

UNIVERSAL PERIODIC REVIEW

Lessons, Hopes and Expectations



Dr Purna Sen
Research by Monica Vincent and Jade Cochran



Commonwealth Secretariat

Universal Periodic Review

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COMMONWEALTH SECRETARIAT

Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom

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Abbreviations

ASEAN	Association of Southeast Asian Nations
ASK	Ain o Salish Kendro (Bangladesh)
CASHRA	Canadian Association of Statutory Human Rights Agencies
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEC	Constitutional and Electoral Commission (Tonga)
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CGE	Commission on Gender Equality
CHRC	Canadian Human Rights Commission
CHRI	Commonwealth Human Rights Initiative
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organisation
ECOSOC	Economic and Social Council
ESCRs	Economic, social and cultural rights
FCO	Foreign and Commonwealth Office (UK)
HRC	Human Rights Council
HRCM	Human Rights Commission of Maldives
HRU	Human Rights Unit
ICC	International Co-ordinating Committee of the National Institutions for the promotion and protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT	Lesbian, gay, bisexual and transgender
MFAT	Ministry of Foreign Affairs and Trade (New Zealand)
MoJ	Ministry of Justice (UK)
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
ODA	Overseas development assistance
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
P5	Permanent five members of the UN Security Council

SAHRC	South African Human Rights Commission
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
WiLDAF	Women in Law and Development in Africa

Message from the Commonwealth Secretary-General

The Universal Periodic Review (UPR) is a unique mechanism, designed to bring benefits to real people in real human rights situations. Peer review is of great value, in that it holds member states to account by setting standards both for themselves and for others.

The UPR operates at different levels: governments, National Human Rights Institutions (NHRIs) and NGOs (non-governmental organisations). The Commonwealth is uniquely placed, with networks in all three.

I warmly commend this publication and encourage its use by all member states taking part in the review process.

We recognise that different Commonwealth countries will have differing needs at different stages of the review process. But everyone should be striving together – even if from very different perspectives and strengths – towards the same goal. Our task is to uphold the values we espouse, as set out in the Trinidad and Tobago Affirmation of Commonwealth Values and Principles, agreed by Commonwealth Heads of Government in Port of Spain, Trinidad & Tobago in November 2009.

To all our member governments, I confirm that the Commonwealth Secretariat stands ready to support you in the Universal Periodic Review at preparation and follow-up stages, and that its Human Rights Unit (HRU) is at your service.

Kamlesh Sharma

Commonwealth Secretary-General

London, April 2011

Preface

In March 2008 the Human Rights Unit held a one-off event, with support from the UK Foreign and Commonwealth Office (FCO), on the new Universal Periodic Review process of the United Nations Human Rights Council (UNHRC). At this two-day seminar, representatives of the first three Commonwealth states to undergo UPR were invited to share their experiences with those still to be reviewed in that year, and the UN was invited to share the aims and workings of the new process. The contribution of stakeholders to the UPR is central and therefore NHRIs and NGOs were invited to participate in the discussions.

UPR experts from the Office of the High Commissioner for Human Rights (OHCHR) were at the seminar and were central to the discussions. They shared information on the process itself and were able to deal with the many queries raised by states and stakeholders. For many Commonwealth small states, the absence of a mission in Geneva renders them outsiders in the debates and discussions there on the experiences and assessments of new developments.

Feedback from participants suggests that information sharing and exploration of others' experience has been particularly supportive in their preparations. Continued FCO support has enabled HRU to hold further preparatory workshops. In the period up to October 2010, the HRU organised or was involved in eight UPR preparatory workshops (including a mid-term review) during the first two years of the four-year process, together with HRU observation of member states' reviews in Geneva and a publication that reviewed the first year of the process. The three streams of our UPR work – seminars, observations and analysis of the Geneva element – inform the content of this publication. It is intended to be a tool for states and stakeholders that have been through or are about to enter the UPR process – by pooling experiences, critiques and responses, as well as positive impacts. Additionally, a summary of key points from this publication have been shared with the Human Rights Council (HRC), which began its review of its architecture and mechanisms on human rights, including the UPR, in late 2010. The HRC review has now concluded and a one page summary is included in the back.

This publication offers an overall positive assessment of the potential of the process to prompt and support change in-country. It also acknowledges and supports the willingness of states to participate in international discussions on human rights to the betterment of their own efforts back home. The second half of the book presents the mid-way analysis and hopes that were shared at the mid-term review held in March 2010.

Finally, a set of data is included that presents information on various aspects of the Geneva dialogue. A commentary accompanies the data.

Thanks are due to many people – this work has rested and grown on the efforts and thoughts of numerous colleagues and organisations. I thank the participants in the many workshops who have come to know the UPR and to seek the best in this mechanism for the benefit of the people for whom they work. I thank also the resource persons who have given most generously of their time. The UPR team in the UN High Commissioner's Office in Geneva deserve special mention; they have been with us at each event and made key contributions towards sharing information on UPR and building the confidence to participate. They have also co-funded some of the events, for which the HRU is particularly appreciative. New Zealand's Ministry of Foreign Affairs and Trade (MFAT) has also contributed funds to the work, supporting the attendance of NGOs at one of the regional events. The FCO has supported this project from the start. Their support and their ongoing engagement is deeply appreciated.

Dr Purna Sen

Head of Human Rights

Commonwealth Secretariat

Introduction

This publication presents what has been learned from HRU engagement with states going through UPR, observation of the interactive dialogues in Geneva. It is written with a view to supporting and strengthening the outcomes of the process for the states concerned and their people. It is not intended to review the workings of the HRC or to offer a full analysis of the UPR. The publication has two objectives:

- To compile and review Commonwealth experiences
- To consider how the potential for UPR as a tool for change in-country can be enhanced in order to increase its effectiveness

We do not, therefore, question the fundamental premise of the mechanism: rather we consider how best it can be used as a tool for national progress. Our workshops have been about exposition of the technicalities and modalities of the process, and crucially they have also been about maximising state and stakeholder buy-in, encouraging and supporting consultation and co-operation, and placing emphasis on the UPR as a process, rather than a one-off session in Geneva.

The HRU has been supporting countries through the process, working with the UN to inform states on its intent and technical workings. Key elements of the process and points learned from HRU's work include:

- All states go through the same process and procedures – a level playing field is sought;
- The process is a chance to share achievements and challenges;
- The process relies upon an honest engagement in order that the best outcomes might be achieved;
- The UPR should be seen as a dialogue, rather than an examination;
- The UPR is a process, not just a Geneva-based discussion; it is a tool through which to progress human rights developments on the ground in line with international standards and commitments;
- The UPR allows, and can perhaps hasten, international co-operation towards such progress;
- The state report has potential for assisting treaty body reporting;
- The consultation requirement inherent in the process may be testing at times but there is value in it, bringing together various actors in the promotion of rights;

-
- Recommendations from the UPR are not discrete but can complement or otherwise link with treaty bodies, special procedures or other human rights commitments

This publication brings together a range of information, reviews and hopes for the UPR from across the Commonwealth, including from the HRU. These include:

- 25 Commonwealth states underwent UPR in 2008–2009.
- All Commonwealth states have participated and shown an openness to the new process.
- All have submitted written reports.
- Most delegations have come from their country's capital, with participation from missions in New York, Brussels and Geneva; four had an equal ratio of females to males.
- A total of 309 stakeholder reports have been submitted for Commonwealth states, of which 89 have been from national groups; seven states had no national stakeholder submissions.
- The Interactive Dialogue saw participation from a wide number of states, ranging from 19 to 69 by session; for seven states there were names on the speakers list that could not be accommodated within the three-hour period.
- The range of comments and recommendations increased as the UPR progressed; states that had their Interactive Dialogues early tended to have fewer recommendations than those that came later.
- Some recommendations were broad or unclear; specific wording is preferable and makes for better follow-up.
- Many states accepted a large number of recommendations and a wide variety of topics; the follow-up phase will be challenging and will need support, especially for states with severe capacity constraints.
- Several states showed remarkable willingness to increase their efforts on human rights, accepting significant recommendations; in some cases they accepted over 100 recommendations.

The UPR received a somewhat sceptical reception from some, who feared that discussions would be superficial or overly political. The first few years saw some of those sceptics revise their position. In our discussions, Commonwealth states and stakeholders have expressed positive views of the process and of the potential it holds for the future, as well as some ongoing reservations. Equal treatment for all states has been welcomed.

From powerful members who are permanent members of the UN Security Council (P5) to small island states, all undergo the same process. Ownership of the report, the selection of issues that can be addressed and the ability to have open discussions with other states are elements that have been appreciated. The HRU has noted that there is a galvanised and energised approach to human rights by many states through and after the Geneva element.

Some stakeholders have found that a renewed dialogue with their governments has been possible through the UPR and have discovered innovative ways of working, given that they have no speaking role in Geneva until after the Interactive Dialogue.

All actors now turn their attention to the implementation agenda, some with apprehension and others with hope!

Commonwealth Secretariat engagement with the UPR process

Since the beginning of the Human Rights Unit's work on the UPR, we have taken the tripartite spirit of the process into our own initiatives, involving the three key constituencies engaged with the process at a national level: states, NHRIs and NGOs. Consultation and partnership work in the promotion of human rights on the ground are core messages of our UPR work.

The HRU has taken a holistic approach to our UPR work, through which we support members through the UPR, up to and beyond the Geneva element. This section outlines the different elements of our broad programme of UPR assistance.

Preparatory seminars

Since 2008, the HRU organised, facilitated and contributed to eight seminars in different regions of the Commonwealth to prepare states, NHRIs and NGOs in the run-up to their UPRs. These seminars allow cross-country conversations and peer learning. The list of preparatory seminars is given below:

- Seminar of Commonwealth countries undergoing UPR in 2008 (March 2008)
- Regional seminar for Commonwealth countries in the Caribbean (October 2008)
- Seminar of Commonwealth countries undergoing UPR in 2009 (November 2008)
- Regional seminar for Pacific countries (in collaboration with New Zealand's MFAT, January 2009)
- Seminar of Commonwealth countries reporting to the review in 2010 (September 2009)
- Mid-term review seminar of UPR (March 2010)

- Seminar of Commonwealth countries reporting to the review in 2011 (three separate seminars were held in Africa, the Caribbean and the Pacific, all in September 2010)

The HRU has spread awareness of UPR during other seminars to different stakeholders, including parliamentarians, police officers and youth leaders.

Observation of UPR working groups

The HRU seeks to observe all Commonwealth countries at the UPR Working Groups of the Human Rights Council.

Such observations strengthen support to member states and allows attention to begin to focus on the implementation of recommendations.

Follow-up/ implementation of recommendations

The review in Geneva involves a number of recommendations to the state under review. Those that are accepted then need to be implemented. Accordingly, the HRU has shifted its focus to the implementation and follow-up of recommendations. Information on these activities can be found on pages 120–121 of this publication.

Good practice publications

The Human Rights Unit also provides UPR assistance to member states and stakeholders through researching, collecting and disseminating good practice in order that states and stakeholders can be supported at different stages of the UPR process. Our publications also provide analysis of the various stages of the process. The HRU's first publication on UPR, *Universal Periodic Review of Human Rights: Towards Best Practice* (2009), is available from the Secretariat.

Commonwealth focal point on UPR

The HRU UPR officer has full-time responsibility of leading on the organising of seminars, liaising with member states, NHRIs and NGOs throughout all the stages of the UPR, including follow-up, producing reports, publications and analysis on UPR developments, and overseeing the observations of Commonwealth reports in Geneva.

Contribution to the Intergovernmental Review of the Human Rights Council 2010–2011

In October 2010, the President of the Human Rights Council held the first intergovernmental working group on the review of the Human Rights Council. Courtesy of research and statistics collected during the course of its work on the UPR and the Mid-Term Review, the HRU submitted a written submission for consideration¹ and a statement was read during the HRC review by the Permanent Mission of Malta in Geneva.

¹ The written submission is in Annex 6.

Collaborating with the Commonwealth Secretariat

It is several years since the UPR started. Sometimes it does not seem that long ago and sometimes it does.

Those of us, such as the United Kingdom, who went through the review in the first round in April 2008 are now reviewing our progress. It is at this juncture that the time elapsed seems short. In 2008 we said we would do x, y and z, and we accepted a range of recommendations from states. Have we made enough progress? When our next review comes around in 2012, will we have achieved all that we said we would do?

Commonwealth countries that have been preparing for UPR together are well placed to assess the results of the process as a whole – that is when the time passed seems longer to me. The friendships and exchanges we have built up through working together are well established, and we feel as though our colleagues are old friends. Preparing for the UPR together has brought the Commonwealth family closer.

Let us remind ourselves what the UPR was all about. It was a new mechanism, designed because many countries thought the UN human rights bodies focused on just a few states, and rarely or never on the rest. We wanted it to be a thorough, effective review, based on our mutual interest in how every UN member state is doing in fulfilling the human rights obligations that we share, and mutual support in helping countries to make progress.

Your countries all have the right – even, I would say, the responsibility – to hold my country to account for how we abide by our human rights obligations, and the UPR has provided that opportunity. We all have different challenges, and being open about that, being ready to accept criticism and to listen to suggestions and explain our policies and plans is not easy for any government. But equally, we are all going through this together; we are all supporting each other to make progress. And that is what these Commonwealth seminars have been all about.

What matters is not just the review itself in Geneva but also – much more – what each country does to make progress and to implement recommendations as a result of the review.

More than half-way through the first UPR cycle, we have the opportunity to consider both the Geneva process and what we are doing at home to implement the recom-

mendations. It is also important to take stock of the achievements we have seen in many countries, and to consider the challenges that lie ahead.

First, the UPR process, as a new mechanism, has got off to a good start. It is widely seen as a success. That is partly thanks to this sort of work between us. Second, and more importantly, the proof of whether UPR is a real success is ultimately about what we do at home in each of our countries. Already I am aware of considerable progress in some countries as a result of the UPR, and many countries can be proud of some achievements. This seminar gives us an opportunity to share our experiences and to discuss how we can work together to support progress.

So maybe the focus of the Commonwealth's UPR work is shifting now towards implementation and follow-up. Of course we should not forget countries that have yet to experience their first review and that would like help and support.

As one of the states reviewed in the very first week of UPR, I hope the UK has been able to help other countries going through the review after us. We have also learned a great deal from other countries that did it differently or better.

Susan Hyland

Head of Human Rights, Democracy and Governance Group
Foreign and Commonwealth Office, UK

What is the UPR?²

The Universal Periodic Review is widely perceived to be a tool of the Human Rights Council (HRC), which meets in Geneva. It is indeed that, but that is not all. It is helpful to consider the UPR both as a mechanism and a process. The mechanism is the part that takes place in Geneva and the process is a much larger and longer project that begins before the Geneva element and extends considerably beyond it.

UPR – the mechanism

A brief summary should serve as a straightforward run-through and explanation.

The UPR commits the UN, through the HRC, to review every state's record and the challenges it faces in promoting human rights. The review is by peers, rather than by experts steeped in the law, language and mechanics of human rights. Other mechanisms – special procedures – perform this function, so there is no need to recreate these in the HRC. All 192 UN member states must undergo review under the Geneva-based mechanism, with 48 reviewed each year in three batches of 16 – the sequence having been determined through a random selection process. An HRC working group is convened for the UPR, for two weeks, three times a year. Three documents provide a written basis for the review, together with an oral presentation by the state under review (SuR).³

The heart of the review is a three-hour session, known as the interactive dialogue, in which the SuR speaks to issues raised in the documents and in which any questions previously put to the state can also be addressed. Members of the HRC and observer states may participate in the dialogue, putting questions, making suggestions or raising issues of concern by putting their names on a list.

The SuR is guided and supported through the process by a group of three other states – known as the Troika. These are randomly selected states, although they should in principle include one from the region of the SuR, and very few names have been rejected by any SuR. The Troika meets with the SuR before and during the review. Together they discuss the process and the Troika feeds through any questions or comments from other states that have been submitted in advance of the interactive dialogue. The Troika is available to discuss options and responses to recommendations put to the SuR.

² This section is taken from Commonwealth Secretariat's 2009 publication, *Universal Periodic Review of Human Rights: Towards Best Practice*.

³ The three documents submitted to the UPR process include the state report, a compilation of UN information and a summary of stakeholders' reports.

The SuR is sovereign in determining which of the suggestions and recommendations made to them they are willing to accept. International standards and norms, recommendations of treaty bodies and other special procedures and other accepted frameworks will together form a strong point of reference for discussions and for anticipated agreement on future work. The UPR is intended to be a review and a collective commitment for action – through the working group discussions other states offer support and advice on the implementation of accepted recommendations. Other organisations, such as the UN, aid agencies and the Commonwealth Secretariat, also make their services and funds available.

The interactive dialogue is followed two days later by the adoption of the report of the dialogue. This document, drawn up by the OHCHR, details the discussions and initial responses of the SuR, as well as recommendations made in the working group. The final step of the mechanism involves consideration of the report of the SuR by the next session of the HRC plenary, at which time the SuR has the opportunity to make a statement and answer questions, and other states can make observations. This is the session at which stakeholders can make oral contributions. This is the point at which the final outcome document of the SuR is adopted; the document includes any voluntary pledges and commitments made by the SuR.

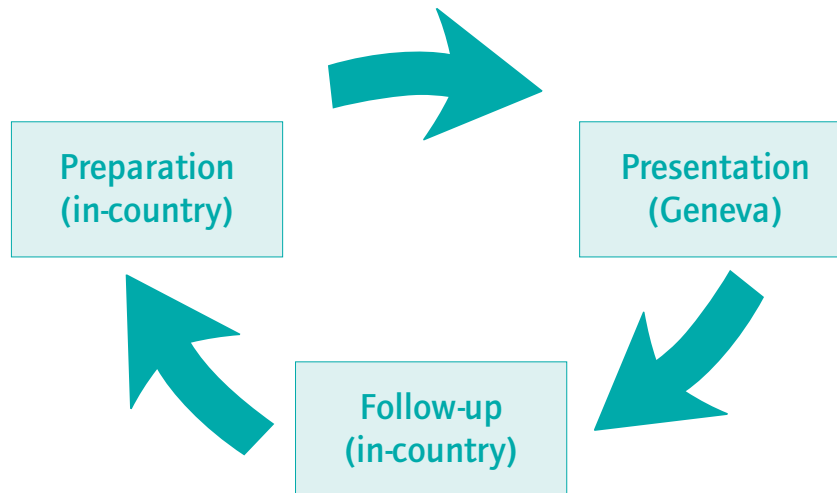
UPR – the process

The flowcharts given below refer to two elements that are not Geneva based: the pre- and post-Geneva periods. As described above, the UPR mechanism forms a technical but significant element in a larger project – that of promoting human rights in member states.

