

UNIVERSITY OF RWANDA

**CRITICAL ANALYSIS OF THE UNIVERSAL PERIODIC
REVIEW VIS-A-VIS THE IMPLEMENTATION OF
INTERNATIONAL HUMAN RIGHTS OBLIGATIONS BY
STATES**

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UNIVERSITY OF RWANDA
COLLEGE OF ARTS AND SOCIAL SCIENCES
SCHOOL OF LAW
POSTGRADUATE PROGRAMMES

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Thesis submitted in partial fulfillment of academic requirements for the award of the Master's degree (L.L.M.) in International Criminal Justice and the Law of Human Rights

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CERTIFICATION

I, the undersigned certify that I have read and hereby recommend for presentation a thesis entitled “**Critical analysis of the Universal Periodic Review vis-a-vis the implementation of international human rights obligations by states**” in fulfillment of the requirements of a Master’s Degree in International Criminal Justice and the Law of Human Rights from University of Rwanda

.....

Dr. Yves MUHIRE

DECLARATION

I do hereby declare that the work presented in this thesis is my own contribution to be the best of my knowledge. The same work has never been submitted to any other University or Institution. I, therefore declare that this work is my own for the partial fulfillment of the award of a Master's degree in Law at UR.

RUBARE Raphael

Signature.....

DEDICATION

To the Almighty God whose mercy I live;

To my dearest Wife;

To my dear Children.

ACKNOWLEDGEMENTS

The success of this work cannot be solely attributed to one individual but really a joint hand that made it produce desired results. From this, I want to express my deep appreciation to all individuals and institutions that were involved in providing data for this research study.

Above all, with whole heartedly appreciation, I thank God for the divine intervention, life and capacity he gave me so that my education becomes a success. Special thanks go to my supervisor, Dr MUHIRE Yves for his technical pieces of advice, corrections and guidance, professional support and critical inputs, throughout the preparation and writing of this thesis till it comes to its final step.

Further thanks go to authorities of the School of Law and all lecturers for their efforts towards the accomplishment of this thesis in particular and the completion of my course in general. I am also greatly indebted to my former classmates for the wonderful moments, learning experience and cooperation we shared for the whole period spent together.

RUBARE Raphael

LIST OF ACCRONYMS

CAT	: Convention against Torture
CED	: Convention on Enforced Disappearances
CEDAW	: Convention on Elimination of Discrimination Against Women
CERD	: Convention on Elimination of Racial Discrimination
CMW	: Convention on the Protection of Migrant Workers
CRPD	: Convention on Rights of Persons with Disabilities
CSECE	: Commission for Security and Cooperation in Europe
DPRK	: Democratic People's Republic of Korea
ECOSOC	: United Nations Economic and Social Council
EEG	: Eastern European Group
GRULAC	: Latin American and Caribbean States
HRC	: Human Rights Council
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic Social and Cultural Rights
ICJ	: International Court of Justice
LDC	: Least Developed Countries
LGBTI	: Lesbian, Gay, Bisexual and Transgender Intersex
NAM	: Non-Aligned Movement
NGO	: Non-Governmental Organization
NHRI	: National Human Rights Institution
OHCHR	: Office of the High Commissioner for Human Rights
OIC	: Organization for Islamic Cooperation
OP	: Optional Protocol
OPCAT	: Optional Protocol to the Convention against Torture
OSCE	: Organization for Security and Cooperation in Europe
SIDS	: Small Islands Developing States
SUR	: State Under Review

UDHR : Universal Declaration of Human Rights
UK : United Kingdom
UN : United Nations
UNGA : United Nations General Assembly
UPR : Universal Periodic Review
UR : University of Rwanda
US : United States
WEOG : Western European and Others Group
WG : Working Group

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ABSTRACT

In 2006, the Universal Periodic Review (UPR) was established by the Human Rights Council through its institutional building package with a mandate for periodically reviewing the human rights record of every United Nations Member State.

Whilst Universal Periodic Review marks a significant improvement in human rights monitoring, it is a new process that necessitates a realistic approach towards continual improvement stemming from an examination of best practices and challenges in the context of the principles and objectives of the review to enhance its intended outcomes.

This study critically explores the impact of the Universal Periodic Review since its creation vis-à-vis the implementation of international human rights obligations. By analyzing the Universal Periodic Review process during its first cycle, the study identifies strengths and challenges and contribute towards improving the effectiveness of the United Nations' system for reviewing each United Nations Member State's international human rights record in future cycles.

As far implementation of all international human rights obligations are concerned, the study looks at Rwanda as a case study in order to fully grasp the UPR impact. Although the Universal Periodic Review has already produced significant results, much progress is yet to be achieved. To solidify best practices and address key challenges, recommendations are provided so that the mechanism can contribute to the full realization of all international human rights obligations.

KEY WORDS: International Human Rights obligations, Universal Periodic Review.

GENERAL INTRODUCTION

1. Background of the study

Since the establishment of the Human Rights Council (HRC) by the UN General Assembly in 2006,¹ the general architecture of international human rights law has received new features, in particular through the introduction of the Universal Periodic Review (UPR).² The UPR is founded on an almost irreproachable base as far as the fairness of the proceeding is concerned.

On the one hand, each and every country is reviewed every four years. On the other hand, each and every country may take part in the review process. Participation is not restricted to the members of the Human Rights Council. Thus, all States may contribute, on the basis of parity, to shape the law underlying the UPR process.

This process reflects in a perfect manner the principle of sovereign equality as enshrined in Article 2(1) of the Charter of the United Nations.³ No State can complain about discrimination or a preponderance of the powerful nations.⁴ The process also reveals the intellectual capacities of all of its participants as well as their real engagement for the sake of the promotion and protection of international human rights.

However, some questions remain in relation to UPR mechanism. What impact does the UPR mechanism have on the implementation of international human rights law by States? Does that mechanism bring States to abide with their international law obligations? This thesis attempts to answer the above-mentioned questions and other related ones basing on the UPR experience, briefly explaining the origin of the UPR, as well as the objectives it pursues, the principles that guide the process and the different stages of that review process. The thesis also refers to the experience of Rwanda among 14 countries that were.

¹ See UN GA Resolution 60/251 of 15 March 2006.

² *Ibidem*.

³ Charter of the United Nations (1945).

⁴ Juliana V “The universal periodic review: a new hope for international human rights law or a reformulation. of errors of the past”, October 2008 , P.58.

Reviewed for the second cycle during the 23rd session⁵ of the UPR in order to illustrate how the UPR operates in practice, thereby attempting to explore the impact of the mechanism in bringing States to comply with their international law obligations of implementing the provisions of international human rights treaties to which they are parties.

2. Problem Statement

The improvement on the ground in terms of human rights enjoyment has been lacking despite written conventions and treaties. Since the first cycle of the UPR in 2008, States have received recommendations which range from abiding by the fundamental principles of public international law as stipulated in the article 1 of the Charter of United Nations,⁶ implementing and protecting their human rights obligations enshrined in different international human rights documents such as the Universal Declaration of Human Rights,⁷ International Covenant on Civil and Political Rights⁸, International Covenant on Economic, Social and Cultural rights,⁹ the Convention on Enforced Disappearances and others.

Despite this, the lack of improvement has been apparent simply because legal challenges still exist in implementing those conventions and treaties. The fact that the outcomes of the UPR and treaty bodies are not legally binding is one of the challenges that this thesis seeks to look at. The UPR seems to be a political solution yet it addresses legal challenges and this thesis is of the view that unless the UPR outcomes become legally binding to States, it

⁵ 23rd session of the UPR Working Group available at <https://extranet.ohchr.org/sites/upr/Sessions/23session/Pages/default.aspx>, accessed on 12/09/2018

⁶ Article 1 of The charter of UN establishes the purposes of the United Nations as follows:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

To be a centre for harmonizing the actions of nations in the attainment of these common ends.

⁷ Universal Declaration of Human Rights (1948).

⁸ International Covenant on Civil and Political Rights (1966).

⁹ International Covenant on Economic, Social and Cultural Rights (1966).

will have no impact in terms of international legal protection of human rights. Using the experience of this UPR, this research will examine the problem of that gaps within this mechanism and will provide recommendations on how to improve the whole system of international human rights protection.

3. Research questions

In the light of the aforementioned, this study seeks to investigate these questions:

1. What impact does UPR mechanism have in relation to the implementation of the international human rights law by States?
2. Does the UPR mechanism help States to abide by their international human rights obligations under human rights instruments to which they are party to?
3. If not, what envisageable strategies to overcome such situation?

4. Objective of the Study

The main purpose of this study is to analyse the impact that the mechanism of the UPR has over the implementation of States' obligations stipulated under the international human rights law.

5. Hypothesis

- The UPR mechanism was an added alternative to the old system to insure a certain monitoring on the protection of international human rights by States.
- The political nature of the UPR makes it hard to fulfill a legal obligation given that the form and design of this mechanism allowed it to be hijacked by States, groups and blocs seeking to further political agendas.
- There is a very need to undertake new reforms of the UPR mechanism including coercion measures vis-à-vis reluctant States.

6. Research methodology

In order to attain the objectives of this study, different research techniques and methods were used. In terms of research techniques, the documentary technique was mainly used in collecting data from different written documents relevant to the topic including law texts, books, journal articles, annual reports, newspapers, etc.

As far as the research methods are concerned, the exegetic method was helpful to interpret the various law materials. The analytic method was used for analysing different elements of data collected. Finally, the synthetic method helped in regrouping the collected data in a coherent manner.

7. Scope of the study

This research frames with the international human rights law which is one of the branches of international law. It focuses on the UPR since its establishment in 2006 up to now using Rwanda as an illustration.

8. Structure of the Study

This study is subdivided into three chapters. Chapter one gives the conceptual and theoretical framework of the UPR for a better understanding of the rest of the present research work. Chapters two builds on these theoretical foundations and critically analyses the impact of the UPR on States obligations under international human rights law. Chapter three suggests legal mechanisms to make effective the UPR. Finally a general conclusion highlights the major findings of the research work and formulates some recommendations.

CHAPTER I. CONCEPTUAL AND THEORETICAL FRAMEWORK OF THE UNIVERSAL PERIODIC REVIEW

In this chapter devoted to literature review on the UPR, it is important to clarify various key concepts and develop a theoretical framework on the latter in the perspective to better enlighten the present research work.

I.1. Conceptual framework

The present section looks at the meanings of key concepts such as the Universal Periodic Review, working group and troika. It also gives the background of UPR.

I.1.1. Universal Periodic Review (UPR)

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council (HRC) which is based on equal treatment of all countries.

It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe.

Currently, no other mechanism of this kind exists.¹⁰ In particular this mechanism of UPR which is the central focus of this thesis is one of the recent developments in human rights protection. Under this mechanism all UN member States are submitted to a periodic review of their human rights performance to be conducted by their peers in the Human Rights Council over a cycle of four years.¹¹ In creating the UPR through resolution 5/1 in 2006, the intention was to institute UPR as cooperative mechanism to review the practice of all States as regards their human rights obligations and commitments.¹²

¹⁰ICJ, Four parameters for a successful second cycle of the UPR, UN Doc A/HRC/20/BGO/57 (2012), available at URL: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20120, pp.3-4;

¹¹Abebe, A. "Shaming and bargaining": African States and the universal periodic review of the United Nations Human Rights Council', *Human Rights Law Review*, (Vol.9 (1) 2009)

¹²GA Res. 60/251, Human Rights Council', 15 March 2006, UN Doc. A/RES/60/251

However, although this mechanism has achieved notable progress in bringing States to comply with human rights obligations, challenges still remain. The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground.

To achieve this, Human Rights Council states that the UPR involves assessing States' human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.¹³

I.1.2. Working Group on the UPR

The Working Group on the UPR is composed by the 47 Member States of the HRC, chaired by the HRC President and conducts country reviews. The Working Group held its first review in 2008.

For the each review, the HRC allocates three and a half hours for each review, 70 minutes of which are given to the State under review to discuss its domestic human rights framework, measures taken to promote and protect human rights in country, human rights issues of particular national pertinence, and steps taken to address and redress violations.

