POLICY REPORT

TOWARDS THE THIRD CYCLE OF THE UPR: STICK OR TWIST?

Lessons learnt from the first ten years of the Universal Periodic Review

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UNIVERSAL RIGHTS GROUP

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PREFACE

This report on the Human Rights Council's Universal Periodic Review (UPR) mechanism is the result of a two-year project led by Subhas Gujadhur and Marc Limon. It reflects primary and secondary desk research, data analysis covering reports and recommendations from the first two UPR cycles, three policy dialogues in Geneva and over fifty interviews with key policymakers, including State delegates, capital-based experts, NGOs, UN officials and academics.

The authors would like to extend particular thanks to Nicholas Alexander for his help with the statistical analysis that underpins many of the key findings of this report.

Notwithstanding, the analysis, conclusions and recommendations presented in the report are entirely the authors' own responsibility.

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In 2005, Heads of State meeting at the UN's World Summit resolved to create the Human Rights Council (the Council) to replace the Commission on Human Rights (the Commission). World leaders asked the President of the General Assembly (GA) to begin negotiations to establish the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council. One of the defining outcomes of those negotiations would be the decision to establish, as a central pillar of the Council's work, a new mechanism: the Universal Periodic Review (UPR).

The decision to create the Council and to arm it with a new universal peer review mechanism was born out of a growing sense among UN policymakers that the international human rights system, with the Commission at its centre, had lost credibility. This understanding – that the Commission had, in effect, outlived its usefulness – was spelt out clearly in the then UN Secretary-General Kofi Annan's landmark 2005 report 'In larger freedom,' which concluded that the machinery built to 'protect [...] human rights at the international level [had come] under considerable strain.'

According to Kofi Annan, reform would need to focus, in particular, on two interconnected weaknesses of the Commission: a credibility gap rooted in the body's membership, and the perceived inability of human rights mechanisms to promote and protect the rights of individuals on the ground in a non-politicised, non-selective, and effective manner.

It was in this context that the Secretary-General, in an effort to balance Western demands over membership with Non-Aligned Movement (NAM) and African Group demands over the elimination of 'selectivity' and 'double standards,' proposed replacing the Commission with 'a smaller standing Human Rights Council...whose members would be elected directly by the General Assembly' and would 'undertake to abide by the highest human rights standards.' This new Council would have a 'new peer review function' that would scrutinise all States with regard to all human rights commitments, helping 'avoid, to the extent possible, the politicization and selectivity that are the hallmarks of the Commission's existing system.'

BUILDING THE UNIVERSAL PERIODIC REVIEW

By the time of the adoption of GA resolution 60/251, States had agreed on the creation of a new standing body with defined membership criteria (though this was less robust than some had

hoped for). States also agreed that the Council would 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by 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 new Council met for the first time in June 2006, and began negotiations on an 'institution-building package' (IBP), which was to include 'the modalities of the universal periodic review mechanism.' Negotiations on the UPR, which were often difficult, focused on a number of key themes, including: normative foundation of the reviews; principles; periodicity of reviews; modalities; documentary basis of reviews; conduct of reviews; and outcome of the UPR. After these negotiations, the President of the Council undertook final talks on the entirety of the IBP. The end result was adopted as resolution 5/1 on 18th June 2007.

THE COUNCIL'S 5-YEAR REVIEW

While creating the Council, the General Assembly had decided that the new body should review its work and functioning five years after its establishment.

This review began in 2010 and concluded in 2011, and came against a backdrop of various 'teething problems' for the new UPR mechanism. One of the most important was the relatively small amount of time devoted to each State's review in the UPR Working Group. Against this backdrop and with an eye on the UPR's second cycle (May 2012-November 2016), the 2010-2011 review saw States submit 525 written proposals for reform of the mechanism.

On 25th March 2011, the Council adopted resolution 16/21, presenting the outcome of the five-year review. The overall package contained in resolution 16/21 was notably unambitious, though the Council did agree on some important changes to the UPR, including in relation to the periodicity of the review; the focus of future cycles and necessary adjustments to the general guidelines; extension of the duration of Working Group meetings; thematic clustering of recommendations; implementation and follow-up; and capacity-building support.

LESSONS LEARNT FROM THE UPR'S FIRST 10 YEARS

The sum total of these innovations and reforms is a mechanism that today has assumed a central role in the international human rights promotion system, and which is widely seen as a success.

Key to that success is the mechanism's universality – the notion that it covers, potentially, every human rights concern in every country – as well as its peer review and cooperative character.

Notwithstanding these strengths, as the UPR mechanism nears the end of its second cycle (which will conclude in 2016), questions are being raised about whether it can maintain its success in the medium- to long-term. It is therefore important, ahead of the third cycle, to analyse and learn lessons from the first two cycles, and to give careful consideration to whether it is necessary to introduce certain reforms to the mechanism. Should States maintain the *status quo*, or are some tweaks desirable? From a political standpoint: should international policymakers stick or twist?

Such an analysis can be broken down according to the stages of the 'UPR cycle': State reporting, peer review in the UPR Working Group, adoption of the review outcome by the full Human Rights Council, and State implementation.

STATE REPORTING

Because the UPR is State-driven and does not involve independent experts, it is extremely reliant on the quality ('objectivity') and accuracy ('reliability') of information fed into the mechanism by States themselves via national reports, and by NGOs and different parts of the UN system. Conscious of this fact, in 2006 State delegations included a provision in the Council's IBP specifying that national reports should be prepared 'through a broad consultation process at the national level with all relevant stakeholders.' However, ten years on, URG's analysis raises serious questions about the degree to which this is happening in practice.

According to URG's analysis of 74 first- and second-cycle reports, it is apparent that relatively few States – perhaps as few as 20 – have put in place truly inclusive national consultation processes. The importance of this point cannot be overstated. If a State, in preparing its national report, seeks the views of all relevant national stakeholders and properly reflects those views in the final report, then its peers (other States, represented in the UPR Working Group) have a reliable and realistic basis for assessing that country's human rights situation and for making useful recommendations for improvement. However, if a national report is drafted by a country's foreign ministry with little or no

consultation inside or outside of government, then the UPR risks becoming little more than a intergovernmental 'beauty contest,' detached from reality and incapable of delivering tangible improvements on the ground.

PEER REVIEW IN THE UPR WORKING GROUP

The principal forum for UPR reviews - the space wherein each UN Member State is obliged to undergo a review, by its peers, of its domestic human rights record - is the UPR Working Group. A review of the practical operation of the Working Group over the past ten years reveals a number of lessons that might be learnt ahead of the start of the third cycle in 2017.

First, it is important to recognise that the UPR has fulfilled its primary mandate: to provide a cooperative mechanism for the 'periodic review...of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment.' By the end of the second cycle in November 2016, every one of the 193 Member States of the UN will have prepared and presented at least one national report on its human rights situation; received comment, constructive criticism, and recommendations from its peers; and accepted many of those recommendations as a basis for domestic reform. In the context of promoting the universal enjoyment of human rights, this is a truly remarkable achievement.

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However, the first two cycles have also revealed a number of problems that should be addressed in order to build a mechanism that will remain credible, respected and effective in the long-term. These problems can be broadly grouped under three headings: the documentary basis of review, quantitative and qualitative issues with statements and recommendations during the interactive dialogues, and issues around the inclusivity of Working Group meetings.

BASIS OF REVIEW

According to URG's analysis of 74 second-cycle national reports, almost all States have – at least in terms of the structure of their reports – largely followed the Council's guidance that second-cycle reports should focus, in particular, on the implementation of first-cycle recommendations. However, the fact that the structure and content of national reports have evolved to include

assessments of domestic implementation does not mean that those assessments are necessarily objective or reliable. Indeed, the fact that so few countries base their national reports on inclusive national processes of consultation suggests that information on levels of implementation should be greeted with caution.

Nor does the generally positive picture with regard to the emphasis of State reports during the second cycle mean that further improvements are not necessary. For example, beyond providing broad updates on progress with the implementation of all accepted recommendations, it would be desirable for States to provide more detailed information on progress *vis-à-vis* the implementation of recommendations related to the most urgent human rights challenges it faces, perhaps on the basis of an advanced list of issues issued by the troika prior to reporting. These core issues could then be the focus of the State's presentation before the UPR Working Group.

The apparent exclusion of civil society, NHRIs and other domestic human rights actors from many national consultation processes makes the other two basic UPR reports – the 'other stakeholders' report (e.g. NGOs and NHRIs) and the UN system report (which contains information, *inter alia*, from independent international human rights mechanisms) – particularly important. Unfortunately, URG's analysis of the second cycle suggests that these crucial 'shadow' reports are not fulfilling that function.

PRESENTATION OF STATE REPORT, AND INTERACTIVE DIALOGUE

One of the main challenges to emerge during the early years of the UPR was the issue of time allocations for reviewing States wishing to speak during Working Group reviews. Even though States arrived at a solution of sorts during the 2011 review, this has not solved the problem of inadequate time available to reviewing States (around 2-3 minutes each), nor the inadequacy of time available for the SUR to respond in a meaningful way to comments and questions. For a supposedly cooperative peer review mechanism based on interactive dialogue, these severe time constraints are clearly problematic, turning what should be a dynamic space for peer-to-peer debate and exchange into a stale forum of rushed and often unconnected monologues.

Far from being a forum for debate, scrutiny, questions and counsel between peers, the UPR Working Group has become a formulaic exercise consisting of a broad (and, due to time constraints, rather superficial) presentation of the national report by the SUR; the rapid, almost metronomic delivery of recommendations by reviewing States; and a valedictory speech by the SUR to mark the end of the session.

A further reason for the 'dryness' of Working Group meetings is the lack of space on the agenda for NHRIs and NGOs to present 'shadow reports' or dissenting views. In the absence of external, independent voices, UPR exchanges have largely become exercises in preaching to the converted – a problem brought into even sharper relief by the broad failure of 'other stakeholders' to use their written UPR reports to provide concise and accessible information on levels of implementation.

Unless these issues are fixed ahead of the third cycle, there is a genuine risk that the UPR will lose credibility.

STATE-TO-STATE RECOMMENDATION: THE PRINCIPAL CURRENCY OF THE UPR

An important consequence of the limited speaking time available to reviewing States is that the content of their statements has evolved considerably: shifting from general reflections about the achievements and challenges faced by the SUR (often accompanied by generous diplomatic flattery), towards a more robust exchange focused on identifying principle challenges and shortcomings, and offering recommendations. In particular, States and other stakeholders have come to realise that recommendations are the principal currency of the UPR, with their quantity and quality defining the overall value of the mechanism.

In terms of quantity, a defining characteristic of the first ten years of the UPR has been the rapid growth in the quantity of recommendations, with the total number received by SURs jumping from 430 at the first UPR Working Group session to 1,804 by the fourth session. URG research suggests that the main explanation for this growth is the increased popularity and inclusivity of the UPR between 2008 and 2016 (measured by the number of reviewing States participating in UPR Working Group sessions), rather than any sustained increase in the number of recommendations issued per reviewing State. If this analysis is accepted, it suggests that in the absence of further increases in the number of recommending States (which would seem unlikely), the question of how to avoid further recommendation proliferation should not be a major preoccupation as stakeholders prepare for the third cycle.

That is not to say the existing large number of UPR recommendations received by States today is not of concern. State delegations in Geneva regularly complain of being 'overwhelmed' or 'lost in a jungle' of recommendations. Such concerns are probably best addressed through improvements to the clustering of recommendations, rather than by efforts to further limit their number. However, for clustering to work effectively, the time between the actual review and the adoption of the review outcome

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by the Working Group (currently around 48 hours) will need to be extended, and the role of the troika will need to be strengthened.

The quality of UPR recommendations is perhaps the most important determinant of the usefulness and effectiveness of the UPR, and therefore also of the capacity of the UN human rights system to engender positive change on the ground. However, beyond general agreement on behalf of stakeholders that recommendation quality is important, there is little agreement as to what constitutes a 'good' or a 'bad' recommendation.

To better understand what does make a 'good' recommendation, URG reviewed over 5,000 first- and second-cycle recommendations. URG's analysis suggests that a helpful way to conceive of and assess recommendation quality is through a double lens of 'usefulness' to the SUR, and 'measurability' for reviewing States.

ANALYSIS OF UPR RECOMMENDATION QUALITY: USEFULNESS AND MEASURABILITY

Using the IBP and the double lens of 'usefulness' and 'measurability' as an analytical basis, URG assessed over 5,000 first- and second-cycle recommendations. URG's analysis found that over 85% of UPR recommendations in both the first and second cycles were 'normal' in that they align with the wording and the spirit of the Council's IBP, and in that they can be described as useful to SURs and measurable in the context of the UPR mechanism. On average, only 12% of first and second cycle UPR recommendations were 'unspecific', in that they were unhelpful to the SUR and unmeasurable in the context of the UPR mechanism.

URG's analysis also found that the quality of recommendations varied considerably across UN regional groups: for example, reviewing States from the African or Asia-Pacific Groups tended to issue more 'unspecific' recommendations (38% and 27% respectively) than States elsewhere. Moreover, the frequency of 'unspecific' recommendations was higher when States provided recommendations to SURs from their own regional group.

ADOPTION OF REVIEW OUTCOME

Following the UPR Working Group's review, the troika, with involvement from SURs and with assistance from OHCHR, prepares a report. This report, referred to as the 'outcome report,' summarises discussions during the review and includes questions, comments and recommendations made by reviewing States, as well as responses and voluntary commitments by SURs. The UPR Working Group then moves to adopt that State's outcome report. At its next regular session, the full Council moves to formally adopt the final UPR outcome.

Some doubt the wisdom of setting aside around 3 days in the Council's already overburdened agenda to adopt documents that have already been decided upon, and wonder what the routine of plenary adoption adds to the overall mechanism, especially when the main purpose of the exercise appears to be to provide an opportunity for States to congratulate each other on a job well done. This has led to suggestions that, as part of the Council's on-going efficiency drive, consideration should be given to holding small dedicated Council plenary sessions immediately after the conclusion of a UPR Working Group session. During these 'special' plenaries, the UPR outcomes of the States reviewed at the preceding Working Group would be formally adopted. Because the IBP stipulates that the Council shall meet 'regularly throughout the year' and 'schedule no fewer than three sessions' 'for a total duration of no less than 10 weeks,' such a step is possible and could free up considerable time on the Council's regular agenda.

IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS

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 mechanism. Unfortunately, until recently, remarkably little attention had been paid by either policymakers or researchers to understanding how implementation happens; to considering ways to strengthen domestic coordination, implementation and oversight; or to measuring implementation and its impact on the on-the-ground enjoyment of human rights. In other words, little thought has been given to what, practically speaking, happens to the thousands of recommendations generated by the UPR every year. Are domestic policy-makers aware of them, and do they influence policy? Do they have a discernable impact on the ground?

One notable exception to this general neglect is *UPR Info*'s landmark 2014 report 'Beyond promises: the impact of the UPR on the ground.' *UPR Info*'s analysis, based on NGO mid-term implementation assessments of first cycle recommendations, assesses progress towards implementation in 165 countries. The report found that, across this sample, some 48% of recommendations had triggered action (partial or full implementation) by the midpoint of the first cycle.

Building on *UPR Info*'s assessment, and in order to further contribute to international understanding about the current and future effectiveness of the UPR, URG has undertaken a new and comprehensive UPR implementation and follow-up analysis. Based on a dataset encompassing the first and second cycle reviews of 74 countries from all UN regional groups, and therefore covering over 5,000 individual recommendations, that analysis seeks to determine two things:

1. The level of implementation, by States under review, of recommendations received and accepted during the first cycle; and

2. The degree to which reviewing States used the second cycle to follow-up on the implementation of first cycle recommendations.

LEVEL OF IMPLEMENTATION

URG's implementation analysis separated recommendations into four categories: implemented, partly implemented, not implemented, and not indicated. The results of that analysis reveal a number of interesting patterns and trends:

1. Nearly half (48%) of all accepted first cycle UPR recommendations were, according to SURs' second cycle reports, implemented. A further 20% were, according to the SURs, partially implemented. Only 25% were not implemented.

2. Implementation levels were high (average or above average) in all regions except the Asia-Pacific. Yet even across the Asia-Pacific Group (APG), nearly 40% of all accepted recommendations were reported as implemented.

3. There were huge disparities within regions. For example, in the Asia-Pacific region, according to second cycle national reports, only 3% of the first cycle recommendations accepted by Sri Lanka were implemented; whereas Bangladesh's national report shows an implementation rate (of accepted recommendations) of around 82%.

4. Implementation rates also varied significantly between thematic issues. Accepted recommendations focusing on women's rights (12% of all analysed recommendations) and children's rights (10% of all analysed recommendations) showed high implementation rates: 54% and 62%, respectively. On the other hand, accepted recommendations focused on more 'politically sensitive' issues, such as the death penalty, showed low implementation rates (14%).

5. Implementation rates also varied significantly by type of recommendation. For example, accepted recommendations calling for the signature or ratification of international human rights instruments had an overall implementation rate of 52%. This contrasts with recommendations for domestic level reform, in areas such as freedom of expression and opinon, which showed an implementation rate of around 24%. These patterns have led some diplomats to suggest that once States have implemented 'low-hanging fruit' recommendations over the course of the first and second cycles, progress with implementation will become progressively more difficult.

6. Certain types of recommendations, or recommendations covering certain issues, may be easily accepted by States (i.e. show a high acceptance rate) but then prove difficult to implement (i.e. show a low implementation rate). A good example of this is recommendations relating to the ratification of and compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nearly 80% of all such first cycle recommendations were accepted by the SUR. However, only 14% were subsequently implemented.

7. Almost 30% of 'noted' recommendations, even though they were not accepted by the SUR, nevertheless resulted in some level of domestic change (i.e. they were either implemented or partially implemented). This mirrors similar findings by UPR Info, which found that 19% of 'noted' recommendations triggered action by mid-term, and is significant in that it suggests that UPR can help to gradually change mindsets as well as laws and policies.

8. The quality of recommendations (i.e. whether they are useful and measurable) has a significant impact on levels of implementation. Vague or imprecise (unspecific) recommendations tend to have a far higher implementation score than normal recommendations. 66% of 'unspecific' recommendations were fully implemented, compared with 44% of SMART recommendations.

MIRROR MIRROR ON THE WALL...

The overall findings of the URG's analysis of recommendation implementation are, at first glance, remarkable. According to those findings, nearly half of all first cycle UPR recommendations had been 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 presented to the Working Group.

It is in this context that one must appraise the findings of this report. 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 amplification of success and to the minimisation of difficulties or shortfalls.

That is not to say that the peer review nature of the UPR should be changed. 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.

FOLLOW-UP BY REVIEWING STATES

In order to complete the second part of its implementation analysis (follow-up on the part of reviewing States), URG analysed the second cycle Working Group statements of the same 74 States.

URG's analysis shows that, despite the importance of effective follow-up (on the part of reviewing States) for the long-term health and credibility of the UPR, only 38% of partially implemented, not implemented, or not indicated recommendations from the first cycle saw effective follow-up during the second.

There are also significant variations between countries. At one end of the scale, some countries, such as Australia (69%), Bhutan (66%), Cuba (58%), Switzerland (58%), and the UK (52%), followed-up on a majority of their earlier recommendations (where those recommendations were not implemented or were only partially implemented). On the other hand, some countries rarely or never followed up on earlier recommendations. Examples of this group include Argentina (20%), Djibouti (0%), Ghana (0%), Greece (20%), Kuwait (20%), Nigeria (8%), and Peru (10%).

CONCLUSIONS AND RECOMMENDATIONS

That the establishment and conduct of the UPR has been a success story for the Council has become an article of faith for policymakers in Geneva and in national capitals. The UPR is now regularly referred to as 'the jewel in the crown' of the UN human rights system.

This report demonstrates that, by and large, such praise is well deserved. The first ten years of the UPR have shown it to be an innovative and inclusive mechanism, and one capable of securing real improvements in the enjoyment of human rights. However, compliments should not give way to complacency: this report

has also revealed signs that the 'honeymoon period' for the UPR may be coming to an end, and that there are important structural weaknesses with the UPR process that should be reflected upon and, if necessary, addressed ahead of the third cycle (due to start in April-May 2017).

In January 2016, the new President of the Human Rights Council, Ambassador Choi Kyonglim of South Korea, announced that he would use his presidency to, *inter alia*, encourage such reflection, and consider what changes – if any – should be brought to the UPR mechanism ahead of the third cycle. Towards that end, in May 2016 he appointed one of his Vice-Presidents, Ambassador Janis Karklins of Latvia, to conduct consultations.

The task facing Ambassador Karklins is not a straightforward one. There are significant differences of opinion between States (and also between UN officials and NGOs) as to whether the mechanism's success means it should be left untouched, or whether now is the time to make small modifications to build on the mechanism's early promise. This has led to behind-the-scenes debates at the Council about whether, in the run up to the third cycle, the international community should 'twist or stick.'

The Universal Periodic Review of Israel, January 2013

PROMOTING UNIVERSAL RESPECT FOR THE PROTECTION OF ALL HUMAN RIGHTS

In 2005, Heads of State meeting at the UN's World Summit resolved to create the Human Rights Council (the Council) to replace the Commission on Human Rights (the Commission). The new Council would be responsible for 'promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.'[1] World leaders therefore asked the President of the General Assembly (GA) to begin negotiations to establish the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council. One of the defining outcomes of those negotiations would be the decision to establish, as a central pillar of the Council's work, a new mechanism: the Universal Periodic Review (UPR).

The decision to create the Council and to arm it with a new universal peer review mechanism was born out of a growing sense among UN policymakers that the international human rights system, with the Commission at its centre, had lost credibility and was no longer able to fulfil the international community's commitment, as reaffirmed by the World Conference on Human Rights (1993), 'to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law.'[2]

This understanding – that the Commission had, in effect, outlived its usefulness – was spelt out clearly in UN Secretary-General Kofi Annan's landmark 2005 report 'In larger freedom.' A key message of the report was that, while the international human rights system had made considerable progress since the founding of the UN in developing a 'universal human rights [normative] framework, comprising the Universal Declaration of Human Rights, the two International Covenants and other core human rights treaties,'[3] the actual machinery built to 'protect [...] human rights at the international level [had come] under considerable strain.'[4]

As Kofi Annan himself said during a speech to the Commission in April 2005:

'The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms – the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation.'[5]

According to Annan, this 'era of implementation' required the UN to 'remake [its] human rights machinery.'[6]

Such reform would need to focus, in particular, on two interconnected weaknesses of the Commission: a credibility gap rooted in the body's membership; and the perceived inability of human rights mechanisms to promote and protect the rights of individuals on the ground in a non-politicised, non-selective, and effective manner.