It is through reporting and sharing challenges in this endeavour that greater energy and expertise can be galvanised towards collective efforts to realise human rights. Offers of technical support and co-operation can flow from the mechanism to support the process on the ground. The UN has established trust funds to assist states where resource constraints limit human rights development work. The follow-up phase, as it is now being seen, is closely linked to the Geneva mechanism, as this is where the accepted recommendations and voluntary pledges to action, as well as offers of support, need to be made real. In time, the follow-up phase will become the preparatory phase as the second round of reporting approaches.

The principle of consultation and co-operation between stakeholders and states applies before and after the Geneva element. In some cases this will be a new approach and in others it will be a set of old relationships that will hopefully be refreshed. Not all such relationships are easy or new, yet it remains possible that they can be made to work.

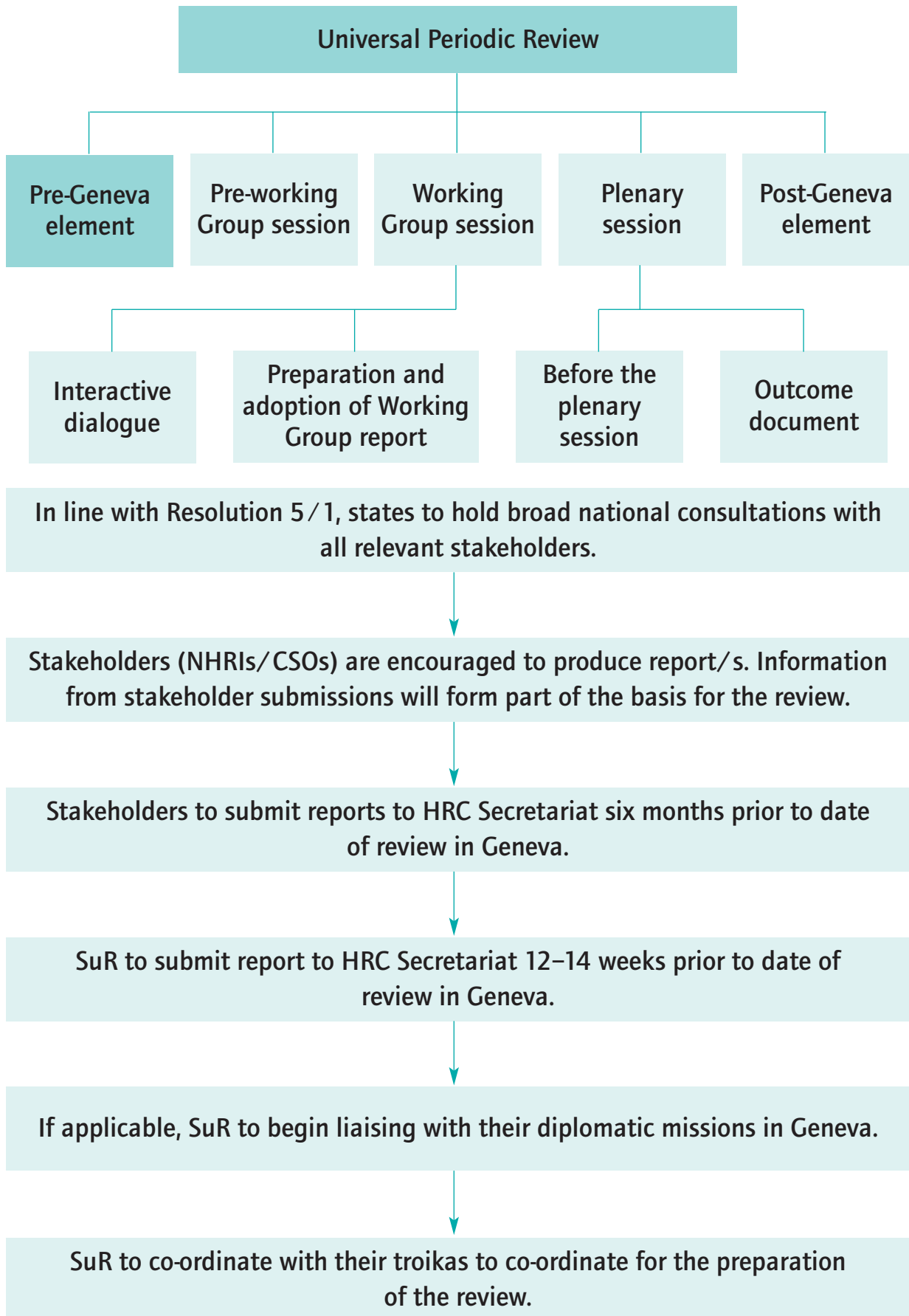
Figure 1. UPR – the process



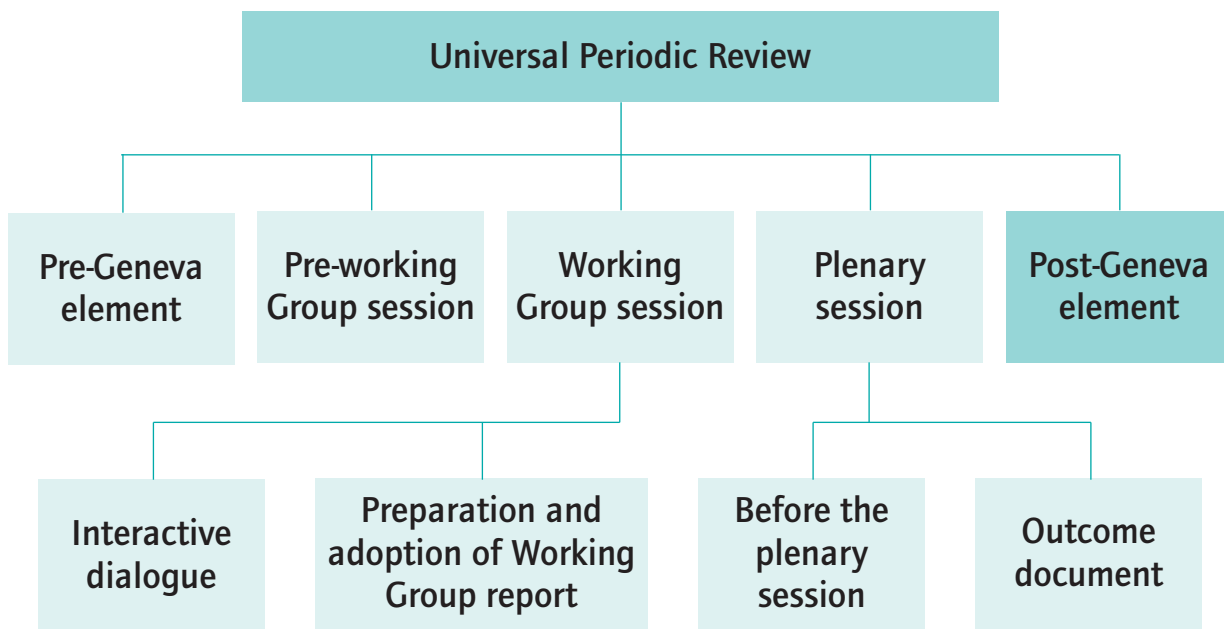
Indeed, the UPR may be a useful prompt for the establishment or reconstitution of such relationships. The fact that states have been tasked with undertaking consultation gives them a responsibility; civil society should see this as an opportunity to establish or renew dialogue.

Discussions and consultations within the Commonwealth have acknowledged the difficulties of undertaking a new reporting process: most state departments have not been provided with additional staff for this, nor have NGOs. Moreover, ministries tasked with the compilation of state reports have told of the challenges of co-ordinating and compiling information for the UPR. It is helpful to see the UPR as a process, as the relationships built in the compilation stage can be revisited in the follow-up phase. After all, it is likely that implementation will require efforts both from a variety of ministries and from stakeholders.

PRE-GENEVA ELEMENT



POST-GENEVA ELEMENT



State and stakeholders encouraged to continue dialogue and consultations into the implementation phase of accepted recommendations.

States and stakeholders should widely disseminate information on recommendations and voluntary pledges, if any, to the public.

States and stakeholders to agree programme of action on how best to implement the recommendations.

States, with stakeholders, to begin preparing for the next round of review in four years time incorporating review/evaluation of implementation during that period.

Taking Stock at the Mid-way Point⁴

In March 2010, the Human Rights Unit organised a Commonwealth Mid-Term Review of the UPR. With the UPR process reaching the midway point of its first cycle (2008–2011), the meeting provided an opportunity for states, NHRIs and NGOs to discuss and share their experiences, good practices and lessons learned from their engagement with all stages of the UPR mechanism: (1) consultation and report writing stages; (2) preparation for the review in Geneva; and (3) implementation and follow-up. For each of the above stages three different presentations were made from the perspectives of a state, an NHRI and an NGO. Following each session on a different stage of UPR, participants sat together in their peer groups to discuss each stage in more depth.

The Mid-Term Review sought to promote and strengthen the voices of states and stakeholders (namely NHRIs and NGOs) in the review of the HRC taking place in 2010 and 2011.

This section puts forward all the presentations that were made at the Commonwealth UPR Mid-Term Review. Each contribution is then followed by a brief summary of the points raised in the state, NHRI and NGO discussion groups.

Annex 5 contains a list of the participants who attended the seminar.

Consultations and Drafting a Report

A view from a state

Ms Evelyn Keelson, Attorney-General's Department, Ministry of Justice, Ghana

In fulfilment of UPR requirements, the Attorney-General's Department in the Ministry of Justice was responsible for co-ordinating the drafting of the national report and holding national consultations. A committee was formed within the Ministry of Justice, which included representatives from the Ministry of Foreign Affairs as well. However, due to a delayed start in the preparatory phase, the consultations held were limited in number. Furthermore, a number of factors, such as insufficient awareness of the UPR process, inadequate time to gather information for the report, lack of public engagement with the process, issues with record-keeping and time constraints in training of local officials on the subject, affected the quality of the national report.

⁴ Please note all contributions are taken from the presentations that were made by individual speakers at the Commonwealth Mid-Term Review in 2010. All contributions represent the personal views of each speaker, and do not necessarily represent those of the Commonwealth Secretariat.



Commonwealth UPR Mid-Term review seminar, Commonwealth Secretariat, London, March 2010.

The lack of awareness of the UPR process and time constraints also limited key stakeholders' participation in the process. Further, as the majority of key stakeholders were not aware of Ghana's review, their contribution and involvement was negligible and ultimately affected the quality of the submissions made. The lack of awareness of Ghana's review was even prevalent within the Attorney-General's Office.

Since the preparatory stage of the UPR is a national exercise, it required participation from a high proportion of the population. Ghana did not benefit from the broadest participation because the preparatory phase was low profile and the ordinary Ghanaian citizen was not aware of the UPR process and did not participate in the national consultation. The public at large was not engaged or aware of the content of Ghana's submission. Public ownership of the report was not achieved, and due to the lack of public knowledge most Ghanaians may not monitor or hold duty bearers to account if the recommendations suggested in Geneva are not adhered to.

That aside, inadequate record-keeping by relevant departments and ministries was another factor which adversely affected the quality of Ghana's report. This challenge, compounded by time constraints, made it difficult for timely soliciting of relevant information which had a bearing on the report. In addition, Ghana's backlog on obligatory reports to the treaty body mechanism also meant that information for the UPR report needed to be gathered in a most comprehensive manner.

Lack of time also impacted on the effectiveness of capacity-building training for local officials. The training was provided too close to the reporting deadline, leaving little time for those who participated to utilise the knowledge they had gained in producing the report.

Ghana did its best to be forthcoming and transparent in the issues highlighted in the submission. However, there were difficulties in agreeing what the report should contain. Given the diverse composition of working groups, individual members may have had their own preferred way of communicating sensitive issues that are of a national concern. Although unintended, misleading information or misrepresented issues may have occurred, so that there was a risk of not capturing the real human rights situation on the ground.

State discussion group

- Lack of time was identified as one of the biggest constraints, and the need to begin consultation and report drafting early was highlighted. As the UPR was an unfamiliar process, it was difficult to estimate the scope of the preparations required.

-
- Establishing 'systems' or committees to assist in the organisation and planning of the UPR was suggested. These systems could also be used to assist states in duties related to other UN human rights conventions.
 - Establishing a system for consultation and preparation of the report was not planned in some cases, and therefore presented strategic difficulties.
 - The importance of good stakeholder management was highlighted. The ability to hold timely discussions with stakeholders was noted as a way to alleviate some of the time constraints, making good working relationships important.
 - Staff changes and the resulting lost knowledge, expertise and experience of the UPR was noted as another challenging issue. Establishing resource material with adequate funding would be useful to build upon and retain the knowledge gained from the UPR.
 - It was noted that sourcing information and ensuring the participation of all government departments in the process was easier if there was a clear, initial political mandate supporting the process.
 - Difficulties in obtaining data from across the state's public sector could be reduced with the greater leverage that a clear political mandate would provide.
 - Efficiencies could be achieved by developing systems which would be applied across the UN Convention process: aiding the gaining of experience, and retention of knowledge and basic data (names and addresses of NGO contacts).
 - The need for continuous stakeholder management and dialogue after the Geneva-based review was highlighted as necessary to maintain effective working relationships.
 - A number of states proposed a public facing web presence to provide information to (and possibly seek comments from) the public on UPR. Other states noted that the UPR process was a 'reporting back on progress' exercise rather than providing the public's view on the human rights record of the state.
 - The importance of remaining flexible was highlighted. What works in one country may not be applicable in another. For example, the relationship with the media or the view of human rights generally will vary from state to state. Depending on these variations, more formalised organisational structures may work in one state but be too heavy in others. Sharing ideas is a way of giving states options from which to consider and adapt to their own context.

A view from an NHRI

Zahid Mohammed, former Vice-President, Human Rights Commission of the Maldives

Maldives is a country in transition to democracy and a culture of human rights. It is within this context that the Human Rights Commission of the Maldives (HRCM) carried out its consultations and report writing for the UPR stakeholder report. On 7 August 2009, Maldives embraced a new constitution with a chapter on rights and freedoms. Maldives is currently in an early stage of liberal democracy, where efforts are being made to establish an institutional framework to promote and protect human rights. In this regard several independent institutions have recently been established, such as the Elections Commission, Anti-Corruption Commission and the Judicial Services Commission.

The process

In order to prepare for the UPR consultation and report writing process, the HRCM conducted a desk review on good practices adopted by those NHRIs which had already undergone UPR. This review led to a consultative dialogue between the HRCM and local NGOs where a time-frame for the HRCM report was decided. In addition, the most pressing human rights issues were identified, based upon perceived public sentiments and complaints received by the HRCM.

Consequently, the HRCM constituted a UPR team, comprising representatives from all departments and focal points of specific rights. A brief orientation concerning the process was provided for the members of this team, followed by designation of topics to staff.

In addition to conducting document and data reviews, the team compiled lists of stakeholders (focus groups, relevant state authorities and NGOs) prior to holding consultations with the identified groups specific to each topic. The team identified specific atolls and islands for these consultations and conducted trips to places of significance within the country.

Eighteen months before Maldives' review, the HRCM facilitated a meeting of Maldivian human rights NGOs to encourage their participation in the UPR process. During the meeting, the HRCM shared information on the review and subsequently interested NGOs registered to participate in the process. The HRCM stepped out of the NGO response to the UPR once a chair of the NGO UPR group had been appointed.

Advantages

Early familiarisation with the UPR process, with assistance from the former UN human rights adviser to Maldives, eased the process. The Vice-President of the HRCM participated in a UPR seminar for all Commonwealth states reporting in 2010. This seminar was very helpful to the senior management of the Commission in leading the UPR team.

The overall consultation and report drafting process served to inculcate and improve the ability of HRCM staff to analyse domestic and international law, since these skills were necessary to compile the stakeholder report. In addition, the involvement and engagement of HRCM staff in this process has contributed to the staff feeling they have ownership of this review.

The HRCM considers its role in facilitating and bringing Maldivian NGOs into the UPR process as an achievement.

The HRCM carried out consultations across many of the islands and atolls. While this widespread information gathering was challenging for the HRCM, it had the advantage of allowing a comprehensive view of human rights in Maldives to be presented in the stakeholder report. This is particularly advantageous because the HRCM believes that both state and NGO reports from Maldives were based on information collection processes restricted to the capital city.

Challenges

The inadequate availability and lack of data, and cautious co-operation from the relevant state authorities proved challenging. In addition, the government UPR team only spent 45 minutes with the HRCM for the state's own consultation and information gathering purposes.

The HRCM found that the limit placed on the number of pages restricted a complete depiction of issues that were of concern.

A lack of awareness of the UPR process among the public and state agents contributed to challenging circumstances during the information collection process. In the most adverse instance, the HRCM UPR team was denied entry to an island due to public resistance triggered by a misconception allegedly spread by local police regarding the purpose of the HRCM's visit.

The HRCM feels that staff needed more technical training and better orientation on the UPR process to enable them to meet the requirements of this initial stage of the process. These challenges continued beyond the consultation and report writing stage. HRCM activities related to the implementation of the HRCM's recommendations and respective monitoring of relevant state activity could be accomplished more effectively with increased staff exposure and relevant skills.

NHRI discussion group

Consultations

- NHRIs, especially those with International Co-ordinating Committee's (ICC)

A-status, are institutions with a special national role related to human rights. Therefore, there was an expectation that NHRIs would and should fully engage in the UPR process.