It is also an opportunity for the State to present voluntary human rights pledges and commitments. An interactive dialogue of 140 minutes follows the State's presentation, during which UN member States question the State and make recommendations towards the improvement of its human rights situation and performance. It is worth noting that all 193 UN member States (both HRC members and not) can take the floor.¹⁴

A wide variety of issues are addressed during country reviews and potentially all human rights issues can be addressed during this session. While the counting of the actual number of recommendations is complicated by the fact that they are clustered together in the

¹³ Human Rights Council "List of non-State observers' contributions" UN Doc A/HRC/WG.8/1/CRP.2/Rev.1 (2010) at part I(C)(2). 61

¹⁴ *Ibidem*

Working Group report, the NGO UPR Info¹⁵ has calculated the first cycle of the UPR to have provided a total of 21,356 recommendations and 599 voluntary pledges.¹⁶

I.1.3. The Troika

The troika consists of three countries' delegates facilitating a country's review. Indeed, each review is facilitated by a group of three States, known as the "troika" that serves as rapporteurs of the review. The troika is responsible for receiving in advance questions from UN member States in relation to the country under review.

The second role of the troika is to prepare an outcome document on the review, which includes a summary of the review proceedings, recommendations suggested by States, conclusions, and voluntary commitments presented by the State under review.

For Alex Conte, the outcome document is prepared with the assistance of the UPR secretariat and the recommendations contained in the outcome of the review are preferably clustered thematically with the full involvement and consent of the State under review and the States that made the recommendations.¹⁷

I.1.4. Historical background of UPR

On 15 March 2006, the UN General Assembly resolution 60/251 created the Human Rights Council (HRC) and mandated the HRC 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; the review has to be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism is complementary and not duplicate the work of treaty bodies.

¹⁵ Established in 2008, UPR info is a non governmental organization with a head office in Switzerland and regional office in Kenya with main mission to grant capacity building tools to actors of the UPR especially States, NGOs, domestic institutions of human rights and civil society platforms.

¹⁶ Amnesty International "Making it Work: The Reviews of the Human Rights Council" (2011), available at URL: <http://www.amnesty.org/en/library/asset/IOR41/001/2011/en/d272fd2a-02e5-4ab7-bef6-d8d8e16ef770/ior410012011en.html>, p. 17

¹⁷ Alex Conte, "Reflections and Challenges: Entering into the Second Cycle of the Universal Periodic Review Mechanism" *New Zealand Yearbook of International Law*, (2011) p.9.

The UPR was established on 18 June 2007, when the HRC adopted its own “institution building package” in resolution 5/1 (A/HRC/RES/5/1). It is therefore a mechanism of the Human Rights Council. On 27th September 2007, the HRC adopted decision 6/102 as a follow-up to resolution 5/1. The first UPR session was held in April 2008.

Resolution 60/251, which founded the HRC, also decided that the HRC would review its work and functioning five years after its establishment. Therefore, following the process of its review, the HRC adopted resolution 16/21 on the outcome of the review and functioning of the HRC, in March 2011.

This resolution contained the new modalities for the functioning of the HRC, but had left several issues pending in relation to the second cycle of the UPR: the order of review, the timetable for each Working Group session, the list of speakers, the general guidelines for the three documents serving as the basis of the review and the revised terms of reference of the Funds. Therefore, on 19 June 2011, the HRC followed resolution 16/21 by adopting decision 17/119. This decision contained the new modalities on these issues for the second and subsequent cycles.¹⁸

I.2. Theoretical framework on UPR

Fundamental principles and goals of the UPR and the various steps followed in the implementation of the UPR mechanism deserve to be examined. This is the content and the purpose of this section.

I.2.1. Principles and objectives of UPR

The HRC outlined a number of principles that the UPR should follow, these principles being the promotion of the universality, interdependence, indivisibility and interrelatedness of all human rights¹⁹. Based on objective and reliable information and on interactive

¹⁸ <https://www.upr-info.org/en/upr-process/foundation> accessed on 10/02/2019

¹⁹ Institutional Building Package of the United Nations, Resolution 5/1

dialogue, it also considered the UPR to be a cooperative mechanism, and as an intergovernmental process.

As a United Nations Member-driven and action-oriented, the UPR allows the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, and it is conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.²⁰

According to Edward R. McMahon, the objectives pursued by the UPR are the improvement of the human rights situation on the ground; the fulfillment of the States' human rights obligations and commitments, and assessment of positive developments and challenges faced by the State; the enhancement of the States' capacity and of technical assistance; the sharing of best practice among States and other stakeholders; support for cooperation in the promotion and protection of human rights; and the encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights,²¹ improve the human rights situation in every country with significant consequences for people around the globe by assessing States' human rights records and addressing human rights violations wherever they occur and finally provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.²²

I.2.2. UPR's basis of review and guidelines

The present point singles out the basis of review of the UPR and the process respected in the evaluation of the compliance of States with human rights law.

²⁰ *Ibidem.*

²¹ Information note for NGOs on the UPR, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NoteNGO.aspx>

²² Edward R. McMahon, 'The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,'

I.2.2.1. Legal basis of the review

The United Nations General Assembly decided that the legal basis of review would be the Charter of the United Nations, the Universal Declaration of Human Rights, Human rights instruments to which a State is party, voluntary commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council.

Although international humanitarian law was not clearly stated out as a basis of review, the HRC recognized its complementary nature to international human rights law, and in that sense it determined that international humanitarian law would be taken into account.²³

I.2.2.2. Process of evaluation

As established by the General Assembly stated out in the resolution 60/251 which created the Council and the UPR, this mechanism should not interfere with other human rights mechanisms or treaty bodies nor should it duplicate them. This meant that the Council had to establish clear differences between the UPR and the mechanisms of evaluation of other UN treaty bodies.

This was accomplished by establishing that the documents on which the review would be based, were not going to be exclusively the ones submitted by the State, but it would also take into account a compilation of cycle documents prepared by the Office of the High Commissioner for Human Rights on the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents; as well, it would include reliable information provided by other relevant stakeholders, which would also be summarized by the Office of the High Commissioner for Human Rights.

According to Nadia Bernaz, the participation of relevant stakeholders is undoubtedly an innovation, especially due to the fact that throughout the debate on the framework of the

²³General Assembly, 'Establishing the Human Rights Council and the Universal Periodic Review,' 15 March 2006, A/RES/60/251.

UPR, within the Council, there were very opposite points of view regarding this particular aspect.²⁴

Likewise, based on the information prepared by the State which can take the form of a national report (written or oral), the Council encourages the States to prepare the information through a broad nationwide consultation process with all relevant stakeholders. Here once again the NGOs and civil society play an important role.

Due to the fact that the Council has to review a large number of States each year, and in order to guarantee fair treatment, certain requirements were established, such as : the State's written report cannot exceed 20 pages, the compilation prepared by the Office of the High Commissioner for Human Rights must include the information contained in the reports of treaty bodies, special procedures, and other relevant official United Nations documents; and the summary of the information of relevant stakeholders cannot exceed 10 pages.²⁵

The Council also outlined a series of general guidelines for the States to prepare the information for the UPR. The guidelines include the following: (i) description of the methodology and the broad consultation process followed in preparing the information provided under the universal periodic review; (ii) background of the country under review and framework (normative and institutional framework) for the promotion and protection of human rights; (iii) promotion and protection of human rights on the ground; (iv) identification of achievements, best practices, challenges and constraints; (v) key national priorities, initiatives and commitments that the State concerned intends to undertake in order to overcome those challenges and constraints and to improve human rights situations on the ground; (vi) expectations of the State concerned in terms of capacity-building and requests, if any, for technical assistance; and (vii) follow-up of the previous review.²⁶

²⁴ Nadia Bernaz, 'Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism,' in Kevin Boyle, (ed) *New Institutions for Human Rights Protection* (Oxford, Oxford University Press 2009), p. 81

²⁵ General Guidelines for the Preparation of Information under the Universal Periodic Review, adopted by the Human Rights Council on 27 September 2007, the Human Rights Council

²⁶ Facts sheet, Human Rights Council: Universal Periodic Review, OHCHR, 2008.

These guidelines clearly differentiate the UPR from treaty body periodic reports, because if carried out accordingly, the outcome is an evaluative report that does an in-depth analysis of the country's human rights situations, both the good and the bad, giving way to compromises for the future and cooperation assistance from other countries²⁷.

This differs from periodic reports to treaty bodies that generally only include legislation; policy measures, national jurisprudence, human rights infrastructure and the implementation of international human rights obligations of that given treaty.

Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review.

The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner.²⁸ The duration of the review was three hours for each country in the Working Group during the first cycle. From the second cycle onwards the time has been extended to three hours and thirty minutes.²⁹

I.2.3.Participation of non-governmental organizations

Non-Governmental Organizations (NGOs) can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting.

²⁷Bernaz N, 'Reforming the UN Human Rights Protection Procedures: a Legal Perspective on the Establishment of the Universal Periodic Review Mechanism',

²⁸ UPR facts sheet, idem 1.

²⁹Resolution concerning the Institution Building of the Human Rights Council, HRC Res. 5/1, UN HRC OR, 5thsess, gen. mtg [5(e)], UN Doc. A/HRC/RES/5/1.

When the outcome of the State reviews are considered, NGOs can attend the UPR Working Group sessions and can make Statements at the regular session of the Human Rights Council.³⁰

I.2.4. The functioning of Universal Periodic Review

From the mechanism of the commission, the mechanism of UPR is stated to be a major departure. UPR is also considered as a significant victory of developing nations who were against the Human Rights Commission's approach of highlighting gross violations being committed only by a handful of nations.

For Kevin Boyle, the UPR mechanism was established as an answer to the criticisms against the earlier Human Rights Commission in regard to selectivity and politicization in its consideration of country situations and also to ensure that human rights situations of all the countries are addressed periodically.³¹

The separate information sought from the national human rights institutions is considered as an innovative step in the UPR mechanism.³² For Peter Splinter et al., the main function of the UPR is not to focus on gross violations of human rights but to make an assessment of the improvements as well as the drawbacks of States in regard to human rights obligations based on widely accepted and fairly precise standards.³³

According to Richard Carver, as per Resolution 5/1, the sources for UPR include National report prepared by the State, report consisting of information from treaty bodies and special procedures of OHCHR and a report prepared by OCHR based on information provided by

³⁰ Technical guidelines for submission of stakeholders available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TechnicalGuide.aspx>

³¹ Kevin Boyle, *The United Nations Human Rights Council: Politics, Power and Human Rights*, 60 (2) *Northern Ireland Legal Quarterly* 121-133 (2009).

³² Henry J. Steiner, Philip Alston, Ryan Goodman, *International Human Rights in Context : Law, Politics and Morals* 806 (2008)

³³ Peter Splinter & Patrizia Scannella, *The United Nations Human Rights Council: a promise to be fulfilled*, *H.R.L. Rev.* 41 (2007)

other stakeholders including non-governmental organizations and national human rights institutions.³⁴

As is clear from the Resolution 60/25, the review under UPR shall be a cooperative mechanism based on interactive dialogue and conducted in an ‘objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.’³⁵ So far as the States are concerned, they do not wish to authorize the Council with the power to take specific actions to deal with the problem of non-compliance and in turn they look for an oversight method in the review system which is less critical.

In short, the working mechanism of UPR consists of documentation followed by interactive dialogue and an adoption of a final outcome by the Human Rights Council which may include certain recommendations and is considered as a means of reestablishing credibility, universality, professionalism and in addition, fair scrutiny of State performance in regard to the protection of human rights.³⁶

³⁴ Richard Carver, *A new answer to an old question: national human rights institutions and the domestication of international law*, *H.R.L. Rev.* 1 (2010)

³⁵ ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc (last visited 19th July 2018)

³⁶ Nadia Bernaz, *Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism* in Kevin Boyle (ed), *New Institutions for Human Rights Protection* 83 (2009)

CHAPTER II : ADVANTAGES AND WEAKNESSES OF THE UNIVERSAL PERIODIC REVIEW IN PRACTICE

This chapter explores in depth the advantages, challenges and weaknesses of the UPR process as far as the implementation of States' human rights obligations is concerned.

