for the Speaker’s

³³ *Review of the work and functions of the Human Rights Council*, GA Res 16/21, UN GAOR, 47th sess, UN Doc A/HRC/RES/16/21 (12 April 2011)

³⁴ Office of the High Commissioner for Human Rights, *Universal Periodic Review: information and guidelines for relevant stakeholders’ written submissions*, OHCHR (last accessed 10 June 2016) <<http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>>.

³⁵ UPR Info, *What is the UPR?* UPR Info (last accessed 10 June 2016) <<http://www.upr-info.org/en/upr-process/what-is-it>>.

³⁶ Jane K. Cowan and Julie Billaud ‘Between learning and schooling: the politics of human rights monitoring at the Universal Periodic Review’ (2015) 36(6) *Third World Quarterly*, 1175.

³⁷ *Ibid*, 1179.

³⁸ *Ibid*.

³⁹ *Ibid*, 1180.

List when they wish to contribute. They are also known for having arranged for the submission of hundreds of NGO documents condemning the USA embargo and praising the Cuban government in order to diminish the significance of critical NGO reports.⁴⁰ These discrepancies illustrate the fact that states interact with the UPR in different ways.

This interaction likely reflects the extent to which states feel comfortable and confident in dealing with the UPR. Those which view themselves as leaders, such as states located in Western Europe and North America, arguably have a significant advantage over other states. They are more likely to be fluent in at least one of the UN's official languages, including the *de facto* dominant language of the UN, English.⁴¹ They are also more likely to be fluent in 'UN language' due to their extensive participation in UN processes.⁴² These fluencies allow Western states to feel 'at home' in the UPR and manoeuvre around its processes with confidence and ease, thus enabling them to take on roles of leadership and guidance.

Western states are also more likely to have sufficient resources allocated to carry out their UN obligations. Ultimately, this gives states the advantage of being able to have a permanent mission in Geneva, host UN-related events, and carry out extensive work in relation to UN obligations.⁴³ The United States is a clear example of the effect of having sufficient resources to engage in the UPR. After their review in 2008, the state organised a mid-term report on their progress of implementing recommendations. The event was held at the Palais de Nations in Geneva, and involved an open discussion with civil society organisations on what could be done to further meet recommendations.⁴⁴ The event was broadcasted live online, and required

⁴⁰ Ibid 1181.

⁴¹ Ibid, 1182.

⁴² Ibid, 1189.

⁴³ Ibid, 1182.

⁴⁴ Ibid, 1183.

an enormous amount of technological and human resources. Hosting such an event would just not be feasible for countries with less resources.

The combination of language barriers, lack of resources and an unfamiliarity with UN processes restricts the extent to which many states can engage with the UPR. Cowan and Billaud use the Small Island Developing States as an example.⁴⁵ Due to the high cost of travel, many of these states were unable to attend any reviews except their own. The resources required to support diplomatic missions in Geneva also made such efforts unfeasible. Language barriers also meant that many of these states were unable to effectively engage in the dialogue required as part of the review process. Such barriers have severely restricted the extent to which many states can engage in the UPR review process.

These disadvantages may also lead to a more global issue. States that are unable to engage in core UPR processes will likely find it difficult to influence the UPR's evolution. This issue is discussed by Abebe, who holds concerns that African states are being left behind by the UPR.⁴⁶ He argues that this has resulted in an overly Westernised narrative on international human rights law, which risks neglecting the experiences and views of countries struggling to participate. Ultimately, this may lead to Western states continuing to dominate the UPR.

It is therefore clear that despite formal mechanisms aiming to ensure equal treatment, some states are able to engage with the UPR much easier than others. This substantive inequality needs to be addressed if the UPR is to live up to its aim of state equality. Initially, this could involve an extensive and honest discussion about the ways in which states struggle to engage with the UPR. Such discussions would need to be accessible by all states, which may require the process to take place online and in various languages. Once the causes of inequality are

⁴⁵ Ibid, 1182.

⁴⁶ Allehone Mulugeta Abebe 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council' (2009) 9(1) *Human Rights Law Review* 1.

recognised, state members will be able to brainstorm ways in which substantive equality can be reached. Even if these ideas are not implemented immediately, they will bring the Human Rights Council one step closer to enabling states to engage equally with the UPR.

VI *Enabling States to Engage Independently*

One of the aims of the UPR has been to overcome regionally driven processes which, under the Human Rights Commission, discouraged states from actively discussing and analysing human rights issues in their region.⁴⁷ The Human Rights Council has attempted to address this by requiring states to engage independently in all aspects of the UPR.⁴⁸ This in turn aims to provide states with more freedom to make decisions and act apart from any pressures of regional affiliation.

The effectiveness of the UPR in ensuring state independence is not easily ascertainable. A study by McMahon and Ascherio has found that states in Africa and Asia tend to engage less actively when analysing human rights issues in their region, compared to states in Europe and North America.⁴⁹ Southern states reportedly make less recommendations overall, with the proportion of recommendations almost equalling the proportion of member states. This is relatively low compared to the number of recommendations made by Western European and other Northern states, which provide recommendations close to three times the proportion of member states. McMahon and Ascherio claim that these findings reflect a continuing regional bloc dynamic.