- The importance of NHRIs holding consultations in provinces and rural areas was highlighted, helping to ensure a more comprehensive view of the human rights situation across the country. If available, use and involvement of provincial human rights commissions is also important.
- The consideration that consultations and national situation analysis should not be for the UPR alone and should be integrated into NHRIs' standard work was underlined. This would then allow NHRIs to collate and use existing reports and information for the UPR report which would be greatly beneficial.
- NHRIs have a role in encouraging the state to hold consultations at the national level.
- Considering that the NHRI report must be completed and submitted many months before the state report, the importance of NHRIs making contact and consulting with the state at an early stage was noted.
- To ensure that NHRI consultations with the state and civil society are fruitful, the consultations should occur after a first draft of the report has already been circulated.
- Given the importance of public awareness of the UPR process and the often limited NHRI capacity to disseminate information, NHRIs can proactively encourage the state to promote greater awareness of the UPR.

Drafting the stakeholder report

- Given the strict five-page limit for the stakeholder reports, it was suggested that recommendations made by NHRIs should be about systemic human rights issues. It was noted that NHRIs could ask NGOs dealing with specific issues to elaborate these in detail.
- Recommendations to the state in the NHRI report should be clear, action-oriented and concrete.
- A frank and honest NHRI report is one method of urging the state to follow through in its own report writing.
- Sometimes a state report could appear inaccurate, but this is sometimes an issue of under-reporting, as the state may not have covered all of the key issues. Again,

it was suggested that a comprehensive NHRI report could help to direct the state to more pertinent concerns.

- Often states do not see the NHRI stakeholder report as separate from the NGO stakeholder reports. This unfortunate perception needs to be re-addressed as it does not give much credence to the distinct status and role that NHRIs hold as separate from NGOs.

A view from an NGO

Ms Patricia Essel, Programme Manager, Women in Law and Development in Africa (WiLDAF), Ghana

WiLDAF's engagement in the UPR process was triggered by correspondence from Amnesty International Ghana and International Women's Rights Advocacy Watch that alerted and called for NGOs to engage and participate in the UPR mechanism. In response, WiLDAF reached out to its partners and network members for their inputs on vital human rights concerns and issues that can be incorporated into the stakeholder's report. One prominent issue that surfaced was the lack of women's political participation in decision-making. WiLDAF was able to collect data and information on this to feed into the report.

As a next phase, WiLDAF entered into advocacy with Cabinet ministers and relevant government officials to encourage wider consultations with stakeholders as part of the national preparation for the UPR process. Whilst lobbying the Office of the President, the Attorney-General's office and Ministry of Women and Children's Affairs, WiLDAF expressed commitment and keenness to participate in the process. An NGO consultation workshop was called for, but due to failure in communicating dates of the consultation in time, WiLDAF was unable to participate. Some national NGOs, including Amnesty International, participated in this workshop. Neither the state nor WiLDAF had an opportunity to exchange reports before submission, largely because as the UPR is a new process, there was a lack of familiarity with deadlines and procedures.

WiLDAF's report acknowledged that the Ghanaian 1992 constitution contains fundamental human rights and freedoms and detailed key state mechanisms that serve to promote and protect human rights in Ghana. The report focused on commitments made by the state in promoting women's participation in governance structures and decision making at a global, regional and national level. Statistical information pertaining to women in politics was presented to inform the reality of women's participation. WiLDAF was also able to draw upon previous shadow reports prepared for the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and concluding ob-

servations made to the state. WiLDAF submitted its report electronically to the UPR Secretariat and received an acknowledgement of receipt.

On the day of Ghana's review, WiLDAF held a press conference to raise awareness of relevant human rights issues, the significance of the UPR process itself and to listen to experiences of some NGOs in preparing their submissions and their participation in the national consultations.

Challenges and lessons learned

Lack of information and clarity on guidelines and procedures, and limited knowledge of the new process deprived WiLDAF and other NGOs of full and meaningful participation. Due to time constraints, WiLDAF was unable to hold consultations with its various partner NGOs and network members on producing a consolidated report to the UPR submission. The late start and the five-page restriction for the NGO submission also limited WiLDAF in raising key issues. The need for a national coalition to contribute to such new mechanisms has been realised and work is in progress towards the setting up of such a forum.

Recommendations

- Exchange information about deadlines and other procedural issues in good time and closely network and correspond with the Commonwealth Human Rights Initiative (CHRI), Amnesty International and other national NGOs;
- Gather information in advance so that documentation and statistical information is readily available;
- Engage with UN mechanisms in all possible ways, including submitting reports to the UPR process, as well as treaty bodies and special procedures;
- Observe government participation at the review;
- Ensure that submission and recommendations are specific to enable targeted follow-up;
- Engage and utilise the media as a medium for creating awareness and enhancing advocacy.

NGO discussion group

- An area of major concern for the NGOs was the lack of effective, timely and inclusive consultations by states.
- The experiences of many NGOs in the consultation process were not satisfactory. NGOs took it upon themselves to form a coalition, consult widely with partners

and networks for their stakeholders' report and reach out to the state with genuine willingness to participate in and contribute to the national report.

- The effectiveness of consultations was limited as they were held too late in the process. Lack of knowledge of timelines, procedures and, in some instances, a perceived lack of will from the state to work in a co-operative, transparent and meaningful manner was an area of concern.
- The poor organisation of consultations highlighted the need for strategic planning during the preparatory stages. A well-informed and widely representative advisory or co-ordination committee to not only oversee the preparatory phase, but also to support/steer and follow through the process in an ongoing manner would be useful.
- Limited involvement in influencing and contributing to the national report was a concern. Experience has shown that NGOs working in coalitions to submit stakeholders' reports are important, as well as working in a co-operative manner with the state to contribute to the national report.
- A greater level of transparency, better communication, inclusive and participatory approaches to engage the public at large, and well-co-ordinated and genuine efforts from the state and stakeholders is called for to make Resolution 5/1 real and meaningful.

Preparing for the Review in Geneva

A view from a state

Ms Aruna Devi Narain, Assistant Solicitor General, Attorney-General's Office, Mauritius

Mauritius was reviewed during the fourth session in February 2009 and despite not being responsible for human rights at the time of the review, the Attorney-General's Office was assigned responsibility for preparing and presenting the national report in Geneva.

A national level inter-ministerial committee was set up by the Cabinet and a number of consultations were held with ministries, NGOs and NHRIs prior to finalisation of the national report. The stakeholders sent separate reports through the office of the United Nations Development Programme (UNDP).

Prior to the review in Geneva, delegates from Mauritius participated in a UPR preparatory seminar organised by the Commonwealth Secretariat in London in November 2008.

The seminar was beneficial as it provided an opportunity to interact with and learn from other Commonwealth states that had been through the UPR process. At this seminar the delegates participated in a mock UPR session and the webcasts of UPR working group sessions of Commonwealth countries were also viewed. Both these exercises proved to be valuable and brought into focus what to expect in Geneva.

For the review in Geneva, the delegation went one day ahead to observe the process and also to observe how other countries participated and responded to questions and recommendations.

Operational difficulties in Geneva

Mauritius is a small jurisdiction with limited financial resources and this restricted the size of the delegation that travelled to Geneva. Initially, the delegation comprised a five-member high-level team, including representatives from the Attorney-General's Office, the Prime Minister's Office, the Ministry of Women's Rights and Child Development and the Ministry of Foreign Affairs, but a few days before departure, due to budget restrictions as advised by the Ministry of Finance, the delegation was downsized to a three-member team. This meant that representatives from the Prime Minister's Office and the Ministry of Women's Rights and Child Development were unable to attend the review. This impacted on the level of expertise present in Geneva and put greater pressure on the remaining delegation.

To support the delegation in Geneva, a back-up team was established to be on stand-by in the capital; given the three-hour time difference between Geneva and Mauritius the team in the capital worked beyond normal office hours to produce a successful review.

The delegation was well prepared to take questions, but given the variety of themes raised it was challenging to collate the responses within minutes to hand them over to the Attorney-General for his response. A considerable amount of time was spent searching through files for the relevant information needed to support responses, thus making the process very pressured. The questions submitted in advance served as useful pointers as to what to expect and the delegation had done its homework as the Attorney-General responded to the advance questions in his initial remarks.

Interacting with the Troika and the OHCHR was a good exercise and strong reliance was placed on the Mauritius mission in Geneva during this diplomatic aspect of the review process. Several sessions were held with the Troika and the draft report with accepted and rejected recommendations was sent to Capital for approval. The level of diplomacy had not been fully anticipated and it was therefore helpful to have the input of those who had been preparing in Geneva and interacting with other delegations for

many months. It was evidenced that there was absolute duplication of questions and recommendations which could be streamlined if the information raised was organised or grouped under specific thematic areas so that prioritisation became apparent. An experienced person from the Ministry of Foreign Affairs would have been required in the absence of a strong mission in Geneva.

The interplay between human rights and diplomacy illustrates some weaknesses of the UPR system, especially with regards to balancing human rights values with the sovereignty of states and unavoidable foreign policy considerations. Although the Mauritius delegation was not involved in planting questions, encouraging comments were received from countries belonging to the same region and friendly states did consult the Mauritius delegation on questions they intended to ask.

State discussion group

- The procedure and management of the speakers list was identified as a problem, with 'friendly' states manipulating the system to ensure their dominance during the state interventions. A secure system of booking a speaking slot would be an improvement or the speaking time could be reduced to one minute to allow more states to participate.
- Reducing the time given to the state under review could be one way of creating more time for interventions, but this may negatively affect the response of the state under review to the issues raised.
- To avoid duplication, states making recommendations and interventions should ensure they are not speaking to issues which have already been raised
- Many questions and recommendations were clustered, making it difficult for the state under review to give a clear response.
- The clarity of the recommendations needs to be improved to ensure states are receiving clear, action-orientated advice.
- States should create opportunities for those NGOs in the process of obtaining ECOSOC accreditation to be involved. This could be done by establishing partnerships with ECOSOC-accredited NGOs.
- When discussing what could be done differently during the next cycle, the length of time taken to present the national report was mentioned, with better time management during the next cycle being a key area for improvement.
- A new way of approaching the second cycle was highlighted as an area which

needed consideration. Devising a new way of approaching the review will be necessary, as it will be based on the recommendations received during the first cycle.

- The need to start discussions on the modalities for the next cycle of review was a high priority, as was looking to include the voice of NGOs to a greater extent.
- To overcome the limitations of a small delegation, the review could be held through video-conference. This would ensure fully informed participation and reduce the financial burden on small states.
- The Commonwealth Secretariat could render assistance to countries that do not have a mission in Geneva.

A view from an NHRI

Mr David Langtry, Deputy Chief Commissioner of the Canadian Human Rights Commission (CHRC), Canada

The Commission's main contribution to Canada's UPR review was the submission to the Human Rights Council on the implementation of Canada's human rights obligations and commitments.

In Canada, civil society plays a vigorous role in protecting and promoting human rights. As a result, the Commission consulted some 60 NGOs, with the assistance of Rights and Democracy, while we developed our submission.

Canada is a federal state, comprising ten provinces and three territories. All of these jurisdictions have their own human rights commissions or tribunals or both. Through the Canadian Association of Statutory Human Rights Agencies (CASHRA), an association of these human rights commissions, we involved these commissions in the preparation of our submission.

During the review

The Commission attended the plenary session of the UPR Working Group, where the outcome document of the review was tabled. Canada also provided further responses to the recommendations it had received.

It is critical for NHRIs to voice the issues contained within their submissions. However, NHRIs are not given the opportunity to speak at the review so their only option is to conduct advocacy work to influence what is said during the review.

Using the opportunity to give an oral statement after the adoption of Canada's report, the CHRC delivered a statement acknowledging that the UPR process opened channels

between the state of Canada, human rights organisations and civil society, enhancing transparency and inclusiveness. The Commission prioritised two issues, expressing a wish that the UPR process should help advance the dialogue around the Declaration on the Rights of Indigenous Peoples and hasten Canada's ratification of the Convention on the Rights of Persons with Disabilities.

During the review, there was another option open to the Commission: it could directly lobby the representatives of member states in Geneva. While the Commission had been able to bring its views and concerns to the attention of the international community through its submission to the Council, the CHRC did consider the strategy of lobbying representatives of other states and seeking their support in commenting on Canada's performance in human rights matters.

The CHRC ultimately decided not to pursue this option, but the Commission notes that several Canadian NGOs did so, and were quite successful. They provided those state representatives with briefings, ready-made questions and recommendations. Several of these questions and recommendations were used by some member states during the Interactive Dialogue – sometimes verbatim.

After the review

While the introduction of the UPR marked a milestone in the work of the Human Rights Council, most would agree that it is just a beginning: the hard work comes afterwards, with the implementation of the commitments made by the state under review.

The Commission hopes to contribute to the implementation of the Council's recommendations that were accepted by Canada, as well as to the monitoring of progress made in that regard.

At the time of writing, the review was concluded less than a year ago, so the mechanisms to follow up on Canada's review remain to be defined, including the role that the Commission and civil society will play in the follow-up.

NHRI discussion group

- Speaking time available for NHRIs is short, therefore key concerns should be prioritised.
- Funding for NHRIs attendance in Geneva is a key issue, often only one person from a NHRI been able to attend. For this reason, strategic planning of how to use the time in Geneva is key.
- It was suggested that rather than lobbying other states – which could have a

negative impact on NHRIs' credibility – it would be preferable for the NHRIs to take up issues with the state earlier at the national consultation phase. In other words, to lobby at national parliament level rather than internationally.

- The possibility of NHRI opportunities to lobby states to make voluntary commitments in the lead-up to the UPR was discussed.
- NHRIs could organise an event in their home country to telecast the UPR review as part of a campaign to raise awareness of the UPR and make the process more accessible to those without the resources to participate in Geneva or watch webcasts with their own facilities.

A view from an NGO

Mr Andrew Khoo, Chair, Human Rights Committee, Malaysian Bar Council, Malaysia

In the preparation of the report at the national level, some of the Malaysian NGOs were not included in the discussions of the national report, nor had they been privy to much of the content of the report, as it was embargoed until its actual submission to the Human Rights Council. This limited the level of engagement of NGOs in contributing to the national report through highlighting contradictions or asking for clarifications from the state. It would have been beneficial if NGOs had had more opportunities to work with the state and Troika states so that the final adopted report incorporated the NGO's inputs as well. For a meaningful UPR process, the national report needs to reflect the concerns of every individual and citizen of the state under review, and limiting NGO engagement prevents this from happening.

One of the very first challenges that an NGO may come across in its aim to participate in the review in Geneva relates to funding constraints. With many NGOs struggling to finance their everyday activities, funding a trip to Geneva may simply be impossible. Though a fund to provide financial assistance for governments to participate in the review exists, similar funding is currently not made available to NGOs. It is submitted that if the HRC is sincere about involving NGOs, then financial assistance needs to be extended to all stakeholders in the new process.

The newness of the process, in addition to lack of orientation and knowledge of how the UN system operates, also presents a challenge for NGOs who have never travelled to Geneva before. The process as it stands, however, favours those who are aware of how the HRC operates.

Obtaining ECOSOC accreditation is another obstacle for many NGOs engaging with the

UPR process for the first time. To participate in the UPR process in Geneva, NGOs must have obtained ECOSOC accreditation. Currently, obtaining ECOSOC status takes a minimum of two years, and for those hearing about the UPR for the first time accreditation will not be finalised in time for participation. Furthermore, an NGO that applies for ECOSOC status must be legally or formally registered in their home country. For those organisations whose work is seen to be politically sensitive this may not always be possible. Non-accredited NGOs may have to rely on accredited national or regional NGOs whose ECOSOC accreditation they can utilise. This alternative may not always be feasible and many NGOs may be unable to make oral submissions in Geneva. Furthermore, the time allocation of two minutes for NGOs making oral submissions is totally insufficient to raise any meaningful intervention on relevant issues and concerns.

Lobbying delegations in Geneva was not an easy task, as states making submissions in the review had finalised the contents of their submissions well in advance. While some states were sympathetic to the lobbying, they decided not to raise non-controversial issues in their submissions. This therefore limited the opportunity to influence questions and recommendations submitted by the participating states. Being present in Geneva weeks before the review might have resulted in more successful lobbying, but that said, the financial constraints for NGOs hinder an early arrival in Geneva.

One of the weaknesses of the UPR process relates to states signing up for a speaking list at the review. As witnessed in Malaysia's review, missions of the states began queuing at 5.45am to register to speak, and some 83 countries were able to register, but to due time constraints only 60 countries were actually able to speak. Of these, 44 were members of either the Association of Southeast Asian Nations (ASEAN), the Organisation of the Islamic Conference or the non-aligned movement. The 'friendly' states had more say in the process and prevented other states from having an opportunity to speak. This procedure, through the help of 'friendly' states, allows the state under review to obtain selective and less challenging recommendations.

To increase the influence that NGOs can exert in Geneva there is need for an increase in logistical and financial support. Funding needs to be readily available and the ECOSOC accreditation requirement needs to be waived to make it possible for many NGOs to even be present during the UPR process. States participating in the review need to be flexible to incorporate any last minute lobbying carried out by the NGOs. To maximise the opportunity for NGOs to effectively participate in the UPR process, the Commonwealth Foundation could consider setting up an office in Geneva and a Commonwealth Trust Fund could be established to assist NGOs.

NGO discussion group

- In comparison to NGOs, states and missions present in Geneva were well prepared for the process; there were limited opportunities for NGOs to participate, with some states declining lobbying requests made by NGOs.
- The overcrowding of the speakers list is an issue of concern as it allows 'friendly' states to dominate the process and thus prevent genuine human rights issues from being raised.
- Preparation for the review needs to have an earlier start. A stronger network of NGOs or a coalition of NGOs is required to make the government more accountable.
- Recommendations submitted by NGOs in the stakeholder reports should be more specific and action-orientated, rather than generic statements.
- Many NGOs face financial limitations which prevent them from fully participating in the Geneva-based review. The full and meaningful participation of NGOs will ensure that the real human rights situation of a country is revealed and to this end a voluntary trust fund for NGOs and provisional funding from the state is suggested.
- Lobbying can be very effective if targeted preparations are made in good time. It could also increase the impact of NGO submissions ensuring specific recommendations directed at the Troika and other states participating in the review.
- A communication strategy which utilises the media and other technologies such as translated webcasts (in local languages) could be a good method to educate citizens on the review process and outcomes. Press conferences held on the day of the review were discussed as being a good publicity method.
- As an informal practice, as in the review process, Troika meetings with the state under review could include NGO participation as observers.
- Networking with international NGOs and ensuring a dialogue with various missions in the capital could also increase the voice of national NGOs in the review. ECOSOC procedures should be slightly relaxed for the participation of national NGOs in Geneva.