II.1. Main advantages of the UPR

The most remarkable feature of the UPR is that all States members of the UN are subjected to this process, irrespective of whether they have accepted the relevant general or special treaties. It is matter of public knowledge that the United States (US), although it signed the ICESCR back in October 1977, has not made the least effort to initiate the ratification process before the senate. In the angle China signed the ICCPR, in October 1998, but has to date refrained from ratifying it.³⁷UNGA resolution 60/251 does not specify whether participating in the review process constitutes a legal obligation.

Notwithstanding this lack of clearly defined contours, one may note that to date all States have consented to be made accountable for human rights situation before the international community through the UPR process, even the permanent members of the Security Council; and no State has raised any objections against the procedure.

According to the agreed timetable, it is foreseen that each year 48 States have to be reviewed in terms 16 States at each session.³⁸Today, all the 193 members of the UN have undergone the exercise which is intended to assess all of their strengths and their weaknesses in the field of human rights.

II.1.1. Uniqueness of the UPR mechanism

The UPR is unique due to its universality. It covers all the human rights issues in each and every UN Member State. This process sets the agenda of global human rights policy, an

³⁷ Ulrich F, "From Bilateralism to Community Interest" Essay in honor of Judge Bruno Simma, Collected Courses of the Hague Academy of International Law, Volume 250, P.151.

³⁸ Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies: UN Doc HRI/GEN/1/Rev 5 (2001) , P. 139

agenda whose success is based on the full collaboration of all parties of the process. Emphasizing the fact that human rights are universal and should be the focus of all States, the UPR has managed to bring States together to discuss, in a peer-review model, the challenges faced when protecting human rights and what has to be done to advance States' obligations in this respect.³⁹

II.1.2. Review of all States' human rights obligations

Another important advantage of the UPR is that in practice all international human rights obligations are reviewed. The legal yardstick to be applied is defined in the annex to HRC resolution 5/1, as comprising the UN Charter, UDHR, and human rights instruments to which a State is party.

Obviously the UN Charter sets forth genuine obligations but it mentions human rights only in general terms (Articles 1(3), 55, 56, 68). During the first years of the existence of the world organization, many voices held that these references had no more than a symbolic character.⁴⁰

It was the advisory opinion of the International Court of Justice (ICJ) in the *Namibia case* which clarified the legal opinion by stating that South Africa had violated the purposes and principles of the Charter through establishing and enforcing distinctions, exclusions, restrictions, and limitations exclusively based on grounds of race, color, descent or national or ethnic origin which constitute a denial of fundamental human rights,⁴¹ the court acknowledged the Charter as a source of genuine human rights obligations.

³⁹ Analytical Assessment of the UPR, 2008-2010, <https://www.upr-info.org/sites/default/files/general-document/pdf/upr->

⁴⁰ See LM Goodrich and E Hambro, *Charter of the United Nations* (2nd edn, World Peace Foundation, 1949)

⁴¹ Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion) 1970, ICJ Rep 1971, 16-57, available at <http://www.icj-cij.org/docket/?p1=3&p2=4&k=a7&case=53&code=nam&p3=4>

The scope of these obligations was not specified at that time. The context of the advisory opinion, however, permitted the conclusion that, in any event, grave and systematic breaches of human rights obligations are deemed to amount to unlawful conduct.

A culmination point was reached in 2005 when the UNGA through the World Summit resolution⁴² synthesized the recognition by all the members of the international community of their commitment to actively protect and promote all human rights and to their responsibilities to respect human rights and fundamental freedoms for all.⁴³

Generally, it may be said that the commitments deriving from the Charter have increased in depth and breadth, but no absolutely reliable and uncontroversial inference can be drawn as to their specific substance.

The fact that the UDHR is explicitly mentioned accessorially might be construed as demonstrating that no clear demarcation line was drawn between obligations pursuant to positive international law and propositions that have not formally acquired the quality of binding international norms.

However, another interpretative option is also available. In fact, mention of the UDHR can be interpreted as meaning that the founding instrument of the international human rights movement is acknowledged as expressing international customary law or general principles of law in the sense of Article 38(1) (b) and (c) of the Statute of the ICJ.⁴⁴

The least problematic item in the list of legal yardsticks to be resorted to during the UPR process is the human rights instruments to which a State is party. Pursuant to the principle *pacta sunt servanda* every State is bound to comply with the commitment it has undertaken

⁴²UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1.

⁴³Ibid, paras 119, 122.

⁴⁴Simma B and Alston P, "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles (1992) 12 *Australian YBK Intl L* 82.

in a treaty. In this respect, the HRC finds itself in perfect harmony with the classical listing of legal sources in Article 38(1) ICJ Statute.⁴⁵

However, when reading the documentation on the UPR, the observer notes that the reviewing States take no care to refer only to applicable contractual commitments and that the States under review have rarely ever argued that a question or a recommendation addressed to them is not comprised within the scope of their international duties.

Generally, the delegations taking part in the review process focus on the relevant problems in the State concerned which they know from their own perception of which they have been apprised by the documentary materials acknowledged as the basis of the review process. They trust their political sensitivity, considering that in any event since the establishment of the UN a culture of human rights has emerged which simply makes certain conduct unacceptable.

Thus, in the working group, where the main discussion takes place, China was questioned by many delegations as to its handling of the death penalty.⁴⁶ Although to date China has not assumed any legal obligation in respect of the death penalty. Fiji, another non-party of the ICCPR, was intensively interrogated about the way in which it deals with freedom of expression and the independence of the judiciary. It would have been easy for Fiji to argue that it was not bound legally to guarantee a certain standard of protection.⁴⁷

II.1.3. UPR better than Treaty bodies

One of the great advantages of the UPR process is that it epitomizes the unity of human rights. All the expert bodies under the different human rights treaty bodies hold jurisdiction

⁴⁵ See Art 38, paragraph 1 of the Statute of the International Court of Justice established by the Charter of the United Nations

⁴⁶ *Enhancing the effectiveness of the mechanisms of the Commission on Human Rights*, UN DocE/CN.4/DEC/2000/109 (2000); *Report of the Intersessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights*, UN Doc E/CN.4/2000/112; Human Rights Council Res 511 (2007), *Institution-Building of the United Nations Human Rights Council*.

⁴⁷ Katherine Short, *From Commission To Council: Has the United Nations Succeeded In Creating A Credible Human Rights Body?*, 9 SUR – Int'l J. on Hum Rts. 147 (2008)

solely over a limited field. Thus, for Hampson views, before the Human Rights Committee on economic, social and cultural rights are legally irrelevant except for instances of discrimination under Article 26 ICCPR, and conversely this Committee is not mandated to look into civil and political rights.⁴⁸

Yet the interconnectedness between the two classes of rights is evident. Indeed, a State subjected to the UPR stands literally before the international community, and not only before a body of delegations which has been tasked to carry out the review process⁴⁹ and under the UPR mechanism, all expert bodies formulate concluding observations after the study of a State report.

As pointed out above, such a collective assessment is avoided in the case of the UPR. Therefore, the specific usefulness of the review process lies primarily in the fact that even with regard to those States which have refrained from submitting to the key human rights treaties all relevant issues can be raised and consequently no State can place itself outside the reach of the radar of the UPR, evading scrutiny.

Compensating for the lack of a clear finalization is the fact that reviews by peers carries much greater weight than review by a small body of experts.⁵⁰ The treaty systems do not provide for an institutional forum permitting all States to voice their concerns while the UPR offers that opportunity.⁵¹

II.1.4. UPR a suitable assessment method

In the past many voices have advocated for the establishment of a world human rights tribunal based on the model of the existing regional courts of human rights. Germany was one of the main voices articulating that wish. In his speeches before the UN General

⁴⁸Hampson N, 'An Overview of the Reform of the UN Human Rights Machinery', Human Rights Law Review (2007), P. 17.

⁴⁹ Rhona K.M. Smitha, Texts and Materials on International Human Rights 189 (2010)

⁵⁰ Wilton Park Conference, 'Building on 60 Years of the Universal Declaration of Human Rights: The Way Forward', January 2008, P.19

⁵¹ *Ibidem*.

Assembly, the then Foreign Minister Genscher regularly emphasized the necessity of creating such a tribunal almost as a matter of routine.⁵² That claim was based on illusionary thinking.

The great powers would never have consented to becoming subjected to such a control mechanism. For instance, to date, the US has not ratified the Optional Protocol to the ICCPR providing for individual communications to be filed with the Human Rights Committee, and, as already pointed out, China has not even ratified the substantive groundwork treaty, the ICCPR.

The OP ICESCR has so far received little ratification. A truly control mechanism by way of judicial proceedings does not enjoy sufficient support within the large circle of all members of the international community.⁵³

Additionally, the responsible political actors may have become aware of the magnitude of the challenge that would have to be faced by a world court for human rights. The relevant figures for the European Court of Human Rights are well known, in 2009, to take the latest year for which a statistical breakdown is available, no less than 57,100 new applications were registered.

Notwithstanding tremendous efforts to deal with this mass of complaints, the European Court disposed of far fewer cases than the number of new entries (35,460 cases).⁵⁴ Fortunately, Europe currently does not have to endure mass calamities. Most of the members of the Council of Europe may lightly be called well-ordered polities governed by the rule of law. At a world level, one encounters many infinitely more complex situations. In the African region of the Great Lakes, for instance, public order has broken down in large slices of territory.

⁵² Ulrich F, Rudolf G, Daniel K, Sabine S and Christoph V "From Bilateralism to Community Interest; Essay in Honor of Judge Bruno Simma", *Supra* n° 7

⁵³ Hurst Hannum, "Reforming the special procedures and mechanisms of the Commission on Human Rights", *H.R.L. Rev.* 73 (2007)

⁵⁴ Ulrich F, Rudolf G, Daniel K, Sabine S and Christoph V "From Bilateralism to Community Interest; Essay in Honor of Judge Bruno Simma", *Supra* n° 8

In certain countries where an authoritarian or outright dictatorial regime has established itself, the rights of millions of persons are constantly being infringed. Where such circumstances prevail, dealing with individual cases becomes almost insignificant. It is the general situation, in particular the factors negatively affecting full enjoyment of human rights, which must be scrutinized.⁵⁵

From this perspective, the UPR indeed constitutes a more suitable method of investigation and assessment. One certainly does not fall to conclude that the introduction of the UPR amounts to a definitive rejection of the idea of establishing a universal court for human rights.

The involvement of the entire membership of the UN, which can roughly be equated with the international community, does not fit into the systematic structure determined by the principle of sovereign equality. At the same time, it activates the vast potential inherent in governmental knowledge and expertise.⁵⁶

II.1.5. Participation

The actual yield of the UPR can be measured by the most diverse parameters. Primarily, it may be said that participation is generally very broad. In the interactive dialogue of Rwanda in 2015, 89 delegations took part while further Statements could not be made orally due to time constraints.

Even with regards to smaller States, interest was clearly visible. In other words, the members of the international community view the UPR as a welcome opportunity to concern themselves with the domestic situation in other States which they deem to raise issues of general interest with trans-boundary implications.⁵⁷

⁵⁵Abraham M, “ *Building the New Human Rights Council*, Dialogue on Globalization:, Occasional Paper No 33, Friedrich Ebert Stiftung (2007). P.167.

⁵⁶Richard Carver, *A new answer to an old question: national human rights institutions and the domestication of international law*, *H.R.L. Rev.* 1 (2010)

⁵⁷ *Ibidem.*

The degree of participation defers widely according to regional and/or political orientation. One of the strategies frequently resorted to consists of mobilizing friendly nations to fill the speakers list, being confident that nothing else than glorious praise will be voiced. The States of Western Europe may be counted among the most active reviewers.

The smaller African States generally stay away from the UPR except in instances where their neighbours are being reviewed.⁵⁸The same is true with regard to Latin America where only Argentina, Brazil, Chile and Mexico feel that they have a monitoring mandate to discharge outside the Western Hemisphere.

