

# UNIVERSAL PERIODIC REVIEW



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The 14<sup>th</sup> session of the Universal Periodic Review (UPR), the second session of the second cycle, was held at Palais des Nations in Geneva from 22 October to 5 November. A total of 14 States were reviewed: the Czech Republic, Argentina, Gabon, Ghana, Ukraine, Guatemala, Benin, Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Peru, and Sri Lanka.

This article presents relevant figures in relation to the effectiveness of the review session. The article also provides an overview of the session by highlighting the level of cooperation of States under review, the quality of recommendations provided throughout the session, and some of the procedural issues encountered.

## INSIDE THE FIGURES

During the 14<sup>th</sup> session, there were a total of 1880 recommendations made to the 14 participating States during the interactive dialogues. The average number of recommendations to each State under Review was 134, a substantial increase from the first cycle review of these States held in 2008, which averaged about 36 per State. About 803 (43%) of these recommendations enjoyed the full support of the State under review, compared to a total of 396 recommendations (21%) rejected. In many cases the reason given for the rejection was a lack of compatibility with the legislation of the respective State. The remaining 681(36%) recommendations were left pending for further consideration and States will have to provide a response no later than the 22<sup>nd</sup> second session of the Human Rights Council taking place in March 2013.<sup>1</sup>

Overall, the figures show willingness from States to cooperate with the system, since a high number of accepted recommendations indicates a commitment to implement, which would lead to substantial changes in human rights situations. At a side event held by the NGO UPR-info during the 14<sup>th</sup> session, there was positive feedback about the implementation of recommendations from the first cycle. In its report 'On the Road to Implementation',<sup>2</sup> UPR-info shows that approximately 40% of the recommendations from the first cycle have been partially or fully implemented at the midterm point of the State's review cycle.<sup>3</sup> This illustrates that progress that has been achieved since the first cycle and creates an expectation by human rights defenders that this progress should be built on during this second cycle.

## QUALITY OF RECOMMENDATIONS

One of the main concerns for the second cycle of the UPR is to ensure that there is extensive follow-up to past recommendations, while also shedding light on new human rights violations occurring in the States under review. However, during the 14<sup>th</sup> session of the UPR, many reviewing States did not adequately engage with these dual objective. While it is important to repeat recommendations that have not been implemented by the State under review, it is also important that recommendations reflect the current situation in a country. For example, during the review of Sri Lanka, there were a total of 43 recommendations from the first reviews repeated out of the total of 230. Regarding current issues in the country, only a few Latin American and European States focused on the reforms that need to be implemented after the end of Sri Lanka's civil war,

1 Five States opted to defer all their responses to recommendations: Japan, Pakistan, Ukraine, Czech Republic, and Argentina.

2 <http://bit.ly/Uk55Bj>.

3 A small percentage of recommendations rejected were also implemented.

which ended a year after the State's first cycle review. This demonstrates a failure to ensure that recommendations accurately reflect the ongoing situation in a country. In fact, in general States were quick to commend the progress made by Sri Lanka on certain issues such as its ability to eradicate the 'scourge of terrorism', but less so in condemning the lack of action on other prominent issues such as the crimes committed during its civil war.

Another important aspect in the quality of recommendations is to assure that States under review are given objective measures that properly apply to its conditions and capacity of implementation. Rather than formulating generic prescriptions that don't take into account national contexts, States should make an effort to identify the root of specific issues and provide relevant recommendations to address them. During the 14<sup>th</sup> session, the recommendations given to Zambia showed awareness of the present situation and reforms occurring in the country, such as the drafting of a new constitution. States were also efficient at identifying the economic capacities of Zambia and many recommendations were derived from the need to implement capacity building and provide funding, in order for the State to meet the expectations of the international community's human rights expectations. This approach is particularly important when reviewing States who are willing to collaborate with the system but lack the institutional structure to properly improve respect for human rights in their country.

Regarding the content of the recommendations throughout the session, many States referred to the necessity of ratifying specific treaties such as the second optional protocol to the *International Covenant on Civil and Political Rights* on the abolition of the death penalty and the *Convention on the Protection of the Rights of all Migrant Workers*. These are specific requests that require precise action and measurable implementation efforts, allowing for clear identification of progress. However, there were other recommendations that lacked specificity and contain vague terms such as 'enhancing measures to eradicate poverty'.<sup>4</sup> This ambiguity allows States under review to evade their responsibility and implement minimal changes to simply avoid criticism in future reviews.

The following is a table with some the most frequently made recurrent recommendations during the 14<sup>th</sup> session of the UPR:

Recurrent Recommendations	States Recommendations was issued to
Abolish the death penalty	Guatemala, Japan, Ghana, Republic of Korea, Peru
Establish a preventive mechanism for torture	Peru, Benin, Ukraine, Gabon
Create enabling environment for human rights defenders/exercise of freedom of expression	Sri Lanka, Peru, Guatemala, Pakistan,
Decriminalise same-sex relationships	Benin, Ghana, Zambia, Gabon,
Ratify the Convention on the Protection of the Rights of All Migrant Workers	Sri Lanka, Ukraine, Japan, Republic of Korea, Czech Republic, Switzerland
Prevent violations against women	Argentina, Peru, Guatemala, Ghana, Republic of Korea, Zambia, Gabon
Prevent child trafficking and child labour	Argentina, Peru, Guatemala, Ghana, Republic of Korea, Zambia, Gabon
Promote participation of women in political life	Guatemala, Zambia, Republic of Korea, Ghana, Czech Republic, Switzerland