UPR Follow-up and Implementation of Recommendations

A view from a state

Mr Lopeti Senituli, Adviser to the Prime Minister, Office of the Prime Minister, the Kingdom of Tonga

The Troika of rapporteurs selected by the HRC to facilitate the review of the Kingdom of Tonga were Nigeria, Qatar and Mexico. A list of questions was prepared in advance by Latvia, the Netherlands and the UK, and transmitted to Tonga through the Troika.

During the Interactive Dialogue of Tonga's review, 34 delegations made interventions praising Tonga for its participation in the UPR process, its high-level representation and the quality of both its presentation and its national report. The Working Group in its report on Tonga identified 42 recommendations. Of these, Tonga expressed its support for 31 and non-support for 11.

Political reform has been Tonga's primary focus since its UPR review. In Tonga's national report it was detailed that the legislative assembly had established a tripartite committee made up of equal representation from the Cabinet, the nobles' representatives and the people's representatives. Their role was to develop a consensus model for a reformed legislative assembly.

However, by the third quarter of 2008 it had become obvious that the tripartite committee would not be able to come to any agreement on a consensus model. The legislative assembly, on the recommendation of the Government, moved forward and established a Constitutional and Electoral Commission (CEC) which has similar but more extensive terms of reference than the original tripartite committee. Membership of the CEC was restricted to non-members of the legislative assembly and Cabinet, despite nominations being made by the Cabinet, the nobles' representatives, the people's representatives and the Judicial Services Commission.

The CEC started its work in January 2009 and presented its final report with recommendations to His Majesty and the legislative assembly in November 2009. By December 2009, the legislative assembly had completed its deliberations and ballot on the 82 recommendations made by the CEC, and agreement was reached on a new consensus model of parliament. The consensus model specified that all members of the legislative assembly are to be elected, the Prime Minister, as the Head of Government, will be selected by the elected members and the Prime Minister may then select his Cabinet from those elected members. The privilege of choosing additional Cabinet members from outside Parliament when deemed necessary remains.

The Electoral Boundaries Commission is currently completing its report on new electoral constituency boundaries and necessary amendments to the Constitution to enable the new legislation are being drafted. The Government is committed to holding elections for a reformed legislative assembly by November 2010. It is on this reform that the Tongan Government has focused its energies and resources since it appeared before the UPR working group in May 2008.

Due to Tonga's focus on its national political reform there has been little opportunity to deal with any of the other commitments made in Geneva, and specific offers of technical assistance made by New Zealand, Switzerland and Australia have not been actively followed up. Tonga is grateful for these regional offers of support, which will assist them in building the required capacity to meet treaty body reporting obligations and implement the recommendations emanating from the UPR process, and it hopes that these offers still stand.

Despite expressing support in Geneva for those recommendations that suggested Tonga should sign and ratify CEDAW, in September 2009 Tonga's legislative assembly voted not to ratify the convention. This was largely due to Tonga's refusal to support those recommendations which suggested consideration should be given to repealing the alleged discriminatory practice in inheritance laws. Tonga wants to reserve the right not to apply the provisions of Article 2 of CEDAW to the succession to the Tongan throne and nobility and hereditary titles, and to land laws; this was one factor which prevented ratification.

Similarly, Tonga wants to reserve the right not to apply the provisions contained in Articles 12 and 16 on family health and marital customs relating to access to healthcare services, including family planning, choice of spouse, spacing of children, and the ownership and disposition of family property.

If Tonga were to ratify CEDAW, an amendment to Clause 32 of its Constitution which specifies that succession to the throne shall be by the eldest male child and the heirs of his body would have to be made so as to allow the eldest female child to ascend to the throne. Similar amendments would have to be made to Clause 111 of the Constitution and Section 82 of the Land Act to enable female children to inherit hereditary titles and estates, as well as registered tax and town allotments, if they are the oldest children.

Within this context, it should be noted that there is no freehold title in Tonga and that land is inalienable. The highest form of property rights that one can hold in Tonga is a life interest. By entrenching succession to family land holdings through the oldest male child and prohibiting its alienability, Tonga virtually guarantees that the family land remains within the family forever, and that the land remains in Tongan hands in perpetuity.

Although Tonga's laws governing succession to family land holdings may seem to discriminate against women, in the same vein it can be deemed to be discriminating against the younger male child. However, it should be emphasised that women have the same rights as men to lease land.

There have been suggestions that Tonga could ratify CEDAW with reservations. Unfortunately, the key articles on which Tonga has reservations, Articles 2 and 16, have been held by the Committee on the Elimination of Discrimination Against Women as central to the object and purpose of CEDAW, and therefore any reservations on them are 'impermissible' under Article 28(2) which states very clearly that any '... reservation incompatible with the object and purpose of the present Convention shall not be permitted'.

Tonga is especially keen to learn from Commonwealth member countries with a similar constitutional make-up to Tonga, which have ratified CEDAW with reservations, as to how they have been able to overcome the 'impermissibility' stipulation in CEDAW.

It must also be emphasised that Tonga's decision not to ratify CEDAW should not be misinterpreted as a refusal to recognise, promote and protect women's rights.

In 2007 Tonga amended its Nationality Act to allow Tongan women who marry non-Tongan citizens, and their children, to retain their Tongan nationality. In 2010 the Tonga Government made a policy decision to amend its land laws so as to allow the eldest female child to succeed in situations where there is no male heir, to register the family allotment and to pass it on to her eldest male child when he comes of age.

These examples are testimony that the legislative assembly and the Government support women's rights and are actively engaged in promoting the rights of women, despite not having ratified CEDAW.

State discussion group

- Some participants expressed their concerns that some recommendations were rather vague and therefore difficult to implement.
- Other recommendations could not be implemented due to changes in policy occurring in governments, in addition to time constraints on the states to implement these recommendations.
- Engagement with civil society at the follow-up and implementation stage would be beneficial to all parties involved.

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- It was suggested that through supporting and strengthening NHRIs, reaching targets of implementation of recommendations could be greatly improved.
 - Levels of awareness were raised as a pressing issue – most people are not fully aware of the principles of human rights in general or of the work of the UPR.
 - A publication setting out best practices, collaborations, the uses of technology and training is strongly recommended by the states.
 - Almost all recommendations dealt with civil and political rights; the states group said that they would like to see more recommendations around social and cultural rights.
 - In the actual process of implementing the recommendations made in Geneva, a national monitoring committee was identified as well placed to gather and review information being fed through by all the different ministries working on implementation, in order to facilitate information sharing and avoid cross-overs.
 - Challenges to the implementation of recommendations were identified: constitutional challenges, sensitive issue areas (such as the death penalty and sexual orientation) and popular traditional religious beliefs were identified as areas of difficulty in the implementation of recommendations.
 - A positive step that the Commonwealth Secretariat could take to follow the implementation stage of the UPR process would be to design a monitoring mechanism of its own, and from this derive a database of best practices.

A view from an NHRI

Advocate Lawrence Mushwana, Chairperson, South African Human Rights Commission (SAHRC), South Africa

South Africa was one of very few states thus far that chose not to submit a written report prior to appearing before the HRC. Rather, the government chose to only make an oral submission on the day of the review. Further, following the Interactive Dialogue stage in Geneva, South Africa did not give any indication whether any UPR recommendations had been accepted or rejected. In fact, the state chose to give no clear response to any of the recommendations.

The SAHRC is engaging in post-UPR activities in three ways: encouraging the state and civil society to engage with the UPR and the international human rights system; mainstreaming UPR recommendations into the Commission's overall work, and aligning its work and programmes with specific UPR recommendations; and encouraging the state and civil society to engage with the international human rights system.

The possible achievements of the UPR at the implementation stage will be further strengthened through greater participation of the state and civil society in the process. The Commission believes that for the international human rights system to work effectively to promote and protect human rights on the ground, there is a need for three strong and active participants: the state, the NHRI and civil society. It is thus deemed imperative that the Commission work towards strengthening both the state's and civil society's capacity to engage.

State: South Africa's approach and response during the review in Geneva must be looked at as part of a larger picture of lack of compliance with international human rights mechanisms. South Africa has never submitted an ICCPR report, and the state reports with respect to the Convention on the Rights of the Child (CRC), the Convention Against Torture (CAT), CEDAW and the Convention on the Elimination of Racial Discrimination (CERD) are all overdue. The SAHRC supposes this lack of compliance is due to a lack of communication between state officials in Geneva and the relevant government departments in South Africa. It also must not be forgotten that South Africa is a new entrant to the international human rights system, having been excluded prior to 1994. The state has many priorities to attend to, so the lack of participation at an international level should not necessarily be read as a lack of commitment to human rights obligations.

The SAHRC is aware of these challenges and is intent on engaging with government to improve its activities at an international level. The commissioners will interact at a political level to obtain greater clarity and understanding regarding South Africa's relative lack of engagement.

Civil society: There is ongoing work through which the SAHRC encourages domestic civil society to strengthen its involvement at an international level. Some of the Commission's work relating to recommendations runs alongside and in consultation with civil society.

Mainstreaming UPR recommendations into the overall work of the Commission

Since the review of South Africa, the SAHRC has always worked from the premise that UPR recommendations must be mainstreamed into the general work of the Commission. The UPR is not viewed as a stand-alone project, but very much as a part of the daily work of the Commission. Commissioners and staff are cognisant of the recommendations and seek to promote and advance them.

As part of this mainstreaming, it is the view of the SAHRC that UPR recommendations must be read alongside the recommendations already made by the UN Treaty Bodies to South Africa.

Following the adoption of South Africa's UPR report in Geneva, the UPR recommenda-

tions have been one of the sources used to guide the Commission in the drafting of its strategic plan.

Aligning Commission work in line with specific recommendations

The SAHRC decided to connect areas of its work with the recommendations made to the state. All 22 recommendations have been allocated as the responsibility of either a Commission committee, programme or topic co-ordinator. In addition, the Commission's work is either being specifically aligned to each recommendation or the relevant committee or staff must monitor issues related to their allocated recommendation(s). The SAHRC's strategic plan provides that all recommendations and related work will be tracked.

The following examples of SAHRC work and activities all directly correspond to UPR recommendations made to South Africa:

Corporal punishment – The Commission is involved in ongoing work with civil society stakeholders, at both a national and regional level, to move towards the abolition of corporal punishment in the home. In a debate about opportunities for strategic litigation on the issue, it was decided that this human rights concern is better addressed by working towards general consensus on this controversial issue, rather than simply enforcing a legal ban by judicial decision. This decision was made particularly because there are many voices of dissent within certain communities on a total ban on corporal punishment.

The strategy now is establish a children's Committee to strengthen ties with relevant state and civil society actors in addressing how to best promote positive non-violent methods of discipline and to address the ongoing use of corporal punishment in some schools.

Torture – The SAHRC has established an anti-torture committee which seeks to ensure the criminalisation of torture, the ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and the establishment of a National Preventative Mechanism.

Gender – Gender work in South Africa has been largely relegated to the Commission on Gender Equality (CGE). However, it is clear that gender is a human rights issue and the many UPR recommendations relating to gender attest to this. The SAHRC has decided to play a stronger role in this area and a formal consultative strategy between the Commission and the CGE will be adopted to ensure common actions and approaches to gender matters.

Ratifications – Following the UPR review, the SAHRC and civil society ran a campaign calling on the state to ratify the International Convention on Economic, Social and Cultural Rights (ICESCR) and its relevant optional protocol. With regards to other human rights

treaties that South Africa has yet to ratify, the strategic plan of the SAHRC provides that the Commission will carry out activities to move towards additional ratifications.

Education – South Africa received recommendations that it should continue to promote and facilitate the right to education, particularly amongst economically disadvantaged children, and to continue disseminating a culture of human rights in its education institutions. The Commission will continue existing work in this area, carrying out enquiries and providing input to the government officials responsible for education. The Commission will also engage with a parliamentary analysis of South Africa's education challenges and will set up a committee on education issues.

Racism and xenophobia – The SAHRC is drafting a new National Action Plan against racism and has been working on a report speaking to the rule of law and impunity issues arising out of the May 2008 xenophobic violence in South Africa.

The SAHRC strongly believes that the UPR process provides an important tool to direct and allow the Commission to carry out its constitutional obligations at a domestic level. The achievements of the UPR will be further strengthened through greater participation in the process by government and domestic civil society.

NHRI discussion group

- It was advised that UPR recommendations should be linked to the NHRI's strategy and to both the ongoing and future work of the NHRI within the scope of its mandate.
- NHRIs should lobby and monitor the state with regard to the implementation of recommendations that come out of the UPR.
- NHRIs could play a role in identifying and correlating state agencies to various UPR recommendations to determine which agencies have the role and responsibility for implementation.
- The pre-review dialogue between the state, domestic NGOs and the NHRI on human rights issues should be viewed as an opportunity to continue conversations and relationships during the implementation stage.
- The fact that a state has accepted a number of UPR recommendations and has shown a political willingness to engage on human rights should be capitalised on by NHRIs.
- It is possible that the UPR has rekindled the interest of state actors and the public in the work of NHRIs – this is another positive opportunity for NHRIs.

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- Where possible, NHRIs could have a strong role in raising awareness of the recommendations that come out of the UPR.
 - NHRIs could request international implementing agencies and organisations to provide technical support to NHRIs in applicable areas where states may face challenges in implementing the recommendations.
 - NHRIs have an important role to play in the post-review UPR stage with regard to the implementation of recommendations. To strengthen the ability of NHRIs to carry out this important work it is suggested that NHRIs appeal to states to expand the mandate of NHRIs to specifically refer to the UPR.
 - A big challenge faced by NHRIs with regard to UPR follow-up is that there is often a lack of state recognition of the specific role of NHRIs. NHRIs should continue to consult and maintain dialogue with the state to ensure more clarity on the side of the state with regard to the role of NHRIs in UPR follow-up. This could also assist NHRIs in their endeavours to receive adequate resources and funding for this stage of the UPR process.

A view from an NGO

Ms Sultana Kamal, Executive Director, Ain o Salish Kendro (ASK), Bangladesh

Although the UPR Forum Bangladesh has easy access to the highest levels of authority, unfortunately the Bangladesh Government categorically only accepts information and/or recommendations received through its own channels. It depends on its intelligence agencies and civil servants rather than on citizens' groups or NHRIs. A state of denial persists in government systems, which means that providing information has proved mostly futile and getting information from the Government seems almost impossible.

Historically, the relationship between the state and even between various groups of citizens has inherited some grey areas of mistrust which hinder effective co-operation and information sharing. Unfortunately, this trend has negatively influenced interactions and the government does not take civil society into account. Although friendly interactions occur at a personal level, the relationship can be quite confrontational. For example, criticisms are considered a 'betrayal' and historically, international mechanisms have been used to criticise the Government, creating the perception that NGOs use these mechanisms to embarrass their own government.

Implementation of the UPR recommendations has regional and international implications and therefore is not exclusively a national affair. The sensitivity existing within the system plays an important role in the effort to implement UPR recommendations. The

relationship with neighbouring countries has a strong bearing on the action a government decides to take in upholding and implementing voluntary pledges and recommendations.

Unfortunately, the UPR process has failed to create the sense of ownership which should exist amongst the public as well as the state authorities. Many recommendations are often rejected by state officials as foreign ideas that do not suit local culture and may offend the religious sentiments of the people. The notion that human rights principles are a Western concept and that they are difficult to implement in 'other' societies needs to be addressed. There must be a wider belief that human rights are inherent and universal if efforts to secure them are to be successful.

Further, political compromises made by the state in the name of national security, protection of religious and cultural traditions, and national identity impact on the enjoyment of human rights by all, especially women, children and disadvantaged groups.

The review of Bangladesh was prepared by the caretaker government led by the military without consultation with any section of society. The new government that came to power towards the end of December 2008 had very limited time to carry out consultations. Under those circumstances, a group of leading NGOs took it upon themselves to form the UPR Forum, which consisted of 17 organisations, with ASK as the secretariat. Its mandate was to work on the reporting process and on the report content. The Government responded to the Forum's call for co-operation and made a commitment to incorporate as many recommendations as possible suggested by the Forum. The Forum has been instrumental in encouraging the government to engage with the UPR recommendations, and the present government is now working on the following issues:

- Trials of war criminals
- Rights of persons with disabilities
- Domestic Violence Prevention Act
- Equal property rights for women
- A code of conduct for the protection of the rights of domestic workers, particularly child domestic workers

Implementation of the Chittagong Hill Track Accord has slowed down, giving way to more conflicts in that area.

NGO discussion group

- In the follow-up and implementation stage of the UPR, one NGO prepared a reporting card to aid them in monitoring the progress which was being made by its government. Efforts to ensure a dialogue between the NGO and the state were also made.
- The need for NGOs to engage with government was highlighted as being necessary during the follow-up and implementation stage of the UPR process. A governing steering committee that could develop a work plan that included NGOs, with the aim of implementing recommendations, was suggested, as was the suggestion to establish a coalition of NGOs. Creating and maintaining good working relationships with key government ministers was also mentioned as an effective way for NGOs to ensure their involvement in the implementation stages.
- NGOs should seek to be included in any consultation on National Action Plan or planning and should make efforts to establish periodic consultations with the relevant NHRIs.
- It was also suggested that NGOs could publish reports on the status of implementation. A categorised database of recommendations could also be established. These initiatives should be done with the involvement of the state.
- In the follow-up and implementation stage of the UPR process a lack of engagement and political will was highlighted as a challenge. The need to keep the public informed and ensure transparency of the process was also noted, as was the need for a strong democratic infrastructure to ensure that governments can be held accountable. The lack of public information presented challenges to NGOs, and in one case it was noted that the government did not report back to any NGOs, limiting the process to interaction between states.

