

UPR and the OHCHR

Samia Slimane
30 September 2008

 OHCHR is mandated by the HRC to prepare two UPR reports by country reviewed: a UN Compilation and a Stakeholders Summary.

 UPR generates a number of documents for each of all 192 countries reviewed and all meetings are webcasted by the UN.

 The webcasting of UPR has proved so far to be a real added-value in making an international human rights mechanism established in Geneva truly accessible at country level.

UPR and OHCHR country follow-up

 For most countries reviewed through the UPR, despite evident weaknesses in the process and outcome, the most significant human rights themes had been nevertheless identified and addressed.

✚ Many States makes pledges and commitments through the UPR process and this trend is very positive as they can later be held accountable

Limits to OHCHR systematic follow-up activities

-  The weakness of some UPR recommendations
-  Their questionable status / reflecting the position of submitting State(s) to their authors and not endorsed by the HRC WG as a whole.
-  The political nature of the country assessment dimension of the UPR
-  The resource limitations of OHCHR / UPR Trust Fund for follow-up / activities deriving from the UPR recommendations / countries where OHCHR have field presences.

Mainstreaming human rights in the UN system...

- 🇺🇸 When OHCHR cannot provide follow-up to UPR recommendations, it will take measures to channel and promote their follow-up by UNCTs and Resident Coordinators.



Place and Role of UPR mechanism

vis-à-vis

existing international
human rights mechanisms



Interaction and dynamics

Added value

- The UPR added value –when its recommendations do truly reflect existing ones from TCBs and SPs is:
 - a) its political strength due to the high status of the Human Rights Council;
 - b) the fact that most (or many) of the UPR recommendations are agreed upon by the concerned States;
 - c) that UPR can potentially revive TBs and SPs recommendations that have been neglected by States.

Limitations and challenges

- There are objective differences between the UPR and TBs/SPs:

UPR is a political and intergovernmental process which is not expert based and independent;

TBs and SPs are a technical and legal based expert and independent system.

- 🌹 The three mechanisms should be complementary and reinforcing each other,
- 🌹 and should strive as much as possible for coherence to strengthen the global human rights system.

▶ Normative value
of UPR review
and outcome

 International human rights law represents a well developed normative field on which notably treaty bodies and special procedures base their work.

What is in this context the added value of the UPR?

 UPR reviews all worlds' countries in a high-level UN body, including:

a) those that would have escaped a comprehensive human rights review such as States that have ratified a very limited number of international human rights treaties;

b) those that have poor reporting record under these treaties;

c) and those who have very limited or no cooperation with special procedures.



UPR in a few instances has also proved to bring to the attention of the Human Rights Council issues that had been taboo in this arena / casts in Sub-Indian continent; gay, lesbians and transsexuals.



On the contrary, THE ISSUE OF INDIGENOUS PEOPLES AND THEIR RIGHTS HAVE BEEN SO FAR VERY MUCH NEGLECTED IN THE CONTEXT OF THE UPR'S OUTCOME.

Limitations and challenges

- ❖ The outcome of the UPR process –political and intergovernmental- can potentially lower existing standards set by international law and related bodies;
- ❖ The UPR political nature also create space for country/thematic selectiveness;

 The status of UPR recommendations remains un-precedent in the UN realm / the UPR WG report is adopted by the HRC plenary but nevertheless its recommendations are, as stated in every report, “reflecting the position of submitting State(s) to their authors and not endorsed by the HRC WG as a whole”

 A certain number of the UPR recommendations are clearly non consistent with TBs and SPs jurisprudence.



Some debates on sensitive human rights issues addressed in the past by TBs and SPs have been re-opened in the context of the UPR / These include death penalty, human rights and counter-terrorism, rights of gay, polygamy **AND RIGHTS OF INDIGENOUS PEOPLES.**

This can potentially lead to the re-opening of these debates within TBs and SPs.

▶ UPR Pledges
and commitments
made by States

 Under the resolution 5/1
establishing the UPR, States are
encouraged to make voluntary
commitments and pledges

Added value



State written pledges and commitments can potentially become a positive dimension of the UPR.

Time will demonstrate whether State pledges will really be enforced; in this regard the next UPR cycle will help in providing a response when States will report back to the Council on implementation measures;

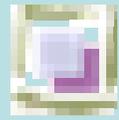


Pledges and commitment can become a positive spin-off for TBs and SPs that can be in an ideal position to use them as a dialogue and follow-up tool.

Limitations and challenges



In a few cases already, pledges made by States have been contradicted by other statements made by the same State / regarding for example a visit by a Special Rapporteur.



Civil society,
National Human Rights
Institutions
and
UN cooperation on UPR

▶ Cooperation with civil society

 The UPR provides for stakeholders, including NGOs, to participate in its process.