On the first point, the membership of the Commission had come under criticism, as elections regularly returned countries with questionable human rights records. One notorious example was Sudan's election to the Commission in 2002 and 2004 (and its election as Chair in 2003), which coincided with its government's campaign of ethnic cleansing in Darfur. As Kofi Annan pointed out the following year (2004), global efforts to reinforce human rights should not be led 'by States that lack a demonstrated commitment to their promotion and protection.'[7]

Regarding the second point – the perceived weakness of human rights mechanisms - Kofi Annan's comments should be seen in the context of historic questions over the role of the UN in the field of human rights. As described elsewhere,[8] it was never the intention of the founding fathers of the UN to create an organisation with a mandate to monitor or independently comment on the internal policies of sovereign States. Thus, for the early decades of its existence, the Commission on Human Rights focused on thematic debates and norm-setting, carefully avoiding any notion that it could scrutinise the human rights 'performance' of individual States. This 'no power to act doctrine'[9] (i.e. no power to intervene in domestic affairs) held sway until the late 1960s and early 1970s, when the Commission

began to pass resolutions and establish mechanisms focused on the human rights situations in certain countries (e.g. apartheid South Africa, the Occupied Palestinian Territories, Chile).

The dismantling of the 'no power to act doctrine' was initially led by developing countries from Africa, Asia and Latin America. These countries sought to leverage the moral authority of the UN to prevent countries like South Africa, Israel and Chile, backed by their Western allies, from using sovereignty arguments as a means of avoiding accountability for human rights violations. It did not take long, however, for Western powers to seize on this expanded reading of the UN's mandate and use the human rights mechanisms to scrutinise the human rights records of an wide array of developing States, including Bolivia, Iran, Iraq, Cuba, Myanmar, Cambodia, Somalia, Sudan, Belarus and North Korea.

Unsurprisingly, these and other countries of the global South – including the very countries that had helped dismantle the 'no power to act doctrine' a few years earlier - soon began to cry foul at what they saw as Western moves to 'politicise' human rights. As a consequence, the Commission became increasingly divided between developing countries that accused the West of using the body to selectively target them for political ends, and Western States and NGOs that accused countries with poor human rights records of seeking membership of the Commission as a way of avoiding or deflecting international scrutiny and censure. Kofi Annan reflected on this situation in his 2005 report, noting that 'States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others.'[10] 'As a result,' he asserted, 'a credibility gap has developed, which casts a shadow over the United Nations system as a whole.'[11]

It was in this context that the Secretary-General proposed replacing the Commission with 'a smaller standing Human Rights Council...whose members would be elected directly by the General Assembly' and should 'undertake to abide by the highest human rights standards.' In an addendum to his report,[12] he further proposed that the new Council would have a 'new peer review function'[13] that would scrutinise all States

with regard to all human rights commitments, helping 'avoid, to the extent possible, the politicization and selectivity that are the hallmarks of the Commission's existing system.'

The idea of conducting periodic reviews of States human rights performance was not a new one. Already in 1956, ECOSOC had passed a resolution requesting States to submit regular (every 3 years) reports on progress achieved, within their territories, in advancing the rights contained in the Universal Declaration of Human Rights, as well as the right to self-determination.[14] With the adoption of the first human rights conventions, which had their own in-built reporting processes, this early precursor of the UPR was deemed superfluous and was abolished in 1980.[15] The concept of a regularised peer review also borrowed from the African Peer Review Mechanisms of the New Partnership for Africa's Development (NPAD).

With his dual proposal – to create a smaller standing Council with defined membership criteria, and a universal peer review mechanism – Kofi Annan sought (successfully, as it turned out) to balance Western (especially US) demands over membership with Non-Aligned Movement (NAM) and African Group demands over the elimination of 'selectivity' and 'double standards' in addressing human rights situations.

BUILDING THE UNIVERSAL PERIODIC REVIEW

In a statement to the Commission on 7th April 2005,[16] Kofi Annan set out a vision for the reform of the 'intergovernmental machinery' of the human rights pillar, so as to 'build a United Nations that can fulfil the promise of the Charter.' Central to his proposed reforms was the establishment of the Council and its peer review mechanism:

'I have proposed that the Council be a standing body, able to meet when necessary rather than for only six weeks each year as it is at present. It should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the

fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. […]

Under such a system, every Member State could come up for review on a periodic basis. Any such rotation should not, however, impede the Council from dealing with massive and gross violations that might occur. Indeed, the Council will have to be able to bring urgent crises to the attention of the world community.

The new Human Rights Council must be a society of the committed. It must be more accountable and more representative. That is why I have suggested that members be elected by a two-thirds majority of the General Assembly, and that those elected should have a solid record of commitment to the highest human rights standards. Being elected by a two-thirds majority of the General Assembly should help make members more accountable, and the body as a whole more representative.'

Council adoption of UPR outcome report, September 2015

Thus, the Secretary-General positioned the UPR, not merely as an extra mechanism, but as *the* central function of the Human Rights Council. The new Council would be, first and foremost, 'a chamber of peer review.' Following this logic, the role of the Council in dealing with violations of human rights is relegated to something of a secondary consideration – with the Secretary-General feeling it necessary to reassure States that although the Council's 'main task' would be to conduct the peer review process, it would also 'bring urgent crises to the attention of the world community.' Crucially, he chose to explicitly link (in a diplomatic balancing act), the establishment of the new, smaller standing Council with defined membership criteria, as demanded by the US, with the new peer review process, a process designed to address NAM/African Group concerns about selectivity and politicisation.

When negotiations on the Secretary-General's proposals began in earnest, State delegations took predictably differing positions on these key issues. Broadly speaking (regional bloc positions were fairly fluid), key Western and some Latin American States pressed for a smaller Council (for example, with 38 members or less), with clear membership criteria, and a prohibition on 'clean slate' elections; while African Group and NAM States argued that the number of members should be the same as the Commission (53 - with a rebalanced geographic distribution of seats in favour of the African and Asian regions), that there should *not* be any membership criteria, and that there should *not* be any undue barriers placed in the way of election. On the last point, for example, they argued that elections should be by simple majority rather than by two-thirds majority, and they opposed moves to prohibit clean slates. Regarding the UPR, differences between groups centred on whether the new mechanism should review the degree to which individual States were abiding by their human rights obligations, or should be more of a general 'global thematic review.' Finally, the West and key GRULAC States emphasised that a primary function of the Council must be to address violations of human rights and respond to human rights emergencies, whereas leading NAM countries opposed this view and pushed proposals that would make it difficult, for example, to adopt country resolutions.

By the time of the adoption of GA resolution 60/251, States had agreed on the creation of a new standing body (slightly smaller than the Commission – 47 members instead of 53) with defined membership criteria (though this was less robust than some had hoped for, with the resolution merely saying that elections should 'take into account the contribution of candidates to the promotion and protection of human rights,' and that once elected, members should 'uphold the highest standards in the promotion and protection of human rights.')[17] States also agreed that the Council would 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by 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.' However, rather than being the central function of the Council, the UPR would be only one of a number of tasks assigned to the new body (indeed, the UPR was included only in operative paragraph 5e of the resolution).

The Human Rights Council met for the first time in June 2006, and began negotiations (under the overall supervision of its first President, Ambassador Luis Alfonso de Alba of Mexico) on an 'institution-building package' (IBP) – the detailed framework governing its operation. Negotiations were conducted in a series of open-ended intergovernmental Working Groups, one of which, under the facilitation of Ambassador Mohamed Loulichki of Morocco, was charged with developing 'the modalities of the universal periodic review mechanism.'[18]

After four rounds of preparatory informal consultations between July and September 2006, the Working Group met formally on four occasions: in November 2006, in February, and twice in April 2007. During the negotiations, a number of key debates emerged:

1. What should be the **normative foundation of the review**? GA resolution 60/251 stated that the UPR should review the fulfilment by each State of its human rights obligations and commitments; but should that mean a general focus on obligations and commitments, or one grounded in the specific international instruments to which a given State is Party? Regarding the latter, some States expressed concern that the UPR should not duplicate the work of Treaty Bodies.

2. Regarding the **principles of the review**, States agreed on the importance of the elements contained in resolution 60/251, but disagreed on what some of those elements should mean in practice. For example, some argued that the periodicity and substance of the review should take account of a country's level of development and its national context, whereas others said that this would contradict the principle that the UPR must be based on 'universality of coverage and equal treatment of States.'

3. Proposals regarding the **periodicity of reviews** ranged from 3 to 6 years. Some, (as noted above), argued that frequency should vary according to levels of development.

4. Regarding the **modalities of reviews**, two principal issues were debated. First, should the reviews be conducted during regular sessions of the Council, or should States create a UPR Working Group that would meet inter-sessionally? Also, some delegations emphasised the importance of involving independent experts in the process, in order to ensure the impartial and objective analysis of country information and formulation of recommendations. Others, however, argued that the UPR, as a peer review process, should not involve independent experts. The debate over the involvement of experts was one of the most difficult and intractable, with implications for other parts of the UPR. For example, the preparation of 'lists of issues' prior to UPR interactive dialogues, or systemic follow-up of recommendations, would be difficult without expert involvement.

5. Also under the rubric of 'modalities,' there was considerable debate over what information should be fed into a given country's UPR, i.e. what should be the **documentary basis of the review**. Some contended that because the UPR is a peer review process, States themselves should be the primary source of information, either through self-assessment reports (produced according to standards or guidelines adopted by the Council,

and on the basis of a broad consultation process at national level) or through responses to questionnaires prepared by the OHCHR or independent experts. The idea of a questionnaire, either individualised or standardised, generated considerable discussion and support among States, with advocates arguing that it would allow reviews to be more targeted (i.e. focused on pressing challenges) and for interactive dialogues to be more specific and relevant. Building on this latter proposal, some delegations suggested that responses to the questionnaires could be used to formulate 'lists of issues or specific questions' for the interactive dialogue (again using independent experts). It was also suggested that OHCHR should compile information on a given State's human rights record garnered from different parts of the UN system (e.g. Special Procedures, Treaty Bodies), and that this report should also include objective and reliable information from NGOs. Others argued that such a compilation report should not include any analysis or interpretation by OHCHR.

6. In terms of the **conduct of the review**, most States agreed that the review should start with a brief presentation by the State concerned (for example, a presentation of the national report). Some suggested that this could be followed by a presentation of a list of issues or questions by the OHCHR or an independent expert. There was also discussion over whether participation in the review should be restricted to Council members, or expanded to include observer States, NGOs, and NHRIs.

7. Regarding the **outcome of the review**, there was debate over whether this should be prepared by a UPR Working Group (perhaps coordinated by a State rapporteur), or by independent experts. In terms of what it would contain, most delegations expressed support for a summary record of the review and of conclusions and recommendations. It was pointed out that recommendations should be objective, practical, realistic and achievable. Several delegations emphasised the importance of including State views and responses in the outcome, as well as any requests for capacity-building support. Most delegations agreed that the outcome should be considered and approved by the plenary of the Council, under a standing agenda item on the UPR.

8. Finally, the Working Group discussed a number of ideas to ensure **follow-up on the implementation of recommendations**. These included the compilation of all UPR outcomes into a 'global human rights report,' the appointment of a special rapporteur on follow-up for each country reviewed (though it was noted that this would require significant new resources), the preparation and transmission of a questionnaire by OHCHR to follow-up on implementation, the preparation of a report (for example, a mid-term report) on implementation, and explicit reference in the IBP to OHCHR and other UN entities as 'implementation

partners.' Most agreed that the second cycle of the UPR should focus on the implementation of recommendations from the first cycle. One interesting proposal was that the reporting State should provide the Council with an implementation plan within six months of the adoption of the outcome. Subsequent reviews would then allow Council member States to check progress against that plan.

Following the conclusion of the Working Group's work, the President of the Council undertook final negotiations on the entirety of the IBP. The end result was adopted as resolution 5/1 on 18th June 2007. Resolution 5/1 presented carefully balanced compromises on a number of key points:[19]

1. **Normative foundation of the review** - the final IBP made clear that the basis of the review would be grounded in the specific legal instruments to which the State is Party, but also include, for example, voluntary pledges and commitments made by States when presenting their candidatures for election to the Council.

2. **Principles of the review** - States decided that the UPR should take into account the level of development and national specificities of countries, but that this should be without prejudice to States' legal obligations under the conventions to which they are Party. The IBP also reiterated that the UPR would ensure 'universal coverage and equal treatment of all States.' Finally, States decided that the UPR should 'in principle' be open to the participation of NGOs and NHRIs.

3. **Periodicity of reviews** - the periodicity for the first cycle was set at four years, meaning 48 States would be reviewed each year, spread across three 2-week sessions of the UPR Working Group.

4. **Modalities of reviews** - the Council decided to establish a single UPR Working Group, composed of all 47 members of the Council, and which would meet inter-sessionally three times each year. Despite a last-minute gambit by a group of Western and GRULAC States to include a role for independent experts, this idea was ultimately rejected on the grounds that it would contradict the peer review nature of the mechanism. Notwithstanding, the Working Group facilitator and President of the Council did include language in the final IBP stating that 'each member State will decide on the composition of its delegation.' This was designed to provide a window for States, if they so wished, to include independent experts on their national delegations to the UPR Working Group.

5. **Documentary basis of reviews** - the Council decided that individual reviews would be based on three documents: a report by the State under review; a compilation of information from Treaty Bodies, Special Procedures and other relevant parts of the UN system, to be compiled by OHCHR; and a summary report of 'additional, credible and reliable information provided by other relevant stakeholders' (e.g. NGOs, NHRIs). The addition of this third report was important, as previous non-papers by the facilitator had merely said that the Council 'could also take into consideration' information from NGOs and NHRIs. The IBP stated that State reports should be prepared 'on the basis of general guidelines to be adopted by the Council at its sixth session' (there would be no questionnaires or lists of issues sent, for example, by independent experts or OHCHR, to guide national reporting), and encouraged States to prepare their national reports 'through a broad consultation process at the national level with all relevant stakeholders.' Regarding the two reports to be prepared by OHCHR, the Council decided that these 'should [also] be elaborated following the structure of the general guidelines adopted by the Council.'

6. **Conduct of the review** - it was agreed that reviews in the UPR Working Group would begin with a presentation by the delegation of the State under review (SUR), followed by an 'interactive dialogue between State under review and the Council.' Both Council members and observer States would participate in the review, but NGOs and NHRIs would only be allowed to 'attend.' As noted above, it was ultimately decided that there would be no explicit role for independent experts in preparing either the review (e.g. summarising information or presenting a list of issues) or the outcome report. Instead, the Council decided to establish a troika of three State rapporteurs to help facilitate the review.

7. **Outcome of the review** - it was decided that this would consist of a summary of the proceedings of the review process, conclusions and recommendations, and voluntary commitments of the State concerned.

As stipulated in the IBP, the Council's sixth session in September 2007 saw the adoption of decision 6/102, which, *inter alia*, set out 'general guidelines for the preparation of information under the UPR.' According to these (rather vague) guidelines, national reports should include:

• A description of the methodology and consultation process followed for the preparation of the report;

• Background of the country under review, particularly the normative and institutional, constitutional and legislative framework for the promotion and protection of human rights;

• Progress with the implementation of international human rights obligations, and identification of achievements, best practices, challenges and constraints;

• Key national priorities, initiatives and commitments to overcome those challenges and constraints;

• Expectations of the SUR in terms of capacity-building and technical assistance; and

• From the second cycle onwards, information on the implementation of recommendations from the previous review.

At the Council's eighth session, the President delivered a statement (PRST 8/1) on modalities and practices for the UPR. This dealt with advance questions, to be submitted to the SUR via the troika; time allocation and use of time for the SUR in the UPR Working Group; the content of the Working Group's report, to be prepared by the troika; the division of recommendations into 'those that enjoy the support of the State under review' and 'other recommendations' which were 'to be noted' (though all recommendations would be included in the report of the Working Group); the adoption in plenary of the outcome of the review, consisting of the Working Group report, the views of the SUR on the recommendations received, and voluntary commitments; and the webcasting of all public proceedings.

At the next session, the President delivered PRST 9/2 (in follow-up to PRST 8/1), clarifying the various constituent parts that would together constitute the formal outcome of a UPR review.

THE COUNCIL'S 5-YEAR REVIEW

While creating the Council (with GA resolution 60/251), the General Assembly decided that the new body should review its work and functioning five years after its establishment. At its 12th session in October 2009, the Council established an open-ended intergovernmental Working Group to conduct this review.[20] The Working Group met for the first time in October 2010, and again in February 2011.

The review came against a backdrop of various 'teething problems' for the new UPR mechanism. One of the most important was related to the relatively small amount of time devoted to each State's review in the UPR Working Group, (itself a result of the need to review over 190 States over a 4-year cycle). An important consequence of this time constraint was that only a limited number of States (usually between 40-60) were able to secure speaking slots during Working Group meetings. This in turn led some States under review to 'encourage' friendly-States to arrive early and thus fill up the list of speakers - which in turn led others (e.g. Western States) to try to arrive even earlier. When stopgap responses such as pre-lists and pre-pre-lists failed to prevent States (often represented by interns) queuing through the night to secure speaking slots, it became clear that a more considered and durable solution would be needed.

Against this backdrop and with an eye on the UPR's second cycle (May 2012-November 2016), the 2010-2011 review saw States submit 525 written proposals for reform of the mechanism. Some of the most important and/or controversial issues were as follows:

• **Core principles of the UPR** - leading developing countries (e.g. Algeria, Bangladesh, China, Cuba, India, Iran, Nepal, Nigeria, Pakistan) insisted that the review should not alter the key underlying character of the UPR, which should remain a State-led, inter-governmental peer review process guided by the principles of cooperation, non-selectivity, non-politicization and non-confrontation .

• **Periodicity of reviews** - as part of efforts to deal with the issue of the time allocated to UPR Working Group meetings and the speaking lists, States debated changes to the periodicity of review cycles. Broadly speaking, Western and some Latin American States (including Argentina and Guatemala) argued in favour of maintaining four-year cycles on the basis that any extension might create a protection gap, while Non-Aligned Movement (NAM), Organisation of Islamic Cooperation (OIC) and African Group States, (including Egypt, Iran, Morocco, Nepal, Nigeria, Pakistan, Russia, Saudi Arabia, and Thailand) argued in favour of extending the cycle to 5 years. The NAM, OIC and African Group also proposed a one-year break between the first and second cycles to 'settle procedural issues'[21] and 'prepare for the second cycle.'[22]

• **Change in emphasis for the second cycle** - a key area of discussion in 2010-2011 centred on whether the second cycle of the UPR should be substantively and procedurally different to the first cycle, or simply a rerun. For example, Egypt, on behalf of the NAM, suggested that the second cycle, like the first, should examine the current human rights situation in the country concerned. Others (e.g. Algeria, Chile, Cuba, Japan, Peru, Thailand) however argued that the second cycle should review the implementation of first cycle (accepted) recommendations. In the end, nearly all States coalesced around the view that there should be a primary focus on reviewing progress towards implementation of first cycle recommendations, but that this focus should not preclude reflection on 'changes in the human rights situation of the country since the previous review'[23] and new challenges.[24] Nor should it prevent reviewing States from making further (i.e. new) recommendations.

• **Documentary basis of the review** - following on from this understanding about the nature of the second cycle, States also considered whether any changes should be brought to

the documentary basis of the review. Regarding the national report, States (e.g. Chile, Cuba, Spain, the US) broadly agreed that second cycle reports should include information on the implementation of accepted recommendations from the previous review. There was little consideration of whether – or how – the focus and content of the UN system and NGO reports should be altered.

• **Guidelines** - disagreements arose over the guidelines for preparation of the three basic review documents. NAM and OIC States, for example, argued – apparently based on a lack of faith with OHCHR's methodology – that the Council should prepare guidelines for OHCHR to follow when preparing the UN system report and the 'other stakeholders' compilation report. According to Egypt (on behalf of NAM), the Council would need to 'develop further guidelines, specific to the second cycle, for the preparation by OHCHR of the two documents...mandated in paragraphs 12 (b) and 12 (c) of the IB package.'[25] Others, however, emphasised the importance of amending existing guidelines for States, as detailed in Council resolution 6/101, to aid them with the preparation of their national reports for the second and third cycles. In line with the altered objectives of the second cycle, these guidelines should be adjusted 'to focus more on following-up on the implementation of recommendations, challenges, and identifying needs for international cooperation and support.'[26] One particularly astute proposal by Moldova went even further, calling for the preparation of a completely new set of guidelines to help States organise inclusive national consultations when preparing national reports. On behalf of the EU, Belgium called for parliaments to be more fully involved in such consultations.

• **Participation of NHRIs** - the role of national human rights institutions (NHRIs) in the UPR process, both as independent providers of information and as important partners in the process of implementation and follow-up, became a key source of tension during the 2011 review. Western States, along with Morocco, Qatar, Thailand, and others, argued for greater engagement with NHRIs, proposing, *inter alia*, that 'A' status NHRIs should be accorded a distinct section in the 'other stakeholders' report, and should be allowed to speak after the SUR during UPR Working Group meetings.[27] Russia and others objected, arguing that the 'level of NGO and NHRI participation are optimal and must not change.'

• **List of speakers** - there was broad agreement during the review that the situation with the list of speakers was untenable, that a durable solution must be found, and that any solution must be premised on the principle that every country wishing to participate in a UPR Working Group meeting should be able to do so. A majority of States favoured extending the duration of Working Group meetings by one hour. If, even after such an extension, States were still not able to speak, then those States

could submit their statements in writing. These would then be included in the Working Group outcome report.[28] Another option, proposed by Canada and the UK, was to divide available time equally between all States on the list of speakers.

• **Number of recommendations** – a further problem encountered in the early years of the UPR was 'recommendation proliferation': the number of recommendations per SUR grew from an average of 25 in 2007 to 2,434 in 2011. This in turn raised concerns about whether States could be reasonably expected to process and implement so many recommendations. In response, some delegations suggested limiting each reviewing State to 3-5 recommendations,[29] or setting an overall limit per SUR.

• **Quality of recommendations** - another focus of the UPR's early years was the importance of the quality of recommendations. During the 2011 review, a number of States suggested developing criteria to ensure that recommendations would be 'operational and feasible,'[30] 'action-oriented,'[31] and 'realistic and implementable.'[32]

• **Acceptance of recommendations** - states broadly agreed that each SUR should clearly state whether or not it accepted each recommendation received, and that their positions should be reflected in addendums to each Working Group outcome report. Beyond this consensus view, France argued that 'the possibility to note recommendations'[33] (a *de facto* halfway house between acceptance and rejection) should be 'eliminated.'

• **Clustering of recommendations** - States considered a number of ways to make the increasing number of recommendations generated by the UPR 'more manageable for the State under review.'[34] The main proposal in this regard was to 'thematically cluster recommendations to ease follow-up.'[35] This 'clustering' would be overseen 'by the troika, with necessary support from the secretariat and with the full involvement of the SUR.'[36] Such a streamlining exercise would help avoid confusing overlap and repetition, and make the final outcome of individual reviews 'more concise, clear and manageable' for the State concerned.[37]

• **Role of the troika** - there was considerable discussion in the open-ended intergovernmental Working Group about the role of the troika. States were divided between those (e.g. Cuba, India, Iran, Russia, Singapore) that wished to maintain the existing (limited) role of the troika, and those (e.g. Maldives, Mexico, Switzerland) that supported a more expansive role. The former were concerned that a more 'substantive'[38] mandate might undermine the peer review nature of the UPR or lead to the 'distortion or manipulation of recommendations.'[39] Other States argued that moves to 'better structure, synthesise,'[40] 'streamline and cluster recommendations into a more manageable, transparent and implementable series of actions'[41] would

necessarily require a more active role for the troika. Some (e.g. Belgium on behalf of the EU) went further, proposing that 'each troika should nominate a rapporteur to coordinate its [expanded] work,'[42] which might include, for example, orally introducing the two compilation reports at the beginning of meetings of the UPR Working Group. This suggestion echoed Western proposals from 2006 about the involvement of independent experts in the UPR, proposals that continued to receive short shrift from Russia and various developing countries (e.g. Philippines), which noted that 'involving independent experts in the UPR process is not welcome.'[43]

• **Time between review and final adoption of report** - in order to give more time for the troika, the SUR, and OHCHR to accurately cluster and streamline recommendations before the preliminary adoption of the Working Group report, some States (e.g. Morocco, Norway) proposed expanding the time between a given State's review in the Working Group and the adoption of the outcome report from 48 hours to 72 hours.