The First Two Years of the UPR: An Analysis and Summary

Dr Purna Sen, Head of Human Rights, Commonwealth Secretariat

Introduction

The new human rights architecture at the United Nations has been a subject of speculation and, as it has become better established, it now becomes a topic of analysis. There has been discussion on the nature of engagements at the Human Rights Council and the potential of moving away from what has been characterised as the politicised Commission that predated it. Both hope and cynicism – or perhaps scepticism – have entered these debates and although the breadth of activity and areas of interest should rightly be part of these discussions, much attention has turned to the UPR. Are the discussions a repeat of the past in which there were ‘usual suspects’ repeatedly targeted for human rights violations? Would the big political players be excused critique? Would the human rights debates simply become a proxy for political score settling?

Such debates reflect a legitimate interest in the pursuit of substantive and meaningful means through which to seek real change and progress on human rights. The many areas of work undertaken by the HRC (such as the Durban Review and work on the right to development) provide an appropriate base from which to seek to make a full determination in response to these key questions. Yet inevitably much attention has focused on the UPR as the ‘flagship’ mechanism of the Council, in which a level playing field was promised. The HRU has not had the resources to engage in the full range of the HRC’s work, so is not in a position to comment on the wider workings of the Council. It has, however, had considerable engagement in the UPR, with a focus on Commonwealth states and comment on the nature of these interactions.

Overview

Twenty-five Commonwealth states began their journey into the UPR in the period 2008–2009, the first two years of the new mechanism. There are some general and common features in the Commonwealth UPR story, while in other ways there is diversity. Both are mapped here.

In the first two years, all Commonwealth states have participated in the Geneva element of the process, with almost all finding the experience a positive boost to increased efforts on the promotion of human rights at home. All states submitted reports and sent high-

level delegations and all Troika members were accepted by the state under review.⁵ The involvement of regional neighbours in Troikas was appreciated by many.

Advance questions

All states under review have received questions in advance and there may be some overlap with those raised in Geneva. Some Commonwealth states have shared with the HRU that they have found it helpful to have time to consider and provide responses, as compared to dealing in haste with comments and queries raised in the Interactive Dialogue. Clearly, those received with a longer lead time, two weeks or so, are easier to handle than those that are received a day or less in advance.

Few of the advance questions have brought written responses, so the nature of those engagements and the degree to which they have garnered positive conversations is difficult to gauge. However, these questions have provided a useful indicator as to the issues that are likely to be raised during the Interactive Dialogue.

There is a perception that it is mainly Western states that put advance questions and there is perhaps a case for wider involvement in this mode of engagement. The process allows a more considered and thorough response from the state under review, which is something that should be used more often.

Speakers list

The Interactive Dialogue has proved to be a great success in terms of the number of speakers that seek to make a contribution. Ambassador Uhomoibhi refers to the UPR being a 'victim of its own success' (see pages 48–49); there have been long queues of people wanting to put their names on the speakers list, sometimes involving overnight queuing (with refreshments and entertainment provided by those in the queue)!

Inevitably there have been times where not all names on the list have been accommodated. In the years 2008–2009 there was a total of 1,010 speakers from Commonwealth states. The number of speakers on the list from all the Commonwealth countries ranges from 19 for Belize to 69 for Pakistan. Seven Commonwealth states, including Nigeria and Malaysia, had 92 speakers on their lists who could not be accommodated. Even with speaking slots being limited to less than three minutes there have been Dialogues where there has been considerable over-subscription.

The problem of speakers list over-subscription has been the subject of a great deal of dis-

⁵ In this one case, Pakistan voluntarily withdrew from India's Troika, with no apparent ill feeling or consequence.

cussion in the assessment of the UPR; there has been consensus on the need for improvements in the second round.

At the end of November 2010, a proposal that seemed to enjoy the support of many states and that progressed to regional groups for discussion had the following elements: the speakers list would require those wishing to speak to sign up one week in advance of the UPR working group; speakers would be listed in alphabetical order; and the selection of the first speaker would be done by lot, drawn by the President of the HRC with alphabetical sequence being followed from that point.

If the two hours allocated to delegations for the Interactive Dialogue does not prove sufficient for all inscribed speakers, the time would be divided by the total number of listed speakers. This would guarantee that all delegations that wish to speak are able to do so, but maybe only briefly. The proposal includes a provision that the microphone would be switched off if anyone spoke for longer than the time allocated. At the time of writing there was no news of any group objecting to this proposal.

Also under discussion is an option to increase the Interactive Dialogue session to four hours. Additionally, there is a proposal that NHRIs⁶ should have a dedicated speaking slot during the Interactive Dialogue. The extended Dialogue session would result in cycles of four and a half years, with 14 sessions of 14 reviews each.

Presentations from states under review

It has already been noted that all states have appeared for UPR in Geneva as scheduled. Some delegations have been large – the largest Commonwealth delegation had 32 members (Malaysia) and the smallest was from Dominica (one person – the New York Ambassador); 14 have been headed by ministers (see Annex 2). The ratio of men to women in these delegations is also noted there: 131 women to 186 men for Commonwealth states in total. From Tonga, with its population of 10,000, to India, with 1.1 billion people, states have submitted a single short written national report on human rights in their country and undergone the review in Geneva.

Civil society and stakeholder participation

One of the foundation principles of the UPR is that not only is the state the primary duty bearer, but also that other stakeholders have a critical role to play and should be recognised and actively involved in national human rights work. While states undertook national consultations with local civil society organisations, the engagement of domestic

⁶ This is for A status NHRIs.

stakeholders through the submission of reports and/or participation at the report adoption stage (where they are able to make an oral contribution) was limited. This is a matter of concern and regret in the Commonwealth, where there is a commitment to the active role of civil society.

Our analysis of the data shows that a total of 309 stakeholder reports were submitted for the 25 Commonwealth states that underwent UPR in the first two years, but only 89 were from national NGOs and an additional ten were from NHRIs. For eight Commonwealth states there was no national stakeholder report⁷ (see Annex 3).

It is of concern if there is poor knowledge in civil society of UPR or of international human rights systems and how they can be used to promote national human rights aims. It is especially important for local capacity and engagement to be strong; this is a key element for successful in-country follow-up. The HRU has sought to spread UPR briefings and encourage UPR participation across civil society. All of the national NGOs that participated in Commonwealth pre-UPR briefing seminars in 2009 subsequently submitted stakeholder reports. The region of most concern is the Caribbean, where until the review of Jamaica in November 2010, there had not been a single wholly domestic national stakeholder report from the region.⁸

The first two years of the UPR saw NGO communities develop ways of working and lobbying that have seen their issues feature increasingly in the recommendations put to states under review. Examples include the international movement to stop physical punishment of children and the lesbian, gay, bisexual and transgender (LGBT) movement. Their work has led to questions, issues and recommendations being taken up by country representatives during the Interactive Dialogue. Sometimes sentences or extracts from stakeholder submissions have been copied and pasted into questions asked at the HRC.

There is limited opportunity for stakeholders to address the UPR discussions and this comes late in the review process. Few civil society organisations from Commonwealth states were able to travel to Geneva to address the UPR deliberations or to lobby/advocate with states to raise their concerns. The importance or effectiveness of such efforts can be debated; nevertheless it is noteworthy and regrettable that it is beyond the financial reach of many NGOs in the South to consider such work and that it is thus left to the richer, international NGOs. It is our experience that NGOs from Commonwealth states have begun to network with each other to learn new strategies and to find alternative ways of doing their advocacy from home.

⁷ For four states there were joint submissions from national and international NGOs.

⁸ In 2009 for Belize, and in 2010 for Guyana, each country had one stakeholder report submitted which was a joint report from an international collective of LGBT rights organisations and a national branch of the international LGBT coalition.

Common themes

There appeared to be a gradual establishment of common themes of interest, on which most, if not all, states being reviewed were questioned. There were four dominant themes in the first year for Commonwealth members: increasing ratifications; establishing or strengthening National Human Rights Institutions, promoting the rights of the child, and promoting gender equality and ending violence against women. Other commonalities obtained for countries facing similar circumstances – for example, all countries that use the death penalty were questioned on this and requested to change their practice and all those that criminalise same-sex sexual behaviour received recommendations on decriminalisation.¹⁰ The same pattern featured in year two.

A level playing field?

Year one saw 12 Commonwealth states reviewed in Geneva, including a P5 member, the UK – also a Commonwealth state. It also saw Tonga, the first small island state, with no Geneva mission, undergo UPR, as well as South Africa, Barbados and India.

These states were the first to experience UPR and it is through them that the process began to find its feet. The UK, South Africa and India came to the UPR having had very little time to prepare and having no other experiences to which to refer for their own preparations. They left Geneva with 28, 22 and 18 recommendations respectively; Tonga had 42 and Barbados 25. Compare this with Malaysia's 64 in 2009 and Kenya's 150 recommendations in 2010. As the mechanism becomes older it seems that it has become more exacting.

Our analysis suggests that in the infancy of the process, states faced a more lenient and less exacting process,¹¹ but those that came later found themselves part of a more exhaustive discussion in Geneva. The P5 as a grouping was not given less rigorous treatment than others; the UK received 28 recommendations when reviewed in 2008; the other four received 33 (France in 2008), 62 (Russia in 2009), 99 (China in 2009) and 228 (USA in 2010).¹² The totals increase with the age of the UPR. I am inclined to an analysis that the early days of the UPR found states showing more caution than in later years. The extent of suggestions made to states clearly showed an expansionary ten-

¹⁰ One Commonwealth state was asked to retain the death penalty and two Commonwealth states were asked to offer special protection and treatment for heterosexual family norms and traditional cultural values.

¹¹ Finland is not in the Commonwealth, but its experience exemplifies this pattern: it received and accepted a mere seven recommendations in 2008.

¹² Number of recommendations taken from the HRC report of the UPR working groups.

dency over the first few years and this was paralleled by increasingly effective stakeholder lobbying. It also appears that as the reviews progressed over time, states under review were subjected to greater expectations in terms of the level and number of recommendations they received.

If there was no deference or caution shown to the more powerful states, it is not the case that all had similar experiences. The eight Commonwealth small states that underwent UPR in 2008–2009 received the smallest number of inscribed speakers.

In 2008–2009 Commonwealth states received a total of 1,986 recommendations, an average of 79.¹³ The range across the countries spread from 18 recommendations for India to 103 for Malaysia. There was an increase in the average number of recommendations received by Commonwealth states from 60 in the first year of the UPR to 97 in the second year.¹⁴

Nature of engagement

The new mechanism was greeted with scepticism by some and fear among others that the process would be overly political and that no, or limited, human rights discussion would take place or that it would be merely superficial. There has been patchy realisation of pledges made by states during candidacy campaigns for HRC membership,¹⁵ which has undermined the serious intent claimed, and hoped for, in relation to the HRC. This has, in turn, reduced optimism about the UPR.

It has indeed been the case that friendly states have made supportive or uncritical remarks to states being reviewed. This has included co-members of regional groupings and has contributed to the urgency with which some states have sought to ensure their inclusion high on the speakers list. It has been perceived that this has been a tactic to minimise the time available for more critical or challenging contributions that might be anticipated from beyond the regional membership.

It has indeed been the case that opening comments in the Interactive Dialogues of a number of states have been commendatory and congratulatory. It is also the case that many of these have come from co-members of regional groupings. To deny or avoid this fact would be unrepresentative of the reality of the Geneva experience. What is also true though is that while it may be that in some cases this sort of behaviour is orchestrated, this is not necessarily or always the case. The loyalty that regional membership engen-

¹³ Number of recommendations taken from UPR info database – www.upr-info.org

¹⁴ Data for calculating average taken from UPR Info – www.upr-info.org

¹⁵ See, for example, *Easier Said Than Done* (Commonwealth Human Rights Initiative, 2008).

ders does not always need to be organised: it has its own momentum and dynamic. It is also right that where commendation or congratulations are due, they should be given.

Those states that reported finding the Geneva dialogue most useful and productive for their work in the promotion of human rights were also those that took an open and honest approach to the discussion of their achievements and challenges. They were the states that did not avoid difficult topics, that had done some preparation in terms of what subjects might be raised in their Dialogue and that acknowledged work still to be done.

It has also been argued that where 'friendly' states have engaged in the Interactive Dialogue, their recommendations have been less demanding than those of other states. In a thorough analysis of UPR debates by regional groupings, McMahon¹⁶ is concerned with what he calls 'regional gridlock' – i.e. North–South divisions – and finds that the UPR has fractured this pattern. He now sees three broad groupings: Asia and Africa at one end and Western Europe and other states at the other, with more democratically minded Eastern European and Latin American states in the centre. McMahon's analysis is thorough and useful; indeed it mirrors very closely the work we have undertaken in the HRU. The regional grouping of interest to us, however, does not feature in the analysis he has done.

In the Commonwealth we find that the participation rate in making recommendations is low, even with a boundary placed on Commonwealth-to-Commonwealth dialogues. A total of 218 Commonwealth states participated in the Interactive Dialogues of sister Commonwealth members.

The universality of human rights

It has been noted by a number of observers that the UPR state participation rate has been 100 per cent – a sharp contrast with the reporting pattern for any of the treaty bodies. Several factors may have contributed to this, including that the UPR is a discussion with peers and seen as less exacting than an examination by experts and that the report writing process is less extensive and more manageable. These are relevant considerations and it is to be hoped that they will continue to serve as enabling and encouraging factors in the second and subsequent rounds.

It is of great benefit not only to states, but also to the human rights systems to maximise the complementarity of the UPR dialogue, treaty body reporting and special procedures

¹⁶ McMahon, E, *Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council* (2010).

and, importantly, to consider the overlaps or continuity in the recommendations that flow from each. Indeed, the OHCHR report for UPR invites such an integrated overview and some states have made connections between the various processes in their contributions to the dialogue.

The UPR offers an opportunity to promote the universality of human rights: every country is reviewed with equal scrutiny, equal time and on the basis of the same standards. The other universal aspect of the UPR is that, thus far, 100 per cent of states have appeared in front of the Council for the Interactive Dialogue.

Of note is that fact that not one country has yet declared that human rights is a concept that does not apply in their country's context; every country has submitted and engaged with the UPR on the basis that the promotion and protection of economic, social, cultural, civil and political rights in line with the Universal Declaration on Human Rights¹⁷ is an aim worthy of pursuit. This may seem a natural enough statement now, but in a previous time this perception of human rights might not have been so universally upheld.

Where disagreements have surfaced on rights specifically (as distinct from a number of political disagreements), they have tended to be around the coverage of the framework – for example, whether or not the death penalty is a human rights concern or whether the prohibition of physical chastisement of children is contrary to their rights. These are not unexpected areas of debate or disagreement; indeed on the former issue many retentionist states have argued the unpopularity of abolition, whether or not they argue for the legitimacy or deterrence of execution; indeed, some have not put the latter case. These disputes relate to issues of political strategy, but do not offer a challenge to the substance or legitimacy of the human rights discourse on this topic.

A similar analysis would apply to the issue of same-sex consensual sexual activity, where many defences offered against decriminalisation can be categorised either as public intolerance or a moral objection; these are distinct from saying that the human rights discourse should not address issues of discrimination or equality. This is an extremely important development.

The UPR has allowed a wider discussion on human rights on the ground in countries than is possible under the treaty body system. For example, The Bahamas, Brunei Darussalam, Malaysia, Tonga and Vanuatu were not, at the time of the UPR, party to the ICCPR and ICESCR and therefore the respective treaty bodies are not able to discuss these issues. However, the UPR Interactive Dialogues of these countries allowed dis-

¹⁷ HRC Resolution 5/1 states that one item forming the basis of review for UPR is the Universal Declaration on Human Rights.

cussion on this broad range of rights as provided for in the Universal Declaration on Human Rights.

Over sixty years after the crafting of the Universal Declaration on Human Rights, to which Commonwealth leaders recommitted themselves in 2009,¹⁸ it seems that the validity of the human rights framework is well established. States have created a new way in which to assess their progress towards realising the vision of human rights; all are participating in this mechanism and all have agreed, through discussion with their peers, agendas for further action. This is a remarkable achievement.

Economic, social and cultural rights (ESCRs) have long been the poor cousin in the global hierarchy of rights, with greater legitimacy and weight being given to the area of civil and political rights. This hierarchy has ill served the inter-relationships between poverty, hunger and other dimensions of economic marginalisation, on the one hand, and lack of dignity, on the other. It is, after all, human dignity to which the philosophy of human rights brings a commitment. To strengthen and to consolidate efforts that seek a greater recognition and legitimacy for this branch of rights is an effort that must be supported. A great deal of work has been done to explore the justiciability and measurement of these rights, laying firm foundations for their greater realisation. The UPR arena has allowed ESCRs to be raised frequently in international discourse and has afforded the two sets of rights a place on the same platform. This can only serve to reduce the lower status long given to ESCRs and address more fully the rights concerns of poorer states.

¹⁸ Trinidad and Tobago Affirmation on Values and Principles (2009).

Hopes and Expectations for the UPR¹⁹

A view from the former President of the Human Rights Council

H.E. Ambassador Martin I Uhomoibhi, Permanent Secretary, Ministry of Foreign Affairs, Nigeria

Having witnessed seven successive sessions of the Universal Periodic Review working group, I am strengthened in my belief in the immense possibilities and promise of the UPR, as envisaged in UN General Assembly Resolution 60/251, and as further elaborated in Human Rights Council Resolution 5/1. Not only do these two documents affirm the universality, transparency and inclusiveness of the process, but they both speak to the great potential of the UPR mechanism in the promotion and protection of human rights globally.

The UPR, as one of the most innovative mechanisms of the HRC, has so far proved to be quite successful. This is easily noticeable from the review of several states since the beginning of the UPR. It is quite remarkable that in the short period of its existence, the UPR has attracted 100 per cent participation by states. We have also witnessed a substantial increase in the number of standing invitations to special procedures, including undertakings by states to establish or improve the operational capacities of national human rights institutions, among others. On account of these successes, one could venture to propose that the true genius of this mechanism would be fully recognised during the second cycle of the UPR in 2012. At that time, states would be in a position to give an account of the level of implementation of the recommendations previously made to them by their peers.