Among the big powers, special caution can partly be observed. Thus, the US refrained from coming forward with comments on China and Russia.⁵⁹ Conversely, China did not hold back with comments on France, Russia, and the UK. Though the attendance rate was high at all sessions, the participation rate could be better if more States could or would take the floor. A plus is that nearly all HRC Member States delivered Statements.⁶⁰

With regard to regional participation, it should be noted that during most sessions the Western European and Others Group (WEOG) was the most active, except for Session 4 when its position was taken over by the Asian group.⁶¹The least active groups were Latin American and Caribbean States (GRULAC) and the Eastern European Group (EEG). However the EEG was noted with higher participation rate than usually at the Session 7. This is explained by increase in number of EEG participating States (21 out of 23 States).⁶²

⁵⁸ For example in 2010, during Kazakhstan review, only Soudan and Nigeria took the floor: UNHCR WG Report (16 February 2010) UN Doc A/HRC/WG.6/7/L.9, Paras 30.

⁵⁹ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: 4 June 2009, A/HRC/12/10, p. 4, para. 15.

⁶⁰ Human Rights Council, 'Report of the Working Group on Universal Periodic Review: 22 May 2008, A/HRC/8/19, p. 5, para. 11.

⁶¹ Henry J. Steiner, Philip Alston, Ryan Goodman, *International Human Rights in Context : Law, Politics and Morals* 806 (2008)

⁶² Human Rights Council, Report of the Working Group on Universal Periodic Review: A/HRC/14/4, 15 March 2010, p. 23, para. 87.

II.1.6. Actions taken by States after the review

Some States have already started the follow-up process to implement the recommendations made to them during their review. Specific actions include accession to international human rights treaties, change of domestic legislation to make it pro-human rights oriented invitations for Special Rapporteurs to visit the countries, better reporting to Treaty Bodies, establishment of national human rights institutions (NHRI), and others.⁶³ One of the examples of States which took action was Barbados, which after the review opted for abolition of the mandatory death penalty and a change in its respective domestic legislation.

Other States have improved their reporting system to the Treaty Bodies. For example Rwanda has submitted its overdue reports like ICCPR, ICESCR, CAT, CEDAW, ACHPR, and ACEDG.⁶⁴ The first ever Rwanda's National Policy and Human Rights Action Plan is at completion stage and contains UPR recommendations.

II.2. Weaknesses of the review

Though the UPR has important positive and aspects that help the HRC to fulfill its mandate, there is a number of factors either preventing the mechanism to be efficient or affecting its efficiency. Thus, this section points at some of those factors which weaken the UPR process.

II.2.1. Rejecting recommendations

The States under review use the most diverse strategies to dismiss the criticisms directed against them. Sometimes, delicate questions are simply ignored.⁶⁵ For example, during the first review, Cuba did not shy away from rejecting all recommendations advising the government to release all political prisoners (recommendations made by Israel, Canada and Italy), not to prosecute persons exercising their political rights (Austria), and to guarantee

⁶³ Human Rights Council, 'Modalities and Practices for the Universal Periodic Review Process,' 9 April 2008, HRC/PRST/8/1, para. 7.

⁶⁴ Rwanda's second UPR report, 2015, P.3

⁶⁵ UNHRC WG Report (23 May 2008) UN Doc A/HRC/8/26, para 41.

that independent journalists, human rights defenders and political dissidents have the possibility to exercise their basic freedom without the risk of harassment, intimidation or prosecution.⁶⁶ Critical comments by NGOs were dismissed as ‘the dissonant voices of those that are mercenaries paid by the empire and voices of the defeated counter-revolution’.⁶⁷

Likewise, the Democratic People’s Republic of Korea (DPRK) rejected in the most drastic way, without any attempt to justify its position, recommendations which embody the essentials of the rule of law.⁶⁸ Thus, it did not accept the Austrian recommendation to ‘take immediate action with a view to the elimination of all forms of torture by the security forces and prison personnel.’⁶⁹

Another strategy consists of accepting long lists of recommendations in a soft form so that little substance can be identified the effect of which might be measurable in concrete terms. Thus, it may be contended that a high percentage of the recommendations made was accepted, without any real change likely to occur. It is also possible to respond in a clever manner so as to create an impression which on closer examination is reduced to more modest dimensions.

Saudi Arabia, almost surprisingly emphasized, on one hand, that gender equality is in conformity with the Islamic Sharia,⁷⁰ on the other hand, however, it accepted gender equality in accordance with the commitments that it has undertaken under the CEDAW Convention.⁷¹ Concerning that convention, Saudi Arabia entered a reservation to the effect that ‘in case of contradiction between any term of the Convention and the norms of Islamic

⁶⁶ Human Rights Council, ‘Report of the Working Group on Universal Periodic Review: ‘Cuba’ 11 July 2011, A/HRC/18/5, p. 4, para. 13.

⁶⁷ UNHRC, Report of the HRC on its 11th Session, UN Doc A/HRC/11/37, para 440, June 2009

⁶⁸ UNHRC WG Report, UN Doc A/HRC/13/13, January 2010

⁶⁹ *Ibid*, para 9, point 1

⁷⁰ Addendum to the UNHRC WG Report, UN Doc A/HRC/11/23/add.1, para 29, June 2009

⁷¹ *Ibidem*, para 33

law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.”⁷²

Some other governments admit without any trick that the conditions in their countries leave much to be desired and fall short of the requirements of the obligations they have undertaken. Such a strategy presupposes a great deal of self-awareness and courage.

Thus, Kenya acknowledged in its national report that ‘the policy, legal and institutional framework across the economic and social sectors as well as governance, human rights, justice and the wider rule of law continue to be inadequate on the whole.’⁷³ Such an admission permits the discussion to operate within a context permeated by openness and realism.⁷⁴

Germany, on its part, chose to identify from the very outset five areas of concern where public authorities are struggling to find well-balanced answers to actual problems⁷⁵, seeking to familiarize the other delegations with the difficult choices with which a government upholding the rule of law is faced. Such exercises in accuracy and honesty cannot fail to impress the governmental actors actively involved in the review process. However, the fact that a country can accept or reject a recommendation is a major weakness of this UPR mechanism.⁷⁶

II.2.2. Non-binding recommendations

The major weakness of the UPR mechanism is that its recommendations are not legally binding. In other words, no country can be held accountable for not implementing a recommendation it has accepted. Countries like Korea and Iran openly refuse to abide by

⁷² See Multilateral treaties deposited with the Secretary General, Chapter IV-8, UN Doc C.N.925.2000.Treaties-8.

⁷³ UNHRC, National Report, UN Doc A/HRC/WG.6/8/KEN/1, para 56, February 2010

⁷⁴ Human Rights Council Res.5/1 [Institution-building of the United Nations Human Rights Council

⁷⁵ UNHRC National Report, UN Doc A/HRC/WG.6/4/DEU/1, paras 22-51, November 2008

⁷⁶ Human Rights Council Res.5/1 [Institution-building of the United Nations Human Rights Council

the obligations they have formally undertaken and nothing can be done against them as far as the UPR is concerned.⁷⁷

From a legal perspective the end result appears to be poor. Indeed it is the State under review which has the last word. It is not even confronted with a collective opinion of the HRC. As emphasized again in the final clause of the WG reports: all conclusions and/or recommendations contained in the present report reflect the position of the submitting State and/or the State under review thereon. They should not be construed by the WG as a whole.⁷⁸

The State concerned can take the appropriate steps to remedy the shortcomings that have been diagnosed but no monitoring is provided for, except for the next round of the UPR four years later. Even where ample evidence has been produced to show that indeed a consistent pattern of grave violations exists, the international community does not feel encouraged to carry the issue any further.

The wrongdoer is allowed to continue on its course. This arrangement flies in the face of the key of the law of State responsibility that every unlawful act entails a duty of reparation.⁷⁹ Not even demands are made to that effect. The strategy employed is exclusively forward looking. It is hoped that through the UPR effective enjoyment of human rights may be ensured in the future.

II.2.3. The nature of recommendations

Similar observations can be made with regard to the other review sessions. The main perspective followed is mainly a political one. Accordingly, a large sector of the questions posed and recommendations made concern recommendations to adhere to the existing

⁷⁷Forst, 2010, Report of Conference on Improving Implementation and Follow up, p.15

⁷⁸ ISHR, UPR: Examining the Opportunities from the First Cycle, 2012, p.23

⁷⁹ ILC Articles on Responsibility of States for internationally wrongful acts, taken note of by UNGA Res 56/83, UN Doc A/RES/56/83. Art 31, December 2001.

treaties in the field of human rights or to withdraw certain reservations, but there is no obligation to accept a recommendation.

Thus, again and again European governments were advised to accept the 1990 Migrant Workers Convention (CMW)⁸⁰, and similar recommendations were made with regard to the Optional protocol to the convention against torture (OPCAT)⁸¹ and the new Optional Protocol to the ICESCR (OP ICESCR).⁸² There is no need to underline the fact that no State is obligated to accept international treaty.

Furthermore, it is of course understandable that such recommendations are made. In particular, the OP CAT strengthens significantly the effectiveness of the CAT. It is no great wonder, therefore that States like Cuba⁸³ and Iran⁸⁴, have rejected the many recommendations addressed to them to proceed to the ratification of the OP CAT.⁸⁵

II.2.4. Absence of mechanism for implementation

Although the recommendations are the main outcome of the UPR and have to be implemented by the State under review, so far there is no mechanism to measure the implementation of the UPR recommendations which could undermine the UPR process. As the third cycle is approaching, how will the HRC assess the level and quality of the States' cooperation with the UPR and their willingness to make positive changes and reforms in human rights protection?

Absence of clear and objective assessment methods will make the future cycle less efficient since the very idea of the UPR mechanism lies in the implementation of recommendations.

⁸⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990) UN Doc A/Res/45/158, 2220 UNTS 3.

⁸¹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entry into force 22 June 2006)

⁸² Adopted by UNGA Res 63/117 (10 December 2008) UN Doc A/RES/63/117

⁸³ Addendum to UNHCR WG Report (n 14), Para 3.

⁸⁴ UNHRC WG report (17 February 2010) UN DOC A/HRC/WG.6/7/L.11, Para 91 point 1.

⁸⁵ UPR Info, "Database of UPR Recommendations," available at <http://www.upr-info.org/database>

If effective follow up indicators are not developed, there is a serious threat that the UPR initiative will lose its credibility.

II.2.5. Time location for interventions

One does not need to be a specialist to come to the conclusion that many elements of the UPR are unsatisfactory. A time location of only three hours is rather short. No delegation will have an opportunity to speak for more than five minutes. What is not said on the microphone cannot be taken as recommendation. Delegations fail to deliver all their recommendations due to time constraints. Thus, the crucial issues can only be touched upon, but no thorough scrutiny is possible.

II.3. Universal Periodic Review: overrated or not?

For Gareth Sweeney views, one of the main reasons to say that the Universal Periodic Review is overrated is the problem of regional alliance which is a major cause of criticism of its review process.

The joint NGO Statement made on 13th June 2008 clearly highlights the problem of the mechanism of Universal Periodic Review as it reveals that though a cooperative approach between the States themselves is valuable, the practice of certain States joining sides merely to ‘praise their allies’ goes opposite to the Universal Periodic Review principles of objectivity, transparency, non-selectivity, constructively, non-confrontational and non-politicization.⁸⁶

Nevertheless, for Rachel Brett, it is true that the political character of the Human Rights Council is indispensable for its functioning as it is a multilateral body constituted by representatives of States that keep on guarding their interests.⁸⁷

⁸⁶ Gareth Sweeney & Yuri Saito, *An NGO assessment of the new mechanisms of the UN Human Rights Council*, H.R.L. Rev. 203 (2009)

⁸⁷ Rachel Brett, “A Curate’s Egg. UN Human Rights Council: Year 3. 19 June 2008 to 18 June 2009,” Human Rights and Refugees Publications, Quaker United Nations Office. August 2009, available at <http://www.quano.org/geneva/pdf/humanrights/ACuratesEgg200908.pdf>

II.3.1. Issue of regional coalitions

The problem of regional block voting where the States organize themselves to carry out the actions in groups is a major setback to the working of the Council. This was the major issue that haunted the working of the earlier Commission.