• **Adoption of UPR outcomes by the Council** - the IBP makes clear that the final outcome of each individual UPR must be adopted by the plenary of the Council.[44] However, in practice, formal UPR adoption turned out to be a shallow exercise, with the SUR, a few friendly States, and NGOs commenting on a process that had, *de facto*, already concluded. What is more, these largely formulaic meetings were taking up a large amount of the Council's regular session time. This led some States to put forward creative ideas and solutions, including the convening of a stand-alone 'UPR plenary session' dedicated to the adoption of UPR outcomes. Such sessions could be convened immediately after UPR Working Group sessions and would consider the outcomes of the preceding Working Group session.[45] Variations on this proposal received wide support from, *inter alia*, Egypt (on behalf of NAM), Israel, Italy, Republic of Korea, Mauritius, Morocco, Saudi Arabia, Switzerland and the UK. Egypt on behalf of NAM proposed that such 'UPR plenaries' could also feature general debates under item 6, thereby freeing up time in the agenda of the Council's three regular sessions.

• **International cooperation and support** - various developing countries including Brazil, Cuba, Mauritius, Mexico and UAE called for improvements in the way the UN delivers technical assistance and capacity-building support to help States implement UPR recommendations. Brazil and Mexico proposed that OHCHR act as a 'clearing house'[46] or 'focal point'[47] for the identification of needs and the mobilisation of international support. Costa Rica, on behalf of GRULAC, called for 'new mechanisms or strategies for capacity-building' to be created. Japan suggested creating a new type of forum, either in Geneva or at the regional level, where developing countries could request capacity-building and technical support and where such

requests could be matched to offers by development partners.

• **Implementation** - there were a number of progressive ideas during the intergovernmental Working Group about how to strengthen the domestic implementation of UPR recommendations. These ideas focused on the role of UN Resident Coordinators and Country Teams as a 'facilitation mechanism'[48] or a 'central support point'[49] for implementation. The UK also called on UN Country Teams to play a more clearly defined role in follow-up and during second cycle reviews. There was also discussion about the optimal and necessary role of parliaments in implementing UPR recommendations. Austria and the UK called for all States to hold 'national consultations' on UPR outcome reports, in order to ensure all stakeholders were involved in implementation.

• **National implementation plans** – Belgium, on behalf of the EU, said that States should be called upon to develop national implementation plans covering all accepted recommendations, and that these should be submitted to the Council one year after the relevant review.

Meeting between diplomats and civil society ahead of review of DPRK, May 2014

• **Mid-term reporting** - the idea of mid-term reporting on implementation emerged as a main topic of debate in 2010-2011. States from all regions, including Brazil, Chile, Japan, Republic of Korea, Morocco, Qatar, and the UK, proposed that States be invited to update the Council on progress and challenges with implementation, two years after their review. Others (e.g. Algeria, China, Iran, Thailand) agreed in principle, but emphasised that this must be a voluntary exercise. The Maldives called for mid-term reports to be made available on a dedicated page on the OHCHR website.

• **Follow-up** - as previously noted, a number of State proposals in 2010-2011 called for national reports and the two compilation reports to focus on the implementation of recommendations from previous cycles. South Africa went further, suggesting that a 'Standard Uniform Questionnaire'[50] be elaborated and addressed to all States to assess compliance with accepted recommendations and wider legal obligations. Others suggested a role for an expanded troika in that regard,[51] or for independent experts[52] or 'regional special rapporteurs.'[53] Colombia and Thailand suggested that item 6 on the Council's agenda be used as a forum for States to update the Council on progress, and to request support as appropriate. Canada, Norway, Poland and Peru highlighted the important role of NHRIs in providing independent information on domestic implementation, and called for the involvement of such institutions to be expanded during the second and subsequent cycles.

• **UPR trust funds** - Egypt (on behalf of NAM) and Morocco called for the two UPR trust funds to be strengthened.

On 25th March 2011, the Council adopted resolution 16/21, presenting the outcome of the five-year review. The overall package contained in resolution 16/21 was notably unambitious, though the Council did agree on some important changes to the UPR. The most significant of these were as follows:

• The Council reaffirmed the **basis, principles and objectives** of the review as set forth in the IBP.

• The **periodicity of the review cycle** was lengthened to four and a half years, in effect splitting the difference between the Western (4 year cycles) and NAM/OIC (5 year cycles) positions, (a perfect example of UN compromise). This meant that, in the future, 42 States would be considered per year during three sessions of the UPR Working Group.

• The **second and subsequent cycles** of the review would 'focus on, *inter alia*, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review.'[54]

• The Council adopted decision 6/102 by which it decided to adjust the **general guidelines** for UPR reports, to enhance the focus on implementation. In addition to calling for a change in emphasis in national reporting, the Council encouraged 'other relevant stakeholders to include in their contributions information on the follow-up to the preceding review.' Moreover, the Council agreed that the report compiling information from 'other relevant stakeholders' should contain 'a separate section for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles.'

• The Council decided against expanding the **role of the troika** as set out in the IBP and Presidential Statement 8/1.

• The lengthening of the review cycle from four to four-and-a-half years, and the corresponding reduction in the number of States to be reviewed during each session of the Working Group (from 16 to 14), allowed the Council to **extend the duration of Working Group meetings** 'from the present three hours' (the precise modalities were to be agreed at the Council's 17th session). This would help alleviate the problem of the list of speakers. New modalities for establishing the list of speakers were set out in the appendix to resolution 16/21. This essentially maintained the practice of affording three minutes to member States of the Council and two minutes to observer States. Where the number of speakers would make this impossible, all States would be afforded two minutes. If there was still insufficient time, then the 'speaking time will be divided among all delegations inscribed so as to enable each and every speaker to take the floor.'

UPR Working Group, May 2015

• The Council failed to agree on any of the proposals to reorganise formal UPR **adoptions in the Council's plenary**. Modalities for adoption would therefore remain in line with PRST 8/1 and 9/2. States did, however, agree that NHRIs would now be 'entitled to intervene immediately after the State under review during the adoption of the outcome of the review by the Council plenary.'

• The Council gave gentle encouragement to **thematic clustering** of recommendations 'with the full involvement and consent of the State under review and the States that made the recommendations.'

• Resolution 16/21 made clear that all States under review 'should clearly communicate to the Council, in a written format preferably prior to the Council plenary, its **positions on all received recommendations**.'

• Regarding **implementation and follow-up**, the Council encouraged States 'to conduct broad consultations with all relevant stakeholders,' and to provide the Council, on a voluntary basis, with a midterm update on the implementation of accepted recommendations.

• Importantly, States agreed that **UN Resident Coordinators and Country Teams**, where requested to do so by the State concerned, should play a more prominent role in the implementation of recommendations and in following up on review outcomes. Resolution 16/21 also stated that OHCHR may act as a '**clearing house**' for international assistance, and encouraged States to develop '**national implementation plans**.'

• The Council agreed to strengthen and operationalize both **UPR trust funds**.

During its 17th session in June 2011 and as foreseen in resolution 16/21, the Council adopted decision 17/119. The decision dealt with the order of reviews for the second cycle (which would stay the same as the first cycle), amendments to the general guidelines for preparation of UPR reports, the duration of reviews in the Working Group, the modalities for setting the list of speakers, and the strengthening of the two UPR trust funds.

Regarding the general guidelines for reporting, the Council essentially maintained the points set out in decision 6/102 (September 2007). While decision 17/119 does stipulate that the second and subsequent cycles should focus on the implementation of accepted recommendations from previous cycles (as well as new developments in the SUR), the only concrete guidance given to States in this regard was a vague suggestion that future national reports should include a 'presentation by the State concerned of the follow-up to the previous review' (which was anyway included in the 2007 guidelines), and should identify 'achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations,' (again, very similar language was already included in the earlier guidelines).

Decision 17/119 also elaborated on the provision, contained in resolution 16/21, which stipulated that the duration of Working Group meetings would be extended from three hours to three-and-a-half hours. On the related question of speaking arrangements for reviewing States, decision 17/119 essentially repeated the modalities agreed in the appendix to resolution 16/21.

PART II

LESSONS LEARNT FROM THE UPR'S FIRST 10 YEARS

The sum total of these innovations and reforms is a mechanism that today has assumed a central role in the international human rights promotion system. Almost ten years after diplomats first considered its genesis, the UPR is widely seen (in Geneva but also, importantly, far beyond the walls of the *Palais des Nations*) as a success story.

Key to that success is the mechanism's universality – the notion that it covers, potentially, every human rights concern in every country, as well as its peer review and cooperative character.

For the first time in the history of the UN, every State now has access to a forum in which it can consider and discuss the human rights performance of every other State. What is more, they are *expected* to provide constructive criticism and recommendations for improvement. For most UN Member States, especially developing countries from Africa and Asia, such a practice would have been unthinkable only a decade ago. Before then, a central tenet of South-South multilateral diplomacy was the avoidance of any public comment that might be perceived as critical of the human rights situation of another sovereign State. In another innovation, the UPR has provided space for Western countries, long accustomed to publically addressing human rights situations in the global South, to also constructively criticise friends and allies from the Western world.

Such innovations matter because, especially on questions of human rights, a basic (if sometimes inconvenient) truth of international relations is that States tend to listen to other States. While critiques delivered by civil society, OHCHR and UN independent experts (e.g. Special Procedures mandate-holders or Treaty Body members) are important, a UPR recommendation delivered by one State to another, especially where the receiving State *accepts* that implicit criticism and counsel, is enormously powerful. This in turn means recommendations are more likely to be followed-up and implemented, and therefore that the UPR mechanism is more likely to generate real change and improvements on the ground. As an illustration of this, a

> **...is this new 'pearl' of the international human rights system beginning to lose its lustre?...**

2014 analysis conducted by *UPR Info*, a Geneva-based NGO, suggested that around 55% of accepted UPR recommendations delivered by States during the first cycle had triggered some form of implementing action by mid-term (i.e. within two-and-a-half years of the relevant review).[55]

Notwithstanding these strengths, as the UPR mechanism nears the end of its second cycle (which will conclude in 2016), questions are being asked about whether it can maintain its success in the medium- to long-term. Or is this new 'pearl'[56] of the international human rights system beginning to lose its lustre?

Interviews conducted for this report show that such doubts, where they exist, are derived from a sense among diplomats and NGOs that political interest in the UPR is beginning to wane. One measure of this is the widely held belief that first cycle sessions of the UPR Working Group were often attended by ambassadors, while second-cycle sessions have seen the room populated by lower-level diplomats or even interns.

To some extent such trends are to be expected. The UPR is no longer a new and innovative mechanism; for many diplomats, the novelty of a platform to question the human rights record of, say, the US, has worn off. However, these doubts also reflect genuine concerns about whether the UPR is in danger of losing its way. During its first cycle, the *raison d'etre* of the UPR was clear: to assess the human rights situation in each UN member State, identify challenges and shortfalls, and propose steps to overcome those challenges (i.e. recommendations). The second cycle was designed to build on the first by reviewing and reinforcing the implementation of those recommendations. What, then, should the third cycle do? What would be its added value? Should it provide a fresh situation analysis of each State, review levels of implementation of earlier recommendations, or deliver a mixture of the two? Or should it work towards something entirely different?

Moreover, whereas the cooperative, State-to-State nature of the UPR may be a strength when it comes to delivering, accepting and acting on recommendations, it is important to ask whether the predominantly inter-State character of the UPR is an optimal means of objectively measuring and reporting on progress with implementation.

Linked with such questions is the issue of credibility. If the UPR becomes a stage for States to periodically present a self-appraisal of their achievements in implementing earlier (accepted) recommendations, and for reviewing States to repeat the same recommendations until they are satisfied that progress has been made, would the entire process not then move 'from ritualism to ritual',[57] and lose all credibility?

This explains why it is important for the international community to give careful consideration to the objectives and modalities of the UPR third cycle. Should States maintain the *status quo*, or

are some tweaks desirable or even necessary? From a political standpoint: should international policymakers stick or twist?

The following chapters present an analysis of lessons learnt from the first two cycles of the UPR. What has been the reality of the UPR since 2006? What has worked, what hasn't, and what impact has the mechanism enjoyed on the ground?
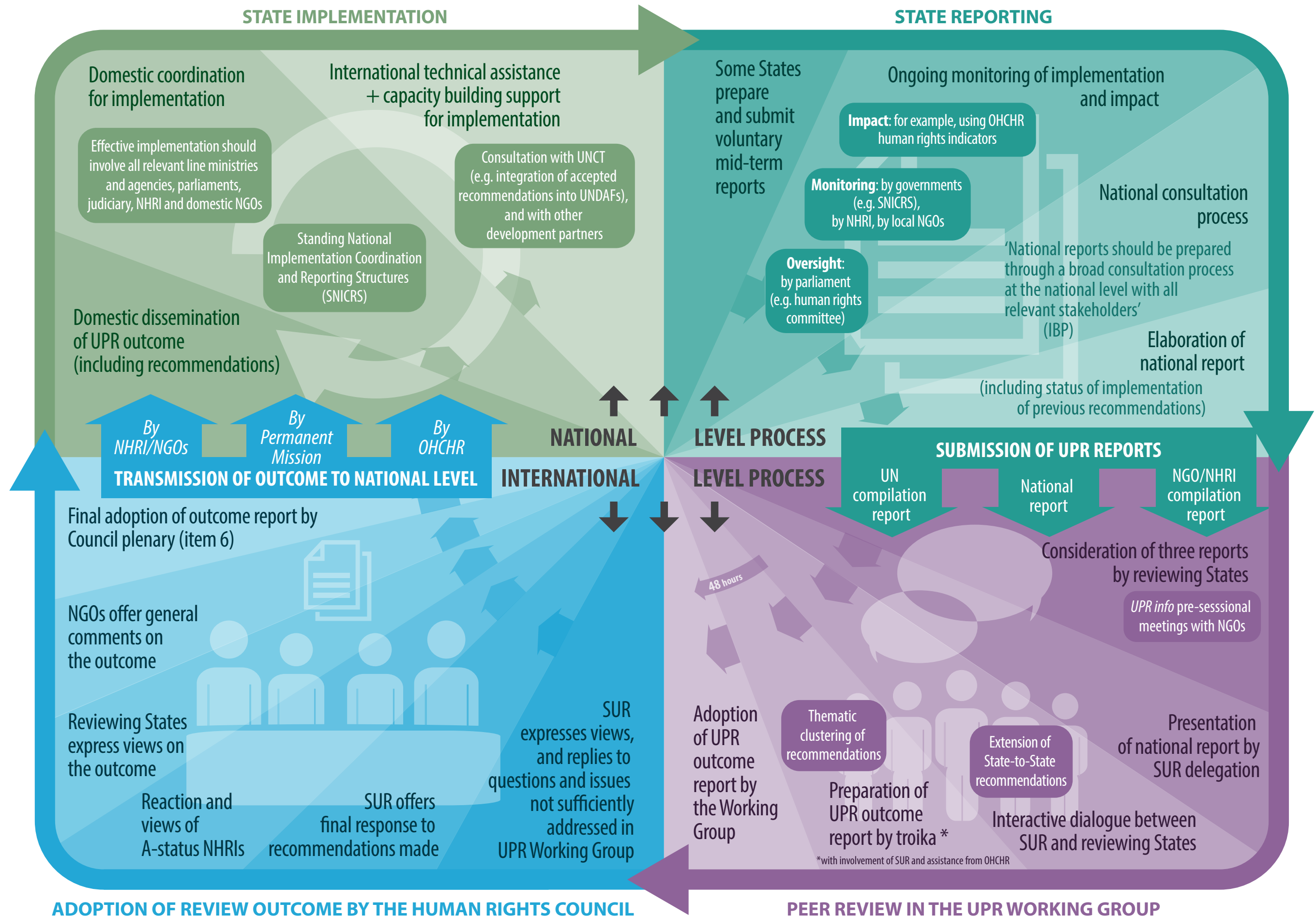
This analysis is broken down according to the stages of the 'UPR cycle' (see Figure 1):

- State reporting.
- Peer review in the UPR Working Group.
- Adoption of the review outcome by the full Human Rights Council.
- State implementation.

Review of the United States of America in the UPR Working Group, May 2015

STATE IMPLEMENTATION

STATE REPORTING

Domestic coordination for implementation

Effective implementation should involve all relevant line ministries and agencies, parliaments, judiciary, NHRI and domestic NGOs

International technical assistance + capacity building support for implementation

Consultation with UNCT (e.g. integration of accepted recommendations into UNDAFs), and with other development partners

Standing National Implementation Coordination and Reporting Structures (SNICRS)

Domestic dissemination of UPR outcome (including recommendations)

Some States prepare and submit voluntary mid-term reports

Ongoing monitoring of implementation and impact

Impact: for example, using OHCHR human rights indicators

Monitoring: by governments (e.g. SNICRS), by NHRI, by local NGOs

Oversight: by parliament (e.g. human rights committee)

National consultation process

'National reports should be prepared through a broad consultation process at the national level with all relevant stakeholders' (IBP)

Elaboration of national report

(including status of implementation of previous recommendations)

By NHRI/NGOs *By Permanent Mission* *By OHCHR*

NATIONAL **LEVEL PROCESS**

TRANSMISSION OF OUTCOME TO NATIONAL LEVEL **INTERNATIONAL** **LEVEL PROCESS**

SUBMISSION OF UPR REPORTS

UN compilation report

National report

NGO/NHRI compilation report

Final adoption of outcome report by Council plenary (item 6)

NGOs offer general comments on the outcome

Reviewing States express views on the outcome

Reaction and views of A-status NHRIs

SUR offers final response to recommendations made

SUR expresses views, and replies to questions and issues not sufficiently addressed in UPR Working Group

48 hours

Adoption of UPR outcome report by the Working Group

Thematic clustering of recommendations

Preparation of UPR outcome report by troika *

Extension of State-to-State recommendations

Interactive dialogue between SUR and reviewing States

*with involvement of SUR and assistance from OHCHR

Consideration of three reports by reviewing States

UPR info pre-sesssional meetings with NGOs

Presentation of national report by SUR delegation

ADOPTION OF REVIEW OUTCOME BY THE HUMAN RIGHTS COUNCIL

PEER REVIEW IN THE UPR WORKING GROUP

1   STATE REPORTING

Because the UPR is State-driven and does not involve independent experts, it is extremely reliant on the quality ('objectivity') and accuracy ('reliability')[58] of information fed into the mechanism by States themselves (i.e. the periodic national report), and by NGOs and different parts of the UN system.

For the UPR to work effectively, each national report must therefore provide a reliable,[59] comprehensive and objective[60] snapshot of the human rights situation in the country concerned, as well as (from the second cycle onwards) the degree to which that State has implemented accepted recommendations from previous cycles. The risk in a State-led process is that governments will present one-sided reports, focusing on achievements while ignoring shortfalls or challenges. Because national reports are the main (though, fortunately, not the only) basis for reviews by the UPR Working Group, skewed and subjective reports can undermine the integrity of the entire peer review process.

Conscious of this risk, in 2006 State delegations included a provision in the Council's IBP specifying that national reports should be prepared 'through a broad consultation process at the national level with all relevant stakeholders.'[61] However, ten years on, URG's analysis raises serious questions about the degree to which this is happening in practice.[62]

NATIONAL CONSULTATIONS

To understand the extent to which States have set up truly inclusive national consultations, URG analysed 74 first-cycle and second-cycle national reports (which contain varying amounts of information about the nature of national consultations processes) and conducted over fifty interviews with State delegates and NGOs. That analysis yielded three interlinked conclusions.

First, the most important determinant of the quality of national reports is the quality, depth and inclusiveness of the domestic consultation processes established to inform those reports. Only reports that were developed through a broad consultation process (and which consequently included information on that process) were found to be in any way 'self-critical' – i.e. reflective of shortfalls or difficulties, as well as achievements.

Second, based on URG's analysis of the 74 first- and second-cycle reports, it is apparent that relatively few States – perhaps as few as 20 – have put in place truly inclusive national consultation processes. The importance of this point cannot be overstated. If a State, in preparing its national report, seeks the views of all relevant national stakeholders and properly reflects those views in the final report, then its peers (other States, represented

in the UPR Working Group) have a reliable and realistic basis for assessing that country's human rights situation and for making useful recommendations for improvement. If a national report is drafted by a country's foreign ministry, with little or no consultation inside or outside of government, then the UPR risks becoming little more than an intergovernmental 'beauty contest,' detached from reality and incapable of delivering tangible improvements on the ground.

URG's analysis of national reports suggests that where inclusive national processes have been established, they can take many different forms. For example, some governments (such as Ecuador, Finland and Germany) prepare a draft national report and then use that as a basis for wider national consultations. Some (e.g. Jordan) initiate open consultations in order to gather information to include in the draft report. Others (e.g. Brazil) use a combination of the two (i.e. consultations feed into a draft report, which then forms the basis of further consultations).

Notwithstanding these differences, inclusive national processes tend to share a number of common characteristics:

• They are based on the creation of permanent or semi-permanent national coordination and reporting structures for the UPR or, more widely, for all international/regional human rights mechanisms;

• They proactively engage all relevant parts of the Executive branch of government, including all relevant line ministries, the police, the prosecutor's office, penitentiary services, etc.;

• They engage the other main branches of government, namely the legislature (parliament) and the judiciary;

• They are open to and proactively seek input from domestic civil society, NGOs and the country's NHRI.

• They include outreach activities at national, regional and local levels.

• They utilise nationwide media campaigns and (in some cases) online platforms to raise awareness about the UPR and to seek input from civil society.

In many cases, these 'good practice' national processes have evolved into permanent or semi-permanent reporting *and* implementing structures. In other words, once a national report is finished and submitted to the Council, the structure remains in place, ready to receive and act upon the eventual UPR outcome report (with recommendations). This very positive development reflects the ideal *cyclical* nature of UPR and is especially important in the context of the second and subsequent cycles, during which States are expected to report on implementation of recommendations from earlier cycles. (For more information on national implementation and reporting, see section 4.)

2   PEER REVIEW IN THE UPR WORKING GROUP

The principal forum for UPR reviews - the space wherein each UN Member State is obliged to undergo a review, by its peers, of its domestic human rights record - is the UPR Working Group.

Although the Working Group is, in principle, subsidiary to the Council plenary (where the final UPR outcome is adopted), to a casual observer it is difficult to see much difference between the two. Both have the same participants: like the full Council, the Working Group is chaired by the President of the Council and composed of the 47 members of the Council plus all observer States.[63] Both take place in Room XX of the *Palais des Nations*, and both have the same seating arrangements. The UPR Working Group's principal practical differences from regular Council plenary sessions are the presence of the SUR delegation on the front podium, and the total absence of civil society from the list of speakers.[64]

Working Group meetings last three-and-a-half hours, and begin with the presentation by the SUR of its national report. During this initial presentation, the SUR is also expected to respond to any advance issues or questions submitted by reviewing States and collated by the troika. According to paragraph 21 of the IBP, these advance issues and questions are designed to help the SUR to 'facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.'