In recognition of the great potential of the UPR, member states of the United Nations continue to attach the highest priority to this mechanism, always striving to protect the integrity of the process, which is unlike any other in the UN human rights architecture. Member states are fully aware of the inbuilt devices in the mechanism for its regular assessment and appraisal. A good example of this is the opportunity offered by the HRC general debate under agenda item 6 for states to share best practices and volunteer to provide updates on the level of implementation of recommendations made during the review and for the exchange of views on how to strengthen the mechanism, within the framework of agreed modalities.

¹⁹ Please note that all contributions are taken from the presentations that were made by individual speakers at the Commonwealth Mid-Term Review in 2010. All contributions represent the personal views of the speaker, and do not necessarily represent those of the Commonwealth Secretariat.

In comparison to other UN mechanisms, the UPR has, within its short period of existence, achieved significant successes. In my view, this may be attributable to the UPR being a new procedure and thus receiving overwhelming support by all concerned and influenced by political considerations, which allows for peer pressure to ensure its success.

The Office of the High Commissioner for Human Rights is actively engaged and encourages the participation of all states, particularly those without diplomatic representation in Geneva.

During my Presidency of the Council, on a number of occasions I stated that the UPR is actually a victim of its own success. This is attributable to the two principal challenges facing the process.

First is the issue of constraints of time for the Interactive Dialogue as a result of over-subscription. As a result of increasing interest by states in participating in the Interactive Dialogue, the Council has been faced with a situation where there are more states inscribed to speak than there is time available. You will recall that three hours are earmarked for the review of each state. During my tenure as President of the HRC, in consultation with others, I tried to create space for all delegations wishing to take the floor without success. You can only do so much at any one time. Providing speaking time to all delegations still remains a contentious issue in the human rights community in Geneva.

Second is the issue of production of documents: this is related to the inability of conference services to translate documents into all the UN official languages in good time. In a few instances, the translation of the report of the UPR working group for some states could not be published simply because they had exceeded the agreed number of words.

I foresee the UPR living up to expectations as a process of evaluating the compliance of national policies with international human rights law in which states submit themselves to the review according to the same methodology and the same criteria. Its success largely depends on the maintenance of its universality, which has become a trademark for the process.

On the whole, my conviction is that the UPR, in a few years to come, will live up to its promise as a mechanism for governments to present their national reports and to engage in the intense Interactive Dialogue that ensues. I have no doubt in my mind that this innovative mechanism has the capacity to encourage the observance and fulfilment of human rights by all states within their jurisdiction.

A view from a state

**H.E. Ambassador Joshua Sears, Director General, Ministry of Foreign Affairs,
The Bahamas**

In undertaking a critical examination of the hopes and expectations of the Universal Periodic Review process, one must necessarily reflect upon the principles and framework governing its establishment and operations to date.

In this connection it is important to be reminded that the Human Rights Council established by General Assembly Resolution 60/251 on 15 March 2006 enjoyed almost universal acceptance.²⁰ This is a compelling reason for the initial trust and current esteem with which the process is held and suggests that any compromise of this principle would seriously undermine the future of the process.

The HRC has at its disposal a number of instruments to assist it in the discharge of its mandate, including the UPR.

The UPR is a unique process with equality of application and treatment. All 192 UN member countries, without exception, are pegged to be reviewed. By the end of 2010 some 144 countries will have been reviewed. As has been mentioned, it is particularly noteworthy that every state scheduled has appeared before the UPR to date. The schedule of review established long in advance enables the state under review adequate preparatory time or, at the very least, adequate notice.

The UPR process, because of its co-operative character, is a key instrument of the Human Rights Council. Its co-operative character allows member states to assess their own human rights records, policies and institutions. It is important that these essential characteristics remain.

The hopes and expectations of the UPR hinge upon the basis of its establishment, its operations to date and, particularly, its recognition and acceptance by all stakeholders as an effective and impartial instrument for monitoring the implementation of human rights commitments of member states.

The integration of human rights in all important global issues such as the environment, governance, democracy, health, culture, poverty and education will continue to propel human rights issues onto national, regional and global agendas.

It is therefore most important for the various instrumentalities of the Human Rights Council to be flexible and adaptable.

²⁰ Four countries voted against the resolution: the USA, which is now a HRC member, Israel, Marshall Islands and Palau; three countries abstained.

An examination of the debate on the consideration of the HRC's report at the Third Committee during the 64th regular session of the UN General Assembly was quite instructive. Several member states spoke positively about the UPR process and this, when taken collectively, in my view captures the essence of the hopes and expectations of the UPR. It shows that states have become advocates for the UPR process. This advocacy will bolster and inspire confidence and credibility in the process. It will also encourage states to be reviewed to attach greater importance to the preparatory process.

To summarise some of the expressions of hopes and expectations made by member states:

- The translation of all the reports in the official working languages of the United Nations is a necessity. It provides for greater access; transparency and access to these reports is an important aspect of the preparatory process.
- Constructive, co-operative and interactive characteristics are fundamental to sovereign respect and participation.
- With regard to country-specific resolutions, care must be exercised to ensure that an atmosphere of confrontation and mistrust does not undermine the UPR process.
- It is important to facilitate the participation of delegations from least developed or geographically remote countries.
- The development of National Human Rights Institutions and stimulation of greater co-ordination between them.
- The HRC should be a versatile body capable of addressing both specific situations and thematic issues. Its effectiveness should be firmly based on certain fundamental principles of co-operation, dialogue, objectivity and non-selectivity.

The role of the Troika

In the President's statement A/HRC/8 L.1 of 9 April 2006 on the modalities and practices for the UPR, the guidelines for the role of the Troika require states wishing to submit advance questions to do so via the Troika, which will relay them to the state under review. The questions should conform to the basis of the UPR. The Secretariat is required to transmit the questions no later than ten working days before the date of the review in the working group.

The Bahamas received advanced questions from seven member states – Czech Republic, United Kingdom, Sweden, Denmark, Germany, Latvia and the Netherlands.

In my view, ten working days for non-Geneva based delegations is insufficient to address the questions adequately. The state has to determine what would be its focus in the

oral presentation. Based on the number of questions and recommendations posed by states during the Interactive Dialogue, it would clearly be more useful if many of those questions could be forwarded in advance. In the case of The Bahamas, we received some 67 questions or recommendations. However, when clustered they amounted to 24.

While it is the sovereign right of member states to raise questions directly during the working groups, the submission of questions via the Troika contributes to a more orderly process.

The mechanics of forwarding the questions to the state under review must be improved or information regarding this process needs to be better communicated, particularly to non-Geneva based delegations.

Impact of governance on the UPR process

The reality is that the political process in a democracy occasions changes on a regular and periodic basis. When this occurs, the momentum, priority and emphasis on human rights also suffers. The institutionalisation of these issues on the agenda or platforms of the political organisations is very important and perhaps the Commonwealth Secretariat could enhance focus on this issue by commencing a dialogue with the major political parties in the member states.

Recommendations

We know that states are required to report on the implementation of their commitments undertaken at the review. This process will start in 2012. I believe that the Secretariat could play a critical role in reminding and urging member states of the importance of preparing for that eventuality.

The UPR process should be placed on the agendas of regional and sub-regional organisations. This would convey the message that the UPR is not solely a UN issue and would assist in its institutionalisation of these organisations and enhancing its universality.

Reporting on commitments

The practice of reporting on the implementation of one's commitments periodically to the HRC is good as it places the state in a position to be ready for the second round of the UPR process.

In closing, The Bahamas expects the HRC to determine the modalities for the second round of UPR in a timely manner so as to minimise uncertainty and to assist the states under review and to adequately help stakeholders prepare for this critically important litmus test.

A view from two NGOs

Iniyen Ilango, Advocacy Programme Consultant, Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is a pan-Commonwealth NGO which is mandated to ensure the practical realisation of human rights across the Commonwealth. The CHRI has monitored many Commonwealth countries as they have undergone the UPR process, and have submitted stakeholder reports for a large number of countries.

The role of the Commonwealth in the UPR process

Recognising the work the Commonwealth Secretariat currently does to support state participation in the UPR process, the CHRI hopes that their work will continue and expand to place an emphasis on the importance of broad civil society consultations, and follow-up consultations, which will also create the space for new initiatives in this area to develop.

The CHRI hopes that the Commonwealth Foundation, whose mandate is to support civil society groups in a number of areas, will begin supporting the participation of NGOs in the UPR process.

Fostering consensus building through diplomatic negotiations around the 2011 review of the Human Rights Council is also encouraged and it is hoped that the Commonwealth Secretariat will play a key role in this area.

To strengthen the effectiveness of the UPR process, the CHRI would like to see recommendations informing the work of the Secretariat's Political Affairs Division and the Secretary-General's Office. Furthermore, it is hoped that the necessary resources and capacity will be provided to the Human Rights Unit at the Secretariat to enable them to advance their work with the UPR and other work related to the Human Rights Council.

Hopes and aspirations for the 2011 review

The CHRI hopes that genuine broad-based consultation with all stakeholders will become a mandatory requirement of the UPR process, including mandatory follow-up consultations. A mechanism which provides assistance to states which do not have sufficient resources to conduct adequate consultations should also be aspired to. Alongside this, it is hoped that financial assistance, similar to the support available to states, will also be provided to support the participation of national NGOs. A voluntary trust fund could be established towards this aim.

A system of protection from reprisal for all stakeholders who co-operate with the UPR and other UN mechanisms should also be introduced.

UN Human Rights Mechanism

The CHRI hopes that to increase the effectiveness and value of the UPR system all UN human rights mechanisms will incorporate UPR recommendations into their inquiries, decisions and statements. Particular notice of the progress made by countries in relation to the recommendations received should be given when working on associated thematic issues and country situations. This has begun to occur with treaty bodies and it is hoped it will expand to other mechanisms.

NHRIs

Following criticism in some countries, the CHRI hopes that NHRIs will ensure that they act as independent actors when they engage with the UPR system. NHRIs should also take the initiative in organising broad civil society consultations, which includes creating the opportunity for civil society to be in dialogue with the state during the follow-up stages of the UPR. NHRIs should also aim to actively participate in the review when necessary, apply UPR recommendations in their own work and provide guidance for the state to implement recommendations when appropriate.

Governments

The CHRI hopes that states will begin to ensure genuine broad-based consultations with civil society and seriously consider the recommendations suggested by civil society organisations.

States should ensure that follow-up consultations are conducted in order to monitor and report on the progress made after participation in Geneva. Ideally, a focal office in charge of the work surrounding the UPR would be established. This body could be mandated periodically to monitor the progress made in implementing recommendations, ensure that the state reports back to the UPR, and act as a window of communication and information sharing for civil society.

States should also work to eliminate reprisals for those stakeholders who participate in the UPR system and ensure the independence of NHRIs.

It is hoped that states will adopt and mainstream recommendations, and use them in national policies and legislation to a greater extent. When there is no genuine claim, lack of capacity or resources should not be used as an excuse for failing to implement recommendations or holding adequate consultations. States should also refrain from orchestrating mutual arrangements to influence their review and they should aim to make their recommendations to other states more specific.

The CHRI also hopes that states will create public awareness of the UPR process and include teaching about the process in academic curriculums and other relevant schools where the work of the UN is taught.

The judiciary

The judiciary can also increase the effectiveness of the UPR by considering relevant recommendations in their proceedings and decision-making. It is hoped they will work to this aim.

Civil society

The CHRI hopes that civil society organisations will maximise their involvement with the UPR system and engage with the state during the early preparatory stages, pressing for consultation.

Civil society organisations also have a role to play in monitoring the progress made by the state in effectively implementing UPR recommendations and it is hoped that their work will develop in this area, enabling them to submit follow-up information at the next review.

Donor agencies and other governments

The CHRI hopes that donor agencies and governments will increase the funds for UPR-related work, increasing the capacity for enhanced engagement by all actors. Money should be used to establish basic national infrastructure which will improve the successful working of the UPR. This funding should be sustainable, and avoid creating aid dependency for UPR work.

Roland Chauville, Director, UPR Info

UPR Info is a non-profit and non-governmental organisation based in Geneva. UPR Info intends both to raise awareness and provide capacity-building tools for the various actors in the UPR process, such as UN member states, NGOs, NHRIs and civil society in general.

Hope and expectations for the second cycle

In discussing the hopes and expectations of the UPR, it must be emphasised that the purpose of its establishment is to secure the advancement of protection for human rights on the ground.

To date, much focus has been placed on the UPR recommendations, but what will become apparent during the second cycle is the importance of implementing the recommendations made and the impact it has had on protecting human rights during the previous four years.

It is also hoped that recommendations rejected during the first cycle will be reconsidered.

2011 review

One of the key issues it is hoped will be re-evaluated is the process of registering to speak, which is currently open to manipulation by the state under review. The issue of

translation with regard to reports, which has been raised by a number of speakers, also needs to be reconsidered.

Lastly, for the 2011 review, UPR Info is strongly against the re-opening of Resolution 5/1, and remains content with the current format of the actual review procedures.

Response to recommendations

Unfortunately, during the first cycle many of the recommendations have been lost in the system due to a lack of state response. It is hoped that all recommendations, whether accepted or not, will at the very least be acknowledged by the state. Recommendations need to be clearly responded to by states and emphasis needs to be placed on the importance of giving a clear response, not just on accepting suggestions. The process will be ineffective if states do not confirm whether they intend to accept or reject recommendations; accountability will not be possible and the reporting and lobbying efforts by NGOs will be lost.

It is also hoped that future recommendations will be clear and action-orientated. This will enable the state under review to gain a clear idea of what steps need to be taken to improve the human rights situation in their country and limit the opportunity for obscurity to be given as a reason for failing to accept or implement recommendations.

UPR Info hopes that recommendations which request states under review to 'continue' current state policy will be discouraged at future review sessions. Recommendations framed in this manner do not address problem areas and therefore are ineffective in improving the human rights situation.

It is also hoped that the implementation stages of the UPR will create and encourage an efficient working relationship between the state and civil society in order to improve the human rights situation. The state will not always have a solution on how to achieve a certain aim and it may be fruitful to seek the practical advice of NGOs.

New issues

The UPR brings hope for new human rights issues to be raised, particularly those which are not given a specific platform within the other UN human rights mechanisms, such as sexual rights. This issue of sexual rights has been raised a number of times during UPR sessions, whereas under the framework of other UN human rights mechanisms it has been given little attention. This reiterates the universal aspect of the UPR, not only in the sense that every state is reviewed, but also in that there is room for all human rights concerns to be raised. UPR Info hopes new issues will continue to be raised through the UPR process.

Possible improvements

The UPR should not be treated as an examination, with states congratulating each other once their three-hour session is over. This encourages the mindset that the UPR is limited only to the procedure in Geneva, shifting the focus away from the importance of actually implementing recommendations.

A suggestion is that NGOs who wish to lobby governments will probably be more effective if they arrive in Geneva at least one month in advance for their work to be effective. This allows contributions to be made to diplomatic missions based in Geneva in time for questions for the Interactive Dialogue to be formulated. When this is not possible, lobbying can be done through embassies in the country under review.

A view from the Commonwealth Secretariat

Dr Purna Sen, Head of Human Rights, Commonwealth Secretariat

The first round of the UPR has by and large been considered by many to have had positive aspects. The depth of enquiry involved has varied, but appears to be growing increasingly rigorous with time.

The Human Rights Council began, in the latter half of 2010, a review of the UPR to date and an associated discussion on the upcoming second round. Some aspects of the process which have had glitches are clearly appropriate subjects for review. Below, we discuss the most pressing of these and we begin here with an overview of the next stage in the UPR.

Table A. Commonalities and divergences

	Round 1: 2008–2011	Round 2: commencing in 2012
Preparation: In-country	Report writing Consultation	Report writing Consultation Co-operation (national and international) on implementation of round 1 recommendations
The Review: Geneva element	Interactive Dialogue – three hours Troika Report adoption	Interactive Dialogue – three hours? Four and a half hours? Troika Reporting on implementation of round 1 recommendations Receiving and accepting new recommendations Returning to recommendations not accepted in round 1? Report adoption
	Implementation	

The most important structural shift between the first and second rounds of the UPR is that the second phase will cover reporting on recommendations that were accepted by the state under review. Commonalities and divergences between the two rounds are captured in Table A.

While the preparation and consultation remain common to both rounds, the major difference is that the state under review will be expected to report on progress against the recommendation accepted by them in the first round. There are some who argue that

this feature will prove to be the critical test for the UPR, as it is here that the stated aim – of bringing change on the ground – will be known to have succeeded or failed. It is likely that SuR may also extend their discussions, as may others, beyond the accepted recommendations.

I have noted earlier that the countries which reported the greatest usefulness and relevance of the UPR were those that brought an honest and open approach to the table. If this approach were to characterise the second round we could find, once more, that the UPR may confound its critics. It would be a considerable achievement if states felt able to share with their peers not only the areas in which implementation has moved forward well, in co-operation with stakeholders or with technical support, but also to say when and where this has been problematic. They may also show an openness to re-visiting recommendations that were not initially accepted. There needs to be an atmosphere of receptiveness and understanding for genuine challenges that will not extend to situations where the challenges identified are merely a cloak for inaction or lack of will.

A few specific areas for improvements in the process are discussed below, but the most important feature of the implementation phase is the need to begin work immediately. Four years is a very brief time in which to make a range of commitments come to fruition; indeed many will take longer than that, especially if they involve a shift in attitudes or awareness.

Making recommendations

Recommendations accepted at the UPR enjoy the support of the state, which is thereby tasked with implementation. That they have political support for follow-through is a strength here and it is reasonable to hope for progress on these post-Geneva. Treaty body recommendations, on the other hand, enjoy the force of law.

Where treaty body and UPR recommendations coincide and are accepted by the state under review, there is a confluence of legal obligation and political will. States may find it useful to consider treaty body recommendations when formulating their UPR comments and suggestions. The international human rights system has a number of different elements, but they are intended to form a whole; the parts are to connect and complement each other. In this respect, it is helpful for states and stakeholders to see the UPR as an adjunct (see Resolution 60/251) to treaty body mechanisms and special procedures, rather than a substitute for these.

While the full participation rate must be applauded, this should not come at the cost of ongoing engagement with those other mechanisms. Likewise, the treaty body reviews could usefully draw on the discussions and recommendations to states under review. It is to be hoped that the coherence intended across different elements of the human

rights framework is realised in practice. UPR has the potential to become the glue that can link and hold the different parts together.