Added value



Generally speaking, civil society's UPR input has so far been of quality, despite short initial deadlines set for their written submissions. This clearly demonstrates the interest of civil society to impact on this new mechanism. ECOSOC and non-ECOSOC NGOs have participated from local and international levels



NGOs have generally well complemented info reflected in the UN Compilation report by submitting information on the de facto human rights implementation and respect;



In some countries some specific UPR NGO coalitions have been set-up with the view also of strengthening relationship with authorities and facilitate UPR follow-up process;



The most experienced NGOs have established efficient advocacy and lobbying strategies, including in working in advance in their own countries and through embassies with States that part of the concerned Troikas;

Limitations and challenges

-  In a number of countries the UPR has attracted essentially the established NGOs that are already experienced in interacting at international level;
-  In the case of a fair amount of countries worldwide, the number and quality of NGO submissions remains potentially very limited or even, in some case, inexistent;

 UPR is one more mechanism in which NGOs can participate and have a recognized key role to play. This raises an issue of resources and capacity. The short UPR experience has shown that international NGOs have struggled covering all requirements (UPR, TBs, SPs and other) and sometimes have sacrificed a mechanism to privilege the highly visible UPR;

▶ Cooperation with UN
agencies



In November 2007, the HC sent a letter to all UN agencies, funds and programmes calling for their active participation in the UPR, and inviting for contributions of information which *“from its perspective, and within its mandate, has a bearing on the enjoyment of human rights in the States to be reviewed”*.



Some UN entities have provided support to governments in the preparation of the State reports, facilitated information to stakeholders, and participated in inter-agency consultations.

Added value

- 🇺🇸 UPR is a UN-system wide effort. The S-G has reaffirmed the centrality of human rights in the development work of the United Nations, while recognising the differentiation in operational agencies' mandates.

- Many UN agencies include human rights work in their programmes and therefore are well placed to share their expertise.
- Some UN entities have submitted some 100 UPR-specific written contributions to the preparation of Compilation reports to the first two sessions (DPA, FAO, UNFPA, UNHCR, UN-Habitat and UNICEF).

 UN agencies, especially at country level within the context (or not) of UNCTs, can play an important role in providing support to follow-up UPR's recommendations, including with regard to UN programming and planning instruments such as CCA/UNDAFs.

Risk mitigation

There is a need to find way to increase UN agencies, including through UNCT's, involvement in UPR in order to strengthen their ownership in the process and motivation in providing support to follow-up. This engagement with the UN system on the UPR needs to be tackled in connection with the overall Office approach to partnership with the UN system

▶ Cooperation with national human rights institutions (NIs)



Based on initial experiences, NI's have often played two main roles:

a) act as catalyst at national level to engage other stakeholders in the UPR process, and

b) make submissions to the Summary of Stakeholders report

Added value

-  Due to their unique status, NIs are in a unique position to add value to the UPR, in terms of national process, information sharing and follow-up;
-  The UPR offers a chance to independent groups to express opinions on the quality of the work of NIs and their compatibility to the requirements of the Paris Principles, especially with regard to independence.

Limitations and challenges

-  Not all NI input is of equal quality. A limited number of NIs felt frustrated that much of their information was not selected in the Summary of Stakeholders report;
-  In a few instances, NIs has been openly criticized by credible national and international NGOs in the Summary of Stakeholders report.

Risk mitigation

NIs could proactively ensure that they are included in the broad consultation process at the national level organized by the State for the purpose of the preparation of the information to be submitted to the UPR by the State

Other organisations:

It should be note that the Organisation de la Francophonie has shown much interest in supporting UPR. It organized an important regional meeting in Rabat (Morocco) before the start of the UPR and also supported the participation of Mali to the process, including meetings in Geneva.

The Inter-Parliamentary Organization (IPU) has also started to provide to its national members training on UPR and;

The Commonwealth Secretariat invited OHCHR to a meeting on UPR during last Spring.

After the first full UPR cycle is completed, the HRC may decide to review the mechanism...

➡ What about indigenous peoples' issues?

UPR
and
INDIGENOUS
PEOPLES' ISSUES
and RIGHTS

Clustering of recommendations and listing of pledges/commitments related to indigenous peoples made by States reviewed

(as of 22/09/08)

Gabon

Minorities and indigenous peoples

Conclusions and/or recommendations:

R 25. To redouble efforts to integrate the Pygmy population in the mainstream society, particularly in the area of educational development and provision of other basic amenities (**Nigeria**);

R 26. To put an end to the discrimination against the Pygmy minority and to grant them basic human rights, and to follow the provisions of articles 2 and 25 of ICCPR and articles 6, 12 and 13 of ICESCR (**Slovenia**);

Observations and/or comments by State

En ce qui concerne les populations pygmées, la délégation gabonaise souhaite réitérer toutes les mesures déjà présentées lors de l'examen par le Groupe de travail. Avec l'appui de la communauté internationale, le Gouvernement a mis en place un plan d'action visant à mieux promouvoir et à protéger leurs droits. En plus, un projet de développement intégré au milieu pygmée a été mis en place en collaboration avec l'UNICEF.

- Sources:
- Report of the WG session: A/HRC/8/35 of 28 May 2008 and report of the 8th HRC session.