On the basis of the opening presentation, the UN system report, and the 'other stakeholders' (NGOs and NHRIs) report, reviewing States then take the floor to ask questions, make comments and offer recommendations. At various points during this interactive dialogue (i.e. after a certain number of statements by reviewing States), the Chair gives the floor back to the SUR to respond to points raised. At the end of the meeting (i.e. after the exhaustion of the list of speakers), the SUR is again given the floor to provide concluding remarks.

The troika, with support from the OHCHR, then prepares a report of the meeting, including a complete listing of all recommendations made. A few days later, the Working Group adopts this report.

A review of the practical operation of this process over the past ten years reveals a number of lessons that might be learnt ahead of the start of the third cycle in 2017.

First, it is important to recognise that the UPR has fulfilled its primary mandate: to provide a cooperative mechanism for the 'periodic review...of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment.'[65] By the end

UPR Info Pre-Session with NGOs, October 2015

of the second cycle in November 2016, every one of the 193 Member States of the UN will have prepared and presented at least one national report on its human rights situation; received comment, constructive criticism, and recommendations from its peers; and accepted many of those recommendations as a basis for domestic reform. In the context of promoting the universal enjoyment of human rights, that is a truly remarkable achievement.

However, the first two cycles have also revealed a number of problems that should be addressed in order to build a mechanism that will remain credible, respected and effective in the long-term. These problems can be broadly grouped under three headings: the documentary basis of review; quantitative and qualitative issues with statements and recommendations during the interactive dialogues; and issues around the inclusivity of Working Group meetings.

BASIS OF REVIEW

As recognised by the General Assembly in resolution 60/251, for the UPR to be effective, individual reviews should be based on 'objective and reliable information.' In 2006, the Council clarified that such objective and reliable information would be provided by a national report presented by the State concerned, a UN system compilation report, and a civil society 'shadow report' compiling information from NGOs and NHRIs.

As noted in section 1, inadequate national consultation processes mean that, in a majority of cases, **national reports** presented by States fail to provide an objective and reliable picture of that

country's domestic human rights situation. This problem was already a significant one during the first cycle, but became even more important during the second cycle when, in addition to presenting a self-assessment critique of their evolving human rights situation, States have been expected to 'focus on, *inter alia*, the implementation of the accepted recommendations [from previous cycles].'[66] This requirement was further (though insufficiently) elaborated in the 'new' general guidelines for reporting contained in decision 17/119, which made clear that national reports should include a 'presentation by the State concerned of the follow-up to the previous review' and should identify 'achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations.'

According to URG's analysis of 74 second cycle national reports, almost all States have – at least in terms of the structure of their second cycle reports – largely followed this guidance, i.e. they have focused their reports on implementation of first cycle recommendations. Some (e.g. South Africa) did so by including a list, in annex, of all accepted recommendations, and a status update on the implementation of each. Others (e.g. Rwanda, Angola, China, Tunisia, Honduras, Lebanon) organised their national reports in terms of separate rights and integrated information on the implementation of recommendations under the relevant sections, or thematically clustered recommendations and provided updates on the realisation of each cluster (e.g. Finland, Cambodia, Italy, Canada, Greece).

However, the fact that the structure and content of national reports have evolved to include assessments of domestic implementation does not mean that these assessments are necessarily *objective* or *reliable*. Indeed, the fact that so few countries base their national reports on inclusive national processes of consultation suggests that information on levels of implementation should be greeted with caution.

Nor does the generally positive picture with regard to the emphasis of State reports during the second cycle mean that further improvements are not necessary. For example, as well as providing broad updates on progress with the implementation of all accepted recommendations, it would be desirable for States to provide more detailed information on progress *vis-à-vis* the implementation of recommendations related to the most urgent human rights challenges it faces, perhaps on the basis of an advanced list of issues issued by the troika prior to reporting.[67] These core issues could then be the focus of the State's presentation before the UPR Working Group.

The apparent exclusion of civil society, NHRIs and others domestic human rights actors from many national consultation

processes makes the other two basic UPR reports – the **'other stakeholders' report** (e.g. NGOs and NHRIs) and the UN system report (which contains information, *inter alia*, from independent international human rights mechanisms) – particularly important. Normally, these reports should present an alternative assessment, independent of State analyses, of the developing human rights situation in the country, and the level of implementation of previous UPR recommendations.

Unfortunately, URG's analysis of the second cycle suggests that these crucial 'shadow' reports are not fulfilling that function.

Firstly, there is a lack of transparency and predictability as to how OHCHR selects information to be included in the UN system compilation. URG's analysis shows, for example, that many Special Procedures observations and recommendations following country visits are not included in relevant UN system reports.[68] This in turn raises questions as to how OHCHR, when faced with strict word limits for the reports, selects and prioritises information. State concern over this issue perhaps explains NAM and OIC proposals during the 2010-2011 review calling on the Council to 'develop further guidelines, specific to the second cycle, for the preparation by OHCHR of the two documents... mandated in paragraphs 12 (b) and 12 (c) of the IB package.'[69]

> ...finding ways to bring the compilation reports into line with the objectives of the UPR (post-first cycle) should be a priority for the third cycle...

Secondly, UN system reports (second-cycle) do not, as a rule, focus on the implementation of first cycle (accepted) recommendations. The reasons for this are clear: such reports are a compilation of observations, conclusions and recommendations from Special Procedures mandates, Treaty Bodies, and other relevant parts of the UN system. Thus, since those mechanisms and bodies tend not to focus on the implementation of relevant UPR recommendations, compilation reports do not do so either.

URG's analysis of second cycle 'other relevant stakeholders' reports likewise suggests that NGOs and NHRIs are failing to provide focused information on levels of implementation, despite the fact that the outcome of the Council's five-year review encouraged other relevant stakeholders 'to include in their contributions information on the follow-up to the preceding review.'[70] Given the crucial role played by civil society and NHRIs in promoting and monitoring the implementation of UN norms and recommendations, this represents a significant weakness of the UPR. It is unclear why NGOs and NHRIs have not adapted to the second cycle – perhaps a lack of awareness or a lack of capacity. Whatever the reasons, it is clear that finding ways to bring the UN system and 'other stakeholder' reports more fully into line with the objectives of the UPR (post-first cycle) should be a priority for the third cycle.

Remigiusz A. Henczel (face camera) Permanent Representative of Poland to the United Nations Office at Geneva and President Human Rights Council speaks with delegates during the Universal Periodic Review (UPR) of Israel.

PRESENTATION OF STATE REPORT, AND INTERACTIVE DIALOGUE

After a few words of welcome by the Chair of the UPR Working Group/President of the Council, all UPR Working Group meetings begin with a **presentation** by the SUR of its national report. This also allows the SUR, in principle, to respond to any advance questions that may have been tabled by reviewing States (via the troika).

The national report is generally presented by the SUR's head of delegation: a high-ranking government representative, often a minister. The level or rank of the SUR delegation, together with the range of line ministries represented, has become a useful informal indicator of the SUR's commitment to and engagement with the UPR process. Many regular observers of the Council believe that there has been a dip in levels of political participation between the first and second cycles. However, this impression appears to be unfounded. A URG analysis of 170 SUR delegations from the first and second cycles of the UPR shows that in the first cycle

> ...the impression that levels of political participation dropped between first- and second-cycles appears to be unfounded...
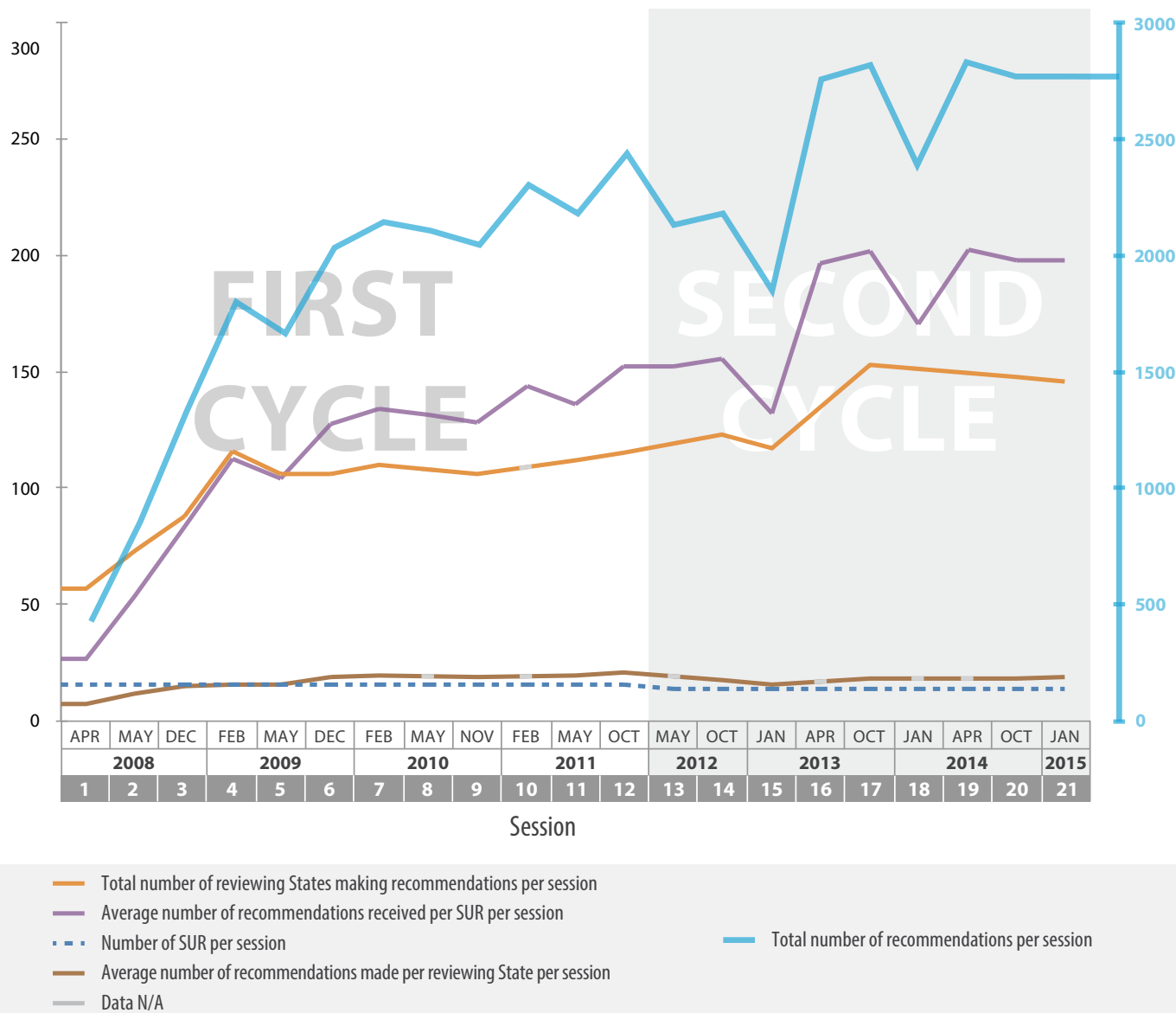
54% were at ministerial rank or above, and 46% were below (e.g. ambassador); while in the second cycle 64% were at ministerial rank or above, and 36% were below.

During the first two cycles, the presentation of the national report has been precisely that: the rather stale presentation of a general overview of the contents of the national report. A few advance questions notwithstanding, the SUR's international partners have no means of requesting the delegation to focus on particular issues or themes (that might, for example, be particularly important human rights challenges for the country), or to encourage the delegation to report on the implementation of certain (particularly pertinent) recommendations from the first cycle. This is an important missed opportunity.

After the presentation by the SUR, other UN member States take turns making individual statements, offering (in theory) comments, questions and recommendations. At various points throughout the session, the Chair allows the SUR delegation to respond to points made.

Legend for Figure 2:
- Total number of reviewing States making recommendations per session
- Average number of recommendations received per SUR per session
- Number of SUR per session
- Average number of recommendations made per reviewing State per session
- Data N/A
- Total number of recommendations per session

As noted in Part I, one of the main challenges that has emerged during the early years of the UPR was the issue of **time allocations for reviewing States** wishing to speak during Working Group reviews. The relatively short time available for each review (3 hours) meant that only around 30% of the UN membership – 40-60 delegations – had the opportunity to speak during interactive dialogues, leading to long queues. The five-year review outcome put in place a solution, which, in combination with an extension of the duration of Working Group sessions from 3 to 3.5 hours, has generally held up well. However, the current arrangements have not solved the problem of inadequate time available to reviewing States (around 2-3 minutes each). Nor has the overall solution arrived at in 2011 freed up enough space for the SUR to respond in a meaningful way to all comments and questions. For a supposedly cooperative peer review mechanism based on an interactive dialogue, these severe time constraints are clearly problematic, turning what should be a dynamic space for peer-to-peer debate and exchange into a stale forum of rushed and often unconnected monologues.

An important consequence of the limited speaking time available to reviewing States is that the content of their statements has evolved considerably: shifting from general reflections about the achievements and challenges faced by the SUR (often accompanied by generous diplomatic flattery), towards a more robust exchange focused on identifying principle challenges and shortcomings, and offering recommendations. In particular, States and other stakeholders have come to realise that *recommendations are the principal currency of the UPR.*

With that realisation came the tendency to minimise comment and questions (as well as diplomatic niceties), and pack interactive dialogue statements with recommendations. This partly explains the proliferation of recommendations between the first and second cycles: the total number of recommendations received by SURs jumped from 430 at the first UPR Working Group session to 1804 by the fourth session.[71] (See below: 'State-to-State recommendation: the principal currency of the UPR.')

As a result, interactive debate has become less and less interactive. Far from being a forum for debate, scrutiny, questions and counsel between peers, the UPR Working Group has become a formulaic exercise consisting of a broad (and, due to time constraints, rather superficial) presentation of the national report by the SUR; the rapid, almost metronomic, delivery of recommendations by reviewing States; and a valedictory speech by the SUR to mark the end of the session. Newcomers to Geneva, including a number of ambassadors speaking informally to the authors of this report, are often startled at how 'dry and un-engaging' the exercise is.[72]

In addition to the limited time for interaction between States, a further reason for the 'dryness' of Working Group meetings is the lack of space on the agenda for NHRIs and NGOs to present 'shadow reports' or dissenting views. In the absence of external, independent voices, UPR exchanges have largely become exercises in preaching to the converted – a problem brought into even sharper relief by the broad failure of 'other stakeholders' to use UPR reports to provide concise and accessible information on levels of implementation.
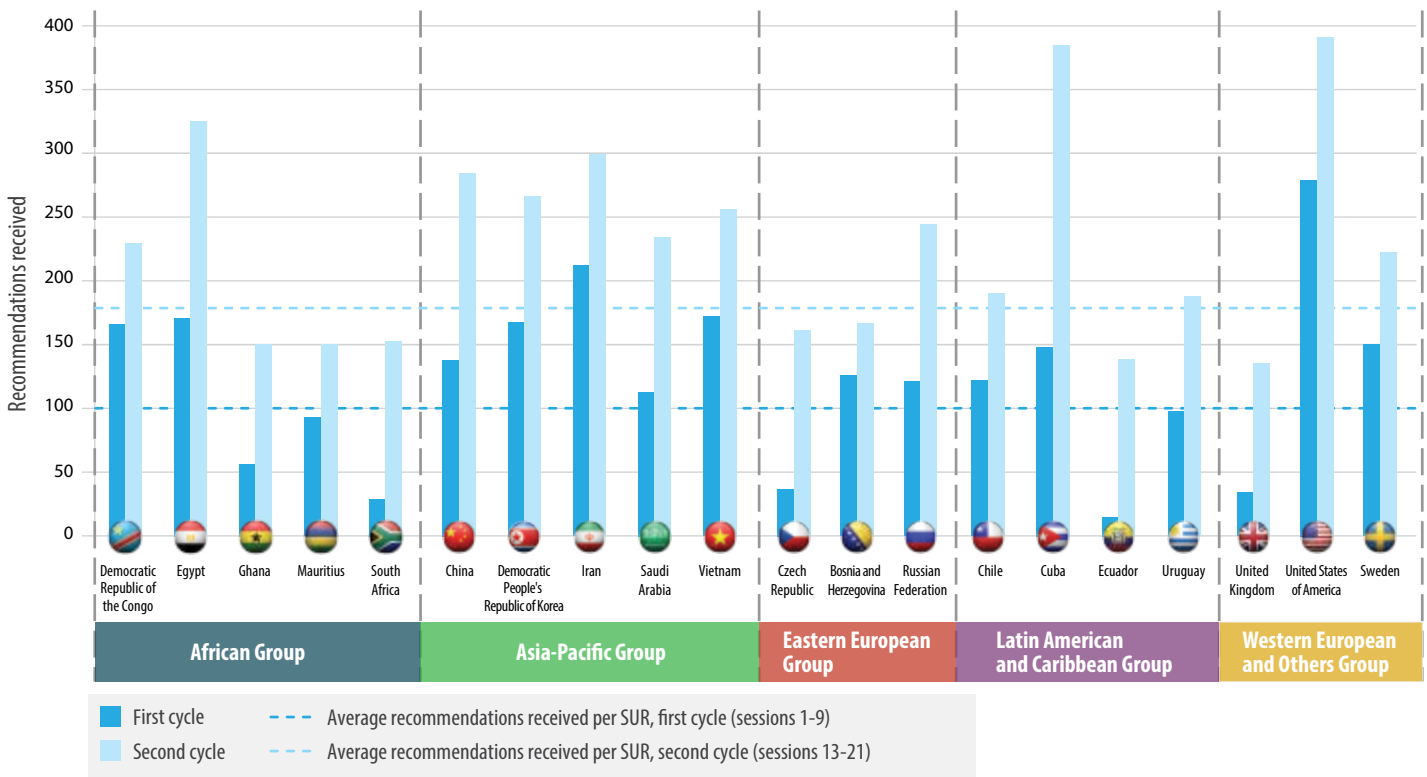
Unless these issues are fixed ahead of the third cycle, there is a genuine risk that the UPR will lose credibility.

STATE-TO-STATE RECOMMENDATION: THE PRINCIPAL CURRENCY OF THE UPR

As noted above, it did not take long after the establishment of the new process for States and other stakeholders to realise that recommendations were the principal currency of the UPR, with their quantity and quality determining the overall value of the mechanism. One sign of this realisation has been the explosion in the number of recommendations made since 2006 (see below).

In terms of **quantity**, one of the defining characteristics of the first ten years of the UPR has been the rapid growth in the number of recommendations given to the SUR (see Figure 2). The first session of the UPR Working Group (held in April 2008) saw each SUR receive, on average, 27 recommendations. By the fourth session (February 2009), the average had risen to 113, and by the tenth (February 2011) the average was 144. Moving into the second cycle, the fourteenth session of the Working Group (October 2012) saw an average of 156 recommendations per SUR, while the seventeenth (October 2013) saw an average of over 200. Based on data from the nineteenth, twentieth and twenty-first sessions in 2014 and 2015, the average number of recommendations seems to have plateaued at around 200 per SUR.

Legend for Figure 3:
- First cycle
- Second cycle
- Average recommendations received per SUR, first cycle (sessions 1-9)
- Average recommendations received per SUR, second cycle (sessions 13-21)

These patterns are well illustrated by the experiences of selected States between the first and second cycles (see Figure 3).

For example, Ecuador (reviewed early in the first cycle) received 12 recommendations in 2008, but by 2012 that number had jumped to 139. Cuba (148-386), Vietnam (172-256), Egypt (171-231), Iran (212-299), and Russia (121-244), amongst many others, also saw significant jumps in the number of recommendations. The US, which received the highest number of recommendaitions of all States during both the first and second cycles,[73] received 280 recommendations during its first-cycle review – already a huge amount – and 385 recommendations in its second-cycle review.[74]

URG research suggests that the main explanation for this growth is the increased popularity and inclusivity of the UPR between 2008 and 2016 (measured by the number of reviewing States participating in UPR Working Group sessions) – more than any sustained increase in the number of recommendations issued per reviewing State.

Although the early years of the UPR (2008-2009) saw significant jumps in terms of the average number of recommendations extended per reviewing State (e.g. from 7.5 during the first session, to 15 at the third session, and 19 at the sixth session), that average subsequently levelled off and even slightly decreased thereafter.[75] This may be due to increased awareness of the problem of recommendation proliferation, time pressures when delivering statements, and/or the emergence of reviewing State initiatives (e.g. the UK-led cross-regional statement delivered at the 22nd session on behalf of 89 States)[76] to voluntarily restrict the number of recommendations.

However, the number of recommending States (i.e. the number of States making recommendations during UPR Working Group meetings) has consistently increased over time (see Figure 2). For example, in 2008, 8 States made recommendations to Bahrain, and 7 made recommendations to Ecuador. By 2012, the number of countries offering recommendations to Bahrain and Ecuador had risen to 63 and 65 respectively. Likewise, the number of recommending States during the reviews of Brazil (from 12 to 71), Canada (36 to 78), China (47 to 125), India (18 to 71), Indonesia (4 to 68) and Malaysia (51 to 100), increased considerably between first and second cycles.

As with other mechanisms and outputs of the UN human rights system (e.g. Special Procedures mandates and recommendations, Treaty Body recommendations), there is considerable debate over the implications of this proliferation. Does it reflect positively on the UPR by demonstrating the mechanism's popularity and importance, or does inflation – as with real currencies – risk devaluing UPR recommendations and the peer review process as a whole?

URG's analysis appears to support a more positive reading of the situation. Recommendation proliferation seems to reflect the universality of the mechanism, and the increased willingness of a broad range of States to actively participate and engage. The increase also reflects changes in attitudes, especially among developing countries, towards the notion of publicly 'criticising' the human rights records of other States. During the first cycle there was a clear nervousness on the part of many towards the idea of making recommendations to geopolitical friends and neighbours. By the second cycle this nervousness had dimished or, perhaps more correctly, had been transformed (as we shall see) into a tendency to extend weak or vague recommendations. Finally, the increase in the number of recommending States reflects a growing understanding on the part of delegates that recommendations are the main currency of the UPR, and that Working Group statements devoid of recommendations are of little use to SURs.

If this analysis is accepted, it suggests that in the absence of further increases in the number of recommending States (which would seem unlikely), the question of how to avoid further recommendation proliferation should not be a major preoccupation as stakeholders prepare for the third cycle.

That is not to say the existing large number of UPR recommendations received by States today is not of concern, especially when combined with the large body of recommendations generated by other mechanisms such as Special Procedures and Treaty Bodies. State delegations in Geneva regularly complain of being 'overwhelmed' or 'lost in a jungle' of recommendations.[77] However, such concerns are probably best addressed through improvements to the **clustering** of recommendations, rather than by efforts to further limit their number.