Clarity of recommendations

The ease with which recommendations can have relevance in-country is in part determined by their clarity and focus. In the first two years of the review there have been suggestions to states that cover a number of different areas and which are then difficult to implement. This is an example: 'It is recommended that [the State under Review] adopts concrete grassroots programmes to sensitise communities, in particular traditional chiefs, and spread them into all communities to abolish cultural practices, which violate the human rights, life and dignity of women and young girls'.

This wording seeks to cover much ground but makes it difficult for the state under review to give a clear response. The report of a state under review reflects such confusion and at times it has been difficult to ascertain which recommendations have been accepted and which have been rejected.

Indeed, there is a risk that some recommendations are not dealt with at all by the state under review. The HRC President has, on occasion, intervened to seek clarity. During HRU observations in Geneva and in analysis for this publication, it has been difficult at times to determine exactly how many recommendations have been made or accepted. For the second round it would be worth considering how to reduce this confusion for states and for the mechanism.

Two elements could improve this situation. The first is that recommendations could be more tightly worded and focused. States that engage in the Interactive Dialogue may wish to consider their comments or suggestions in (at least) two parts:

- a) What is the area they wish to address in their comment? Is it gender inequality, rural poverty, violence against women, displacement? Throwing in too many issues at once is not always helpful to the state under review.
- b) What *action/s* is or are sought from the state under review? Is it a new policy or law? Is it progress on some work already begun? Is it implementation of a treaty body recommendation already made? Specificity in the request being made would facilitate not only understanding, but also the potential for acceptance by the state under review and effective follow through.

Documenting responses

In turn, states under review can improve the nature of their responses to the recommendations they receive. Giving a response and making this clear is essential to the success and relevance of the UPR process. Clearer wording and intent of recommendations

would assist this. In addition, the state under review might consider a written summative response to the recommendations they receive. Some states have issued a document some months after the Interactive Dialogue called 'Addendum 1', which provides a user-friendly and clear summary of responses.²¹

Commonwealth hopes

Two much noted characteristics of the UPR story to date are the 100 per cent participation rate and the acceptance of numerous recommendations by states. Contributors to this volume have signalled their hopefulness for the UPR and its move into its second round, where states will report on progress made on implementation. They see this as the real 'test' of the UPR's success: change on the ground.

The mid-term review seminar organised at the Commonwealth in March 2010 was a valuable opportunity to start to consider more fully the implementation stage of the process. Some key lessons emerge from the early work in which the Commonwealth has been engaged and through discussion with many states.

Tackling the range of recommendations

While the number of recommendations received by countries may be daunting (particularly for the countries that underwent UPR in the later sessions), many of these will not be new. Many relate to issues that have already been raised in treaty reviews and others may already be part of countries' national priorities and policies. Kenya underwent UPR in 2010 and received 150 recommendations and accepted 143 of these, stating that many of these were already in line with existing national priorities and policies.

It is worth **clustering** the recommendations into groups or topics, policy areas, departmental briefs or in some contextually fitting way. This is especially helpful where there are a large number of recommendations that have been accepted.

The next stage would be to draw up an **implementation plan** and to allocate areas of responsibility, with timelines. If this work is done as a national effort a national action plan on human rights²² may result. Some states have found it helpful to establish an oversight or co-ordinating mechanism, such as a **UPR Committee or working group** that brings together staff from different ministries. There is also a strong case for the establishment or maintenance of **consultation mechanisms** with stakeholders in the implementation agenda. Commonwealth states undertook consultations on UPR in a

²¹ In 2008–2009 19 Commonwealth countries provided written responses to the outstanding recommendations in the form of Addendum 1, including India, UK, Zambia, Pakistan, Sri Lanka, Botswana, The Bahamas, Barbados, Cameroon, Mauritius, Bangladesh, Malaysia, Canada, Vanuatu, Belize, Malta, New Zealand, Brunei Darussalam and Cyprus.

²² The Human Rights Unit has a publication on developing national action plans and offers support in such efforts.

variety of ways that can provide a useful starting point for in-country dialogues to take forward recommendations.²³ HRU follow-up work is introducing to states and stakeholders a matrix through which this approach can be progressed.

Interim updates

During the March 2010 HRC session, the representative of Nigeria, on behalf of the African Group, called on all stakeholders to provide periodic updates on the implementation of recommendations. This practice had already begun with countries such as the UK, Bahrain and Colombia providing voluntary updates on implementation.

Such updates fulfil at least two functions: first of all they offer a staging post for the state, which can commit to implementation and see how it is progressing. This is helpful in getting the follow-up work underway at an early stage and avoiding the potential of coming up to a second round report and discovering, perhaps with disappointment and perhaps panic, that little has been achieved. Second, it can alert the HRC to any difficulties, especially any unforeseen circumstances, that have impeded implementation ahead of the formal second report. This in turn may open the possibility for revisiting the technical co-operation elements of the UPR.

As a bonus, this process may provide good examples of work that could serve as inspiration for others faced with similar recommendations or challenges. It is this element of cross-country learning that has proved invaluable in the Commonwealth's work on UPR and for which few opportunities exist.

In 2010 the OHCHR added to its UPR website interim documents (Implementation reports) provided by states.²⁴ This page was created in September 2010 and at the time of writing contained the reports of ten countries.²⁵ The provision of additional Implementation reports to the OHCHR may facilitate the sharing of lessons and ideas among states and stakeholders.

Round 2

There is some trepidation as to the nature of the discussions in round 2. How open will states be in recording progress? Will there be a tendency to cover up shortcomings, to find excuses for lack of implementation? Or will states whose recommendations have not found fulfilment be critical when this is reported? Is it possible that genuine reasons for lack of implementation will be seen as excuses and bring adverse consequences? There have been suggestions that overseas development assistance (ODA) may in future be

²³ See *Universal Periodic Review of Human Rights: Towards Best Practice* (Commonwealth Secretariat, 2009).

²⁴ accessed March 2011.

²⁵ Argentina, Bahrain, Chile, Colombia, Ecuador, Japan, Mauritius, Netherlands, Romania and Ukraine.

tied to UPR implementation. Indeed, this does give import to the process, though increasing conditionality by the West comes with consequent difficulties.

A 6 month break between round 1 and 2 has been agreed by the HRC. This could perhaps allow time for further consultation on any changes required and provide time to disseminate to all states. There is a need to guard against any potential loss of momentum inbetween the two rounds. The need to report on implementation could inhibit frankness, or even attendance, in the second round. It is to be hoped that attendance does not slip below the 100 per cent rate achieved in the first round.

Clarity is needed before the commencement of round 2 on the way in which recommendations not accepted in the first round will be handled. Can they be brought back to the table or does prior rejection by the state under review render the subject or recommendation beyond discussion? How receptive will the state under review be to hearing again recommendations which it has already rejected, perhaps unequivocally?

It is to be hoped that the review currently being undertaken by the HRC, under the able Presidency of H.E. Mr Sihasak Phuangketkeow will be able successfully and in a timely manner to address a host of more and less difficult matters. The HRU has already submitted a brief document for the working group on UPR to consider,²⁶ hopes that this publication will also prove useful and remains available for any further discussion.

Geneva office space

Switzerland offers states without permanent missions in Geneva free office space during their stay in Geneva for their UPR. The Swiss Permanent Mission to the UN is the contact route for this facility.

The Commonwealth Secretariat opened a Small States Office in Geneva in 2011. This will provide subsidised office space, especially for small states that do not have representation in Geneva. The HRU hopes to have expertise based in this office to engage with members on the UPR and on other human rights areas.

Looking forward

The UPR has confounded some of its critics by offering a more substantive human rights dialogue than expected and by subjecting all states to a similar process in reality, not just in theory. If any States under Review have had lighter treatment, it seems to be the small states that are not often seen at the HRC; at least this is so in the Commonwealth context. There seems to be goodwill towards them and a warm welcome for their presence in Geneva. It is hoped that office options in Geneva and Commonwealth human

²⁶ The HRU's submission to the Human Rights Council Review can be found in Annex 6.

rights support there will enhance their opportunities to interact further with the UPR, other human rights mechanisms and discussions.

Most states reviewed in the early years of the review have engaged at a high level and with receptiveness to hearing how their peers would like to see progress take shape and support such efforts. That many recommendations have been accepted is a testimony to this and it is to be hoped that the UPR will continue in this spirit.

Stakeholders have engaged increasingly and with greater effect in the UPR, including some NHRIs. There is scope for much greater involvement in the next round and in the implementation phase.

On the other hand, to expect the absence of politics is an unreal aspiration. Regional groupings have played a key role and regional loyalties have come into play, whether sought or not. This need not always be problematic, but where it stops an open discussion it is certainly obstructive. The UPR has not overcome these divisions and perhaps it cannot hope to do so. The Commonwealth, with its claimed shared bonds of values that include the promotion of human rights and democracy, has not trumped regional loyalties and there is considerable room for further consolidation of the Commonwealth bond for the promotion of human rights on a global stage.

The second round of the UPR will have a very different flavour from the first. The blank page with which the process opened is no longer there: this time there is a report card on whether or not, and to what extent, accepted promises have been fulfilled. To date, there is no agreed format or measure for determining the nature or extent of progress on recommendations. In 2011 the HRU work programme seeks to assist and support Commonwealth members in addressing these questions, so that their implementation programmes and second reports can be manageable and meaningful.

The Secretariat continues its support for the UPR and for efforts to make the process increasingly effective in bringing substantive progress on rights for the general population and in particular for the most marginalised and vulnerable. From here we hope to work with states and stakeholders, to encourage the acceptance of recommendations, to support cross-sectoral dialogue and consultation, and to assist in establishing effective forms of planning and monitoring implementation. We remain available for assistance when requested in addition to the Commonwealth-wide initiatives on UPR that are already planned.

Mid-Term Commonwealth Commentary on the UPR

Consultations and Drafting the Report

From the perspective of states

- States to engage in wide consultations with stakeholders and to do so in good time for the purposes of drafting a comprehensive report on the human rights situation on the ground.
- States' better co-ordination and collaboration with stakeholders will go a long way in developing and fostering better working relations for the UPR process and beyond.
- States to ensure the establishment of designated committees to assist in the co-ordination, consultation and preparation of the report, as well as in the implementation of the recommendations.
- States identified that a clear and outright political commitment from the leadership was crucial for a successful process.
- Sharing and exchange of information/best practices was reinforced as an ongoing process which is pivotal for all stakeholders throughout the process.

From the perspective of stakeholders

- Stakeholders to engage closely with states in good time for the preparation of a comprehensive report on the human rights situation on the ground.
- National institutions can play a role not only by pro-active engagement, but also through integration of specific UPR-related action plans in their mandate to promote and protect human rights.
- Stakeholders emphasised that their reports should included clear, concrete and action-oriented recommendations directed to the state, so that pertinent human rights concerns receive prominence and suggested action.
- NGOs reinforced the fact that formation of a coalition/network which is participatory, inclusive and transparent is beneficial to oversee, support and steer through civil society engagement with the UPR process in all its stages.

Review in Geneva

From the perspective of states

- States noted that some recommendations present challenges for being too vague or cover a wide range of issues/themes. This presented challenges in deciding on state responses to recommendations.
- States proposed that recommendations be clustered by themes before the adoption of the report with the assistance of the Troika or the OHCHR or both, and with the inputs of the recommending states.
- States called for the HRC to consider ways of enhancing opportunities for small states' engagement with the UPR. Innovative ways such as being allowed to make oral interventions via video submissions or video link was proposed.

From the perspective of stakeholders

- Stakeholders urged that recommendations made to the state under review are constructive, specific and measurable. The states under review were equally encouraged to document and record definitive responses in a clear and articulate manner, as this will provide guidance for UPR follow-up.
- The absence or poor representation of national stakeholder reports in the process was identified as a major concern. Stakeholders called for increasing awareness of and resources for adequate participation of the stakeholders in the all phases of the UPR.

UPR Follow-up and Implementation

From the perspective of states

- States are aware of the challenges in the implementation of recommendations for a number of reasons: where recommendations are vague; where accepted recommendations are met with changes in government policy; time constraints; constitutional challenges; sensitive issues (such as the death penalty and sexual orientation); popular traditional and religious beliefs. States need to resolve how to address, target and overcome these known challenges when pulling together implementation.
- Implementation of recommendations could be greatly improved through supporting and strengthening NHRIs. There was also acknowledgement that state engagement and/or collaboration with civil society at the follow-up and implementation stage would be beneficial to all parties involved.
- There is awareness that there is not much precedence to follow in terms of state

implementation of many human rights recommendations. It was strongly recommended that a collection of good practices, good examples of collaboration, uses for technology, and training would be very useful for states in this stage of the UPR process.

- A national monitoring committee was identified as a mechanism that would be well placed to gather and review information being fed through by all ministries working on implementation. This information sharing would allow actors to see the work being done on all thematic areas of accepted recommendations.

From the perspective of stakeholders (NHRIs and NGOs)

- It was advised to consider linking accepted UPR recommendations to the organisations' strategy in order to follow-up the implementation of states.
- Organisations should consider monitoring the state with regard to the implementation of recommendations that come out of the UPR. For example, NHRIs could play a role in identifying and correlating state agencies to various UPR recommendations to determine which agencies have the role and responsibility for implementation.
- Organisations should take advantage of goodwill shown where a state has accepted a number of UPR recommendations and has shown a political willingness to engage in human rights.
- Where possible, stakeholders could play a stronger role in raising awareness of the recommendations accepted in Geneva.
- NHRIs have an important role to play in the post-review UPR stage with regard to the implementation of recommendations.
- Organisations should make efforts to continue to consult and maintain dialogue with the state with regard to the role of NHRIs and NGOs in UPR-follow up. Where appropriate, creating and maintaining good working relationships with key government ministries was mentioned as an effective way for stakeholders to ensure their involvement in the implementation stages.
- Stakeholders could publish reports on the status of implementation to raise awareness. A categorised database of recommendations could also be established – these initiatives could be done with consultation and involvement of the state.
- Stakeholders encouraged the states to submit interim reports to the HRC before the second cycle of UPR. It was proposed that such a practice would not only outline scheduling of a state's follow-up work, but also allow the HRC to have a sense of in-country progress on UPR.

List of Contributors to the Commonwealth Mid-Term Review of the UPR

Roland Chauville, Director, UPR Info

Patricia Essel, Programme Manager, Women in Law and Development in Africa, Ghana

Susan Hyland, Head of Human Rights, Democracy and Governance, Foreign and Commonwealth Office, UK

Iniyen Ilango, Advocacy Programme Consultant, Commonwealth Human Rights Initiative

Sultana Kamal, Executive Director, Ain o Salish Kendro (ASK), Bangladesh

Evelyn Keelson, Attorney-General's Department, Ministry of Justice, Ghana

Andrew Khoo, Chair, Human Rights Committee, Malaysian Bar Council, Malaysia

David Langtry, Deputy Chief Commissioner of the Canadian Human Rights Commission, Canada

Zahid Mohammed, former Vice-President, Human Rights Commission of the Maldives

Advocate **Lawrence Mushwana**, Chairperson, South African Human Rights Commission, South Africa

Aruna Devi Narain, Assistant Solicitor General, Attorney-General's Office, Mauritius

H.E. Ambassador **Joshua Sears**, Director General, Ministry of Foreign Affairs, The Bahamas

Lopeti Senituli, Adviser to the Prime Minister, Office of the Prime Minister, Tonga

H.E. Ambassador **Martin I Uhomoibhi**, former President, Human Rights Council and former Permanent Representative of Nigeria to the United Nations Office in Geneva, Nigeria

Annex 1

Methodology

Methodology for themes

The HRU reviewed all UPR recommendations received by Commonwealth countries in 2008 and 2009 and categorised them into themes, where possible, or identified specific national cases. In total there were 111 themes and all are listed here for reference, with examples given for clarity where themes may be open to interpretation:

UPR recommendation/theme	Example/clarity
Anti-corruption	
African peer review mechanism	
Boat people/vulnerable groups	
Case of Teonea v Kaupule	
Caste	
Central Kalahari game reserve communities	
Child labour	
Child soldiers	
Children's rights	
Chittagong hill tracts accord	
Clemency petitions	
Climate change/environment	
Conflict resolution	
Constitutional reforms	
Consumer rights	
Corporal punishment	
Counter-terrorism and human rights	

Civil and political rights	Theme was used where recommendation referred generally to 'civil and political rights'.
CSOs	
Custom and human rights	e.g. 'Take more concrete measures with a view to fostering a genuine human rights culture with due regard to national and regional particularities as well as historical, cultural and religious backgrounds' (Islamic Republic of Iran during the UPR of Brunei Darussalam).
Death penalty	
Democratisation process	e.g. 'To continue the democratisation process on which it has embarked so courageously' (Holy See during the UPR of Tonga).
Detainee rights	
Disappearances	
Domestication	
Durban review conference	
Economic and financial crimes	e.g. Pursue its efforts in order to ensure the efficient working of the Economic and Financial Crimes Commission (Côte d'Ivoire during the UPR of Nigeria).
Emergency regulations	e.g. 'As the nominal state of emergency has unintended consequences for government accountability, review it and produce a timetable on how it might be ended' (UK during the UPR of Brunei Darussalam).
Equality and non-discrimination	
Economic, social and cultural rights	Theme used where recommendation referred generally to 'economic, social and cultural rights'.
Extra-judicial killings	
Fair elections	

Fair trial

Freedom of assembly/association

Freedom of expression/opinion

Freedom of movement

Freedom of the press

Freedom of religion

Gender equality

General e.g. 'Continue its endeavours towards better serving its people by securing a higher standard of human rights' (Turkey during the UPR of Tonga).

Genocide

HIV/AIDS

HR and armed conflict

HR education/awareness
raising/training

HR monitoring/OHCHR presence

HRC

Human Rights Defenders

Humanitarian assistance

ILO conventions

Indigenous rights

Internal Security Act

Internally displaced persons

International standards e.g. 'Implement international human rights obligations within Federally Administered Tribal Areas and refrain from detention that contravenes international standards of due process' (Canada during the UPR of Pakistan).