⁴⁷ Rosa Freedman, 'New Mechanisms of the UN human Rights Council' (2011) 29(3) *Netherlands Quarterly of Human Rights* 289, 290.

⁴⁸ Human Rights Council, GA Res 60/251, 60th Sess, Agenda Items 46 and 120, UN Doc A/Res/60/251 (3 April 2006) para 5(e).

⁴⁹ Edward McMahon and Marta Ascherio, 'A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council' (2012) 18 *Global Governance*, 231.

Cowan and Billaud add that states have commonly ‘lined up to praise their friends’ in order to obscure critical statements about a state’s shortcomings or misdeeds.⁵⁰ Again, this was most visible in Asian and African states in relation to their recommendations to neighbouring countries. Apart from reflecting a regional bloc dynamic, Cowan and Billaud were informed that such actions were also due to the fact that many Asian and African states are poorer, and thus more constrained by obligations to donors and international financial institutions.

It is also possible that this behaviour is a result of the way in which countries view the function of the process. States who adopt a more culturally relative perception of human rights may take a softer approach to addressing human rights issues with states in their region. On the other hand, those that emphasise the importance of critical and honest dialogue are more likely to provide more recommendations to reflect this.

McMahon agrees with this position, stating that China’s review reflects their cultural relativist approach to the UPR process.⁵¹ Their tendency to accept a greater proportion of recommendations made by others states in Asia or Africa than states from other regions purportedly reflects their less confrontational approach toward states from their own or similar region.

These studies thus offer alternative reasons as to why states behave differently depending on the state under review. It may not be caused by traditional bloc dynamics, but by differences in perception of the UPR process, or allegiance due to limited resources. Whatever the cause, it is visible that states are not engaging independently. The Human Rights Council should take

⁵⁰ Jane K. Cowan and Julie Billaud ‘Between learning and schooling: the politics of human rights monitoring at the Universal Periodic Review’ (2015) 36(6) *Third World Quarterly*, 1175.

⁵¹ Edward McMahon and Marta Asherio, ‘A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council’ (2012) 18 *Global Governance*, 231, 245.

efforts to recognise and address this issue. Perhaps this should involve reconsidering the possibility of states acting in a completely independent manner.

VII *The Participation of Civil Society Organisations*

As previously stated, each state member is reviewed based on certain reports and documents. This includes a summary document of information submitted by other stakeholders, such as civil society actors, national human rights institutions and regional organisations.⁵² Access to this information is required in order for the UPR to effectively base their reports on objective and reliable information.⁵³ If civil society organisations find it difficult to participate in the UPR process, this can indicate that the UPR has failed to fulfil this aim.

This is precisely what is argued by CIVICIS, a global alliance of activists and civil society organisations passionate about strengthening civil action in UN processes. In 2014, the organisation conducted extensive research into civil society participation in the UPR process.⁵⁴ After interviewing 15 countries from four continents, they found that civil society actors face considerable challenges with engaging in the process.

Civil Society Organisations (CSOs) in countries such as Malaysia, Serbia and Venezuela reported that the national governments took efforts to marginalise and polarize participation in the UPR.⁵⁵ They have done this by employing inflammatory and accusatorial rhetoric to publically undermine the process. As reported by Jerald Joseph in Malaysia, “the persecution

⁵² Office of the High Commissioner for Human Rights. *3rd UPR cycle: contributions and participation of “other stakeholders” in the UPR* (12 April 2016) United Nations Human Rights Office of the High Commissioner <<http://www.ohchr.org/en/hrbodies/upr/pages/NgosNhris.aspx>>.

⁵³ Office of the High Commissioner for Human Rights, *Information note for NHRIs regarding the Universal Periodic Review mechanism*, United Nations Human Rights Office for the High Commissioner <<http://www.ohchr.org/EN/HRBodies/HRC/Pages/NHRIInfoNote.aspx>>.

⁵⁴ Tor Hodenfield and Ive Van Severen, ‘Enhancing the effectiveness of the UN Universal Periodic Review: A Civil Society Perspective’ (Research Report, CIVICUS, September 2015).

⁵⁵ *Ibid*, 5.

and smearing of groups [critical of government] has been rampant.”⁵⁶ Governments in countries such as Uzbekistan and Malaysia have also prevented effective participation by implementing legislation which restricts civil society’s ability to collaborate on UPR submissions and recommendations.⁵⁷ In 2013, at least eleven civil society activists were imprisoned by the Uzbek government due to their efforts to participate in the UPR process.⁵⁸ This has led many independent organisations to flee the country, gravely limiting their capacity to contribute.

Other governments have also attempted to hinder civil society participation by actively engaging with SCOs and the related UPR submission process. The Vietnamese government, for example, has implemented regulations which support specific mass organisations and government sponsored groups, while prohibiting the establishment of independent civil society groups.⁵⁹ This government infiltration has led to unbalanced, pro-government submissions by civil society, effectively corrupting the UPR submission process.

