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Universal Periodic Review

Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Four parameters for a successful second cycle of the UPR

The High Commissioner for Human Rights has described the Universal Periodic Review (UPR) mechanism as one that “has opened unprecedented opportunities to initiate or strengthen dialogue and cooperation on human rights at all levels, and with all countries”.¹ As the Human Rights Council (the Council) now begins with the second cycle of the UPR, the International Commission of Jurists (ICJ) takes this opportunity to identify four critical issues for the successful operation of the UPR in the second cycle.

Equal treatment and objectivity

The institution-building package (IBP) of the Council makes reference to the need for the UPR mechanism to be objective, transparent and to ensure the equal treatment of States under review (SURs).² This reflects the General Assembly’s ideal, in replacing the former Commission on Human Rights with the Human Rights Council, to address the perception that the Commission had been selective and based on double-standards in its work on country-specific situations.³ Despite this, it has been apparent during the first cycle of the UPR that recommendations of the UPR Working Group have in places been selective and unprincipled based on relations with the SUR, or borne out primarily by self-interest and self-preservation. A challenge for the Council in the second cycle of the UPR will be to avoid similar patterns, recalling its role to work objectively and impartially towards the promotion and protection of human rights and fundamental freedoms for all. This being said, ‘equal treatment’ means that the process for review must be the same for all States; not that the outcome will be the same. Where tailored approaches are warranted, the UPR mechanism must respond accordingly.

Basis of review

The outcome of the review of the work and functioning of the Human Rights Council makes it clear that the second and subsequent cycles of the UPR will continue to be based on national reports, information on international instruments and engagement with UN human rights mechanisms, and information from other relevant stakeholders.⁴ It also provides that one of the primary areas of focus for the second and subsequent cycles of the UPR is the implementation of accepted recommendations.⁵ The outcome document at the same time makes it clear that this is just one of the bases of review and that the UPR Working Group must continue to focus on human rights developments in the SUR.⁶ This must include developments that relate to rejected recommendations from the first UPR cycle; matters that will be highly relevant to the potential emergence of chronic human

¹ Human Rights Council, 19th Session Panel Discussion, Sharing best practices and promoting technical cooperation: Paving the way towards the second cycle of the Universal Periodic Review, Opening statement by Ms. Navi Pillay High Commissioner for Human Rights, Geneva, 21 March 2012.

² UN Doc A/HRC/Res/5/1 (2007), paras 3, 15(a) and 27(a).

³ Marianne Lilliebjerg, “The Universal Periodic Review of the UN Human Rights Council – An NGO Perspective on Opportunities and Shortcomings” (2008) 26(3) Netherlands Quarterly of Human Rights 311.

⁴ UN Doc A/HRC/Res/16/21 (2011), para 5.

⁵ Ibid, para 6.

⁶ Ibid.

rights violations. The Working Group should also remain open to the mainstreaming of issues that have not formed a focus of reviews under the first cycle, including in the context of business and human rights.

UPR recommendations

A marked difference in approach to the making of UPR recommendations can be seen through a comparison of recommendations made in the initial reviews under the UPR with those at the end of the first cycle. By way of example, just 15 recommendations were made to Brazil during the first session of the UPR, many of which can be characterised as broad proposals to commit to core principles and generally enhance the situation of human rights.⁷ In contrast, 172 recommendations were made to Thailand in the 12th and final session of the UPR.⁸ This in part reflects a growing confidence of the Working Group in the development of its work on the UPR. A challenge for the second UPR cycle will be for the Working Group to make precise, practical and actionable recommendations that are more than a simple statement of principle and that are manageable in number. Recognising that effective implementation relies on effective recommendations, the ICJ welcomes the joint statement made during the Council's 19th regular session that second cycle recommendations should be "precise, constructive and implementable" and that there needs to be "a manageable number of recommendations to ensure the best chance of successful implementation".⁹ A challenge for States undertaking to make just two high-quality recommendations per review will be to ensure sufficient coordination in order to guarantee that a full range of issues is addressed in the UPR.