The States belonging to the same regional groupings often praise one another in regard to the human rights situations and never issue Statements that are against a State within the group. It also revealed that there existed the practice of answering in clusters which failed to address majority of the issues.⁸⁸

Moreover, Joanna Harrington, in her study states that the fact that the UPR is an inter-governmental process and is being put into operation in a situation where regional groups for example the European Union (EU), the African Group, the Organization of Islamic States as well as the Non-Aligned Movement exercise massive control is also Stated as a challenge to the whole review process on quite a lot of issues such as the human rights situations in Palestine, freedom of expression as well as racism, the African Group agreed to the stands taken by the Arab League as well as the Organization of Islamic Conference as many affiliates of the African Group are members of the Arab League and the Organization of Islamic Conference Group.⁸⁹

It is stated that the vast amount of time devoted to Darfur for discussions makes it clear that the Council was aware of the importance of the issue but the actions of the African Group, OIC, and States like Cuba and China supporting Sudan's outright denial of its part in the violence in Darfur weakens the recommendations to go unimplemented.⁹⁰

⁸⁸ Paulo Sergio Pinheiro, *Sixty Years After the Universal Declaration: Navigating The Contradictions*, 9 SUR – Int'l J. on Hum Rts. 71 (2008)

⁸⁹ Joanna Harrington, *Canada, the United Nations Human Rights Council, and Universal Periodic Review*, 18 Const. F. 79 (2009)

⁹⁰ *Ibidem*

As the system of Universal Periodic Review encompasses peer evaluation by the States apart from periodic review it may result in undesirable politicization. The growing gap between the developed and developing countries is more prominent in the case of the Human Rights Council than in the case of the UN Commission on Human Rights.⁹¹ The ‘disproportionate attack’ on Israel and the cross-regional working relationship created by the EU countries contribute to the weaknesses of the system as a whole.

II.3.2. Lack of sufficient information

The need for an independent fact finding mechanism on specific topics in the Universal Periodic Review process is emphasized due to the problem of information availability and due to the fact that the treaty body members may not ask questions of topics which they are unaware of and may only reproduce the information that are already provided in the State report or the information from other UN bodies or documentation submitted by the NGOs.⁹²

Moreover, with regard to the review of Canada, the compilation duly refers to the fact addressed by one treaty monitoring body that there are no effective measures in Canadian law to provide civil compensation to victims of torture but the compilation failed to point out that it was relating to a matter of compensation claimed by an Iranian national for torture that was committed in Iran at the hands of Iranian officials which was rejected by the Canadian court on the basis of the doctrine of foreign State immunity.⁹³

The complexity in measuring implementation of human rights obligations by States, the availability of little or no information from the member nations during review, the problems with the quality and definitiveness of the information given by the member

⁹¹ *Ibidem*

⁹² Joint Statement on behalf of the Asian Legal Resource Centre, Ba’hai International Community, the Cairo Institute for Human Rights Studies, the Centre for Housing Rights and Evictions (COHRE), Conectas (Brazil), Asian Forum for Human Rights and Development (FORUM-ASIA), Franciscans International, Human Rights Watch, the International Service for Human Rights (ISHR), Pax Romana, and Rights and Democracy’, NGO Statement on Item 6 – Friday, 13 June 2008, Human Rights Council – 8th session http://olddoc.ishr.ch/lca/Statements_council/otherngos/upr_Statement_final_13_june_2008.

⁹³ *Ibid.*

nations, the chances of politicization when it comes to selecting rapporteurs and the lack of concrete follow-up mechanisms are some of the other existing challenges so far as the universal periodic review is concerned.⁹⁴

For Lucia Nader, the working of the Council as such is not challenged here but when it comes to certain aspects it is doubtful as to whether the establishment of the Council by replacing the former Commission did succeed in achieving all that was anticipated to achieve and it is also doubtful as to whether the establishment of the Council eliminated all the shortcomings and drawbacks of the former Commission.⁹⁵

II.4. Superficiality

Given that the duration of the review for each country in the WG was three hours during the first cycle and is now three and a half hours during the second cycle, many have criticized the superficial nature of the UPR. In this time, it is impossible to address all the human rights issues within a country, especially considering the amount of information that goes into a review.

However, in the views of Rosa Freedman, the UPR's WG session is a political and discussion-based process and is not meant to serve as a rigorous technical review of States' human rights records and situations. As implied in its principles, the review must complement and help enforce, rather than compete with or replace, recommendations from other more expert-led and detail-oriented human rights mechanisms such as treaty bodies and Special Procedures⁹⁶.

II.5. Politicization

In a number of cases, governments have been able to avoid critical assessments by rallying the support of "friends" eager to praise their human rights record without devoting any attention to the shortcomings that exist regarding human rights in all States. For example,

⁹⁴ Hurst Hannum, *Reforming the special procedures and mechanisms of the Commission on Human Rights*, H.R.L. Rev. 73 (2007)

⁹⁵ Lucia Nader, *The Role of NGOs in the Un Human Rights Council*. 7 SUR – Int'l J. on Hum Rts. 7 (2007)

⁹⁶ Rosa Freedman, *Improvement on the Commission? The UN Human Rights Council's Inaction On Darfur*, 16 U. C. Davis J. Int'l L. & Pol'y 81 (2009)

for its first cycle, Iran lobbied and rallied friendly nations not particularly known for their respect for human rights such as Sudan, China, Cuba, Syria, and Zimbabwe to provide a counterpoint to the criticisms they were facing.

Similarly, Venezuela was accused of manipulating its list of speakers by rallying allied States before the WG, resulting in the monopolization of speaking time and the exclusion of more pertinent recommendations. This practice, informally known as “stacking the audience,” undermines the UPR’s principle of transparency and objectivity, as well as its goal of engendering meaningful discussion around human rights records and situations.

Furthermore, States belonging to the same or similar regional groupings rarely criticize each other. For example, out of the 65 Statements made during the first review of Tunisia, at a time when it was facing numerous human rights challenges, 50 of them were “favorable” and came mainly from African and Muslim countries.

This sort of regional leniency has become apparent because “if you look at the general recommendations made by, for example, EU member States to other EU member States or African countries to other African countries, they are quite weak.

According to Lauren Paul Gordon, what seems to be the general thrust is that proximity leads to softness as opposed to rigor.⁹⁷ Correspondingly, members of the 57-strong Organization of the Islamic Conference (OIC) have also largely followed the trend of praising each other’s records.⁹⁸

In Sameer Rana views, a Geneva-based NGO, UN Watch, claims that in the first cycle of the UPR, a majority of 32 out of 55 countries acted as a mutual praise society, misusing the process in order to legitimize human rights abusers, instead of holding them to account.⁹⁹

⁹⁷ Edward R. McMahon, Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council,” July 2010. Available at http://www.upr-info.org/IMG/pdf/McMahon_Herding_Cats_and_Sheeps_July_2010.pdf

⁹⁸ Lauren, Paul Gordon, "To Preserve and Build on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council., *Human Rights Quarterly* 29, no. 2, 326. Accessed October 10, 2019. <http://www.jstor.org/stable/20072801>.

⁹⁹ Sameer Rana, Review or rhetoric? an analysis of the united nations human rights council’s UPR, [http digital collections sit.edu](http://digitalcollections.sit.edu)

II.6. Lack of punitive sanctions and surplus of empty rhetoric

Like many mechanisms within the UN system, the UPR lacks punitive sanctions in cases of non-compliance or non-implementation. The recommendations are non-binding and after the discussions and reports in Geneva, the State under Review is free to implement what it sees fit.

Though countries must report back on progress, either through voluntary mid-term reports or updates during their second and subsequent cycles of review, there are few ramifications for inadequate compliance. Rather, the UPR operates as a cooperative and dialogue-centered mechanism that is non-adversarial in nature.

Ultimately, as with the aspects of politicization, it is the responsibility of civil society, the OHCHR, special rapporteurs, and other stakeholders to prevent this from establishing itself into the working culture of the Council.

Some sort of dialogue and cooperation, which is what the Council has with the UPR Peer reviews, like the UPR, have become one of the most widely used “soft instruments” of global governance and function primarily as tools for international cooperation that respect sovereignty and diversity.

While some dismiss these types of instruments, regulatory scholarship suggests that peer review of the kind undertaken by the UPR can be effective in some circumstances, which is certainly better than nothing.

It has been argued that although States may initially participate in cooperative regulatory regimes in a perfunctory manner, or for reasons at odds with stated purposes, they are frequently drawn into more meaningful commitments simply through their representatives’ embodied experience of participation and their desire to earn the esteem and respect of their peers.

Arguably, Ghanea Nazila, in his study states that this can be seen at the UPR, as States often announce human rights initiatives prior to their review and multiple mission staffs in Geneva display a marked willingness to engage with other diplomats and civil society

throughout the review process. Lastly, one must consider that a number of States do participate in genuinely good faith during the UPR.¹⁰⁰

II.7. Non-Cooperation

The principal strength of the UPR lies in its universality. Therefore, the entire exercise is in danger if even one State decides not to or fails to cooperate. The only attempt to deal with this is vaguely described in Article 38 of Resolution 5/1 which States, 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.

For Maria Francisca Ize-Charrin, the most significant testing point of this hazard was in March 2012 when Israel's foreign minister severed all working relations with the Council and the OHCHR due to the perceived selectivity and disproportionate bias of the Council against the Jewish State.¹⁰¹

This confirmed Israel's likely non-participation in their January 2013 UPR, which would make it the first country to miss a scheduled review for reasons other than a domestic urgency. Echoing concerns from many in civil society, I criticized this decision by reasoning that, the UPR stands to lose the compelling legitimacy it derives from being applied even-handedly to all...why should States that would prefer to escape scrutiny...or are severely resource constrained submit to this process if Israel's noncompliance demonstrates that it is no longer universal?

Ultimately, in Hickey Emma's study, the Council voiced regret at Israel's decision, postponed the country's examination to later that year, and called on the President of the Council to "take all appropriate" steps to encourage Israel to resume its cooperation. Israel eventually returned to the Council for its rescheduled second review in October 2013,

¹⁰⁰ Ghanea, Nazila, "From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?" *ICLQ International & Comparative Law Quarterly* 55, no. 3 (2006): 704. Accessed 12/11/2018. <http://www.jstor.org/stable/4092647>.

¹⁰¹ Maria Francisca Ize-Charrin, Former Secretary of the UN Commission on Human Rights, interviewed by Author, October 27 2015, Geneva, Switzerland.

albeit with strong reservations.¹⁰² While Israel's non-cooperation was the biggest political challenge to universality, there are also many practical and logistical difficulties of participation for many developing States.

Understandably, the UN report indicated that it is also extremely difficult for these States to bring experts or high-level national representatives to Geneva multiple times a year, let alone deal with the implementation of countless recommendations.¹⁰³

However, this was not the case and besides Israel's challenge in 2013, there have not been many critical situations of non-cooperation or participation due to political reasons. Rather, the practical and logistical difficulties of participation and cooperation, with the UPR in specific and the Council in general, have been and are much more acute.

In response, the OHCHR, in addition to already providing a range of advisory services and technical assistance, has established resources such as the Voluntary Technical Assistance Trust Fund to Support the Participation of Least Developed Countries (LDCs) and Small Island Developing States (SIDS) in the work of the Human Rights Council (HRC) and the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review.

According to Abraham Meghna study, States, intergovernmental and non-governmental organizations, or private institutions and individuals must make contributions voluntarily. Predictably, the OHCHR is struggling to secure financial commitments from donors, forcing it to prioritize requests and therefore considerably limit coverage.¹⁰⁴

¹⁰² Hickey Emma, "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?" ICL Journal: 1.

¹⁰³ United Nations, Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change, "A More Secure World: Our Shared Responsibility," 2004, 90, available at http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf

¹⁰⁴ Abraham, Meghna, "A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council," International Service for Human Rights and Freidrich-Ebert-Stiftun, June 2006, 11.