Structural challenges also mean that only a small proportion of SCOs are able to participate in the UPR process. A lack of adequate resources and technical support has disabled majority of civil society from engaging with the UPR. In Malaysia and the Philippines, this has led to a lack of input by indigenous and grassroots groups, and an over-representation of well-resourced, capital-based CSOs.⁶⁰ Consequently, large segments of society in these countries were not adequately represented in the UPR process.

This is exacerbated by the fact that many local governments lack awareness of the UPR process and therefore fail to encourage civil participation at a grassroots level. Interviewers from Serbia

⁵⁶ Ibid.

⁵⁷ Ibid, 6.

⁵⁸ CIVICUS, Expert Working Group and Fiery Hearts Club, ‘Submission to the UN Universal Periodic Review 16th Session of the UPR Working Group’ (Submission, CIVICUS, 2 October 2012).

⁵⁹ CIVICUS, ‘Submission to the UN Universal Periodic Review 18th Session of the UPR Working Group, Vietnam’ (Submission, CIVICUS, 17 June 2013).

⁶⁰ Tor Hodenfield and Ive Van Severen, above n 55, 9.

and Zambia noted that little discussion took place domestically before and during the reviews, and that “high-ranking ministers rarely speak about the UPR and have failed to encourage a discourse around the process.”⁶¹ This research supports concerns that the UPR is a process that “stays in Geneva” that lacks authentic local engagement.

SCO interviewers also indicated that more needs to be done by governments to harmonize the UPR with other international and regional human rights mechanisms. Failing to incorporate UPR recommendations among other intergovernmental processes acts as a barrier to realising human rights at a domestic level, and ultimately stops CSOs from assessing progress in a comprehensive and in-depth manner.⁶² As stated by a Serbian interviewee, “only concerted pressure from across the international, regional and national human rights spectrum can manifest in substantial results on the ground.”⁶³ It is therefore crucial that countries develop comprehensive and streamlined human rights frameworks will enable CSOs to evaluate progress with greater ease and efficiency.

These challenges need to be addressed in order for the UPR process to reach its full potential. Without active engagement from civil society organisations, the dialogue that occurs between a state under review and the UPR working group risks being artificial and incomplete. A lack of civil advocacy will also obstruct attempts to mobilise international supports for sensitive human rights issues. Failing to address these matters will continue to limit the effectiveness of the UPR process.

VIII *Conclusion*

The UPR has sought to do what no other human rights mechanism has done before. It has aspired to bring about the promotion and protection of human rights via a cooperative peer

⁶¹ Ibid, 10.

⁶² Ibid, 11.

⁶³ CIVICUS Policy Centre, ‘Submission to the UN Universal Periodic Review 15th Session of the UPR Working Group’ (Submission, CIVICUS, 16 July 2012).

review process, in which states can engage equally and independently, in a manner which complements the work of treaty bodies.

Certain efforts made by the Human Rights Council have effectively fulfilled these goals. The cooperative nature of the process has been wholeheartedly embraced by member states. 100% participation during the first review cycle has enabled the collection of comprehensive information on each state's human rights record. It has also led to progress on complex issues like decriminalising same-sex relationships. The cooperative nature of the UPR process can also potentially lead to the development of opinion juris, and ultimately customary law. This progress suggests that the process has the potential to help protect and promote human rights.

Unfortunately, other efforts seem to have been less effective. The equal nature in which states are to engage with the process appears to be superficial, as many states experience substantive inequalities which make it challenging to engage in the process. Resource and language barriers, as well as an unfamiliarity with UN processes, are not only hindering state engagement, but also their ability to influence the UPR's revolution. Likewise, challenges experienced by civil society organisations are compromising their ability to contribute to the process, increasing the chances of reports being based on incomplete information. If these issues are not addressed by the Human Rights Council, the UPR process will continue to be highly Westernised and artificial.

Issues surrounding independent state engagement will not be as easy to address. Despite attempting to eradicate the pressures of regional affiliation, evidence shows that states are still engaging differently depending on the state under review. There are several possible causes for this – financial obligations to other states or international institutions, different cultural approaches or historical regional blocs. Whatever the cause, this is something that the Human Rights Council will struggle to address.

It is too soon to tell whether the UPR is effectively complementing the work of treaty bodies. The process has been shown to act as an impetus to states to submit overdue reports, sign or ratify treaties. Several treaty body reports have also referred to the usefulness of UPR reviews in assisting with state examinations. However, certain treaty bodies have also expressed concerns of the UPR jeopardising their work, as it can provide states the opportunity to reconsider their treaty obligations. Time will tell how effective the UPR process is at truly complementing the work of treaty bodies.

Overall, these mixed results indicate that the UPR has not been overly effective, nor overly ineffective at carrying out what it has sought to do. If the Human Rights Council addresses the shortfalls discussed above, the UPR will be one step closer to effectively protecting and promoting human rights.

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