Implementation

The true measure of the UPR mechanism will be seen by the level of implementation of accepted recommendations. Amongst others, the ICJ has advocated for the adoption of two mechanisms to assist and compel States to adequately implement UPR recommendations.¹⁰ The first is for the presentation to the Council, as soon as possible after the adoption of the outcome document, of a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments. It has been suggested that such plans should be developed within 12 months of the adoption of the UPR outcome document, including a clear timeframe and key milestones for implementation.¹¹ During the review of the Council, this idea was identified as a voluntary mechanism that should form part of the second and subsequent cycles of the UPR.¹² Although this proposal did not find

⁷ UN Doc A/HRC/8/27 (2008), para 83.

⁸ UN Doc A/HRC/19/8 (2012), paras 88-89.

⁹ Human Rights Council 19th Session Panel Discussion on the UPR, above note 1, UK Statement for Panel on Technical Cooperation.

¹⁰ ICJ Position Paper on the Review of the Human Rights Council, 3 February 2011, at 2, <http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23691>. See also UN Doc A/HRC/WG.8/1/CRP.2/Rev.1 (2010), part I(C)(2).

¹¹ Amnesty International, Making it Work: The Reviews of the Human Rights Council, 2011, at 17 (available at <<http://www.amnesty.org/en/library/asset/IOR41/001/2011/en/d272fd2a-02e5-4ab7-bef6-d8d8e16ef770/ior410012011en.html>>).

¹² Second Session of the Working Group on the Review of the Work and Functioning of the Human Rights Council, Compilation of contributions in the context of the facilitation and coordination processes on the review of the work and functioning of the Human Rights Council, 'I. Contribution by the Facilitator of the Universal Periodic Review Cluster' (2011) at [23(a)], available on the Human Rights Council extranet, at:

its way into the outcome of the Council review, and is thus regrettably not part of the revised modalities for the conduct of the UPR, the ICJ strongly encourages all States under review to voluntarily adopt national plans of implementation within 12 months of their review.

The second mechanism advocated for improvement in the implementation of UPR recommendations is to have SURs provide the Council with a mid-term report on the status of the implementation of recommendations and commitments.¹³ To that end, States are now encouraged to provide the Council, on a voluntary basis, with a mid-term update on the implementation of accepted recommendations.¹⁴ Only 22 countries provided written mid-term progress reports during the first cycle of the UPR. It is expected that this will present challenges for the second UPR cycle's focus on the implementation since many States may not consider the question until they come to produce their national report at the commencement of their second cycle review. To enhance this process, the ICJ proposes that national civil society actors should both encourage their governments to produce mid-term reports and, where capacity allows, that civil society should coordinate their efforts to themselves produce 'alternative' mid-term reports.

Two provisions of the Council's institution-building package – as yet unused – should finally be noted. The first is that, in considering the outcome of each review, the Council has the authority to decide if and when any specific follow-up is necessary.¹⁵ Furthermore, paragraph 38 of the IBP provides that: "After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism". It is in the course of the second and subsequent cycles of the UPR that these provisions may come into play. In the case of States who have not implemented first cycle recommendations, or have only done so in respect of a small proportion of accepted recommendations, the ICJ calls on the UPR Working Group to identify specific follow-up action. Should the position remain unchanged in subsequent reviews, States under review should be treated as falling within the category of persistent non-cooperation and, at the very least, the situation of human rights in such a State should then be addressed in the plenary of the Human Rights Council under item 4 of its agenda, i.e. situations that require the Council's attention.

<<http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/2ndWorkingGroupsessionontheReview.html>>.

¹³ ICJ Position Paper, above note 11, at 2. See also: UN Doc A/HRC/WG.8/1/CRP.1/Rev.1 (2010) at 12; and UN Doc A/HRC/WG.8/1/CRP.2/Rev.1 (2010) at part I(C)(2).

¹⁴ UN Doc A/HRC/Res/16/21 (2011), para 18.

¹⁵ UN Doc A/HRC/Res/5/1 (2007), para 37.