Status of recommendations: comments to the recommendations are contained in the HRC report A/HRC/8/L.10/Rev.1 (paragraphs 638 to 647)

JAPAN

Minorities and indigenous People

Conclusions and/or recommendations:

R19 - Review, inter alia, the land rights and other rights of the Ainu population and harmonize them with the United Nations Declaration on the Rights of Indigenous Peoples. (Algeria); Urge Japan to seek ways to initiating a dialogue with its indigenous peoples so that it can implement the United Nations Declaration on the Rights of Indigenous Peoples (Guatemala);

Observations and/or comments by State

Taking note of the interests in dialogue and support for the Ainu people expressed in Subparagraph 19 of the Draft Report of the Universal Periodic Review (A/HRC/WG.6/2/L.10), we would like to explain our latest developments on this issue: On June 6, 2008, the Japanese Diet unanimously adopted the resolution concerning the Ainu people. Responding to this resolution, the Government of Japan issued the Statement by the Chief Cabinet Secretary. The Government of Japan will plan policies in accordance with the Statement by the Chief Cabinet Secretary.

Sources

- 1- Reports of the UPR Working Group: A/HRC/8/44 of 30 May 2008 and A/HRC/8/44/add1 of 13 August 2008
- 2- Report of the 8th HRC regular session: A/HRC/8//L.10/Rev.1 of 5 August 2008
- 3- Japan national report to the UPR: A/HRC/WG.6/2/JPN/1 of 18 April 2008

Status of recommendations: some accepted, some rejected and some for which comments were provided.

FINLAND

*International obligations /
ratification/accession/reservations and
cooperation with treaty bodies:*

Conclusions and/or recommendations:

R5. To consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (Bolivia).

Observations and/or comments by State

The delegation stated that it pursued actively the enhancement of the rights of the Sámi people. The objective of the present Government is to solve the issue of the land use question during the current term of the Government. Another question related to the right of Sámi people to participate in decision-making on the use of land in the Sámi homeland area and the delegation stated that the aim of the Government was to find a solution that would include the prerequisites to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

Sources

Report of the WG session: A/HRC/8/24 of 23 May 2008 and report of the 8th HRC session: A/HRC/8/24/Add.1)

Status of recommendations: all recommendations accepted

UKRAINE

Minorities and Indigenous Peoples

Conclusions and/or recommendations: (not accepted by Ukraine)

R35 - To implement the Committee on Economic, Social and Cultural Rights encouragement to recognize the right to self-identification of all ethnic groups in Ukraine as well as to ensure protection and development of their cultural heritage (Romania);

Sources:

- 1- Report of the UPR Working Group: A/HRC/8/45 of 3 June 2008
- 2- Report of the 8th HRC regular session: A/HRC/8//L.10/Rev.1 of 5 August 2008
- 3- Ukraine national report to the UPR: A/HRC/WG.6/2/UKR /1 of 9 April 2008

Status of recommendations: 34 accepted, 6 refused.

ARGENTINA

Equality and non discrimination

Conclusions and/or recommendations:

- **R2.** To take further steps to address all kinds of discrimination against women, children, minorities and indigenous peoples. (United Kingdom, Mexico)

Minorities and indigenous peoples

Conclusions and/or recommendations:

R15. To intensify measures to fully realize the rights of indigenous peoples, in particular their representation in civil service and public institutions. (Republic of Korea)

R16. To provide adequate protection to indigenous peoples and ensure that their right to possess land is respected. (Nigeria)

Sources:

WG report: A/HRC/8/34 and Corr.1 of 13 May 2008 and report of the 8th session: A/HRC/8/34/Add.1)

Status of recommendations: all accepted

BRAZIL

Right to life, liberty and security of the person

Conclusions and/or recommendations:

R3. While continuing its positive initiatives, invest more rigour in evaluating the outcomes of planned activities in many of these areas: [...] violence against women, indigenous communities, rural violence and land conflict [...] (United Kingdom);

R5. Give a more thorough consideration to the issues of human rights violations of indigenous people [...] (Republic of Korea)

Source:

WG report: A/HRC/8/27 of 22 May 2008 and report of 8th HRC session:
A/HRC/8/27/Add.1)

Status of recommendations: all (15) recommendations accepted

GUATEMALA

Right to life, liberty and security of the person

Conclusions and/or recommendations:

R15 - Implement fully the new law on femicide and ensure that the physical security of women is protected by implementing CEDAW recommendations (Canada) and follow up the CEDAW recommendation to Guatemala to ensure that indigenous women have full access to bilingual education, health services and credit facilities and to fully participate in decision making processes (Slovenia).

Observations and/or comments by State

e) Adoption of additional measures to combat discrimination and to obtain equality for indigenous peoples;

Sources:

- 1- Reports of the UPR Working Group: A/HRC/8/38 of 29 May 2008
A/HRC/8/38/add1 of 13 June 2008
- 2- Report of the 8th HRC regular session: A/HRC/8//L.10/Rev.1 of 5 August 2008
- 3- Guatemala national report to the UPR: A/HRC/WG.6/2/GTM/1 of 8 April 2008

Status of recommendations: all accepted

For more information regarding this powerpoint presentation, please contact

Samia Slimane

Office of the United Nations

High Commissioner for Human Rights (OHCHR)

Indigenous Peoples and Minorities Unit

sslimane@ohchr.org

Phone: +41 22 928 93 79