II.8. Excessive focus on Geneva circular

Though much focus on the Geneva round of the UPR, what happens in the “Capital of Peace” is sandwiched between two rounds that occur in the States under Review themselves consultations and documentation beforehand and implementation and follow-up after.

Though the process in Geneva serves as an important tool and catalyst, perhaps what is much more important is what happens in-country for preparation and what happens in country afterwards. While the interactive dialogue, exchange of recommendations, and so on are valuable components of the process, what ultimately matters the most in reality is the national implementation of recommendations and the tangible improvement of human rights situations on the ground.

CHAPTER III. LEGAL MECHANISMS TO ENHANCE THE UPR EFFECTIVENESS

The present chapter discusses a number of strategies to improve the effectiveness of UPR. Before tackling such strategies, it is crucial to underline the impact of the UPR over States duties to promote and protect of respect of human rights. For this purpose, Rwanda is referred to as a case study.

III.1. Impact of the UPR on human rights at domestic level

To appear more concrete, Rwanda is taken as example or case study. In this regards, Rwanda appeared before the HRC under the UPR for the first time in 2011. The Working Group on the UPR established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held the review of Rwanda on 24 January 2011.

The HRC had selected the following group of rapporteurs (troika) to facilitate the review of Rwanda: Guatemala, Japan and Senegal.¹⁰⁵ In accordance with paragraph 15 of the annex to resolution 5/1, four documents were issued for the review of Rwanda:¹⁰⁶

- (a) A national report presentation prepared in accordance with paragraph 15 (a) (A/HRC/WG.6/10/RWA/1 and Corr.1);
- (b) A compilation of UN information prepared by the OHCHR in accordance with paragraph 15 (b) (A/HRC/WG.6/10/RWA/2);
- (c) A Summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/10/RWA/3 and Corr.1).
- (d) A list of questions prepared in advance by Belgium, Germany, Norway, Slovenia, Canada, Czech Republic, Ireland, Latvia, the Netherlands, Sweden, Switzerland, and the United Kingdom of Great Britain and Northern Ireland was transmitted to Rwanda through the troika.¹⁰⁷

¹⁰⁵ Report of the Working Group on the Universal Periodic Review of Rwanda, A/HRC/17/4

¹⁰⁶ Human Rights Council Res.5/1 [Institution-building of the United Nations Human Rights Council

¹⁰⁷ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RWindex.aspx> accessed on 12/09/2019

III.1.1. Presentation by the State under review

The national report that was submitted in October 2010 by Rwanda was a product of massive consultations in the country, involving Government ministries, institutions, civil society and all stakeholders in the human rights portfolio. And also most of the human rights instruments under regional and international portfolios had ratified by Rwanda.

It had also submitted various human rights reports to the relevant Committees at the regional and international levels, and lifted most of the reservations that had been placed on some provisions under of those instruments.¹⁰⁸ Rwanda presented its report on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to be followed by a presentation in June 2011 of the reports on the Optional Protocols to the Convention on the Rights of the Child.

Rwanda also presented, as and when the concerned committees set the dates, the report on the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as its third and fourth reports on the Convention on the Rights of the Child (CRC).¹⁰⁹

III.1.2. Interactive dialogue and responses by Rwanda

During the interactive dialogue, 48 delegations made Statements. Many delegations commended Rwanda for its level of participation in the process, and for its consultative approach in the preparation of its national report. For example Slovenia commended Rwanda for its active engagement in the field of human rights at the regional and international level.¹¹⁰

It recognized Rwanda's leading role in the region and the positive developments regarding the participation of women in politics. It further commended the abolition of the death

¹⁰⁸ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council

¹⁰⁹ Report of the WG on the UPR of Rwanda, paragraph 41

¹¹⁰ See paragraph 30, Report of the Working Group on the Universal Periodic Review of Rwanda, A/HRC/17/4

penalty in 2007. Slovenia encouraged Rwanda to maintain its constructive self-critical attitude, and shared the concern of the Committee on the Rights of the Child about reports of recruitment of children below the age of 15.¹¹¹

The Republic of Korea acknowledged the progress made by Rwanda in the promotion of human rights.¹¹² It welcomed the fact that Rwanda had withdrawn its reservations to international human rights treaties, and that the latter had precedence over domestic laws. Belgium noted with satisfaction the ratification of the Optional Protocol to the ICCPR (ICCPR-OP 1).

The United Kingdom of Great Britain and Northern Ireland commended Rwanda for the progress made since the 1994 genocide.¹¹³ While welcoming the abolition of the death penalty, it expressed concern over its replacement by life imprisonment in solitary confinement.

III.1.3. Conclusions and/or recommendations

During the review, Rwanda was given 73 distinct recommendations but accepted to implement only 67. Among the recommendations accepted by Rwanda include but not limited to extend a standing invitation to the United Nations human rights special procedures so that they can visit the country and assist the Government with its human rights reforms (Republic of Korea)¹¹⁴; ratify CERD (Maldives);¹¹⁵ end solitary confinement sentences and ensure that those sentenced to life imprisonment benefit from the United Nations Standard Minimum Rules for the Treatment of Prisoners, and adopt urgent measures against overcrowding (United Kingdom);¹¹⁶ a number of countries including Hungary, South Africa, Azerbaijan, Germany, Spain, Sweden and Netherlands requested Rwanda to ratify the Optional Protocol to the Convention against Torture (OPCAT),

¹¹¹ [https://www.upr-info.org > database](https://www.upr-info.org/database) accessed on 14/09/2019

¹¹² WG report on the UPR of Rwanda, paragraph 47

¹¹³ WG report on the UPR of Rwanda, paragraph 54

¹¹⁴ Report of the Working Group on the UPR of Rwanda

¹¹⁵ Report on the review of Rwanda, available at <http://reliefweb.int/report/rwanda/report-working-group-universal-periodic-review-hrc174>, accessed on 15 June 2016

¹¹⁶ Report on the UPR of Rwanda

establish a National Preventive Mechanism in line with OPCAT, ratify ICCPR-OP, Optional Protocol to ICESCR OP and the International Convention for the Protection of All Persons from the Enforced Disappearance.¹¹⁷

Among the rejected recommendations were recommendations to ensure that children under the age of 18 are not recruited into any armed group on the national territory (Slovenia); prohibit child recruitment into local defense forces or into any armed group (Hungary) simply because Rwanda did not accept was recruiting children under 18 to army. Adopt concrete measures to avoid discrimination and protect the rights of the Batwa community and other minorities, as well as request technical assistance from the United Nations to identify their basic social needs (Spain);

III.1.4. Impact of the Review for Rwanda

By the 2ndUPR cycle of Rwanda in November 2015; 63 of the 67 recommendations accepted during the first cycle were considered to have been implemented and actions were underway already on the remained 4 recommendations. Among the recommendations which had not been implemented include the removal of solitary confinement, ratification of CED, establishment of the Action Plan for human rights.¹¹⁸

Rwanda was then a State party to eight core United Nations human rights instruments. Since the previous review, Rwanda has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Rwanda is up to date in reporting to the relevant treaty bodies. Rwanda had issued a standing invitation to all special procedure mandate holders and, since the previous review; three special rapporteurs visited Rwanda.¹¹⁹ One cannot shy away in saying that had it been not for the UPR, some conventions would not even have been ratified by Rwanda and some

¹¹⁷ *Ibidem*

¹¹⁸ Rwanda's second UPR report

¹¹⁹ Rwanda's presentation at the UPR WG, Geneva 2015

obligations would not have been respected. The UPR served as a wake-up call for Rwanda to implement human rights obligations. During the 2nd cycle, Rwanda received 83 distinct recommendations; only 50 of those recommendations were accepted.

The recommendations accepted range from institutional development to protection of all civil, political or economic rights. As a result of the review, Rwanda is now in the process of establishing a national preventive mechanism in line with article 17 of the OPCAT¹²⁰ and the national action plan for human rights has been developed, the first of its kind.

Uphold its responsibility to ensure the civilian nature of camps by implementing its humanitarian obligations in line with the 1951 Convention relating to the Status of Refugees (United Kingdom of Great Britain and Northern Ireland); Ratify the Rome Statute of the International Criminal Court and ensure that it is able to meet obligations to cooperate with the Court under that Statute (Australia).¹²¹

The UPR is currently seen as a major innovative development of the United Nations human rights system, the UPR was created to ensure the review of the human rights situation in all UN Member States and the implementation of international norms and treaties on the ground. Equally reviewing each State's obligations, commitments, and practices, the UPR is meant to improve human rights through inter-State dialogue and cooperation.

Based on three reports (a national report from the government, a report from the UN agencies, Special Procedures and Treaty Bodies, and a report from NGOs, NHRIs and other stakeholders), the UPR assesses the situation in every UN country and provides recommendations aiming at improving the human rights agenda and practices. In the case of Rwanda, it is noted that the UPR is achieving its targets.

¹²⁰ Article 17, Optional Protocol to the Convention Against Torture

¹²¹ Rwanda's WG full report available at <https://extranet.ohchr.org/sites/upr/Sessions/23session/Rwanda/Pages/default.aspx>

III.1.5. Rwanda's participation in the work of the Human Rights Council

In the 2015, Rwanda was selected by the OHCHR to participate in the Fellowship Program of the Voluntary Trust Fund to Support the Participation of LDCs and SIDS in the Work of the Human Rights Council (LDCs/SIDS Trust Fund).¹²²

The objectives of the Fellowship Program are based on the terms of reference for the Voluntary Technical Assistance Trust Fund to Support the Participation of Least Developed Countries and Small Island Developing States in the Work of the Human Rights Council (LDCs/SIDS Trust Fund) that were adopted by the Human Rights Council through HRC/RES/19/26 of 23 March 2012.

Along other five countries namely The Bahamas, Saint Lucia, Solomon Islands, Nepal, and Sierra Leone; Rwanda developed a project aiming at integrating a gender perspective in the Follow-up of the UPR of Rwanda. The project purpose was to facilitate and ensure future participation and involvement of Rwanda in the work of the United Nations Human Rights Council through the UPR. The project was carried out and presented in Geneva, Switzerland as part of the Fellowship program.

III.1.5.1. General Overview

At its 6th session, the Human Rights Council (HRC) adopted resolution 6/30 entitled, "*Integrating the human rights of women throughout the United Nations system*,"¹²³ by which it decided to incorporate into its program of work an annual discussion on the integration of a gender perspective throughout its work and that of its mechanisms, including the evaluation of progress made and challenges experienced.

The resolution 6/30 urges all stakeholders to take into full account both the rights of women and a gender perspective in the universal periodic review, including in the

¹²² SIDS-LDCs Fellowship program/Rwanda available <http://www.ohchr.org/EN/HRBodies/HRC/Pages/2015LDCsSIDSTrustFundRecipientsComplete.aspx>

¹²³ Human Rights Council (HRC) resolution 6/30, "*Integrating the human rights of women throughout the United Nations system, Adopted without a vote, 33rd meeting, 14 December 2007*"

preparation of information submitted for the review, during the review dialogue, in the review outcome and in the review follow-up;

In 2009, the HRC held a panel discussion on the integration of a gender perspective in the UPR.¹²⁴ The integration of a gender perspective throughout the work of the HRC and its mechanisms is a responsibility of the Member States supported by the United Nations Systems.

Rwanda was first reviewed under the UPR in 2011 and was reviewed for the second cycle on 4th November 2015. Rwanda as a country has demonstrated strong commitment in involving women in all economic activities. Basing on the best practices, and experience of Rwanda in promoting women's rights, Rwanda will participate in the Human Rights Council's work in continuing to integrate a gender perspective in all the Human Rights Council mechanisms especially the UPR.¹²⁵

Rwanda will continue promoting and protecting human rights on the ground and participate in such initiatives within the United Nations system. The project will enhance the capacity of Rwanda to be more involved in the UPR processes and actively participate and contribute to the United Nations Office for Human Rights (OHCHR), UN Human Rights Council and UN treaty bodies.