## COOPERATION BY STATES UNDER REVIEW

The effectiveness of the review process depends on the level of cooperation by States to accept and implement recommendations. Without such collaboration, the UPR could not serve its purpose of fostering tangible improvements in protecting human rights. Therefore, it is necessary for States to be willing to engage in constructive debate throughout the review and to be objective in their responses. Peru's review was an exemplary demonstration of how the process lends itself as a forum for sharing best practices and receiving advice that specifically addresses human rights concerns occurring in the State under review. Throughout the interactive dialogue with Peru, the State clearly demonstrated the progress made since its first cycle review and acknowledged the areas in which advances have been truncated due to lack of institutional structure. Peru

<sup>4</sup> Recommendation made on the review of Guatemala.

methodically addressed all the advance questions and concerns raised during the interactive dialogue by calling on the relevant Government representatives in the delegation to speak on their areas of expertise.<sup>5</sup> Peru concluded its review by inviting all Special Rapporteurs to visit the State and see the progress it has achieved.

Some States, however, lacked objectivity in the presentation of their report and in the responses provided during the interactive dialogue. Some reports were detached from human rights issues of major concern occurring in the respective State and presented a contradictory picture to that exposed by current and first review cycle recommendations. For instance, this was the case for Japan's review, which was marked by defensive and dismissive language. Japan's stance was particularly criticised on the death penalty. Even though States reiterated recommendations to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, Japan stood by its position that abolition is simply inappropriate in the country.

This behaviour reflects the lack of accountability within the UPR process in addressing States who are indifferent to certain recommendations that are of major concern globally. There are no consequences beyond the short-term embarrassment of having a deficient human rights record discussed internationally. It is relatively easy for States to reject recommendations, thus avoiding any accountability in those areas. The tendency of reviewing States to simply re-recommend the same issues during the following review cycle, with no demonstrated willingness to increase the focus on previously rejected recommendations, may over time erode the effectiveness of the UPR process.

## PROCEDURAL ISSUES

During the adoption of the report of Sri Lanka, some States raised the fact that modifications had taken place in the substance of recommendations made to Sri Lanka during the interactive dialogue.<sup>6</sup> The UK, the US and France voiced their disagreement with this practice and criticised the lack of transparency it brought to the UPR process. In Sri Lanka's defence, several States including Cuba, China, and Russia raised the importance of sovereignty and the need to prevent turning the UPR into a mechanism for confrontation that puts the State under review in a place where they are unable to accept recommendations. Sri Lanka also took the floor to affirm that it had consulted all the States who provided

the recommendations and agreed all of the modifications with them. It also emphasised its flexibility in accepting 110 of the 230 recommendations it had received. According to UPR-Info, Sri Lanka was not the first State to negotiate the wording of the recommendations with the aim of watering down their strength. In sessions 13 and 14 of the UPR, the States who have modified the language in recommendations include Brazil, Bahrain, Ecuador, Finland, Guatemala, India, Indonesia, Morocco, Peru, Philippines, and Poland. Most States decide to accept this practice in order to accommodate the State under review and the changes always appear in the footnotes of the working group reports.<sup>7</sup>

Some States also resorted to techniques such as utilising most of their available time to present their report thus avoiding having to clarify any of the issues that States raised during the review. Five States made use of most of their time to present their report and did not provide specific responses to questions and issues raised in the interactive dialogue.<sup>8</sup>

The individual time allocated for States to make recommendations proved to be too short in some of the reviews. This was particularly the case Sri Lanka's, which had a total of 98 participating States, resulting in very short speaking times of 72 seconds. The ability for States to submit advance questions, if used more systematically and predictably, may go a long way in addressing this issue and facilitate an interactive dialogue that scrutinises progress in the State under review. However, the number of advance questions submitted for reviews remains limited and often provided by the same group of States.<sup>9</sup> More use of and attention to advance questions by both the State under review and reviewing States would allow delegations to better prepare their responses and interventions and create a more informed and deeper interactive dialogue during the oral review.

## CONCLUSION

The 14<sup>th</sup> session marked the second review under the new procedures for the second cycle. Although clear steps were taken to improve the procedural process, there remain challenges to the system. Key is the reliance on the cooperation of States, which in some cases results in the State under review being given great leeway to engage with the review on its own terms, such as in negotiating recommendations.

Although it could be argued that the cooperative basis of the UPR is one of its strengths, and encourages participation, it is also the greatest weak spot of the process. If States exploit that aspect of the process too far the mechanism could be irreparably damaged. ■

5 Argentina, Japan, Switzerland, Pakistan also use members of their delegation to answer questions.

6 Sri Lanka made eight amendments. They change references to implement or report on implementation of the recommendations from the Lessons Learnt and Reconciliation Committee (LLRC) to instead reference the Action Plan created to implement the recommendations from that Committee. That Action Plan rejects the central call from the LLRC to carry out independent investigations.

7 See UPR-trax #35 available at <http://bit.ly/Yngunm>.

8 Guatemala, Benin, Pakistan and Sri Lanka all used the majority of their time to present their report.

9 Spain, Canada, Denmark, Sweden, United Kingdom, Netherlands.