Recognition of the importance of clustering or recommendation management (a term that covers both 'clustering' and 'splitting') was reflected in the outcome of the Council's five-year review. Paragraph 15 of the annex to resolution 16/21 stated that 'recommendations contained in the outcome of the review should preferably be clustered thematically, with the full involvement and consent of the State under review and the States that made the recommendations.' Efforts to follow up on this provision have been spearheaded by UPR Branch in OHCHR. Their approach is based on the premise that, while a SUR may receive upwards of 200 recommendations during its review, in reality many of those recommendations are very similar or overlapping in nature and can thus be 'clustered.' This avoids duplication and streamlines the body of recommendations to make it more manageable for the SUR. It also improves the transparency of the process and, if done carefully, could encourage implementation, based on the idea that it is more difficult for a State to ignore a single recommendation that has the backing of 20 States than it is for it to ignore 20 separate recommendations on the same broad subject.

It is also important to note that effective clustering of UPR recommendations can help lead to cross-mechanism recommendation clustering. Over the course of a year, a State may receive hundreds of different recommendations from the UPR, Special Procedures, Treaty Bodies, and regional human rights mechanisms. Yet once all those recommendations are collated, clustered and streamlined, it is usually the case that ten or less key issues and challenges emerge. This provides, in theory, a useful and comprehensive picture of the overall human rights situation in a country, and of the key challenges faced.

As OHCHR's Treaty Body Division noted in its 2016 report on national implementation: 'The recommendations or decisions [emanating from all of these human rights mechanisms]... provide the most authoritative and comprehensive overview of human rights issues requiring attention at the national level, based on the legal obligations resulting under international human rights law as well as political commitments made by States, usually in the context of the UN Human Rights Council and General Assembly.'[78] This cross-mechanism clustering also, in principle, makes it far easier for States to manage and implement recommendations.

However, it is unlikely that these efforts can be taken further without certain institutional reforms ahead of the third cycle. Most importantly, for clustering to work fully and effectively, the time between the actual review and the adoption of the review outcome by the Working Group (currently around 48 hours) should be extended, and the role of the troika should be strengthened. Effective clustering requires considerable discussion, coordination and negotiation between the SUR and the recommending State, all of which takes time; and whereas the IBP made clear that the group of three rapporteurs should 'facilitate each review, including the preparation of the report of the working group' with support from OHCHR, and certain aspects of that exercise were elaborated by Presidential Statement (PRST) 8/1,[79] the Council has yet to clarify the precise prerogatives and responsibilities of the troika in the case of clustering or 'recommendation management.'

The **quality** of UPR recommendations is perhaps the most important determinant of the usefulness and effectiveness of the UPR, and therefore also of the capacity of the UN human rights system to engender positive change on the ground. However, beyond general agreement on behalf of stakeholders that recommendation quality is important, there is little agreement as to what constitutes a 'good' or a 'bad' recommendation (or something in between).

The most well known and widely used framework for analysing and guiding recommendation quality is the SMART framework, which says that recommendations should be specific, measurable, achievable, relevant, and time-bound. Using that framework as a starting point, Professor Edward R. McMahon

of the University of Vermont, with the support of *UPR Info*, has conducted an analysis of recommendation quality.[80] Taking his lead from paragraph 3d of the IBP, which says that the UPR process should be 'action orientated,' Professor McMahon's analysis focuses on the nature of the action requested by each recommendation, mostly by looking at the verb starting each recommendation (e.g. continue, explore, adopt, etc.) This allowed him to categorise recommendations on a scale of 1 (minimal action) to 5 (specific action). Using this methodology, Professor McMahon and *UPR Info* have claimed that 'only 35% of recommendations [are] specific (category 5) in the first cycle, showing that most recommendations are not consistent with the UPR ideals.'[81]

However, this analysis is based on a restrictive understanding of what those 'UPR ideals' are (essentially focusing on *actionability* and paragraph 3d). Is it right to say, for example, that recommendations to: 'take measures to' or 'take steps towards' (category 4); or 'consider,' 'examine' or 'explore' (category 3); or even 'pursue' (category 2); are inconsistent with UPR ideals or are qualitatively inferior?

Perhaps then, it is necessary to rethink what constitutes a 'good' or a 'less good' recommendation. When considering such matters, it is important to be guided by the the UPR's own terms of reference, as agreed by States themselves: the Council's IBP.

The IBP makes a number of important points that should guide the drafting or appraisal of UPR recommendations. According to the IBP, the UPR process (including the issuing of recommendations) should be 'action-oriented,'[82] 'complement and not duplicate other human rights mechanisms,'[83] and, without prejudice to a State's human rights obligations, 'take into account the level of development and the specificities of countries.'[84] States also decided that the UPR should aim to secure, *inter alia*, 'the improvement of the human rights situation on the ground,'[85] 'the fulfilment of the State's human rights obligations and commitments,'[86] 'the enhancement of the State's capacity and of technical assistance,'[87] and 'the encouragement of full cooperation and engagement with the Council, other human rights bodies and [OHCHR].'[88]

In light of this wider set of criteria, Professor McMahon's categorisation offers a too narrow appraisal of recommendation quality. For example, a given recommendation may well be 'action-orientated' according to Professor McMahon's categorisation, but if the proposed action does not take into account the specific situation and characteristics of the country concerned, if the proposed action is unachievable considering a country's capacity constraints, or if the proposed action is unrealistic in terms of the ability of the State to bring about such a change within the specified time-frame, can we really say such a recommendation is 'useful' to the SUR, or that it has a high qualitative value?

To better understand what does make a 'good' recommendation, URG reviewed over 5,000 first- and second-cycle recommendations. Notwithstanding the difficulties inherent in qualitatively categorising recommendations or precisely measuring them against the principles and objectives of the UPR, URG's analysis suggests that a helpful way to conceive of and assess recommendation quality is through a double lens of 'usefulness' to the SUR, and 'measurability' for reviewing States (i.e. during subsequent UPR cycles).

The IBP makes clear that the UPR is a 'cooperative mechanism' based on 'interactive dialogue.'[89] In other words, it is about helping States, through engagement, cooperation and dialogue, to improve 'the human rights situation on the ground.' It therefore stands to reason that recommendations must be **useful** to the SUR. This means that they should, *inter alia*: be based on an objective analysis of the main human rights challenges facing a country; be based on a strong understanding of the country's overall situation and available resources; and help provide a catalyst to - and guidance for - efforts by the SUR and relevant domestic stakeholders (e.g. local civil society) to move an issue forward (even by small degrees) and to promote domestic reform.

'Usefulness' has the benefit of covering all the principles and objectives mentioned in the IBP. For example, it is self-evident that SURs will be better able to implement recommendations that are 'action-oriented'[90] and aim to secure 'the improvement of the human rights situation on the ground,'[91] that 'take into account the level of development and the specificities of countries,'[92] that '[encourage] full cooperation and engagement with the Council, other human rights bodies and [OHCHR],'[93] and that 'complement and [do] not duplicate other human rights mechanisms.'[94]

A final point on 'usefulness': if indeed a key goal of the UPR is to help States fulfill their human rights obligations and commitments,[95] then recommendations should obviously avoid making that job more difficult (i.e. they should, at a minimum, 'do no harm'). Unfortunately, based on URG's analysis of first- and second-cycle recommendations, there is a worrying tendency on the part of some States to 'muddy the waters' around a State's legal obligations and commitments by, for example, taking a Treaty Body concluding observation as the basis of a UPR recommendation, but then weakening or substantively altering the wording. This practice risks creating ambiguity as to which recommendation(s) – those generated by Treaty Bodies or by the UPR - ought to be implemented. The practice also contravenes the IBP which makes clear that the UPR should 'complement and not duplicate other human rights mechanisms,' thus representing an added value.[96]

A second way to conceive of and assess recommendations quality is by looking at their **'measurability.'** States have repeated-ly asserted that the second and subsequent cycles of the UPR should focus on the implementation of previous (accepted) recommendations.[97] This was seen as key in order for the UPR to meet its stated objective of generating 'improvement[s] [in] the human rights situation on the ground.'[98] This emphasis on implementation and follow-up was repeated in decision 17/119, which urged SURs to present information to the Council on 'follow-up to the previous review,' and to identify 'achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations.' It is clear that for the UPR to effectively focus on implementation, for reviewing States to be able to assess progress, and for all States to be able to identify (and eventually overcome) obstacles, the UPR recommendations must be **measurable** and time-bound.

In practice, this means that recommendations should provide indicators against which progress can be measured. The importance of developing clear and specific indicators of progress is not new. For example, in the 1993 Vienna Declaration and Programme of Action,[99] States recognised the need to find ways to better measure improvements or regressions in the enjoyment of economic, social, and cultural rights, and proposed the development of a 'system of indicators to measure progress.' Building on such calls, in 2012 OHCHR produced a study on 'Human rights indicators: a guide to measurement and implementation.'[100] In the study, OHCHR identified a range of different kinds of indicators – both quantitative and qualitative – and suggested that these might be categorised as either structural and process indicators (sometimes refered to as 'output' indicators) or outcome indicators (sometimes refered to as 'impact' indicators).

When applied to the case of UPR recommendations, structural indicators (commitments) might include, for example, a call on the SUR to sign and ratify the Convention against Torture; process indicators (ongoing efforts) might include a recommendation for the State to adopt a new national law to prevent torture; and outcome (or impact) indicators (results) might include recommendations for the State to ensure that all outstanding allegations of torture are fully investigated, and that victims receive remedy and redress.

Clearly, the inclusion or exclusion of precise and objective indicators that allow the SUR (and other national stakeholders) to measure progress (and report on that progress in its national report); and that allow the SUR's peers (reviewing States) to consider and assess that progress and engage in a meaningful dialogue with the SUR about challenges and capacity-building needs; is central to the measurability of UPR recommendations and to their usefulness. However, it is also important to point

Box 1 – Comparative examples of 'normal' and 'unspecific' recommendations

Normal	Unspecific
'Remove from the final version of the new Constitution all references to traditions or customary law in the field of family and private law which may be conducive to violations of human rights.'	'Continue its national plans and programmes to improve the quality of education.'
Recommendation from Italy to Zambia, 2nd cycle	**Recommendation from Belarus to Syria, 2nd cycle**
'…undertake a comprehensive study on child abuse in order to understand its scope and to suggest ways to prevent it.'	'Continue to address socio-economic disparities and inequalities that persist across the country.'
Recommendation from Bahamas to Canada, 1st cycle	**Recommendation from Turkey to Canada, 1st cycle**
Amend the 1992 law on freedom of communication (Organisation Act No. 2-AN-92) and update it on the basis of article 19 of the International Covenant on Civil and Political Rights.'	'Continue energising existing mechanisms to enhance the addressing of human rights challenges.'
Recommendation from Canada to Djibouti, 1st cycle	**Recommendation from Ghana to India, 1st cycle**

FIGURE 4 – PROPORTION OF UNSPECIFIC RECOMMENDATIONS MADE, BY REGION

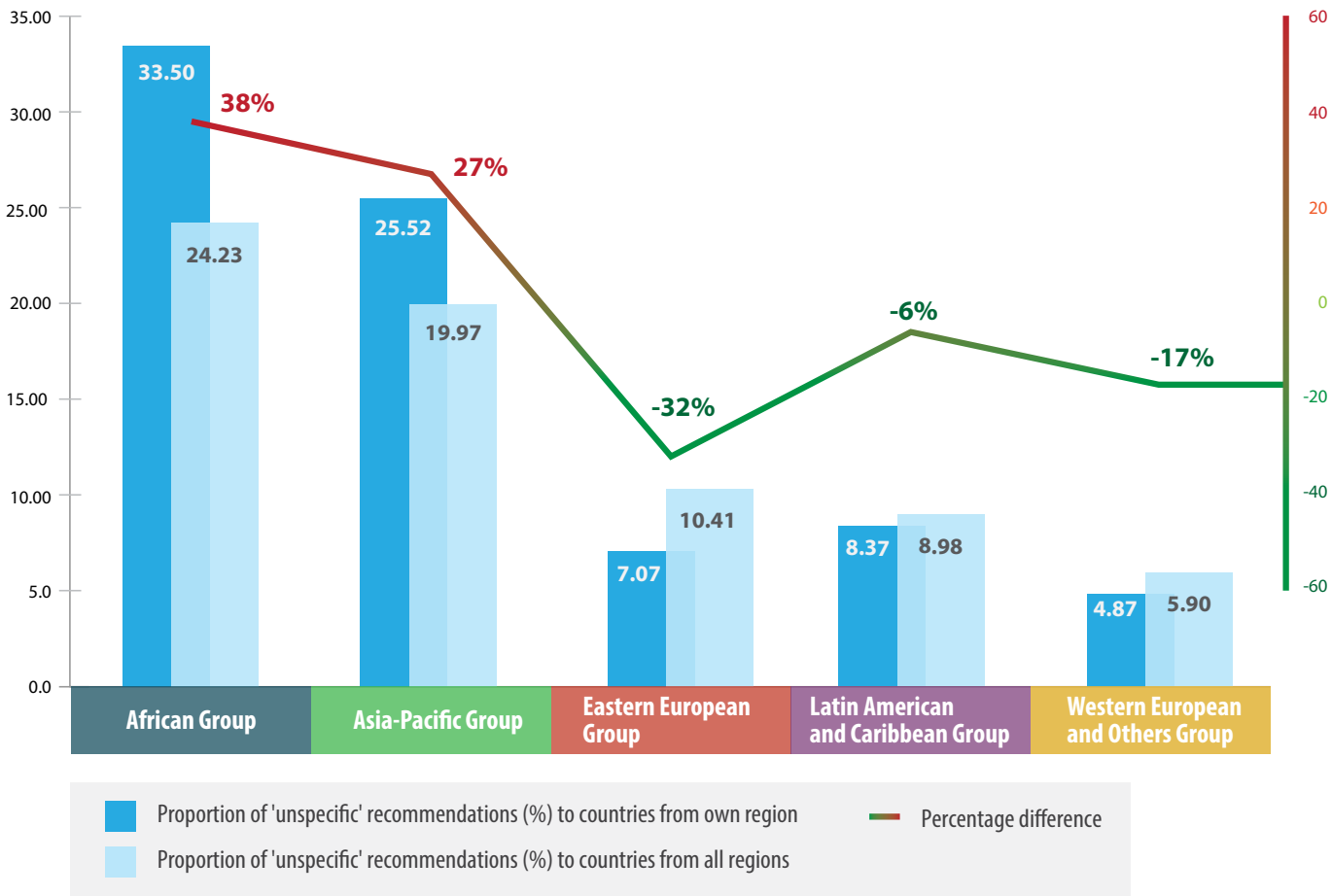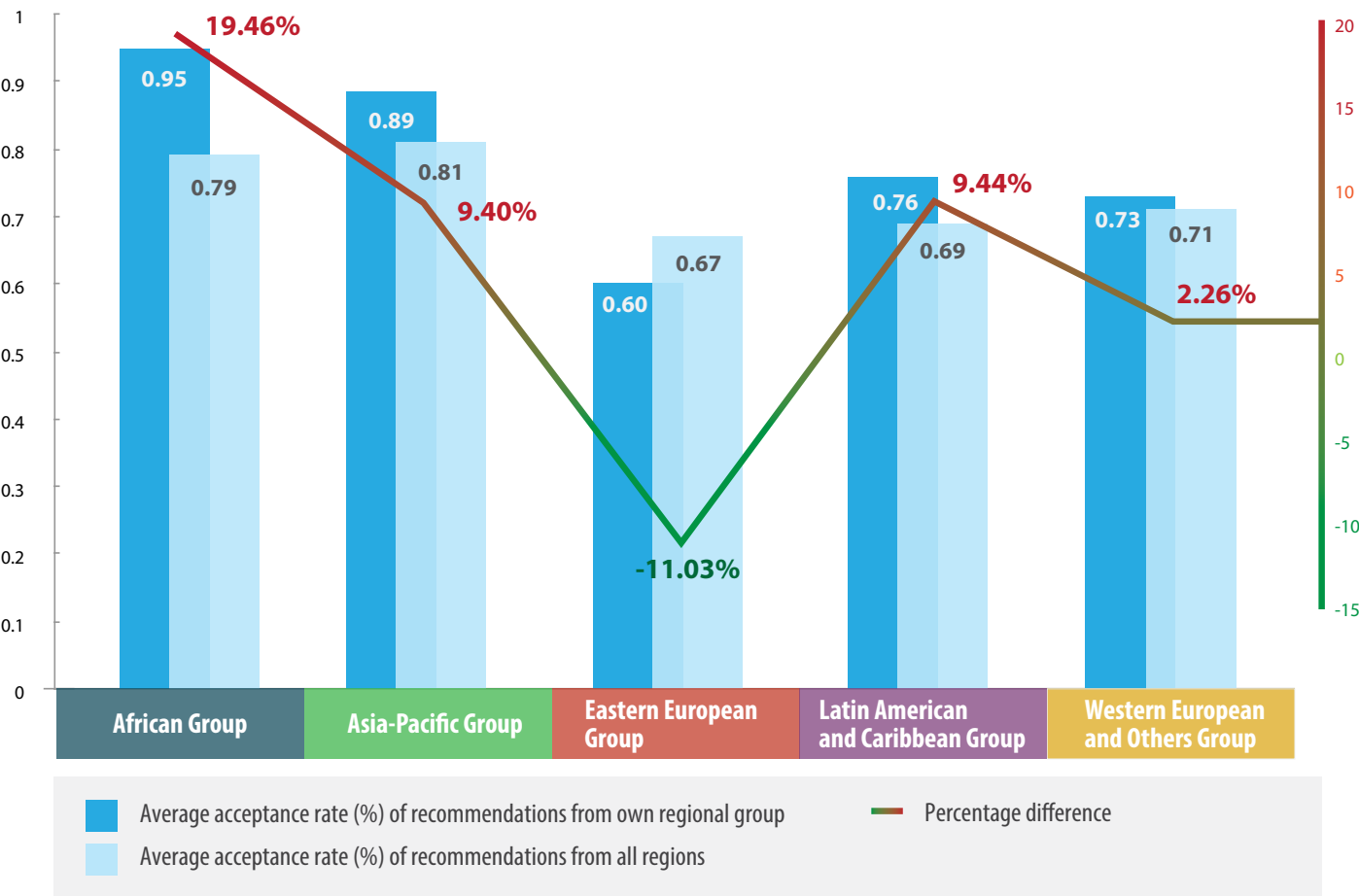Proportion of 'unspecific' recommendations (%) to countries from own region
Proportion of 'unspecific' recommendations (%) to countries from all regions
Percentage difference

FIGURE 5 – ACCEPTANCE RATES OF RECOMMENDATIONS, BY OWN OR OTHER REGIONAL GROUP

Legend:
- Average acceptance rate (%) of recommendations from own regional group
- Average acceptance rate (%) of recommendations from all regions
- Percentage difference

FIGURE 6 – ACCEPTANCE RATES OF RECOMMENDATIONS, BY GIVING AND RECEIVING REGIONAL GROUP

'Giving' regional group

'Receiving' regional group	AG	APG	EEG	GRULAC	WEOG
AG	0.947	0.936	0.613	0.713	0.704
APG	0.902	0.886	0.636	0.649	0.628
EEG	0.688	0.750	0.596	0.671	0.761
GRULAC	0.888	0.891	0.759	0.757	0.746
WEOG	0.538	0.587	0.745	0.669	0.730
AVERAGE	0.792	0.810	0.670	0.692	0.714

Intra-regional acceptance rates

out that, by promoting State accountability against accepted UPR recommendations and against the international human rights legal obligations that underpin those recommendations, measurement indicators also help support the overall effectiveness and credibility of the UPR mechanism.

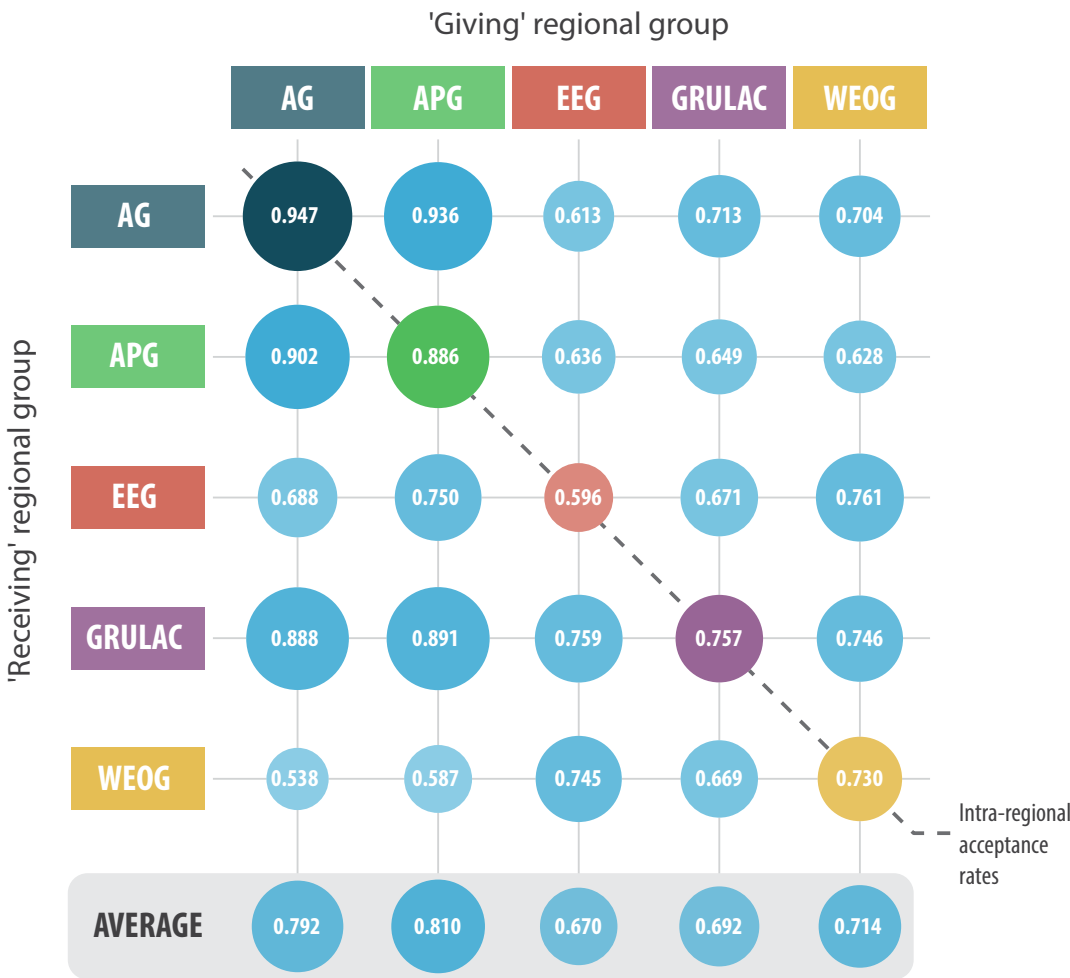## ANALYSIS OF UPR RECOMMENDATION QUALITY: USEFULNESS AND MEASURABILITY

Using the IBP and the double lens of 'usefulness' and 'measurability' as an analytical basis, URG assessed over 5,000 first- and second-cycle recommendations. Recommendations that were considered to be 'useful' and 'measureable' were classified as 'normal' (i.e. were deemed to be consistent with the wording and the spirit of the IBP), while those that were were not were labelled as 'unspecific.'[101]

URG's analysis found that over 85% of UPR recommendations in both the first and second cycles were 'normal' in that they align with the wording and the spirit of the Council's IBP, and in that they can be described as useful to SURs and measurable in the context of the UPR mechanism. On average, only 12% of

first and second cycle UPR recommendations were 'unspecific', in that they were unhelpful to the SUR and unmeasurable in the context of the UPR mechanism. (For examples of 'normal' and 'unspecific' recommendations, see Box 1.)

