



The UPR: An implementation reality check

Leveraging the crucial role of NHRIs and national NGOs in advocating for, and independently monitoring and reporting on, the domestic implementation of UPR recommendations

The Permanent Mission of Australia, the Permanent Mission of Colombia, the UPR Branch of the OHCHR, and the Universal Rights Group (URG) have the pleasure to invite you to a side event on the margins of the 27th session of the Universal Periodic Review

Tuesday 9th May, 13h00 to 14h30, Room XXIII, Palais des Nations

Moderator:

Ms Tanya Bennett, Chargé d'Affaires, Permanent Mission of Australia

Panellists:

H.E. Ms Beatriz Londoño Soto, Permanent Representative of Colombia

Mr Ed Santow, Australian Human Rights Commissioner

Mr Gianni Magazzeni, Chief of UPR Branch, OHCHR

Mr Marc Limon, Director, Universal Rights Group

Format

Panellists will give short interventions of 5-6 minutes, followed by an interactive dialogue with participants. Light refreshments will be served at the conclusion of the discussion.

Summary:

Follow-up and implementation of UPR recommendations is the essential step to ensuring the value and credibility of the UPR. While the peer-to-peer, co-operative and self-reporting aspects of the UPR are strong contributors to the mechanism's success, they also create incentives for states to emphasise successes and avoid acknowledging difficulties in their reporting on implementation of recommendations.

After international attention has moved on, however, NHRIs and domestic civil society have a crucial role to play in assisting, encouraging and monitoring domestic implementation and follow-up of UPR recommendations. In this way, NHRIs fulfil an invaluable role as a bridge between a State's international obligations and domestic implementation of those obligations. This discussion will explore the way in which NHRIs and civil society can be mobilised in support of monitoring, follow-up and implementation of a State's UPR obligations.

Participants will need a UNOG pass

Background

The importance of implementation

If the first two cycles saw recommendations emerge as the principal currency of the UPR, then it is the implementation (or not) of those recommendations by States that ultimately determines the value and credibility of the UPR mechanism. Unfortunately, until recently, remarkably little attention had been paid by States, OHCHR or NGOs to understanding how implementation happens; to considering ways to strengthen domestic coordination, implementation and oversight; or to independently measuring implementation and its impact on the on-the-ground enjoyment of human rights.

In 2016, URG undertook a comprehensive UPR implementation and follow-up analysis. Based on a dataset of over 5,000 individual recommendations, the analysis found that, inter alia, nearly half (48%) of all accepted first cycle UPR recommendations were, according to State under review's (SUR's) second cycle reports, implemented; while a further 20% were, according to the SURs, partially implemented. Only 25% were not implemented.

These findings are, at first glance, remarkable: nearly half of all first cycle UPR recommendations were fully implemented by the time the SUR returned to Geneva to present its second cycle report. A further 20% had been partially implemented, meaning that nearly three quarters of all accepted first cycle UPR recommendations generated action by the SUR. In some countries, the implementation rate was as high as 82%!

So what is happening? The answer lies in the heavily peer-to-peer, State-centric and self-assessment character of the UPR.

In 2006 States made the deliberate decision to minimise the role of external independent actors in the UPR – a mechanism which should be based, according to those States, on a cooperative, non-confrontational, consensual exchange between peers (i.e. between States). Therefore, States' own national reports are

the predominant input into the process. The two compilation reports - the UN system and 'other stakeholders' reports - are only provided 'additionally' (i.e. supplementary to the national report), and are expected to be much shorter than the State's own report. Only the national report is formally presented to the UPR Working Group.

Any system so heavily dependent on self-assessment and self-reporting, and on peer-to-peer international diplomatic exchange, will always be prone to the risk of amplification of success and minimisation of difficulties or shortfalls. This risk is exacerbated when States make general rather than specific recommendations.

That is not to say that the peer review nature of the UPR should be abandoned. Indeed, much of the success of UPR is directly related to the peer-to-peer, universal, dialogue - and cooperation-based character of the mechanism. Rather, it is to point out that in order for the mechanism to remain credible and effective in the long-term, it will be necessary to find a way to maintain the predominantly peer-to-peer character of the review, while strengthening the monitoring and reporting contribution of civil society and NHRIs.

Mobilising NHRIs and domestic civil society to press for, and independently monitor/report on, implementation

Long after the UPR Working Group has moved onto the next State under review, NHRIs and domestic NGOs play a crucial role in encouraging or pressing governments (and in many cases, helping them) to implement the recommendations generated by the mechanisms (alongside the recommendations of Treaty Bodies, Special Procedures and relevant regional mechanisms). NHRIs and domestic NGOs are also ideally placed, due to their on-the-ground presence and local expertise, to independently monitor and report on implementation (to both domestic partners like parliaments, and to international partners like the UN).

As part of this overall picture, NHRIs can play a unique role as a bridge between NGOs and the State, helping mobilise and coordinate the monitoring and reporting efforts of domestic civil society. The Council has recognised (e.g. in resolution 33/15) this role, encouraging NHRIs to 'monitor, promote and support the implementation of accepted recommendations in their respective national contexts'.

Any serious push to strengthen the implementation of UPR recommendations (as well as recommendations from other international mechanisms), and to strengthen the credibility of the UPR by independently verifying implementation

and impact, must leverage the unique role of NGOs and NHRIs if it is to succeed. This means, on the one hand, protecting civil society space domestically and at the Council; and, on the other hand, building the capacity of NHRIs and local NGOs – including by exchanging good practice – so that they can better advocate for, monitor and report on the implementation of UN human rights recommendations.