

SEVENTEENTH ANNUAL STUDENT HUMAN RIGHTS CONFERENCE

UN Human Rights Council: Ten Years On
Afternoon Session

What the Universal Periodic Review means for States

Ms Lucy Richardson, PhD Candidate at The Graduate Institute, Geneva and former member of the New Zealand Permanent Mission to the United Nations

Ms Richardson began by identifying overarching factors to be considered when analysing the Universal Periodic Review (UPR). Firstly she drew particular attention to its *de facto* political nature and suggested that any assessment of the Human Rights Council (HRC) ought to move beyond this. Ms Richardson reasoning was that despite the title 'Human Rights Council,' many diplomats are not human rights experts, with some instead being foreign policy specialists. Accordingly the issues discussed will often go beyond the scope of human rights. She stated that, "the relationship that States have outside the Council is not magically going to disappear when you get into the Council chamber." Ms Richardson also pointed to the World Trade Organisation as an example of a body whose discussion is not limited to the specific field of trade, as well as the Security Council whose mandate in recent years has increased to cover an increasingly broad range of topics. For that reason, she suggested this should be a realistic expectation for the UPR too, quoting Sergio Vieira De Mello (last address to the Commission on Human Rights, April 2003):

Most of the people in this room work for government or seek to affect the actions of government. That is politics. For some to accuse others of being political is a bit like fish criticising each other for being wet.

Secondly, Ms Richardson drew attention to the way in which the UPR was created as one of the reasons why some areas may appear weaker than others. The UPR was negotiated for many years, and is the result of a compromise between States. As such when some aspects are considered weak in isolation, there are most likely other aspects that are much stronger in response. She stressed that this did not mean that individuals should not continue to critique and suggest ways to improve it, instead she merely cautioned against looking at aspects of the UPR in isolation without due attention given to their background.

Ms Richardson then moved to the question of what the UPR means to States, asserting that they do in fact take it very seriously. She compared the UPR to older human rights forums where States could potentially avoid or limit scrutiny, and suggested that the nature of UPR has made it increasingly difficult for them to circumvent review as a wide range of issues can now be raised without having to find a specific treaty body that deals with them. She also noted that another

change is the increased role for civil society, revealing that a State is poorly looked upon if they have not engaged in some degree of consultation at the domestic level with civil society.

Turning to the problems that the UPR raises for some States, Ms Richardson suggested that the increased workload has made it almost unmanageable for smaller delegations owing to the influx of the large number of reports and documents. Additionally, despite the UPR covering a wide range of issues, a report cannot be longer than 20 pages (in comparison to treaty body reports sometimes being six times longer), which can have the result of diluting a complex issue to just one sentence. Ms Richardson noted that there was a proposal by Amnesty International during the five-year review of the HRC to increase the human rights expertise of delegations; however, the UPR does not tend to receive much funding unlike other HRC sessions. A point she left open for thought was that States can choose how to apportion their resources, and many, if not most, missions have larger delegations at the World Trade Organisation than for human rights at the UN.

Moving on to how the UPR impacts on different categories of States, Ms Richardson creatively followed Sergio Vieira De Mello's fish metaphor as a way to categorise States. Starting with 'big fish', such as the permanent members of the Security Council, who can be categorised here on the basis of their resources and political influence. Ms Richardson noted that these are the countries that are likely to be party to many treaties, who tend to intervene on most if not all other States during the UPR process and who traditionally would have been able to avoid or limit discussion on their own human rights situation. As discussed above, the nature of UPR has now made this a lot harder for them to do.

Moving further down the 'food chain' to the 'medium-sized fish', Ms Richardson suggested that these are perhaps the States where changes from the UPR are not as evident as they are for very big or small States. However she drew attention to the fact that these States are also likely to intervene on another State's UPR like 'big fish', but do so selectively. This led Ms Richardson to question the so-called 'universality' of the UPR, as deciding which State to intervene on can be a very subjective determination to make.

