

UNIVERSAL PERIODIC REVIEW

The creation of the Universal Periodic Review (UPR) was one of the most significant innovations of the Human Rights Council (HRC). Under this system, the human rights records of all UN member states will, for the first time, be regularly examined through a common mechanism. Its creation is based on the UN General Assembly Resolution¹ that established the HRC. Consequently, in June 2007, the HRC decided to establish the UPR as one of the key elements of its institution-building package.²

The goal of the UPR mechanism is to improve the human rights situation on the ground; assess the fulfilment of states' obligations and commitments; enhance the states' capacity; and share best practices among states and other stakeholders.

A country review is based on three official documents: the National Report, a compilation of UN information, i.e., reports from UN mechanisms and special procedures relating to the human rights situation of the country under review, and a ten-page summary of stakeholders' information, the latter two being compiled by the Office of the High Commissioner for Human Rights (OHCHR).

Each state is reviewed once every four years, in a three-hour session consisting of the presentation of its report and an interactive dialogue with all member states. Only states have the possibility of taking the floor during the review. The report from the review is adopted by the Human Rights Council at one of its subsequent sessions.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007 has established the minimum standard for the recognition of the collective rights of indigenous peoples. The UNDRIP therefore needs to be mainstreamed into the work of the UN Human Rights Council as well, particularly within - but not limited to - the UPR.

Indigenous issues in the UPR

2010 saw the seventh, eighth and ninth sessions of the UPR take place. During these sessions, various countries with indigenous populations were up for review and they included Angola, Bolivia, Nicaragua, Sweden, Kenya, Kiribati, Honduras and the United States of America.

While the reviews for Angola and Kiribati were largely silent on indigenous issues, the trend for most states was interactive dialogue sessions that contained numerous inquiries and recommendations regarding their indigenous populations. Sweden, for example, received multiple questions on the measures taken to address the concerns of the Sami people while Kenya, Honduras and Bolivia faced numerous queries on the responsiveness of their legal frameworks to indigenous issues.³

The common threads throughout the recommendations issued to various states included the ratification or proper implementation of ILO Convention 169, the adoption or implementation of the UNDRIP, constitutional recognition for indigenous peoples, addressing all forms of discrimination against indigenous peoples and guaranteeing the participation of indigenous peoples in public affairs. Sweden and Kenya were noted for their commitment to review their respective stances on ratification of ILO Convention 169, while the United States of America voluntarily undertook to review its position on the UNDRIP.

The states under review were also able to highlight the domestic reforms they were undertaking in order to enhance the rights of indigenous peoples. Honduras, for example, was able to outline its Programme for the Comprehensive Development of Indigenous Peoples while Kenya made mention of its constitutional review process, which included provisions that would safeguard the land rights of indigenous peoples and introduce affirmative measures.

Indigenous peoples' involvement in the UPR process

Involvement in the UPR process needs to be considered in the following phases: the preparation and submission of the State and Stakeholder Reports to the OHCHR; participation in the interactive dialogue session; participation in the adop-

tion of the report; and follow-up on implementation of the recommendations accepted by the state.

Various organizations representing indigenous peoples did prepare and submit reports that were included in the stakeholder summary prepared by the OHCHR. In certain instances, such as Kenya, civil society organizations were invited to critique and inform the State Report prior to its submission to the OHCHR. In recognition of the fact that NGOs are not permitted to make interventions during the interactive dialogue sessions, most organizations conducted side-events in Geneva to generate awareness and garner support for various recommendations among the working groups that would undertake the reviews of their respective states. Kenyan NGOs, under the banner of the Kenya Stakeholders' Coalition on Universal Periodic Review (KSC-UPR), were commended for their preparation of an Advocacy Charter⁴ - a tool designed to convey a summary of Kenya's human rights concerns along with proposed questions and recommendations to the state. Indigenous peoples were also represented during the adoption of State Reports at sessions of the Human Rights Council, where they made interventions compelling their respective governments to accept recommendations pertaining to their rights and to commit to definitive implementation agendas.⁵

Experiences with the UPR process

The universality aspect of the UPR mechanism cannot be gainsaid. In carrying out a holistic analysis of the human rights situation of a state under review, the UPR has been instrumental in propelling the concerns of indigenous peoples into mainstream discourse and providing much needed impetus to stalled processes. Sweden, for example, was reminded of its commitment to implementing the UNDRIP while Kenya was urged to declare its commitment to implement a decision from the African Commission on Human and Peoples' Rights pertaining to the land rights of the Endorois community.

The UPR process is, however, plagued by structural shortcomings that limit its effectiveness. Most NGOs consider the parameters guiding stakeholder submissions to be restrictive (a 5-page limit for individual submissions and a 10-page limit for group submissions). The interactive dialogue sessions are, in some instances, heavily diluted by states encouraging their allies to dominate the speakers list and consequently spend the entire time celebrating the successes of the

state rather than interrogating their shortcomings. NGOs are dismayed by the fact that their spoken interventions only take place during the adoption of the report, when most of the substantive work has already been done. This is further compounded by the fact that the speaking slots for NGOs are only two minutes each in duration.⁶

An initial analysis of the traction gained by indigenous peoples in the UPR indicates limited success. The first five UPR sessions saw 166 recommendations out of a possible 5,000 focus on indigenous peoples.⁷ This has been attributed to limited awareness of the UPR process and a predisposition to more mainstream issues such as civil and political rights. Indigenous communities must therefore adopt innovative approaches to ensure their issues capture the attention of the UPR process. The Kenyan approach was notable in this regard: indigenous communities joined a wider coalition (KSC-UPR) that included their national human rights institution and participated in preparing a single multi-stakeholder report. Some of the benefits of this approach included placing indigenous issues at parity with other human rights issues, the uptake of and advocacy for indigenous issues on the part of the national human rights institution, consultations with the state prior to the review and the exposure to wider platforms for lobbying and advocacy during the review in Geneva.

As the UPR looks to the second cycle of reviews, there is a need to consider the implementation of recommendations by states. It is incumbent upon states that have undergone review to prepare their respective Plans of Actions in regard to implementation of UPR recommendations. States are expected to convert the recommendations into actionable policy interventions, while stakeholders are expected to advise the state and monitor the rate of implementation.

It is also hoped that the final report of the “Open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council”, due in 2011, will yield recommendations aimed at enhancing the effectiveness of the UPR. ○

Notes

- 1 General Assembly Resolution 60/251 mandates the Human Rights Council to “undertake a universal periodic review based on objective and reliable information, of the fulfillment 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”.

- 2 A/HRC/RES/5/1
- 3 The final reports of the respective states are available at <http://www.upr-info.org/-Sessions-.html>
- 4 Available at http://www.upr-info.org/IMG/pdf/Kenya_Advocacy_Charter.pdf
- 5 See also the article on Kenya in this volume.
- 6 For a comprehensive analysis of the effectiveness of the UPR from an NGO perspective, refer to, “Analytical Assessment of the Universal Periodic Review 2008-2010”, a report prepared by UPR.INFO.ORG and available at http://www.upr-info.org/IMG/pdf/UPR-Info_Analytical_assessment_of_the_UPR_2008-2010_05-10-2010.pdf
- 7 Refer to factsheet prepared by UPR-INFO.org available at http://www.upr-info.org/IMG/pdf/IA_Indigenous_Peoples_FactSheet_S1-5.pdf

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