However, URG's analysis also found that the quality of recommendations varied considerably across UN regional groups. For example, reviewing States from the African or Asia-Pacific Groups tended to issue more 'unspecific' recommendations (38% and 27% respectively) than States elsewhere. Moreover, the frequency of 'unspecific' recommendations was higher when States provided recommendations to SURs from *their own regional group*. For example, whereas on average 24% of recommendations issued by African States were unspecific, that proportion rose to nearly 33% when recommendations were directed towards other African States. A similar pattern was evident among States of the Asia-Pacific Group: here, 26% of intra-regional recommendations were unspecific, compared to a cross-regional average of 20%. (See Figure 4.)

According to African and Asian diplomats interviewed for this report, the reason for this pattern is a concern 'not to embarrass friendly States by tabling recommendations that might be perceived as overly criticial or difficult to implement.' This phenomena, which *UN Watch* has argued is typical of the 'mutual praise society' character of UPR,[102] can also be seen in the context of differing recommendation acceptance rates between and within regions, (see Figures 5 and 6). For example, African States accepted 95% of recommendations extended to them by other African States, compared with an average acceptance rate of 79% when the analysis was expanded to all regions. Similarly, Asia-Pacific States had an intra-regional acceptance rate of 89%, compared to an overall acceptance rate of 81%. Latin American countries are also statistically more likely to accept recommendations from other members of GRULAC.
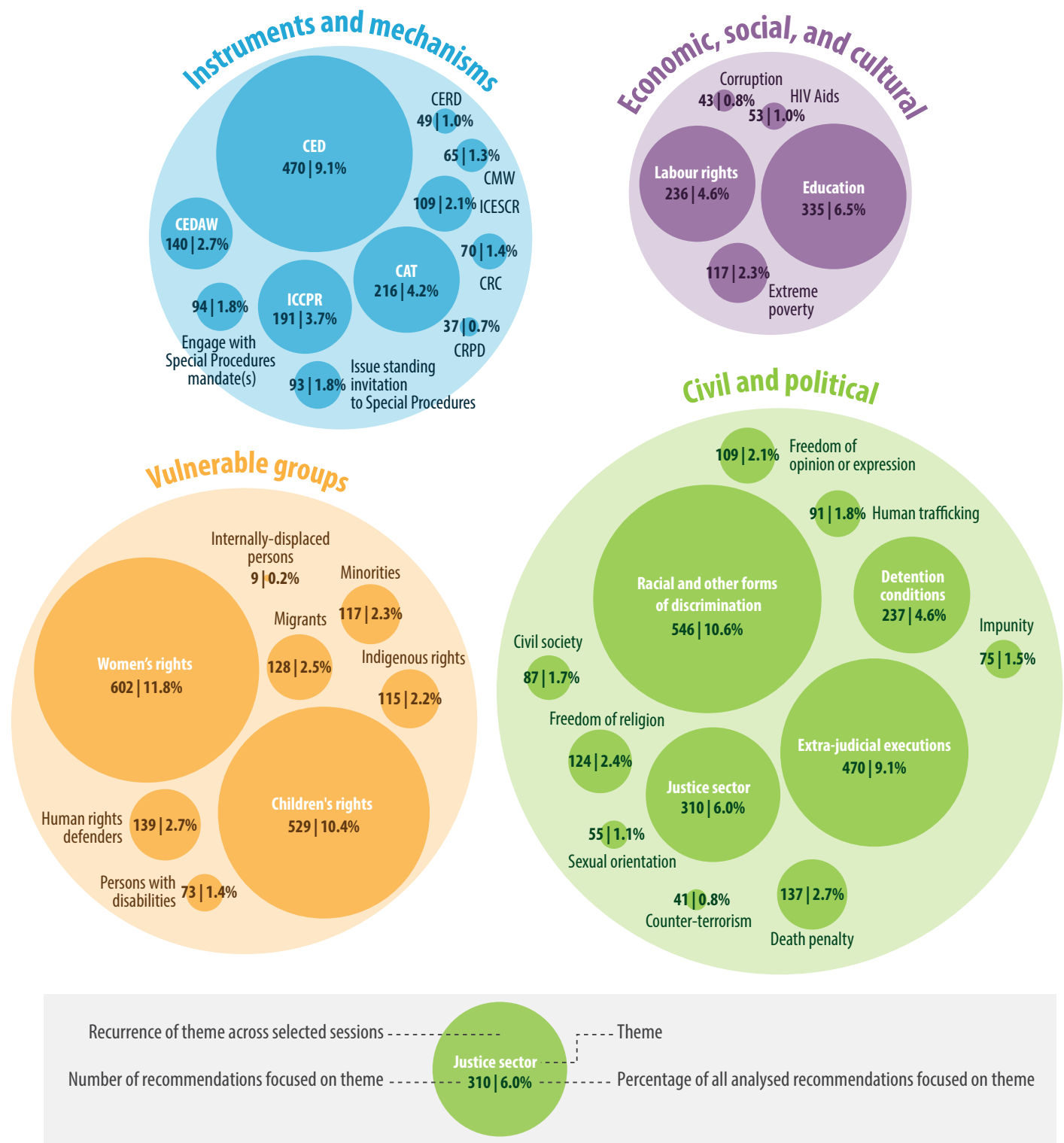
On the contrary, Eastern European States, Latin American States and Western States have generally been *less* likely to make unspecific recommendations to countries of their own regional groups. Eastern European States have also shown

themselves to be *less* likely to accept recommendations from other members of their own regional group.

A final interesting finding from URG's analysis was that unspecific recommendations were, overall, far more likely to be accepted by SURs than were normal recommendations. 89% of unspecific recommendations were accepted by SURs, while normal recommendations were accepted only 71% of the time. The reason for this is clear enough: even though unspecific recommendations are neither useful to SURs nor to the UPR process as a whole, their generally 'soft' character makes them difficult to object to or reject.

...over 85% of UPR recommendations were 'normal,' though this figure varied between UN regional groups...

FIGURE 7 - SELECTION OF POPULAR THEMES OF UPR RECOMMENDATIONS

Instruments and mechanisms

CED 470 | 9.1%
CERD 49 | 1.0%
CMW 65 | 1.3%
ICESCR 109 | 2.1%
CEDAW 140 | 2.7%
CRC 70 | 1.4%
CAT 216 | 4.2%
ICCPR 191 | 3.7%
CRPD 37 | 0.7%
Engage with Special Procedures mandate(s) 94 | 1.8%
Issue standing invitation to Special Procedures 93 | 1.8%

Economic, social, and cultural

Corruption 43 | 0.8%
HIV Aids 53 | 1.0%
Labour rights 236 | 4.6%
Education 335 | 6.5%
Extreme poverty 117 | 2.3%

Vulnerable groups

Internally-displaced persons 9 | 0.2%
Minorities 117 | 2.3%
Migrants 128 | 2.5%
Indigenous rights 115 | 2.2%
Women's rights 602 | 11.8%
Children's rights 529 | 10.4%
Human rights defenders 139 | 2.7%
Persons with disabilities 73 | 1.4%

Civil and political

Freedom of opinion or expression 109 | 2.1%
Human trafficking 91 | 1.8%
Racial and other forms of discrimination 546 | 10.6%
Detention conditions 237 | 4.6%
Impunity 75 | 1.5%
Civil society 87 | 1.7%
Freedom of religion 124 | 2.4%
Justice sector 310 | 6.0%
Extra-judicial executions 470 | 9.1%
Sexual orientation 55 | 1.1%
Counter-terrorism 41 | 0.8%
Death penalty 137 | 2.7%

Recurrence of theme across selected sessions - - - - - - - - - - - Theme
Number of recommendations focused on theme - - - - - - - Justice sector 310 | 6.0% - - - - Percentage of all analysed recommendations focused on theme

ANALYSIS OF RECOMMENDATION FOCUS

In addition to allowing for an assessment of recommendation quality, URG's assessement of over 5,000 first- and second-cycle recommendations also revealed interesting patterns in terms of the thematic focus of UPR recommendations. Those results are presented in Figure 7.

3 ADOPTION OF THE REVIEW OUTCOME

Following the UPR Working Group's review, the troika, with involvement from SURs and with assistance from OHCHR, prepares a report.[103] This report, referred to as the 'outcome report,' summarises discussions during the review and includes questions, comments and recommendations made by reviewing States, as well as responses and voluntary commitments by SURs.

No sooner than 48 hours after the end of the interactive dialogue with the SUR, [104] the UPR Working Group moves to adopt that State's outcome report. Half an hour is allocated for this purpose. At that time, the SUR may make preliminary comments on the recommendations, choosing to either 'accept' or 'take note' of them; both sets of recommendations are included in the outcome report. (It is important to note that, while the IBP states that SURs can either accept recommendations or take note of them, the early years of the UPR have seen SURs ignore this stipulation and respond to recommendations in a range of different ways, such as 'partially accept,' 'already implemented,' etc.) Notwithstanding, many States choose to keep recommendations under review in order to allow time for them to be properly considered by relevant national authorities. These States then provide their responses later - prior to the adoption of the final UPR outcome by the Council plenary.

At its next regular session, the full Council then moves to formally adopt the final UPR outcome. Final adoption takes place under item 6 of the Council's agenda. Each SUR is given an opportunity to reply to questions and issues that were not sufficiently addressed during the Working Group meeting, and to offer a final response to recommendations made. Time is also allotted to member and observer States who wish to express their opinions on the outcome of the review, and for NHRIs, NGOs and other stakeholders to make general comments. The Council then adopts the final outcome by consensus.

That the final outcome should be adopted by the plenary of the Council was set down in the IBP. The reasons for this are clear enough: the UPR is a Council mechanism, and therefore the outcome of each review should be subject to a final decision by the full Council. Adoption by the full Council also serves to provide the outcome with important political weight – the full weight of the international community of nations.

Notwithstanding, observers of adoption in plenary may doubt the wisdom of setting aside around 3 days in the Council's already overburdened agenda to adopt documents that have already been decided upon. Observers may also wonder what the routine of plenary adoption adds to the overall mechanism, especially when the main purpose of the exercise appears to be

to provide an opportunity for States to congratulate each other on a job well done. This has led some to suggest that, as part of the Council's on-going efficiency drive, consideration should be given to holding small dedicated Council plenary sessions immediately after the conclusion of a UPR Working Group session. During these 'special' plenaries, the UPR outcomes of the States reviewed at the preceding Working Group would be formally adopted. Because the IBP stipulates that the Council shall meet 'regularly throughout the year' and 'schedule *no fewer* than three sessions' 'for a total duration of *no less* than 10 weeks,' such a step (which was widely supported during the 2011 review) is possible in principle, and in practice would free up considerable time on the Council's regular agenda.

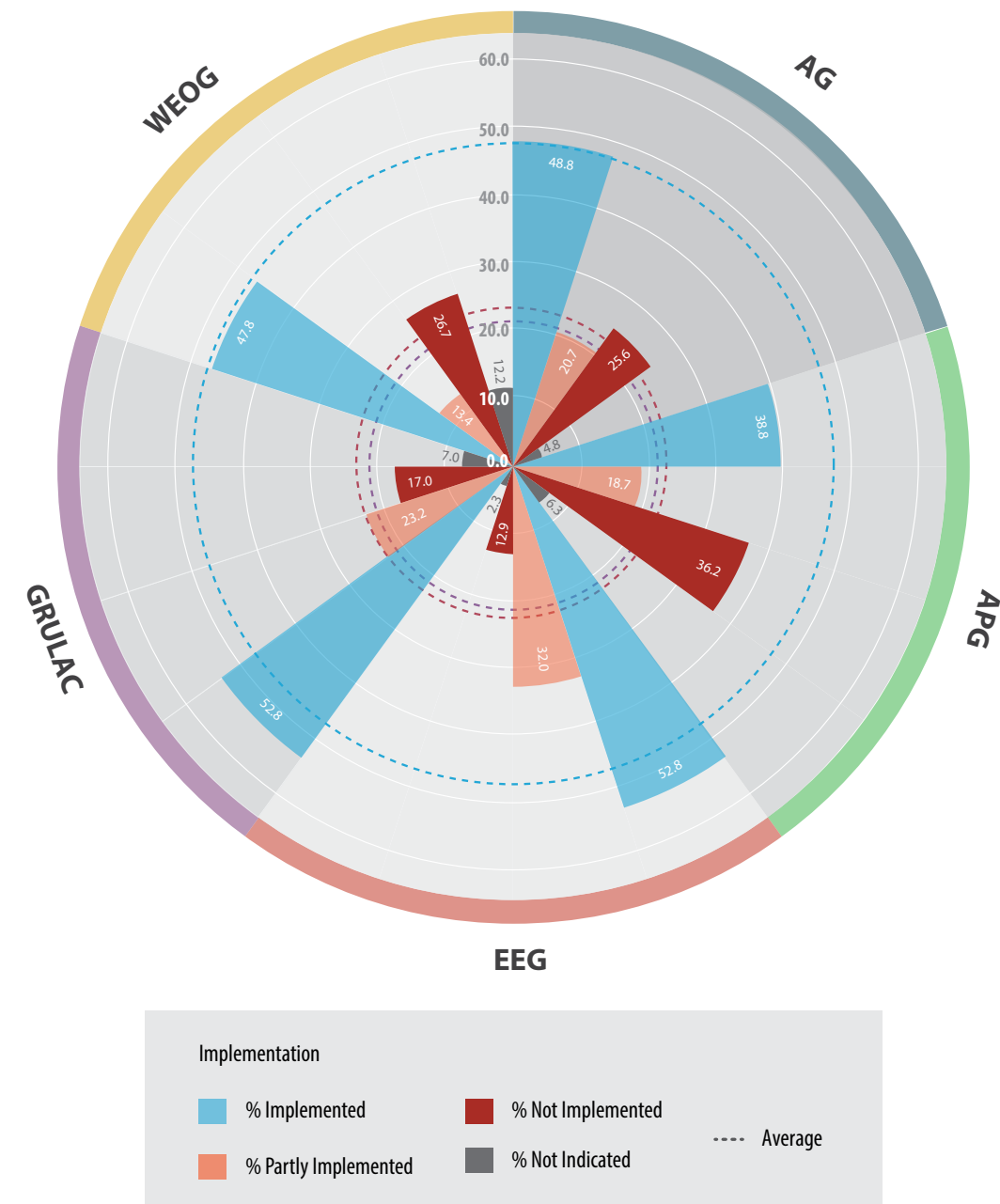# 4 IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS

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 mechanism. As Christof Heyns and Frans Viljoen observed in 2001, 'the success or failure of any international human rights system should be evaluated in accordance with its impact on human rights practices at the domestic (country) level.'[105]

Unfortunately, until recently, remarkably little attention had been paid by either policymakers or researchers to understanding how implementation happens; to considering ways to strengthen domestic coordination, implementation and oversight; or to measuring implementation and its impact on the on-the-ground enjoyment of human rights. In other words, little thought has been given to what, practically speaking, happens to the thousands of recommendations generated by the UPR every year. Are domestic policy-makers aware of them, and do they influence policy? Do they have a discernable impact on the ground?

One notable exception to this general neglect is *UPR Info's* landmark 2014 report 'Beyond promises: the impact of the UPR on the ground.'[106] *UPR Info's* analysis, based on NGO mid-term implementation assessments (MIAs) of first cycle recommendations, assesses progress towards implementation in 165 countries. The report found that, across this sample, some 48% of recommendations had triggered action (partial or full implementation) by the mid-point of the first cycle.

Building on *UPR Info's* assessment, and in order to further contribute to international understanding about the current and future effectiveness of the UPR, URG has undertaken a new and comprehensive **UPR implementation and follow-up analysis.**

FIGURE 8- IMPLEMENTATION RATES, BY REGION

Implementation

- % Implemented
- % Partly Implemented
- % Not Implemented
- % Not Indicated
- ----- Average

Based on a dataset encompassing the first and second cycle reviews of 74 countries from all UN regional groups, and therefore covering over 5,000 individual recommendations, that analysis seeks to determine two things:

1. The level of implementation, by States under review, of recommendations received and accepted during the first cycle; and

2. The degree to which reviewing States used the second cycle to follow-up on the implementation of first cycle recommendations.

In order to complete the first assessment, URG compared accepted recommendations (first cycle) with information on levels of implementation contained in second-cycle national reports, which (as we have seen) generally included information

on levels of implementation. This methodological focus on what States themselves say they did or did not implement is designed to mirror (and help expose weaknesses in) the overwhelmingly inter-State, peer-to-peer nature of the UPR mechanism. As a consequence, URG's analysis did not use UN and civil society compilation reports, except on certain limited occasions to verify ambiguous information contained in State reports. (It is also worth noting that URG's decision to base its analysis on UPR national reports was both a choice and a necessity, because, as noted earlier in this report, most second-cycle 'other stakeholders' and UN system reports did not contain any information on the implementation of first cycle recommendations.) Finally, by focusing on States' own assessment of their levels of domestic implementation, it was hoped that this new analysis would complement work already done by *UPR Info,* which based its calculations on information obtained from NGOs.

Before presenting the results of URG's implementation analysis, it is important to make a final point on methodology: it is clearly not possible, within the framework of such an analysis, to isolate the effects of UPR recommendations from the effects of recommendations issued by other UN or regional human rights mechanisms, or to isolate them from the effects of domestic political dynamics that may equally be responsible for identified reforms.

LEVELS OF IMPLEMENTATION BY STATES UNDER REVIEW

URG's implementation analysis separated recommendations into four categories: implemented, partly implemented, not implemented, and not indicated. The results of that analysis, which are presented in Figures 8 and 9, reveal a number of interesting patterns and trends:

1. Nearly half (48%) of all accepted first cycle UPR recommendations were, according to SURs' second cycle reports, implemented. A further 20% were, according to the SURs, partially implemented. Only 25% were not implemented.
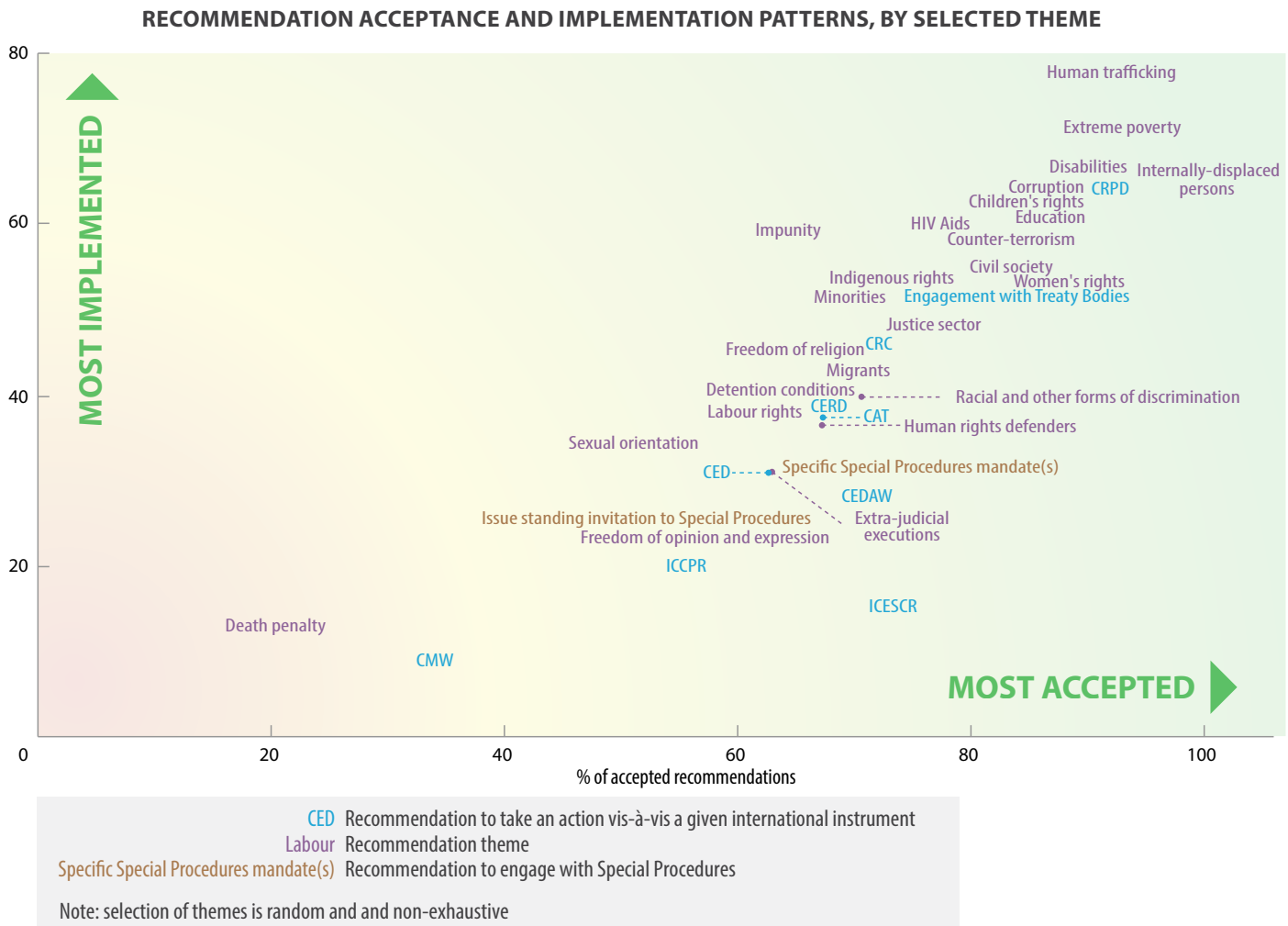
In 7% of cases, there was no indication as to whether the concerned recommendation had been implemented.

2. Implementation levels were high (average or above average) in all regions except the Asia-Pacific. Yet even across the Asia-Pacific Group (APG), nearly 40% of all accepted recommendations were reported as implemented. 36% were unimplemented. The highest implementation rates were recorded in countries of the Eastern European (EEG) and Latin American (GRULAC) regions. (See Figure 8.)

3. There were huge disparities within regions. For example, in the Asia-Pacific region, according to second cycle national reports, only 3% of the first cycle recommendations accepted by Sri Lanka were implemented; whereas Bangladesh's national report shows an implementation rate (of accepted recommendations) of around 82%.

4. Implementation rates also varied significantly between thematic issues. Accepted recommendations focusing on women's rights (12% of all analysed recommendations) and children's rights (10% of all analysed recommendations) showed

FIGURE 9: COMPARATIVE ANALYSIS OF ACCEPTANCE AND IMPLEMENTATION RATES, BY THEMATIC FOCUS

RECOMMENDATION ACCEPTANCE AND IMPLEMENTATION PATTERNS, BY SELECTED THEME

CED Recommendation to take an action vis-à-vis a given international instrument
Labour Recommendation theme
Specific Special Procedures mandate(s) Recommendation to engage with Special Procedures

Note: selection of themes is random and and non-exhaustive

high implementation rates: 54% and 62%, respectively. On the other hand, accepted recommendations focused on more 'politically sensitive' issues, such as the death penalty, showed low implementation rates (14%).