'Tiny fish' followed next, a country example given by Ms Richardson was Grenada. Whilst these States are small in size, Ms Richardson pointed to the fact that they account for almost 20% of UN membership, and indeed this group has seen the most changes from the UPR. She asserted that the benefit of the UPR for them is that it provides a platform to tell their story to a global audience in a way that might not have been possible before. For some it also provides an opportunity to use the periodicity of UPR to create a national action plan for human rights, Ms Richardson gave the example of Vanuatu. She then raised some key points in furtherance, one being the fact that those who make and lobby recommendations should have knowledge of the State and its functioning capacity. She pointed out that whilst having a recommendation accepted might seem like success for the State or civil society who is lobbying the State under review, the country itself might consequently fall behind on matters like reporting obligations.

She finished with a caution not to forget the 'invisible fish', referring back to the question of how universal the UPR really is. She pointed to the fact that dependent territories get very limited treatment, and if you are not a member of the UN, even if you have ratified some UN human rights treaties, you are excluded from the process entirely.

In conclusion, Ms Richardson submitted that the UPR is evidently important, and has developed into a distinct mechanism that has moved away from the traditional State centric order of older UN systems. She underlined that expectations for the UPR have to be realistic, again pointing to the politics that exist outside of the chamber. However, according to Ms Richardson, the UPR has

created the opportunity for a new level of pressure on States as well as being effectively utilised by civil society, thus acting as a significant complement to existing UN mechanisms.

Advancing human rights through the Universal Periodic Review: a critical tool for NGO engagement

Ms Aoife Hegarty, Programme Manager at UPR Info, Geneva

As the UPR process draws to the end of its second cycle, Ms Hegarty sought to reflect on its triumphs and shortfalls by using concrete examples in an attempt to reach a conclusion of how the UPR should progress forward into its third cycle.

As introductory remarks, Ms Hegarty set out a few positive characteristics of the UPR process, drawing attention to its 100% participation rate from all 193 Member States of the UN, and its provision of a fair platform for all to voice concerns on any given country's human rights record. Additionally she put forward the argument that the UPR can be considered universal not only in terms of the variety of countries that engage with the process, but also in terms of the issues that can be raised, in comparison to other thematic special procedures or treaty bodies whose focus is on specific rights. Quoting UN Secretary General Ban Ki Moon, who said that the UPR "has great potential to promote and protect human rights in the darkest corners of the world", Ms Hegarty followed by stating that it would be fair to say that UPR has indeed done so, noting that in an increasingly globalised world it is "politically problematic to be blacklisted as a human rights violator because this label is likely to affect trade, tourism and diplomatic relations."

Ms Hegarty then sought to provide tangible examples of the direct impact of UPR recommendations, pointing to Fiji who removed the death penalty from its military code, Sierra Leone who established a child labour unit to combat child servitude, and Greece who, after much lobbying, introduced a new nationwide asylum service to improve the situation for refugees and migrants. She further provided statistical evidence on the rate of implementation of recommendations that were noted (i.e. those not accepted), and stated that 2 in every 5 noted recommendations had been either partially or fully implemented, despite States having made no commitment to do so. An example provided here was China, who did not accept multiple recommendations for the abolition of the death penalty in its first cycle, but nonetheless abolished it for 13 economic crimes a few years later. Whilst 55 crimes remain punishable by death in China, Ms Hegarty highlighted that this was a significant improvement from the previous 68.

Ms Hegarty considered that whilst non-governmental organisations (NGOs) are official stakeholders and can make written submissions, they were not allowed to make oral interventions during the working group stage of the UPR process, only being allowed to speak at the adoption stage. She noted that it is then too late to influence the recommendations. In response to this failing, UPR Info introduced country specific international human rights conferences and called pre-sessions in an attempt to fill this information vacuum and reinforce NGO influence by briefing the recommending States on the human rights situation in any given state. Ms Hegarty stated that this advocacy platform has now given many grassroots activists the opportunity to see their campaigning consolidated as a formal recommendation. She used Rwanda and the Democratic Republic of Congo as examples where for both States the rights of indigenous people were not discussed in their first review, but as a result of lobbying efforts, were included in the second round.