The project will contribute to the strengthening of Rwanda's national capacity to participate more effectively in the work of the Human Rights Council, including by facilitating the effective and informed participation of representatives in consultative and decision-making processes such as negotiations, come up with resolutions on matters under discussion in the Human Rights Council especially on UPR and gender, co-sponsoring resolutions and engage on a daily basis with the council on other thematic issues as the Permanent Mission of Rwanda in Geneva has always been active at the HRC sessions.

¹²⁴ All Statements and recommendations can be found at: <http://portal.ohchr.org/portal/page/portal/HRCExtranet/12thSession/OralStatements/280909>

¹²⁵ See Rwanda's project for participation in the Human Rights Council, 2015

III.2. Ways forward for the effectiveness of UPR

The UPR should not be fully judged by this first stage, nor should it be dismissed due to its political nature. Every mechanism that takes place within the UN forum should have a political content and this is both the asset and drawback of the UN.

III.2.1. Practical recommendations for strengthening the UPR

The UPR should be enhanced from a practical side that would give quicker, efficient and quality-based results. This approach would strengthen the UPR mechanism and add bona fide value to it. The following recommendations pursue this practical approach.

III.2.1.1. Improving the system of allocating presentation time to States

Considering serious problems with restricted speaking opportunities of States during the review, it is recommended to extend the review session from 3 to 4 hours or even more. Since the intervention/speaking time is only 2 minutes due to time constraints, extending the review up to at least four hours would make a real difference and provide for delivery of more and longer Statements by States.¹²⁶

Because of the time limit which restricts States to express all their concerns or give all their recommendations to the State under Review, one way of improving the speaking time system would be through better use of written questions.

Currently the majority of States are still reluctant to submit written questions though this saves time which can be better used for States' interventions. More attention should be put onto written questions by delegations. As noted by Rachel Brett: "Encouraging greater use of written questions would make sense in order to enhance the substance of the review."¹²⁷

¹²⁶SHR, 2012, Council debate on UPR: Raising the bar for the second cycle.

¹²⁷ UPR-info practical assessment of the Universal Periodic Review, p.17

To this end, the time allocated to the State under Review could be extended to 1, 5 hours. Fifteen minutes would be devoted to the presentation of the national report, 30 minutes to respond to advance questions and 45 minutes to respond to questions during the interactive dialogue.¹²⁸

III.2.1.2. Recommendations should be binding

Since the UPR recommendations are key to the mechanism, it is necessary to provide for their effective implementation and ensure States' willingness to cooperate with the HRC in making changes on the ground. Therefore, recommendations issued should be legally binding so that countries are held accountable under international law in case such recommendations are not implemented.

III.2.1.3. Specificity of recommendations

To secure the efficiency of the UPR, recommendations should be specific and more action oriented. To this end, States need to make such recommendations to the State under Review. Being action oriented means that the commendation must contain a measure to be implemented and not only an aim to achieve. The recommendation should be explicit on how to achieve its goal.¹²⁹

III.2.1.4. Clear response to each recommendation

As seen above, besides the "Accepted" and "Rejected" responses, numerous SuRs give "General Response" or even "No Response" to recommendations. States have to provide clear responses to each and every recommendation they receive. These responses should be given in advance and in writing in an addendum to ensure transparency and predictability and show States' attitude and willingness to cooperate with the mechanism.¹³⁰

¹²⁸UPR-info assessment of the UPR first cycle, available at www.upr-info.org

¹²⁹ISHR "UPR Analytical Overview April –June 2008" pp.12 –15

¹³⁰This information was extracted from country information provided by UPR.info:
<http://www.upr-info.org-Sessions-.htm>

The General Responses should not serve as an answer to specific and concrete recommendations and the “No Response” should be eliminated in order to ensure accountability of the State under Review and provide clear picture of which recommendations are accepted and should therefore be implemented.

3.2.1.5. Distinction of recommendations

It is important to distinguish recommendations coming from Treaty Bodies and Special Rapporteurs Stated in the OHCHR compilation, from recommendations made by States. Treaty Bodies monitor the implementation of international obligations undertaken by the States when signing or ratifying the respective treaties.¹³¹

Therefore the legal nature of these treaties makes it mandatory for the States to comply with recommendations given by the Treaty Bodies. The UPR should not undermine the system of treaty bodies by allowing States to reject them. Therefore they should be distinguished from other recommendations when made during the interactive dialogue and in Reports of the Working Group.¹³²

III.2.1.6. Providing reasons of the rejection of recommendations

The UPR is a peer-review process based on States’ cooperation and political will. Rejection of recommendations coming from States should be regulated in order to ensure the accountability of the State under Review.

Thus a detailed explanation would demonstrate the States’ cooperation within the UPR. Good practices have been shown by Barbados (Session 3) and Bosnia and Herzegovina (Session 7) which gave extensive explanations to all recommendations, including those rejected and partially accepted.¹³³

¹³¹Information extracted from UPR Info’s database see: <http://www.upr-info.org/database/>

¹³² ISHR, 2012, UPR: Examining the Opportunities from the First Cycle, p.25.

¹³³A/HRC/8/26 Barbados’s Outcome Report p.10 para.47.

III.2.1.7. Strengthening the role of the Troika

To add value into the UPR process, the Troika could focus on playing a more significant role before, during and after the review. Several actions could be taken to strengthen the role of the Troika:

This step could tackle the problem of lack of expertise within the Troika and ensure that Troika is able to comment on recommendations or Statements that are not in line with the human rights treaties the review is based on. The idea of bringing expertise into the UPR was also noted by Human Rights Watch.

Hereby there should be suggested that the expertise should be put within the framework of the Troika as this way it would be central, it could enhance the Troika's role, and provide for legal advice or consultation on human rights.¹³⁴ Again the HRC should encourage States to submit questions to the Troika in writing, in advance, in order to ensure States' full participation during the review session.

The Troika would then give priority to these questions. To provide for this priority the Troika could read the written questions out loud so they are included into the Report of the Working Group. Then the SuR could be asked to give responses to these questions in its introduction which would increase the responsibility of the SuR and the emphasis on advance questions.¹³⁵

To facilitate the review process and the interactive dialogue in particular, the Troika could present the main issues contained in the three documents the review is based on. This could be done at the beginning of the interactive dialogue.

Such a briefing would help the Troika add value into the process and make a sensible input into the content of the dialogue. The same could be done at the final stage of the UPR

¹³⁴Upr info analytical assessment available at <http://www.upr-info.org/database/>

¹³⁵Upr info analytical assessment available at <http://www.upr-info.org/database/> accessed on 15/12/2018

process, i.e. adoption of the review. The Troika would ensure the international community is aware of the main issues of concern or main critical challenges the SuR is facing.¹³⁶

3.2.1.8. Strengthen the role of NGOs

Although NGOs and other stakeholders are legitimate and recognized actors of the UPR process, their role is marginalized and limited to formal and brief participation in national consultations, submission of a 5-page report (10-page for coalitions of NGOs), and 20-minutes of total speaking time for all NGOs at the HRC plenary session after the review.

NGOs today represent a strong sector with extensive expertise in human rights which can add constructive value into the UPR process as well as to all the other mechanisms of human rights protection. Using NGOs' expertise and better cooperation with them would be beneficial for the HRC in general and the UPR in particular. NGOs enhance the UPR through their active participation.¹³⁷

III.2.1.9. Organizing national consultations

The process of national consultations which the State is responsible for is at times formal, brief and may include pro-governmental NGOs rather than a full range of stakeholders. To tackle this problem and make this process more thorough and participatory for NGOs, the HRC should pay more attention to it.¹³⁸ This could be done through the engagement of OHCHR regional offices. OHCHR could follow the process of national consultations more closely and include its observations into its report to the HRC.

III.2.1.10. Enhancement of the follow-up process

The follow-up needs to be a productive and efficient process for each and every State, so it would not just become a matter of quantitative implementation of a number of UPR

¹³⁶ Idem

¹³⁷ See UPR-info assessment 2008-2010, P.21

¹³⁸ WGHR, Joint Stakeholder's Report for UPR Second Cycle, December 2011, p.16, para.36.

recommendations on the ground but a quality-based implementation. The follow-up process could be strengthened by active participation and monitoring by the OHCHR regional offices, UN agencies, NHRIs and NGOs that could play an important role on the ground. The HRC could recommend States to engage the civil society into the follow-up. Considering the fact that NGOs are actors of the UPR process, they could contribute to implementation of the UPR recommendations.

The process could start with the organization of yearly coordination meetings in the State between the government, the OHCHR regional office, UN agencies, the NHRI and NGOs. Under item 6 (General Debate) of the HRC Resolution, not only States, NGOs and NHRIs could report on implementation, but also UN agencies and regional offices.

As a result the coordination of all actors involved in the UPR would be ensured in the most efficient manner. For the follow-up process to be successful, the HRC through OHCHR offices could help the States and share the best practices of implementation with them.

Another recommendation would be to establish a concrete mechanism to evaluate the implementation of recommendations by the States. The role of OHCHR regional offices could be crucial for delivery of information to the HRC. The OHCHR conclusions could then be presented by the Troika during the second cycle.

III.2.1.11. Enhance future UPR cycles

It is essential for the HRC to prepare an effective strategy for future cycles. Inter alia this strategy should be based on lessons learnt from the previous cycle and demonstrate the enhancement of the UPR mechanism. It is recommended that the future cycles concentrate on the human rights situation in the UN Member States and their implementation of recommendations received during the previous UPR cycles.

The future cycle should not function as a mere continuation of the previous cycle as it would decelerate the whole process. At the onset of the upcoming cycle the HRC should

have all the information on the States' implementation of the UPR recommendations and be able to assess the development of the human rights situation.

For the upcoming cycles to be well organized, the HRC could ask all the actors submitting reports for review sessions to include a section in each of the three reports on the status of implementation of the UPR recommendations. OHCHR in its turn could draft a fourth report solely on the implementation of recommendations accepted by the States.

During the future cycles it is crucial that the States under Review are challenged on the recommendations which they did not implement. In such cases, and in cases where recommendations were rejected, it is important that States are allowed to make the same recommendations again. Such a measure will show the pro-human rights persistence the States should have when giving recommendations to their peers rather than letting the politics take over human rights agenda.

III.2.2. Towards a UPR which is accessible, strong, effective and protective

As the UPR reaches the end of its second cycle, ISHR has developed a strategy detailing measures that would enhance the UPR's ability to fulfill its potential and achieve a greater vision for the process during its third cycle. Ben Leather and Tess McEvoy provide a snapshot of that strategy, which will be launched later this year.

The Universal Periodic Review (UPR) has emerged as one of the key rallying points for civil society engagement within the UN human rights system. Many civil society organizations and coalitions have used it to gain the recommendations needed to back their national level advocacy, with some taking advantage of its peer-to-peer nature to ensure buy-in and follow-up from recommending States.

However, a lack of follow-up mechanisms, procedural weaknesses and patchy implementation have exacerbated fears that the mechanism risks degenerating into a purely 'ritualistic' review. Obstacles to safe and effective participation by human rights defenders (defenders) mean the process is not reaching its full potential.

There are several changes which could be applied to the UPR to ensure that its outputs have a more positive impact on the behavior of State and non-State actors, including by strengthening civil society's role at all stages in the process.

III.2.3. Ensuring an institutionalized reprisals mechanism

The Secretary General's annual report on reprisals shows an increase in intimidation and attacks against human rights defenders in association with their engagement with the UPR. As well as constituting a violation of international human rights law, reprisals – if not tackled – will deter other defenders from interacting with the UPR and prevent civil society from following up on recommendations, thus hindering implementation.

Human Rights Council resolution 24/24,¹³⁹ existing legal research¹⁴⁰ and a recent cross-regional joint Statement¹⁴¹ by 65 States have made it clear that the president and bureau of the Human Rights Council have a moral and legal duty to tackle reprisals. This duty needs to be better operationalized and discharged. In the framework of the UPR, the Council president, bureau and secretariat should amongst other things:

1. Elaborate a comprehensive policy to prevent, investigate, remedy and promote accountability for cases of intimidation or reprisal, establishing accessible secure channels for making allegations;
2. Take proactive steps to investigate and follow up on allegations, adopting the precautionary principle;
3. In consultation with alleged victims, seek protection, non-recurrence and remediation guarantees from the State concerned; and
4. Include alleged cases of intimidation and reprisals in the report of the UPR Working Group, together with the concerned State's response. Cases should also be discussed at the adoption of the report.