5. Implementation rates also varied significantly by type of recommendation. For example, accepted recommendations calling for the signature or ratification of international human rights instruments had an overall implementation rate of 52%. Other recommendations focusing on international-level steps, such as extending Standing Invitations to Special Procedures or improving treaty reporting, likewise showed relatively high levels of implementation (42%). This contrasts with recommendations for domestic level reform, in areas such as freedom of expression and opinon, which showed an implementation rate of around 24%. These patterns have led some diplomats to suggest that once States have implemented 'low-hanging fruit' UPR recommendations over the course of the first and second cycles, progress with implementation will become progressively more difficult.

6. Certain types of recommendations, or recommendations covering certain issues, may be easily accepted by States (i.e. show a high acceptance rate) but then prove difficult to implement (i.e. show a low implementation rate). (See Figure 9). A good example of this is recommendations relating to the ratification of and compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nearly 80% of all such first cycle recommendations were accepted by the SUR. However, only 14% were subsequently implemented. Some types of recommendation, for examples those focused on the issues of internally-displaced persons, extreme poverty, the rights of persons with disabilities or human trafficking, demonstrate both high acceptance rates and high implementation rates. Others, for example those focused on the death penalty or those that recommend ratification of the Convention on Migrant Workers, suffer from low acceptance and low implementation rates.

7. Almost 30% of 'noted' recommendations, even though they were not accepted by the SUR, nevertheless resulted in some level of domestic change (i.e. they were either implemented or partially implemented). This mirrors similar findings by UPR Info, which found that 19% of 'noted' recommendations triggered action by mid-term, and is significant in that it suggests that UPR can help to gradually change mindsets as well as laws and policies.

8. The quality of recommendations (i.e. whether they are useful and measurable) has a significant impact on levels of implementation. Specifically, vague or imprecise (unspecific) recommendations tend to have a far higher implementation score than normal recommendations. 66% of 'unspecific'

recommendations were fully implemented, compared with 44% of SMART recommendations. The reason for this is clear enough: ambiguous recommendations, such as to '[c]ontinue efforts and endeavours to improve the overall human rights situation,' are easier to implement because any domestic policy step can potentially be used by the SUR to show that it has 'improved' the human rights situation.

MIRROR MIRROR ON THE WALL...

The overall findings of the URG's analysis of recommendation implementation are, at first glance, remarkable. According to those findings, nearly half of all first-cycle UPR recommendations had been 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 took 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 themselves). One important consequence of that decision is that 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'[107] (i.e. supplementary to the national report), and are expected to be much shorter than the State's own report (10 pages instead of 20.)

Another consequence is that during the review proper (i.e. during the interactive dialogue in the UPR Working Group), only the national report is presented and only States are allowed to offer views, opinions and reactions. Finally, the peer review nature of the UPR also appears to affect the mentality and approach of diplomats in Geneva, many of whom, when interviewed for this policy report (confidentially) admitted that they base their interactive dialogue statements and recommendations principally (though certainly not exclusively) on national reports. That is not to say that the two 'supplementary' reports are not useful or are ignored. Indeed, both are widely used and provide an important alternative or 'shadow' perspective. Similarly, although NGOs and NHRIs have no formal role during UPR Working Group meetings, pre-sessional hearings with them do take place, though those hearings are organised by an NGO - UPR Info – rather than by the UN. It is rather to point out that such inputs and exercises are secondary or supplementary – an appendix to the main event, which is a State-to-State exchange.

It is in this context that one must appraise the findings of this report. 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 amplification of success and to the minimisation of difficulties or shortfalls. It would take a brave government indeed to submit a report to the UN admitting that they had failed to implement any of the 200 or so recommendations received four years earlier, or even to focus their national UPR report on the difficulties encountered rather than on progress made.

That is not to say that the peer review nature of the UPR should be changed. 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 (State-to-State) character of the review, while strengthening the monitoring and reporting contribution of civil society and NHRIs.

FOLLOW-UP BY REVIEWING STATES

In order to complete the second part of its implementation analysis (follow-up on the part of reviewing States), URG analysed the second cycle Working Group statements of the same 74 States.

URG's analysis shows that, despite the importance of effective follow-up (on the part of reviewing States) for the long-term health and credibility of the UPR, only 38% of partially implemented, not implemented, or not indicated recommendations from the first cycle saw effective follow-up during the second.

Broken down by regional group, Western States followed up on around 42% of their recommendations (where they had not been implemented or had been only partially implemented by the SUR). Indeed, various WEOG members have developed elaborate databases to keep track of their previous recommendations. By contrast, States of the African Group followed up only 29% of the time, perhaps due to capacity constraints.

There are also significant variations between countries. At one end of the scale, some countries, such as Australia (69%), Bhutan (66%), Cuba (58%), Switzerland (58%), and the UK (52%), followed-up on a majority of their earlier recommendations (where those recommendations were not implemented or were only partially implemented). Others, including Egypt (48%), France (47%), Italy (49%), Maldives (47%), and Slovenia (49%), followed up on around half. On the other hand, some countries rarely or never followed up on earlier recommendations. Examples of this group include Argentina (20%), Djibouti (0%), Ghana (0%), Greece (20%), Kuwait (20%), Nigeria (8%), and Peru (10%).

5. IMPLEMENTATION: NATIONAL STRUCTURES, REPORTING, IMPACT, CAPACITY

NATIONAL IMPLEMENTING AND REPORTING STRUCTURES

One positive impact of the UPR is that it has encouraged many States to establish standing national implementation, coordination and reporting structures (SNICRS). As the name suggests, these structures are mandated to take recommendations from the UPR, sometimes along with recommendations from other UN mechanisms, and coordinate the actions of different organs of the State to pursue their realisation. The same mechanisms often then receive feedback from and monitor implementation by different parts of government, and prepare the subsequent national report, thereby completing the UPR's 'life cycle.'

In 2016, OHCHR's Human Rights Treaties Division published the results of a global study, 'National Mechanisms for Reporting and Follow-up (NMRF): governmental structures for effective engagement with the international human rights mechanisms.'[108] This important study, which complements projects undertaken by other parts of OHCHR including UPR Branch, represents a first concerted effort to map evolving State practices with the establishment and development of SNICRS (or NMRFs).

OHCHR's report recognises that the on-going increase in the number of treaty ratifications, the growth in numbers of Special Procedures mandates and of related country missions, and the advent of the UPR have together led to a situation in which States are expected to implement and report on an increasingly wide array of international human rights recommendations. Especially in the case of developing countries, these requirements can quickly become unmanageable.

In order to adequately address the situation, and in so doing engage with international human rights mechanisms in a meaningful and effective way, an increasing number of governments have, according to OHCHR, 'adopted a comprehensive, efficient approach to reporting and follow-up, including, and as a key element, the setting up of NMRFs.' The study notes that this trend is not new – for example, many States have long-established inter-ministerial committees on human rights – but it has been given added impetus by OHCHR's 2012 report on 'Strengthening the UN human rights Treaty Body system,'[109] which recommended the establishment of such mechanisms, and by General Assembly resolution 68/268 on Treaty Body reform, which recognised that 'some States parties consider that they would benefit from improved coordination of reporting at the national level.'[110]

The genesis and future development of SNICRS is an area of significant contemporary interest amongst both policymakers and researchers. Picking up on that interest, in 2015 Brazil and Paraguay tabled a Council resolution on 'promoting international cooperation to support national human rights follow-up systems and processes.'[111] Through resolution 30/25, the Council encouraged more States to establish such systems and processes, and decided to convene an inter-sessional half-day panel discussion during the 26th session of the UPR Working Group in November 2016 (itself an important innovation for the UPR *and* for the Council), to exchange national experiences and good practices with national implementing and reporting structures.

Questions around the development of SNICRS are an important area for future study and are beyond the scope of this policy report. Notwithstanding, it is worth noting that OHCHR and others (including URG), while recognising that there is no 'one-size-fits-all' approach to domestic implementation, have put forward a number of common or beneficial characteristics that might help define and guide the future growth of these public structures. SNICRS tend to be/have:

• National public mechanisms/structures - ministerial, inter-ministerial or institutionally separate. As government structures, they are different to and distinct from national human rights institutions (NHRIs).

• 'Standing' in nature – stable and permanent, with a formal legal or administrative mandate (e.g. via a government decree).

• High-level political support or backing - for example, some are convened by the country's president, while others are chaired by prime ministers or senior ministers.

• Based within, or liaise closely with, ministries of foreign affairs - because these ministries are usually responsible for overseeing relations between the national public administration and the international and regional systems.

• Comprehensive in approach, engaging on all human rights issues, with all human rights mechanisms at the international and regional levels.

• Coordination structures rather than bodies that implement recommendations themselves. They coordinate, support and follow-up on implementation by relevant line ministries and agencies of the State.

• Inclusive – they perform their functions in coordination with other ministries, State specialised bodies (such as the national statistical offices), and parliaments and judiciaries, and in consultation with the national human rights institutions and civil society. Some SNICRS also consult with international

development partners, including UNDP (Resident Coordinators).

• Mandated to track progress with implementation – they 'manage knowledge'[112] or 'manage information'[113] about the domestic realisation of universal norms. Some SNICRS ensure that this information is made publicly available, for example via a website-database.

Complementing this comprehensive OHCHR survey of SNICRS, URG's research for this policy report uncovered a number of interesting case studies, including: an inter-sectoral human rights standing committee (and related information system) in Colombia, led by the Vice-President; national human rights action plans, informed by relevant UPR recommendations and Treaty Body concluding observations, in Germany, Indonesia, Malaysia and Mexico; the SIMORE online implementation and reporting platform in Paraguay; a national mechanism in Ecuador to coordinate implementation and reporting to all mechanisms, and create a human rights indicator database; an inter-ministerial standing committee on human rights in Jordan; a national 'Human Rights Council' in Georgia, chaired by the Prime Minister and with the engagement of all line ministries, the parliament, judiciary and domestic civil society; a permanent consultative body (executive branch) in Costa Rica, attached to the Ministry of Foreign Affairs; and an inter-ministerial unit on human rights in Morocco.

Of the 74 countries surveyed for this policy report, 19 informed the URG that they had set up, by the end of the first cycle, some type of national coordination mechanism to draft national reports and follow up on the implementation of UPR recommendations. A further 18 said that they integrated UPR recommendations into national human rights action plans (which usually existed already). These are clearly positive developments – even more so when one considers that many State representatives interviewed for this report explained that their government, with UPR acting as a key catalyst, was in the process of either establishing or strengthening national implementing and reporting structures.

MID-TERM REPORTING

During the Council's five-year review in 2010-2011, many States, including Japan, Chile, Morocco, Norway, Uruguay and Brazil, argued that as part of efforts to emphasise implementation, States should be encouraged to provide mid-term reports on progress, no later than two years after the adoption of the review outcome. This proposal was then incorporated into Council resolution 16/21, which encourages States 'to provide the Council, on a voluntary basis, with a mid-term update on the follow-up to accepted recommendations.'[114]

Five years on, there is a lack of consensus as to whether mid-term reports are useful or not. Proponents note that they allow

for a more regular tracking of progress (especially considering the long duration of full UPR cycles), and help national authorities to maintain a more regular focus on UPR implementation (as opposed to only reviewing progress at the end of each cycle). Others, however, question whether the results are worth the effort. A review of the number of mid-term reports submitted by States during the first and second cycles, while not fully conclusive (as the second cycle is not yet finished), suggests that the second, more sceptical view might be gaining ground. According to OHCHR, 55 States submitted mid-term reports on the implementation of first cycle recommendations, while only 15 have so far done so in relation to recommendations put forward during the second cycle.[115]

HUMAN RIGHTS INDICATORS

Even where there is credible evidence (e.g. information in a national report, corroborated by information in the 'other stakeholders' report) that a State has taken steps to implement a certain recommendation, that does not mean that the UPR mechanism has necessarily had a measurable impact on the actual on-the-ground enjoyment of human rights. This in turn raises an important question: what is 'implementation' and how can it be measured?

In recent years, the UN, led by OHCHR, has done considerable work to develop a system of human rights indicators to measure compliance and implementation and to monitor domestic human rights trends.[116] This work draws a distinction between 'output indicators' and 'impact indicators.' The former refers to evidence of a State having taken steps, in line with a UPR recommendations to, for example, amend a certain piece of legislation linked to the the right to safe drinking water, or to conduct torture prevention training within the police force. The latter then takes the analysis one step further and seeks to measure the degree to which these policy steps have resulted in improvements in the enjoyment of the right to water (e.g. more people linked to the mains water supply), or in reductions in incidences of torture.

To robustly and credibly measure the impact of the UPR, it will eventually be necessary to include impact indicators in the monitoring work of national implementation and reporting structures, NHRIs and domestic NGOs; and to include these measurements in the three UPR input reports. While there is evidence of some States taking such steps (e.g. Benin, Ecuador, Mauritius), far more work needs to be done before the international community can be said to have a solid evidentiary basis for determining the success or failure of the UPR.

CAPACITY-BUILDING SUPPORT AND THE UPR TRUST FUNDS

A final point regarding implementation is that, especially when one considers the large number of recommendations generated by the UPR, many developing countries require capacity-building and technical support in order to translate those recommendations into improved policy and practice on the ground.

With this in mind, in 2006, as part of the IBP, States agreed to establish two UPR Trust Funds, one to support the implementation of recommendations, and one that seeks to help developing country SUR delegations fly to and stay in Geneva for UPR Working Group reviews.

The former Fund could potentially play a vital role in helping developing countries overcome capacity-related barriers to implementation. However, the Fund remains under-resourced. Total voluntary contributions to the Fund for the implementation of first cycle recommendations amounted to US$3,239,514: a relatively small sum when one considers the high number of SURs that submitted requests for technical assistance in their national reports. During the 28th regular session of the Council in March 2015, China, on behalf of a group of countries, called for the Voluntary Fund to be strengthened, especially to help Least Developed Countries and Small Island Developing States.[117] Morocco made a similar call in a separate statement.[118]

Beyond the walls of the *Palais des Nations*, it is also important for international development partners, including UNDP (especially via the Resident Coordinator system), multilateral development banks, and bilateral donors, to take more and deeper steps to integrate accepted UPR recommendations into their development assistance programmes with developing countries. UNDP has made important progress in that regard over recent years, by encouraging UN Resident Coordinators to integrate accepted UPR recommendations into UN Development Assistant Frameworks (UNDAFs). However, much more needs to be done.

Finally, organisations such as the *Commonwealth* and the *Organisation internale de Francophonie*, have done significant work, since 2006, in building the capacity of member States to engage effectively with the UPR. For example, the Commonwealth secretariat has worked to help States prepare for reviews, participate in Working Group meetings, and organise post-review activities such as establishing inter-ministerial mechanisms for follow-up and implementation. The Commonwealth also conducts programmes aimed at building the capacity of parliamentarians to participate in the work of the Council, including the UPR.

RECOMMENDATIONS

That the establishment and conduct of the Universal Periodic Review (UPR) has been a success story for the Human Rights Council has become an article of faith for policymakers in Geneva and in national capitals. The UPR is now regularly referred to as the 'crown jewel' of the UN human rights system, an accolade originally used to describe the Special Procedures.[119]

This report demonstrates that, by and large, such praise is well deserved. The first ten years of the UPR have shown it to be an innovative and inclusive mechanism, and one capable of securing real improvements in the enjoyment of human rights. However, compliments should not give way to complacency: this report has also revealed signs that the 'honeymoon period' for the UPR may be coming to an end. There are important structural weaknesses with the UPR process that should be reflected upon and, if necessary, addressed ahead of the third cycle (due to start in April-May 2017).[120]

In January 2016, the new President of the Human Rights Council, Ambassador Choi Kyonglim of the Republic of Korea, announced that he would use his presidency to, *inter alia*, encourage such reflection, and consider what changes – if any – should be brought to the UPR mechanism ahead of the third cycle.[121] Towards that end, in May 2016 he appointed one of his Vice-Presidents, Ambassador Janis Karklins of Latvia, to conduct consultations.

UPR THIRD CYCLE: TWIST OR STICK?

The task facing Ambassador Karklins is not a straightforward one. There are significant differences of opinion between States (and also between UN officials and NGOs) as to whether the mechanism's success means it should be left untouched, or whether small modifications ought to be made in order to build on the mechanism's early promise.

Those in the first camp (broadly speaking, countries of the Like Minded Group) contend that the current UPR is a finely balanced compromise and that any tinkering, especially any moves to undermine the peer review nature of the mechanism, would risk reducing support and country engagement. These countries emphasise the UPR's 100% participation rate, anecdotal evidence that the UPR has contributed to domestic human rights improvements, and the fact that the mechanism

has only been in place ten years – too short a time to judge its ultimate effectiveness or to identify necessary reforms. Countries more willing to consider small improvements (broadly speaking, Western and some Latin American States) agree that the broad parameters of the UPR should remain unchanged, and that nothing should be done that might risk undermining the mechanism's acknowledged strengths and achievements; however, they also worry that the UPR may be losing steam, and that limited but important changes in its operating procedures are necessary to build on and reinvigorate the UPR's early success. This has led to debate at the Council as to whether, in the run up to the third cycle of the UPR, the international community should 'stick or twist.'

With that question in mind, on Thursday 25 February, URG convened a roundtable policy dialogue chaired by Ambassador Mehmet Ferden Çarikçi of Turkey. Participants included the President of the Council, OHCHR's UPR Branch, and around 20 ambassadors and relevant NGOs including *UPR Info* and *the International Service for Human Rights (ISHR)*. As well as informing this policy report, the roundtable also fed ideas into the third Glion Policy Dialogue (Glion III), hosted by Norway and Switzerland in May 2016.

Regarding the macro-level issue of whether the UPR should be left alone or whether the Council should consider possible improvements, although some participants kept firmly to their 'no change'/'some change' positions, others proposed a middle ground: 'we need to preserve what we have, but at the same time make some small adjustments to take us back to the original principles and modalities of the mechanism, as foreseen in the IBP.' Another suggested that 'any changes or tweaks to be made should be focused on strengthening implementation and improving reporting and the measurement of impact.'[122] This led to further discussion about what 'small adjustments' might look like.

RECOMMENDATION 1 (COUNCIL BUREAU)

It is imperative that any consultations ahead of the third cycle are fully inclusive (all State delegations and NGOs). All stakeholders should have an equal opportunity to express their views on whether adjustments should be made to the UPR mechanism and, if so, what those adjustments should be. Consultations should be on an 'informal informal' basis and open-ended. It should be made clear that there is no predetermined outcome (i.e. that the Bureau is in 'listening mode') and that any modifications will be consistent with, and indeed will reinforce, the IBP and five-year review outcome.

INPUTS INTO THE UPR: THE THREE REPORTS

The second and subsequent cycles of the UPR should focus, *inter alia*, on the implementation of accepted recommendations from previous cycles. This key *raison d'etre* is reflected in the outcome of the Council's five-year review and in relevant guidelines.

This policy report reveals that States, for their part, have indeed made progress in changing the format of national UPR reports to focus on progress with implementation. However, URG's analysis of second cycle reports suggests that domestic civil society has yet to adapt to the post-first-cycle requirements of the UPR. UN compilation reports have also, by and large, failed to adapt.

The present report also reveals broad agreement around the notion that the quality of national reports is heavily dependent on the quality and inclusiveness of national consultation processes. Yet while some States appear to be establishing inclusive and transparent national processes, research for this report has uncovered many examples of reports being drafted by governments only – even, in some cases, by individual ministries.

Taken together, these two issues constitute a significant challenge for the long-term credibility of the UPR process. Without inclusive national consultation processes, and without effective alternative or 'shadow' reports on State implementation, the international community and the general public will continue to be denied access to any kind of balanced, objective picture of State implementation. If left unchallenged, this situation – which some have said reduces the UPR to little more than a 'mutual appreciation society' – will eventually lead to the discrediting of the mechanism.

RECOMMENDATION 2 (STATES)

Although States have, by and large, responded to the Council's call for second-cycle national reports to focus on the implementation of first-cycle recommendations, the Council should nonetheless review, strengthen and further elaborate its guidelines to States

on national consultation processes and on the preparation of national UPR reports. The improved guidelines, to be adopted as a Council decision, should spell out more clearly what a 'broad consultation process at the national level with all relevant stakeholders' means in practice. They should also help States move towards better-structured national reports focused more squarely on implementation, and that provide concise information on the nature of national consultation process, on key obstacles (e.g. capacity constraints) to further progress and, where appropriate, on technical assistance or capacity-building needs.

RECOMMENDATION 3 (NHRIS, CIVIL SOCIETY)

Paris Principle-compliant NHRIs, in cooperation with UN Country Teams and OHCHR, should play a more focused role in strengthening the capacity of local civil society to monitor, measure, and report on the implementation of recommendations (and, via indicators, on their on-the-ground impact.) The Global Alliance of NHRIs (GANHRI) might consider developing guidance and support programmes for its members. International NGOs such as *UPR Info* and *ISHR* should continue to support such efforts.

RECOMMENDATION 4 (OHCHR)

OHCHR should improve its informal reporting guidelines to local NGOs and NHRIs, to further encourage civil society to report on implementation. When sending requests for NGO input (with the improved guidelines in annex), OHCHR should also consider attaching a consolidated matrix of accepted (clustered) recommendations, with a request that civil society comment on progress. In addition to sending out its requests for NGO inputs by email, OHCHR should more closely cooperate with local NHRIs to arrange briefing sessions for domestic civil society.

RECOMMENDATION 5 (OHCHR, TREATY BODIES, SPECIAL PROCEDURES MANDATE-HOLDERS, UN RESIDENT COORDINATORS)

UN compilation reports should also focus more tightly on the implementation of earlier accepted recommendations. Effective inter-mechanism clustering would help, by empowering Special Procedures and Treaty Bodies to better follow up on UPR recommendations. OHCHR should also, from the third cycle onwards, change the format of UN compilations reports

to more explicitly link Treaty Body and/or Special Procedures commentary on a State (e.g. concluding observations) with relevant (accepted) UPR recommendations from previous cycles. UN Resident Coordinators and Country Teams should also be systematically requested to contribute to UN compilations reports with information on what the UN has done to support the implementation of recommendations, especially important clusters of recommendations, on the ground.

RECOMMENDATION 6 (COUNCIL BUREAU, COUNCIL)

The Council should give serious consideration to increasing the word limit for the two compilation reports (i.e. to 10,000 words each), to bring them into line with national reports. At the very least, the word limit for the compilation reports should be expanded to 8,500, in line with UN standard rules for documents prepared by the secretariat.[123]

RECOMMENDATION 7 (OHCHR)

From the third cycle onwards, OHCHR should include, in the UN compilation report, its own one-page analysis of the situation in the country, of progress made towards the implementation of recommendations, and of any support it has extended to the SUR (e.g. technical support to help establish SNICRS). According to a leading member of the first Bureau of the Council (2006-2007), when the IBP was negotiated and agreed the Bureau intended that OHCHR would include such an analysis. The possibility to do so is provided by paragraph 15b of the IBP, which says the compilation should include 'information contained in...other relevant official UN documents.'