On further examination however, whilst NGO concerns tend to be successfully reflected in the recommendations, Ms Hegarty noted that "the role of NGOs does not stop as soon as the

recommendations are made, in fact this is where the real work starts.” She listed a few reasons as to why civil society plays a crucial role in ensuring the *de facto* implementation of recommendations, as in some cases the government will not take the necessary steps to ensure implementation of the recommendations accepted. She also added that civil society actors are often experts on a particular human rights issue. They can therefore be instrumental in helping to create a plan for implementation. She provided the example of Kenya where, after its second cycle of review in January 2015, a multitude of NGOs and the National Human Rights Institution came together to create a matrix for implementation of the recommendations. Ms Hegarty explained that the matrix was, to a large extent, subsequently used by the government in their official implementation plan.

Ms Hegarty provided Colombia as a final tangible example of the success of the UPR. She explained that Colombia had received a recommendation during its first cycle to support a system of national registration of children and also of people without documents. With the help of a child rights organisation and local NGOs, the government registered over 500,000 people. Ms Hegarty drew attention to the fact that just one recommendation had directly affected the lives of 500,000 people, providing them with both the crucial right to identity as well as the right to access social services.

Ms Hegarty then turned to the challenges facing NGOs and the flaws of the UPR mechanism more generally.

Ms Hegarty noted that global human rights voices such as CIVICUS and the International Service for Human Rights have highlighted that acts of intimidation against NGOs are an ever-present threat, not only on the ground but also in the context of participation in the UPR process. Additionally, she stated that gaining financial support is becoming increasingly more competitive, and for NGOs in the global south, CIVICUS have estimated that only 1% of official development funding goes directly to them. She followed by stating that it is easy to see how this can impede their ability to access the Geneva based phase of UPR. In response to these issues, potential solutions she offered were to first provide greater protection from acts of intimidation against NGOs. Whilst this has been recognised as a problem by the HRC, during the vote on the resolution for the protection of human rights defenders at the General Assembly, 14 countries voted against it and 40 abstained. Secondly, she argued that there needs to be a systematic increase in the financial support for NGOs who are trying to access the system.

With regard to other areas of concern, Ms Hegarty argued that there is little direction for what happens when a State under review decides to disengage with the mechanism. Ms Hegarty noted that the founding resolution of the UPR refers to such circumstances as ‘persistent non-cooperation.’ Ms Hegarty raises two issues with this statement. First, there is no guidance as to what would meet this condition, i.e. what action or inaction would amount to ‘non-cooperation’, nor the frequency that would fulfil the ‘persistent’ aspect. Secondly, it provides no direction as to what action can be taken by the HRC in response to ‘persistent non-cooperation.’ Ms Hegarty submitted that further definition was imperative, not only for clarity’s sake but also to act as a deterrent for any State who may attempt to neglect their human rights responsibilities.

Ms Hegarty suggested that an issue that warranted discussion was the lack of any formal follow-up mechanism, stating that Resolution 5/1 was too vague - paragraph 37 of which states that, “the Council will decide if and when any specific follow-up is necessary.” She did note, however, that during the review of the Council in 2011, there had been some improvement in this regard. The

outcome resolution encouraged States to provide the Council, on a voluntary basis, with a mid-term update, to follow up on the accepted recommendations. Ms Hegarty noted that whilst this was a step in the right direction, the voluntary nature has resulted in less than 1/3 of States actually submitting mid-term reports. Nonetheless, another attempt came from Paraguay in 2015, which pushed for a resolution that encourages States to establish a national framework of follow-up, and to share these practices at the 26th UPR session. Ms Hegarty was hopeful that States will engage with the resolution.

In conclusion, Ms Hegarty submitted that by the end of 2016, all 193 Member States of the United Nations would have been reviewed twice and the second cycle will draw to an end. Consequently we should critically evaluate the shortfalls of the UPR in order to “avoid hubris on the one hand, and reporting fatigue on the other”. She finished by saying that “we must keep the UPR relevant, inclusive, accessible and impactful to ensure human rights remain a truly universal imperative.”

Report by Aliya Karim, LLB Candidate.