¹³⁹ Available at www.ishr.ch/sites/default/files/article/files/hrc_res_24-24.pdf

¹⁴⁰ 'Submission made on behalf of the International Service for Human Rights to the United Nations Human Rights Council on its obligations to protect from reprisals individuals who cooperate with the council and its subsidiary mechanisms,' October 2014, available at www.ishr.ch/sites/default/files/article/files/freshfields_advice_on_reprisals_print_0.pdf.

¹⁴¹ Joint Statement to the Human Rights Council on preventing reprisals, available at <https://geneva.usmission.gov/2015/09/25/u-s-joins-hrc-joint-statement-on-preventing-reprisals/>.

States, meanwhile, as well as preventing and ensuring accountability for reprisals, ought to make recommendations on the issue through the UPR and during Item 5 and 6 debates within the Council.

III.2.4. Effectiveness of UPR

After the review hearings, the Human Rights Council can, in addition to the recommendations, propose capacity building measures in order to implement human rights obligations.

For Felice D. Gaer study, though it is true that the system of Universal periodic review resolves the drawbacks of the earlier commission in relation to double standards, selectivity and shaming, it is quite often stated that the influence of political considerations during the institution building process has given way to least professional and expert contribution. It has also been stated that Universal Periodic Review continues to be a “largely unknown process outside of the UN human rights environment.”¹⁴²

On the contrary, it is also Stated that it was the politically selective nature of the Commission which was the reason why it got replaced by the Council and as the Universal Periodic Review apply to all of the United Nations member States it cannot be said that the council is applying double standards.

In short, according to Allehone Mulugeta Abebe, it means that if selectivity was the nature of the work of the commission, it is universality which is the nature of the mechanism of the council and Universal Periodic Review.¹⁴³ For Hurst Hannum, the main benefit of the mechanism of universal periodic review is that it ensures that all the countries are subject to a minimum level of Council attention on a regular basis.¹⁴⁴

¹⁴² Felice D. Gaer, *A Voice Not an Echo: Universal Periodic Review and The UN Treaty Body System*, H.R.L. Rev. 109 (2007)

¹⁴³ Allehone Mulugeta Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, H.R.L. Rev. 1 (2009)

¹⁴⁴ Hurst Hannum, *Reforming the special procedures and mechanisms of the Commission on Human Rights*, H.R.L. Rev. 73 (2007)

But in the case of Universal Periodic Review individual human rights experts are excluded from directly participating in the review procedures and it is principally an inter-governmental oversight mechanism. In the context of Universal Periodic Review, it is most often stated that “in the Universal Periodic Review, States are in the driving seat, being the primary suppliers of information, reviewers and consolidators of the report itself.”¹⁴⁵ This is precisely the reason why it is stated to be an overwhelmingly political undertaking.¹⁴⁶

For Rhona K.M. Smitha, though Universal Periodic Review is slightly controversial in regard to the fact that it addresses both international human rights law as well as international humanitarian law, it is the only compulsory mechanism to review human rights compliance by States. But the mechanism of Universal Periodic Review does not in itself assure a full and comprehensive assessment of the human rights situation in a State and it is clear from scrutinizing the reviews.¹⁴⁷

The members of the troika depending on their Geneva diplomats which will in turn reflect badly on its efficacy and professionalism, the struggle to make safe adequate financial commitment even despite the establishment of Voluntary Trust Fund, limitation of funding to just one individual from a Member State of the Council which do not have permanent mission in Geneva are all pointed out as the shortcomings of the Universal Periodic Review system.¹⁴⁸

One another factor which should be taken into account is that though the universal periodic review mechanism allows for a systematic and periodic scrutiny of all the UN member States and endeavors at reinforcing the existing monitoring system by creating a new direction, the Universal Periodic Review mechanism is not a novel idea as a similar

¹⁴⁵ *Ibidem.*

¹⁴⁶ *Ibidem.*

¹⁴⁷ Rhona K.M. Smitha, *Texts and Materials on International Human Rights* 189 (2010)

¹⁴⁸ Allehone Mulugeta Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, *H.R.L. Rev.* 1 (2009)

procedure was established in 1956 and abandoned in 1980. In addition it seems to be duplicating the reporting procedures of the treaty bodies.¹⁴⁹

Though the involvement of NGOs and other stakeholders in the Universal Periodic Review makes it more effective and is something which is commendable, institution-building text contains no stipulation empowering them to make Statements as well as to raise queries throughout the interactive dialogue in the Working Group. Moreover, the term ‘stakeholders’ is not defined either in GA Resolution 60/251 or Council Resolution 5/1 which is another major drawback of the mechanism.

III.2.5. Increasing the standard of UPR proceedings

Feedback from a range of local civil society organizations suggests that the following initiatives would enhance the UPR’s process and, consequently, its impact:

1. The program of work of Council sessions should be rearranged to ensure that item 6 falls at the end of the agenda.¹⁵⁰ This would assist to ensure that debates on UPR Working Group reports occur after resolutions are mostly agreed upon. It is anticipated that this will increase the number, quality and candour of interventions by States;
2. States should use the Council’s item 6 debate to both update the Council on implementation of recommendations previously received, and seek information regarding implementation by States to which they have made recommendations previously on priority issues;
3. States should focus their attention on the quality of recommendations, not the quantity, in line with a Statement made by 47 NGOs at the Human Rights Council’s 28th session;¹⁵¹

¹⁴⁹ Nadia Bernaz, *Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism* in Kevin Boyle (ed), *New Institutions for Human Rights Protection* 83 (2009)

¹⁵⁰ Human Rights Council agenda item 6: Universal Periodic Review.

¹⁵¹ Joint NGO Statement at the Human Rights Council’s 28th session, item 6 – general debate, 20 March 2015, available at www.ishr.ch/sites/default/files/article/files/2015_03_20_Statement_item_6.pdf.

4. Guidelines should request States to respond to recommendations at least two weeks before the beginning of the Council session at which their Working Group report will be adopted. This would make it easier for NGOs and States to prepare their responses to the Working Group report, including through Statements.

By ensuring an institutionalized reprisals mechanism, an increase in civil society space at the Working Group stage, greater follow-up to, and implementation of, recommendations, and through the fine tuning of UPR processes, the UPR will be able to better fulfill its intended vision in the third cycle and beyond.

III.2.6. Enhancing the Effectiveness of the UN Universal Periodic Review: Civil Society Perspective

In a new report released today, CIVICUS examines the experiences of civil society groups from across the world in engaging with the Universal Periodic Review (UPR). The report, based on interviews with civil society leaders operating in diverse regions of the globe, provides a number of substantive recommendations to strengthen the UPR process to support the creation of a safe and enabling environment for civil society to promote and protect human rights¹⁵².

“As almost half the world’s governments implement controls in breach of international law to suppress civil society voices at home, the UPR is emerging as an essential avenue to address pressing national human rights concerns,” said Mandeep Tiwana, Head of Policy & Research. “This paper, in collating the views of civil society experts, underscores the integral value of public participation with this important process to protect and promote universal human rights.”¹⁵³

The report finds that the UPR, a UN process which involves the review of the human rights records of all UN Member States every 4.5 years, is increasingly used as a mechanism to highlight human rights concerns especially for countries where civil society is under threat. The report further reveals that the UPR is playing an increasingly important role in

¹⁵² Reports & Publications 10 September 2015

¹⁵³ Ibid.

initiating and resuscitating multi-stakeholder dialogue and cooperation on contentious human rights issues.

In this regards, Tiwana, CIVICUS Chief Programs Officer, Stated that while still a relatively new process, the UPR has emerged as a key forum for civil society to engage on critical human rights concerns.¹⁵⁴ “Its effectiveness can be enhanced by encouraging the international community and national governments to take proactive measures to facilitate robust public participation in the process.

To address these and other challenges, the report puts forward a number of substantive recommendations including the need to:

- create mechanisms to monitor the implementation of recommendations and commitments made by the countries under review;
- create specific sanction mechanisms for governments who persecute civil society representatives for participating in UPR related activities at the UN Human Rights Council;
- translate and disseminate UPR related materials to the general public and civil society to facilitate greater engagement with the process; and
- reduce burdensome restrictions on accessing the UN Human Rights Council which disproportionately affect human rights defenders operating in the global South such as discriminatory visa processes and high costs of participation

¹⁵⁴ Mandeep Tiwana, [Human Rights, Participation and the 2030 Agenda](https://www.civicus.org/index.php/what-we-do-126/2014-04-25-03-26-23), <https://www.civicus.org/index.php/what-we-do-126/2014-04-25-03-26-23>

GENERAL CONCLUSION

Although they signed and even ratified the different covenants relating to human rights, most of States are still reluctant on their effective implementation. Among the factors of this apparent denial prevails the fact that the international law is conventional and its coercive force is not always guaranteed.

Indeed, in 2006, the Human Rights Council established the UPR through its institutional building package with a mandate for periodically reviewing the human rights record of every United Nations Member State.

In human rights monitoring, whilst Universal Periodic Review marks a significant improvement, it is a new process that necessitates a realistic approach towards continual improvement stemming from an examination of best practices and challenges in the context of the principles and objectives of the review to enhance its intended outcomes.

Since its creation vis-à-vis the implementation of international human rights obligations, this study critically explored the impact of the Universal Periodic Review. The first chapter dealt with literature review on the UPR whereby it was deemed to clarify various key concepts and develop a theoretical framework on the latter in the perspective to well guide readers of the work.

Within the conceptual framework, there was examined the meanings of key concepts such as the Universal Periodic Review, working group and troika. It also gives the background of UPR.

The second chapter analyzed the universal periodic review in practice, advantages and weaknesses. The most remarkable feature of the UPR is that all States members of the UN are subjected to the process, irrespective of whether they have accepted the relevant general or special treaties. It is matter of public knowledge that the United States, although it signed the ICESCR back in October 1977, has not made the least effort to initiate the ratification process before the senate, and that China, better still, signed the ICCPR, in

October 1998, but has to date refrained from ratifying it. UNGA resolution 60/251 does not specify whether participating in the review process constitutes a legal obligation. Notwithstanding this lack of clearly defined contours, one may note that to date all States have agreed to be made accountable before the international community, even the permanent members of the Security Council; and no State has raised any objections against the procedure.

Though the UPR has quite a few important positive and efficient aspects that help fulfill the mandate given by the HRC, there is a number of factors either preventing the mechanism to be efficient or affecting its efficiency namely the fact of State rejecting recommendations from HRC; the soft character of those recommendations which are not binding; absence of mechanism for their implementation; Universal Periodic Review is deemed overrated due to regional coalitions supporting their members even unduly; lack of sufficient information on the part of the treaty body members; superficiality; politicization; lack of punitive sanctions and surplus of empty rhetoric in cases of non-compliance or non-implementation; absence of cooperation and excessive focus on Geneva Round

The third chapter brings a number of strategies to improve the effectiveness of UPR. Before tackling such solutions, there proves crucial to underline the impact of the UPR on the duties of respect of human rights that are incumbent on domestic level and there is taken Rwanda as research field.

To address the legal and political challenges raised, there is suggested a number of substantive recommendations including the need to create mechanisms to monitor the implementation of recommendations and commitments made by the countries under review; create specific sanction mechanisms for governments who persecute civil society representatives for participating in UPR related activities at the UN Human Rights Council; translate and disseminate UPR related materials to the general public and civil society to facilitate greater engagement with the process; and reduce burdensome restrictions on accessing the UN Human Rights Council which disproportionately affect human rights defenders operating in the global South such as discriminatory visa processes and high

costs of participation. Recommendations are provided to solidify best practices and address key challenges so that the mechanism can contribute to the full realization of all international human rights obligations.

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CRITICAL ANALYSIS OF THE UNIVERSAL PERIODIC REVIEW VIS-A-VIS THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS BY STATES

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