PEER REVIEW IN THE UPR WORKING GROUP

Those surveyed for this report differed on the question of whether the level of participation (i.e. ambassador or expert-level) in UPR Working Group sessions is going down. However, there was widespread agreement that sessions are insufficiently interactive and are becoming increasingly 'formulaic' or 'ritualistic.'

According to one diplomat, 'UPR Working Group interactive dialogues should be an invaluable opportunity for a frank exchange between States on their human rights situations and on progress with the implementation of past recommendations – a place for questions and answers, constructive criticism, peer-to-peer advice, and recommendation. Unfortunately, they are not living up to this billing.'

RECOMMENDATION 8 (REVIEWING STATES)

Because it is not practically possible to expand the amount of time available for each review (currently set at three and a half hours), States should take steps to improve the focus of the exchange. One way of doing so would be for States to make greater use of advance questions to the SUR. In-so-doing, States should respect the 10 working days deadline for the transmission of advance questions to the troika.

RECOMMENDATION 9 (REVIEWING STATES, TROIKA, OHCHR)

In addition to offering the possibility of submitting advance questions, the IBP also says that the troika 'may collate *issues*... to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue.'[124] According to PRST 8/1, the troika is responsible for collating issues and questions, and for relaying them to the secretariat. The secretariat must then transmit those issues and questions to the SUR 'no later than 10 working days before the date of the review.' PRST 8/1 further states that 'troika members shall cluster the [questions and/or] issues in accordance with the content and the structure of the report prepared by the SUR.' These provisions, which have not so far been fully utilised, provide an opportunity to consider sending the SUR advance 'lists of issues prior to review', thus building on evolving good practice by the human rights Treaty Bodies. Reviewing States should submit lists of issues to troikas ahead of reviews (preferably well in advance of 10 working days before the review, to allow time for the troika to collate the issues). These lists of issues prior to review (LIPR) should focus, in particular, on key clusters of previous recommendations. If done systematically, the development of such LIPR could contribute to more focused, interactive and productive Working Group dialogues – dialogues more able to address the most important human rights issues and challenges for the country concerned.

RECOMMENDATION 10 (STATES, TROIKA)

Even if, as per recommendations 3-7, the two compilation reports are qualitatively improved, it is nonetheless the case that, unlike the SUR's national report, these reports are not formally presented to the UPR Working Group. Therefore, they are accorded less value in the review. The fact that the Working Group only hears a presentation of the national report contributes to the generally stale and formulaic nature of interactive dialogues, as the lack of alternative views or dissenting opinions reduces the quality of the debate. States should therefore consider whether these two compilation reports could be presented in the Working Group without compromising the peer review character of the UPR. One option could be to expand the role of the troika by asking it to present short summaries of the compilation reports. Whether this option is possible under the IBP is unclear, though as States did

agree that the purpose of the troika is to 'facilitate each review,' the IBP certainly does not explicitly preclude the possibility.[125]

RECOMMENDATION 11 (STATES)

Ultimately, it will be important for the long-term credibility of the UPR to allow NGOs (especially domestic NGOs) and NHRIs to speak (ask questions and make comments – *not* offer recommendations) during the Working Group. Indeed, in URG's opinion, Paris-Principle-compliant NHRIs should be given a formal role in the Working Group review, perhaps in the form of an address to the Working Group immediately after the SUR's initial presentation. However, for this to happen, States would need to agree upon changes to the IBP, which is unlikely ahead of the third cycle.

RECOMMENDATION 12 (REVIEWING STATES)

All States should adopt the good practice of systematically following up on their own earlier recommendations to the SUR, either to request further information on implementation (for example, by asking for more detail on implementing legislation or on impact indicators) or, where a previous recommendation has not been implemented, by repeating the recommendation.

State under review delegation gives press conference after the conclusion of the UPR Working Group, November 2010

RECOMMENDATIONS

Over the course of the first two cycles, the UPR mechanism witnessed a rapid increase in the number of recommendations extended to each SUR: from an average of 27 per SUR during the first session to an average of over 200 by the seventeenth session. However, according to URG's analysis, this increase has been mainly driven by an increase in the number of recommending States (i.e. strengthened universality), a development that should be welcomed.

The rise in recommendations appears to be levelling off; nevertheless, the large number of recommendations currently extended by SURs is still problematic, especially for small State delegations.

RECOMMENDATION 13 (REVIEWING STATES)

States should continue to promote voluntary initiatives to limit the number of recommendations per reviewing State.

RECOMMENDATION 14 (REVIEWING STATES)

Recommending States should also look to strengthen coordination with like-minded States, in order to better avoid duplication and overlap.

RECOMMENDATION 15 (OHCHR, COUNCIL BUREAU)

Effective clustering of recommendations is key to making this 'principal currency' of the UPR more manageable and useful for SURs. According to resolution 16/21, after the conclusion of the Working Group interactive dialogue, recommendations to be included in the review outcome of the review (i.e. to be adopted by the Working Group) should first 'be clustered thematically with the full involvement and consent of the SUR and the States that made the recommendations.'[126] This time-consuming coordination exercise is undertaken by the troika, with support from OHCHR. Unfortunately, at present the troika and secretariat have only 48 hours (from the end of the interactive dialogue to the adoption of the outcome by the Working Group) to liaise between SURs and reviewing States on splitting and clustering recommendations, and to prepare the report. With this in mind, it is recommended that the role of the troika be strengthened to allow it to *automatically* cluster recommendations where those recommendations are substantively identical. It is further recommended that the Bureau (e.g. through a decision or PRST) expand the time available between the interactive dialogue and adoption by the Working Group from 48 to 72 hours. (The IBP says only that 'a reasonable time frame should be allocated between the review and the adoption.')

RECOMMENDATIONS 16 (REVIEWING STATES)

URG's analysis of over 5,000 recommendations shows that around 85% of them can be considered 'normal' in that they broadly align with the wording and the spirit of the Council's IBP and can be said to be useful to SURs. Only around 12% were found to be 'unspecific,' although this figure was higher for members of some regional groups. All States should

take steps to improve the quality and measurability of their recommendations, as 'unspecific' recommendations are not useful to the SUR and are a waste of time and resources for both the SUR and the UPR Working Group. Recommendations should be useful and measurable, and should include output and impact indicators. States should also avoid paraphrasing Treaty Body recommendations.

RECOMMENDATION 17 (STATES UNDER REVIEW)

The IBP makes clear that '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.'[127] Despite this clear stipulation, States have added a wide variety of different responses to UPR recommendations (e.g. partially accepted, already implemented). According to one diplomat, 'all these different variations have created difficulties in terms of holding States accountable against the implementation of accepted recommendations.'[128] SURs should therefore return to the clear terminology on recommendation acceptance agreed in 2006, according to which recommendations may only be 'supported' or 'noted.'

ADOPTION IN PLENARY

In the URG's opinion, the current practice of UPR adoption in plenary serves little purpose, offers no added value to the overall process (apart from offering a belated opportunity for NHRIs and NGOs to comment on an outcome that is already a *fait accompli*), and uses up much-needed plenary time during regular Council sessions.

RECOMMENDATION 18 (COUNCIL BUREAU)

Consistent with the IBP and the five-year review, the final UPR outcome should continue to be adopted in the plenary of the Council. However, the Bureau should amend the Council's programme of work (in particular with regard to item 6 on the UPR) to convene small, dedicated Council plenary sessions immediately after the conclusion of each UPR Working Group session, during which the UPR outcomes of the States reviewed at the preceding Working Group may be formally adopted. Some UN officials and NGOs have suggested (as an alternative) moving item 6 to the last week of a given Council session, though it is difficult to see what difference this would make.

RECOMMENDATION 19 (COUNCIL PRESIDENT)

The modalities of plenary adoption should also be amended

through a PRST, to convert it into a space wherein SURs clarify their positions on recommendations, explain their implementation plans, and, where appropriate, request international support; wherein other States and relevant UN agencies can pledge support; and wherein NHRIs, NGOs and parliamentarians can offer views and information about their roles in implementation and follow-up. This would not require any changes to the IBP.

COOPERATION WITH THE UPR MECHANISM

A number of NGOs surveyed for this report noted that the UPR mechanism does not adequately guard against SUR reprisals against human rights defenders and others who seek to cooperate with and provide input into the review.

RECOMMENDATION 20 (COUNCIL PRESIDENT)

A 'UPR reprisal protocol' should be developed by the President of the Council. Under such a protocol, the President of the Council would bring admissible allegations of reprisals to the attention of the State concerned. Where the SUR's response is deemed inadequate, the case would be noted in the final (plenary) outcome report. The President, based on updates received from the alleged victim and from the State concerned, would inform the Council of progress with the case under agenda item 5.

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 will ultimately determine the value of the mechanism. In that regard, a particularly positive consequence of the UPR has been that it has encouraged many States to establish dedicated standing national coordination, implementation and reporting structures (SNICRS).

RECOMMENDATION 21 (STATES)

All States that have not done so should give urgent consideration to establishing a SNICRS. These structures should be responsible for coordinating the implementation of accepted UPR recommendations, together with relevant recommendations from Special Procedures and Treaty Bodies; for monitoring progress (for example through a publicly-accessible online database); for measuring impact (e.g. via the application of indicators); and for preparing future UPR

national reports in full consultation with all relevant domestic stakeholders. SURs should include information on their SNICRS in their national reports, including information on relevant focal points.

RECOMMENDATION 22 (STATES)

The Council should create space on its agenda, either during sessions or inter-sessionally (or even regionally), for States and other national stakeholders to exchange good practices on the elaboration of SNICRS and the implementation of UPR and other recommendations. These spaces, which some have called 'communities of practice,' should involve and engage domestic-level experts and practitioners.

RECOMMENDATION 23 (STATES)

States should develop voluntary principles to guide the creation, development, mandates and functioning of SNICRS.

RECOMMENDATION 24 (OHCHR, DONORS)

OHCHR should continue and expand its vital work to offer capacity-building and technical assistance to States, upon their request, to support the further development of SNICRS, and to help measure the impact of implemented recommendations (i.e. via indicators). As part its technical support, OHCHR should ensure that the 'digital implementation coordination, monitoring and reporting tool' successfully piloted in Paraguay, Luxembourg and Costa Rica is made available 'off the shelf' to all States that so request it. OHCHR should also ensure that, where the SUR agrees, data from the 'digital implementation coordination, monitoring and reporting tools' is automatically shared with the Universal Human Rights Index (which contains information on clustered UPR, Treaty Body and Special Procedures recommendations, organised by State).

RECOMMENDATIONS 25 (OHCHR)

Building on the above-mentioned effort to collate and share information on recommendation implementation and on the impact thereof (i.e. via indicators), OHCHR should help States to streamline reporting obligations and support the realisation of the 2030 Agenda for Sustainable Development, by working with other relevant parts of the UN to link information on human rights implementation and impact with relevant SDG targets and indicators.

RECOMMENDATION 26 (DONOR STATES)

Donor States should provide greater support (through voluntary contributions) to OHCHR's vital work on implementation coordination, monitoring and reporting. This work should be centrally coordinated by OHCHR rather than by other parts of the UN (e.g. UNDP).

RECOMMENDATION 27 (IPU, COMMONWEALTH, CPA)

Relevant international organisations representing parliaments, such as the Inter-Parliamentary Union (IPU) and the Commonwealth Parliamentary Association (CPA), should also develop 'good practice' guidelines or principles on how parliaments should engage with national implementation and reporting processes. The fact that around 50-70% of UPR recommendations require legislative action to be realised, together with the important government oversight role played by parliaments, means that legislatures should be involved and engaged throughout the UPR cycle.

RECOMMENDATION 28 (STATES, OHCHR)

States should include information on parliamentary involvement with the UPR process in their national reports. OHCHR should also consider requesting information from all national parliaments about their level of engagement with UPR implementation and oversight, for inclusion in the UPR compilation reports.

RECOMMENDATION 29 (GANHRI)

In addition to playing an important coordinating and capacity-building role to help domestic civil society produce improved 'other stakeholder' UPR compilation reports; NHRIs, led by GANHRI, should identify, codify and promote good practice in support of UPR recommendation implementation and monitoring/measurement.

RECOMMENDATION 30 (OHCHR, GANHRI, UNDP/RESIDENT COORDINATORS)

OHCHR, GANHRI and UN Country Teams should work together to build the capacity of local NGOs to press for, monitor, measure, and then report on (in line with recommendation 3) the implementation of UPR recommendations.

RECOMMENDATION 31 (UNDP/RESIDENT COORDINATORS, DONORS)

UN Resident Coordinators should systematically integrate accepted UPR recommendations into UN Development Assistance Frameworks (UNDAFs), and bilateral donors should integrate accepted recommendations into development partnership agreements. These steps should be taken in full cooperation with the concerned State.

NOTES

1   UNGA resolution 60/1, 'World Summit Outcome', UN Doc. A/RES/60/1, 16th September 2005, para 158.

2   World Conference on Human Rights, Optional Protocol to the International Covenant on Civil and Political Rights (OP1), Vienna Declaration and Programme of Action, 1993.

3   Report of the Secretary-General of the 59th session of the UNGA, 'In larger freedom: towards development, security and human rights for all', UN Doc. A/59/2005, 21st March 2005, para 181.

4   Ibid, para 141.

5   Kofi Annan, Secretary-General's Address to the Commission on Human Rights, Geneva: 7th April 2005, Speech.

6   Ibid.

7   Report of the High Level Panel on Threats, Challenges and Change, 'A More Secure World: Our Shared Responsibility', UN Doc. A/59/565, 2nd December 2004, p.74, para 283.

8   Marc Limon and Ted Piccone, Human Rights Special Procedures: Determinants of Influence [Universal Rights Group: Brookings Institute: March 2014], Policy Report.

9   Ibid.

10   UN Doc. A/59/2005, op. cit.

11   Kofi Annan, Secretary-General's Address to the Commission on Human Rights, op. cit.

12   Report of the Secretary-General of the 59th session of the UNGA, 'In larger freedom: towards development, security and human rights for all,' addendum, Human Rights Council, explanatory note by the Secretary-General, the Secretary-General's proposal, UN Doc. A/59/2005/Add.1, 23rd May 2005.

13   The proposal built on his speech to the Commission on 7th April 2005.

14   ECOSOC resolution on periodic reports on human rights and studies of specific rights or groups of rights, 1st August 1956, UN Doc. E/RES/624(B)(XXII); and Resolution I and reform of this procedure introduced by ECOSOC 1074C resolution (XXXIX), UN Doc E/2844-E/CN.4/731, 28th July 1965.

15   Identification of activities that have been completed or are obsolete, of marginal usefulness or ineffective, UN Doc AR/Res/35/209, 17th December 1980.

16   Kofi Annan, Secretary-General's Address to the Commission on Human Rights, op. cit.

17   UNGA resolution 60/251, UN Doc. A/RES/60/251, 3rd April 2006, did contain a provision allowing for membership to be suspended where a State has committed gross and systematic violations of human rights.

18   See Human Rights Council decision 1/103, UN Doc. A/HRC/DEC/1/103, 30th June 2006.

19   UNGA resolution 5/1, UN Doc. A/HRC/RES/5/1, 18th June 2007.

20   Open-Ended Working Group on the review of the HRC and functioning, UN Doc. A/HRC/RES/12/1, 1st October 2009.

21   Pakistan on behalf of the OIC.

22   Egypt on behalf of NAM.
23   Japan.

24   Uruguay.

25   Egypt, on behalf of NAM.

26   Mexico.

27   Australia, France, Norway, UK.

28   France, Norway.

29   Uruguay.

30   Mauritania.

31   Brazil, UK.

32   Indonesia.

33   Emphasis added.

34   Algeria.

35   Turkey.
36   Thailand.

37   Bosnia and Herzegovina.

38   Egypt, on behalf of NAM.

39   Nepal.

40   Switzerland.

41   Maldives.

42   Belgium, on behalf of the EU.

43   Russia.

44   Human Rights Council resolution 5/1, UN Doc. A/HRC/RES/5/1, op. cit.,   para 29.

45   Republic of Korea, Mauritius, UK.

46   Brazil.

47   Mexico.

48   Uruguay.

49   Maldives.

50   South Africa.

51   Kazakhstan.

52   Mauritius.

53   South Africa.

54   Review of the work and functioning of the Human Rights Council, UN Doc A/HR/Res/16/21, 12th April 2011.

55   'Beyond promises: the impact of the UPR on the ground' [UPR

Info: 2014], Policy Report.

56   UPR is sometimes called the 'jewel in the crown' of the UN human rights system or the UN Human Rights Council. However, that epithet was first used by UN Secretary-General Kofi Annan to describe Special Procedures.
57   Quote by a Western diplomat.

58   Human Rights Council resolution 5/1, op.cit., para 3b.

59   UNGA resolution 50/251, UN Doc. A/RES/60/251, 3rd April 2006, para 5e.
60   Ibid.

61   Human Rights Council resolution 5/1, op.cit., para 15a.

62   That analysis is based on descriptions of national consultation processes contained in national reports, together with interviews with relevant State representatives and domestic NGOs.

63   Council observer States can fully participate in the interactive dialogue and submit recommendations.

64   NGOs, NHRIs and other 'relevant stakeholders' may attend meetings of the Working Group, but may not make Statements or submit recommendations (thereby retaining, according to the States that pressed for these modalities, the 'peer review' nature of the UPR).
65   Human Rights Council, UN Doc. A/RES/60/251, 3rd April 2006, para 5e.

66   Universal Periodic Review: Information and guidelines for relevant stakeholders' written submissions, OHCHR, 3rd March 2013, para 9.

67   This practice is carried out by UN human rights treaty bodies.

68   Analysis in 'The UPR, Treaty Bodies, and Special Procedures: a connectivity study' [URG: due for publication in 2016-2017], Policy Report.

69   Egypt, on behalf of NAM.

70   Human Rights Council resolution 16/21, UN Doc. A/HRC/RES/16/21, 12th April 2011, annex, para 8.

71   Universal Periodic Review Extranet Page, OHCHR, available at http://extranet2.ohchr.org/Extranets/UPR/portal/page/portal/UPR.html.

72   Comment by an ambassador at an informal meeting held under Chatham House rule, December 2015.

73   So far, the second cycle is not yet complete.

74   Universal Periodic Review Extranet Page, op. cit.

75   URG calculations.

76   See 22nd session of the Council, item 6 on the Human Rights Council Extranet Page, OHCHR, available at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/22ndSession/Pages/default.aspx.

77   Glion Human Rights Dialogue 2015 : the Human Rights Council at 10 : improving relevance, strengthening impact [Universal Rights Group : September 2015], Policy Report.

78   National Mechanisms for Reporting and Follow-Up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms [OHCHR: 2016], Policy Report.

79   Human Rights Council, 'Modalities and practices for the universal periodic review process', UN Doc. 8/PRST/1, 9th April 2008.

80   'A Guide for Recommending States to the UPR' [UPR Info: July 2015], Policy Report.

81   Ibid, pp25.

82   Human Rights Council resolution 5/1, op. cit., para 3d.

83   Human Rights Council resolution 5/1, op. cit., para 3f.

84   Human Rights Council resolution 5/1, op. cit., para 3l.

85   Human Rights Council resolution 5/1, op. cit., para 4a.

86   Human Rights Council resolution 5/1, op. cit., para 4b.

87   Human Rights Council resolution 5/1, op. cit., para 4c.

88   Human Rights Council resolution 5/1, op. cit., para 4f.

89   Human Rights Council resolution 5/1, op. cit., para 3b.

90   Human Rights Council resolution 5/1, op. cit., para 3d.

91   Human Rights Council resolution 5/1, op. cit., para 4a.

92   Human Rights Council resolution 5/1, op. cit., para 3l.

93   Human Rights Council resolution 5/1, op. cit., para 4f.

94   Human Rights Council resolution 5/1, op. cit., para 3f.

95   Human Rights Council resolution 5/1, op. cit., para 4b.

96   Ibid, pp35.

97   Human Rights Council resolution 16/21, op.cit.

98   Human Rights Council resolution 5/1, op. cit., para 4a.

99   Vienna Declaration and Programme of Action, 1993, para 98.

100   Human Rights Indicators: A Guide to Measurement and Implementation [OHCHR: 2013], Policy Report.

101   To mitigate subjectivity, the recommendations were evaluated with a moderate approach (making our results closer to an underestimation) and without consideration of context (recommending states and SUR) by both a URG researcher and an external evaluator. Such an evaluation should not be considered clear-cut or authoritative, but rather should hope to give a broader picture of recommending states' behavior in the UPR.

102   'Mutual Praise Society' case study [UN Watch: 29 January 2013], Blog Post.

103   Available online at http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.

104   Human Rights Council resolution 5/1, op. cit., para 24.

105   Christof Heyns and Frans Viljoen, The Impact of the United National Human Rights Treaties on the Domestic Level, Human Rights Quarterly vol. 23 no. 2, 2001, pp483-535.

106   Beyond Promises: the Impact of the UPR On the Ground [UPR Info: 2014], Policy Report.

107   Human Rights Council resolution 5/1, op. cit.

108   National Mechanisms for Reporting and Follow-Up [OHCHR: 2016], Policy Report.

109   'Strengthening the United Nations human rights treaty body system [OHCHR: 2012], Policy Report.

110   UNGA resolution 68/268, UN Doc. A/RES/68/268, 9th April 2014.

111   UNGA resolution 30/25, UN Doc. A/HRC/RES/30/25, 2nd October 2015.

112   National Mechanisms for Reporting and Follow-Up [OHCHR: 2016], op. cit.

113   National Mechanisms for Reporting and Follow-Up [OHCHR: 2016], op. cit.

114   Human Rights Council resolution 16/21, op.cit., para 18.

115   'UPR Mid-term reports', OHCHR webpage, available online at http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.

116   Human Rights Indicators : A guide to measurement and implementation, OHCHR Doc. HR/PUB/12/5, 2012.

117   Joint Statement by the LMG on the Universal Periodic Review, delivered by Ambassador and DPR H.E. FU Cong at the 28th session of the Human Rights Council on 28 March 2014.

118   Statement delivered by Ambassador and Permanent Representative S.E. Mohamed Auajjar at the 28th session of the Human Rights Council on 28 March 2014.

119   UN News Centre, 'Annan calls on Human Rights Council to strive for unity, avoid familiar fault lines,' 29 November 2006.

120   Human Rights Council decision 31/116, UN Doc. A/HRC/DEC/31/116, 7th April 2016.

121   Human Rights Council decision 31/116, op. cit.

122   Two different diplomats, speaking during 25 February roundtable on the third cycle of the UPR (a policy dialogue held in preparation for the third Glion Human Rights Dialogue). These quotations and other meeting highlights are available online at http://www.universal-rights.org/wp-content/uploads/2016/01/Consol-report-pre-Glion-III-policy-dialogues-.pdf.

123   http://dd.dgacm.org/editorialmanual/ed-guidelines/instr_prep_docs/instructions.htm

124   Human Rights Council resolution 5/1, op. cit., para 21.

125   Human Rights Council resolution 5/1, op. cit., para 18d.

126   Human Rights Council resolution 16/21, op.cit., para 15.

127   Human Rights Council resolution 5/1, op. cit., para 32.

128   'Interview with Western diplomat'

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