Justice

Juvenile justice

Labour rights/decent work

Land rights

e.g. 'Provide access to land and support for the residents of the Reserve, as specified in the United Nations Declaration on the Rights of Indigenous Peoples, and work with the land boards of the various districts to ensure equity in land allocation' (Denmark during the UPR of Botswana).

Marriage rights

Including polygamy, forced marriage.

Millennium Development Goals

Migrant rights

Minority rights

National action plan

National institutions

NHRIs

Ombudsman

Peace process

Poverty reduction and eradication

Prison conditions/standards

Racism

Ratifications

Refugee/asylum seekers' rights

Religious tolerance

Representation of the People's Act

Resources to address human rights

Right to education

Right to food

Right to health

Right to housing

Right to information

Right to life

Right to property e.g. 'Protect Mayan customary property rights in accordance with Mayan customary laws and land tenure in consultation with affected Mayan people of Toledo district' (Slovenia during the UPR of Belize).

Rights of persons with disabilities

Rights of religious minorities

Rights of senior citizens

Rights of young people

Rome statute

Rule of law

Safe drinking water and sanitation facilities

Sectarian violence

Sexual education e.g. 'Formulate a national policy on sexual education' (Finland during the UPR of Malta).

Sexual orientation e.g. 'Follow the Council of the European Union Asylum Qualification Directive in future cases with regard to sexual orientation as a ground for asylum-seeking' (Canada during the UPR of UK).

Sexual offences e.g. 'Strengthen enforcement legislation and programmes regarding prohibition of commercial sexual exploitation of children' (Philippines during the UPR of Canada).

Share experience e.g. 'Share experience and efforts on religious harmony' (Sudan during the UPR of Cameroon).

Sharia law

Special procedures

State agents

Technical assistance

e.g. 'Seek the support and advice of the various United Nations agencies in order to meet its international commitments in the protection and safeguarding of human rights' (Mexico during the UPR of The Bahamas).

Torture

Tourism

e.g. 'Continue to reinforce its jurisdiction in relation to the human rights of consumers in general and more particularly as applicable to the tourism sector' (Morocco during the UPR of Malta).

Treaty bodies

Treaty of Waitangi

Tribal rights

Turkish–Cypriot relations

UN human rights mechanisms

UPR follow-up

Violence against women

Violence against women includes all recommendations pertaining to female genital mutilation, rape in marriage, domestic violence, rape, trafficking.

Victims support

Vulnerable groups

e.g. 'Take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers' (Ireland during the UPR of Sri Lanka).

Withdrawal of reservations

Women's rights

Yogyakarta principles

Methodology for theme break-down

Every recommendation submitted to the state under review was analysed to identify the themes raised. Each recommendation did not necessarily equate to one theme, because in many instances recommendations received by the state under review relate to multiple themes. For example: Take measures to eliminate corporal punishment as a legitimate sanction in the law and to discourage its use in schools with a view to its eventual and total abolition, conduct public awareness initiatives to change people's attitudes to corporal punishment.

In this particular recommendation, two themes were identified: corporal punishment and awareness raising on the issue.

A total number of 111 themes were identified in this process. The table below displays the 111 themes against the 25 Commonwealth countries that underwent the UPR working group in 2008 and 2009. The table shows only the themes that were raised in the recommendations, but does not give a count of the number of times each theme was raised.

For the purposes of graphical representation, the 111 themes were grouped under eight headings, as follows:

- 1) International treaties and standards
- 2) National/international process and mechanisms
- 3) Specific national cases/national legal and constitutional concerns
- 4) Civil and political rights and freedoms
- 5) Economic, social and cultural rights and freedoms
- 6) Human rights principles
- 7) Special groups
- 8) Other

UPR recommendations – levels of action

In pursuing analytical research on the UPR, the Secretariat has found it useful to draw upon a ranking according to the level of action required by the recommendation in question. This method was developed by Professor Edward McMahon of the University of Vermont and UPR Info, an NGO based in Geneva. The methodology involves an assessment of the first verb and the overall action contained in the recommendation and ranks it on a scale from 1 (minimal action) to 5 (specific action). The following is taken from the UPR Info website:²⁷

²⁷ www.upr-info.org

	The Bahamas	Bangladesh	Barbados	Belize	Botswana	Brunei Darussalam	Cameroon	Canada	Cyprus	Dominica	Ghana	India	Malaysia	Malta	Mauritius	New Zealand	Nigeria	Pakistan	South Africa	Sri Lanka	Tonga	Tuvalu	United Kingdom	Vanuatu	Zambia
Anti-corruption	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
APRM																									
Boat people / vulnerable groups																									
Case of Teonea v Kaupule																									
Caste																									
Central Kalahari Game Reserve Communities																									
Child labour	x																								
Child soldiers																									
Children's rights	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Chittagong Hill Tracts Accord	x																								
Clemency petitions																									
Climate change/environment	x																								
Conflict resolution																									
Constitutional reforms																									
Consumer rights																									
Corporal punishment	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Counter terrorism and human rights																									
CP rights	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
CSOs	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Custom and HRs																									
Death penalty	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Democratisation process																									
Detainee rights	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Disappearances	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Domestication	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Durban review conference																									
Economic and financial crimes																									
Emergency regulations																									

	The Bahamas	Bangladesh	Barbados	Belize	Botswana	Brunei Darussalam	Cameron	Canada	Cyprus	Dominica	Ghana	India	Malaysia	Malta	Mauritius	New Zealand	Nigeria	Pakistan	South Africa	Sri Lanka	Tonga	Tuvalu	United Kingdom	Vanuatu	Zambia
Equality and non-discrimination	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ESC rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Extra judicial killings																X									
Fair elections																									
Fair trial						X							X												
Freedom of assembly/association					X	X							X									X			
Freedom of expression/opinion					X	X							X									X			
Freedom of movement								X																	
Freedom of press					X	X							X									X			
Freedom of religion		X			X	X							X									X			
Fundamental freedoms					X	X							X									X			
Gender equality		X	X	X	X	X							X									X			
General		X	X	X	X	X							X									X			
Genocide					X	X							X									X			
HIV/AIDS	X	X	X	X	X	X							X									X			
HR and armed conflict																						X			
HR education / training / awareness raising	X	X	X	X	X	X							X									X			
HR monitoring / OHCHR presence																						X			
HRC					X	X							X									X			
Human Rights Defenders	X				X	X							X									X			
Humanitarian assistance																						X			
ILO conventions	X	X	X	X	X	X							X									X			
Indigenous rights	X	X	X	X	X	X							X									X			
Internal Security Act					X	X							X									X			
Internally displaced persons								X														X			
International standards		X	X	X	X	X							X									X			
Justice	X	X	X	X	X	X							X									X			
Juvenile justice	X	X	X	X	X	X							X									X			

	The Bahamas	Barbados	Belize	Botswana	Brunei Darussalam	Cameroon	Canada	Cyprus	Dominica	Ghana	India	Malaysia	Malta	Mauritius	New Zealand	Nigeria	Pakistan	South Africa	Sri Lanka	Tonga	Tuvalu	United Kingdom	Vanuatu	Zambia
Labour rights/decent work	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Land rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Marriage rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MDCs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Migrant rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Minority rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NAP	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
National institutions	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NHRIs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ombudsman	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Peace process	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Poverty reduction and eradication	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Prison conditions/standards	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Racism	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ratifications	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Refugee/asylum seekers rights	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Religious tolerance	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Representation of People's Act	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Resources to address HRs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to education	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to food	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to health	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to housing	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to information	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to life	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Right to property	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rights of persons with disabilities	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rights of religious minorities	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

	The Bahamas	Bangladesh	Barbados	Belize	Botswana	Brunei Darussalam	Cameroon	Canada	Cyprus	Dominica	Ghana	India	Malaysia	Malta	Mauritius	New Zealand	Nigeria	Pakistan	South Africa	Sri Lanka	Tonga	Tuvalu	United Kingdom	Vanuatu	Zambia
Rights of senior citizens																									
Rights of young people																									
Rome Statute																									
Rule of law																									
Safe drinking water and sanitation facilities																									
Sectarian violence																									
Sexual education																									
Sexual orientation																									
Sexual offences																									
Share experience																									
Sharia law																									
Special procedures																									
State agents																									
Technical assistance																									
Torture																									
Tourism																									
Treaty bodies																									
Treaty of Waitangi																									
Tribal rights																									
Turkish Cypriots relations																									
UN HR mechanisms																									
UPR follow-up																									
VAW: inc FGM, RIM, DV, Rape, trafficking																									
Victims support																									
Vulnerable groups																									
Withdrawal of reservations																									
Women's rights																									
Yogyakarta Principles																									

Categories

1. Recommendation directed at non-state under review states, or calling upon the state under review to request technical assistance or share information (example of verbs: call on, seek, share).
2. Recommendation emphasising continuity (example of verbs: continue, maintain, persevere, pursue).
3. Recommendation to consider change (example of verbs: analyse, consider, envisage envision, explore, reflect upon, revise, review, study).
4. Recommendation of action that contains a general element (example of verbs: accelerate, address, encourage, engage with, ensure, guarantee, intensify, promote, speed up, strengthen, take action, take measures or steps towards).
5. Recommendation of specific action (example of verbs: conduct, develop, eliminate, establish, investigate, undertake, as well as legal verbs: abolish, accede, adopt, amend, implement, enforce, ratify).

Principles

When there is an equal rationale for two different actions in a recommendation, emphasis is generally placed on the first one.

When a recommendation is starting with two verbs, the second one is taken into account.

Example: '*Continue and strengthen*' – category 4.

When a recommendation starts with a general action, but then provides examples of specific actions, it is considered as category 5. Example: 'Improve women's rights by amending the family code'.

The Secretariat accepted this formulation for assessing UPR recommendations. These levels of action have been used by the HRU for all recommendations received by Commonwealth countries. Then we compared the levels against the responses the countries gave to those recommendations (accepted, rejected, pending/unclear, noted).

Responses to recommendations

The HRU also chose to look at the responses given by the state under review to the recommendations received. HRC Resolution 5/1 states that 'Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations,

together with the comments of the State concerned thereon, will be noted.' Despite this provision, states' response to recommendations have not always been clear. In light of this, we have chosen to group responses as follows: accepted, rejected, noted/unclear, pending. The responses have been taken from statements made by the state under review during any stage of the UPR working group or in oral statements or written submissions made at the time of the UPR plenary session.

Accepted is used only where a state has given a clear indication of acceptance of a recommendation, including phrases such as 'accept', 'supports' and 'enjoy the support of'. An example of this is: *X accepts all recommendations, except those mentioned in section D.*

Rejected is given as a position where states have provided clear indications that a recommendation is not accepted, including phrases such as 'reject', 'not accepted' and 'does not enjoy the support of'. An example is: *X does not accept the recommendation to consider ratifying the remaining two fundamental ILO conventions.*

Noted/unclear is used to indicate where states have not offered a clear position of their response to recommendations or where the response given was ambiguous in terms of explicit acceptance or rejection. An example is: *X takes note of recommendations 12 and 13.*

Some states have chosen not to give an outright response of acceptance or rejection to a recommendation during any stage of the UPR working group, and instead state that the recommendation is noted/unclear. We do not interpret this recommendation to be accepted or rejected; instead, this is seen as no position being given and that the state in question is reserving judgement.

Pending is used where states have either not provided the HRC with an individual response to the recommendation in question.

As mentioned above, the responses given by states to recommendations are sometimes unclear and this topic has been the subject of much discussion, particularly in the run-up to the review of the HRC and its mechanisms. Therefore, while the Secretariat follows the methodology above for determining a state's response to the recommendations received, the determination does not necessarily reflect the official position of individual states.

The HRU makes a determination of state responses from statements and written contributions made to the HRC, including the UPR working group, the UPR plenary session and addendum documents.

Annex 2

List of UPR Delegations and Statistics, 2008–2009

Commonwealth UPR delegations:

25 countries: 317 total persons in delegations

Average delegation size: 12.5

Largest delegation: Malaysia (32)

Smallest delegation: Dominica (1)

Equal female to male ratio: 3 (The Bahamas, Vanuatu, New Zealand)

Higher female to male ratio: 9 (South Africa, UK, Ghana, Zambia, Tuvalu, Mauritius, Belize, Brunei Darussalam, Cyprus)

Higher male to female ratio: 13 (India, Pakistan, Sri Lanka, Tonga, Botswana, Barbados, Cameroon, Nigeria, Bangladesh, Malaysia, Canada, Malta, Dominica)

Total Geneva to capital to New York missions ratio: 91 to 222 to 4

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
South Africa	H.E. Ms Claudine J Mtshali, Ambassador, Permanent Representative of South Africa to the UN Office at Geneva	7	4:3	7:0	7 x Geneva mission
India	H.E. Mr Swashpawan Singh, Ambassador and Permanent Representative of India to the United Nations Office at Geneva	13	3:10	5:8	1 x Solicitor General 4 x External Affairs 1 x Social Justice and Empowerment 1 x Women and Child Development 1 x Home Affairs 5 x Geneva mission
UK	H.E. Mr Michael Wills MP, Minister of State for Justice	24	14:10	8:16	1 x Minister of State for Justice 7 x Justice 3 x Defence 2 x Foreign and Commonwealth Office 1 x Border and Immigration Agency 1 x Home Office 1 x Northern Ireland Office 8 x Geneva mission
Ghana	H.E. Mr Joe Chartey, Minister of Justice and Attorney-General	11	8:3	2:9	1 x Minister for Justice 1 x Minister of State for Education, Science and Sports 3 x Legal Affairs 1 x Manpower, Youth and Employment 1 x Women and Children's Affairs 1 x Minerals Commission 1 x Human Rights Commission 2 x Geneva mission

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
Zambia	H.E. Ms Gertrude Imbwae, Permanent Secretary, Ministry of Justice	20	11:9	2:18	1 x PS, Justice 1 x Governance 1 x Justice 1 x DPP 1 x Immigration 1 x Police Complaints Authority 1 x Health 1 x Gender 1 x Education 2 x Human Rights Commission
Pakistan	H.E. Ms Fauzia Wahab, Member of the National Assembly	10	2:8	5:5	3 x Member of National Assembly 2 x Foreign Affairs 5 x Geneva mission
Sri Lanka	Hon. Mahinda Samarasinghe, Minister of Disaster Management and Human Rights	18	4:14	5:13	1 x Minister of Disaster Management and Human Rights 1 x Attorney-General 2 x Deputy Solicitors-General 2 x Secretariat for Co-ordinating the Peace Process 2 x Police 1 x Army 1 x Justice and Law Reform 1 x Disaster Management and Human Rights 1 x Constitutional Affairs and National Integration 1 x Defence 5 x Geneva mission

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
Tonga	H.E. Mr Sonatane Tu'akinamolahi Taumoepeau Tupou, Minister of Foreign Affairs, Acting Minister of Defence and Acting Governor of Vava'u	6	2:4	0.5:1	1 x Minister of Foreign Affairs 1 x Permanent Representative to the UN in New York 1 x High Commissioner, London 2 x Foreign Affairs 1 x Consultant/ adviser
Botswana	Hon. Mr Dikgagamatso Seretse, Minister for Defence, Justice and Security	13	5:8	6:7	1 x Minister for Defence, Justice and Security 1 x Defence, Justice and Security 2 x Foreign Affairs 1 x Women's Affairs 1 x Local Government 1 x Attorney-General 5 x Geneva mission
Tuvalu	H.E. Mr Enele Sopoaga OBE, Permanent Secretary, Department of Foreign Affairs and Labour	5	3:2	0:5	1 x Permanent Secretary, Foreign Affairs and Labour 1 x Attorney-General 1 x Foreign Affairs and Labour 1 x Home Affairs 1 x Human rights adviser/consultant
Bahamas, The	The Senator the Hon. Michael Barnett, Attorney-General and Minister of Legal Affairs	6	3:3	0:6	1 x Attorney-General and Minister of Legal Affairs 2 x Foreign Affairs 1 x Labour and Social Development 2 x Advisers

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
Barbados	H.E. Christopher Sinckler, MP, Minister of Social Care, Constituency Empowerment, Urban and Rural Development	11	5:6	5:6	1 x Minister of Social Care, Constituency Empowerment, Urban and Rural Development 2 x Office of the Attorney-General 2 x Foreign Affairs and Foreign Trade 1 x Consultant on International Law 5 x Geneva mission
Cameroon	H.E. Mr Dion Ngute	12	1:11	5:7	1 x Minister Foreign Affairs 1 x Academic from Yaoude University 3 x Foreign Affairs 1 x NHRI 1 x Justice 1 x Prisons 5 x Geneva mission
Mauritius	Hon. Jayarama Valayden, Attorney-General	9	5:4	6:3	1 x Attorney-General 2 x Attorney-General's office 6 x Geneva mission
Nigeria	H.E. Mr Ojo Uma Maduekwe, Minister of Foreign Affairs	26	8:18	2:24	1 x Minister of Foreign Affairs 1 x Minister of Justice 9 x Foreign Affairs 3 x Justice 2 x National Assembly 1 x Attorney-General's Office 1 x MDGs office 1 x Labour 1 x Women's Affairs 1 x Prisons

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
<i>Nigeria cont.</i>					
Bangladesh	H.E. Dr Dipu Moni, Minister for Foreign Affairs	15	5:10	5:10	<ul style="list-style-type: none"> 1 x Police 1 x Office of Secretary to Government 1 x NTA 2 x Geneva mission
					<ul style="list-style-type: none"> 1 x Minister for Foreign Affairs 1 x Attorney-General 4 x Foreign Affairs 1 x Home Affairs 1 x Professor, University of Dhaka 1 x Law, Justice and Parliamentary Affairs 1 x NHRI 5 x Geneva mission
Malaysia	H.E. Tan Sri Rastam Mohd. Isa, Secretary-General, Ministry of Foreign Affairs	32	9:23	7:25	<ul style="list-style-type: none"> 1 x Secretary-General, Ministry of Foreign Affairs 1 x Attorney-General 2 x Women, Family, and Community Development 2 x Home Affairs 2 x Foreign Affairs 2 x Housing and Local Government 2 x Rural and Regional Development 3 x Attorney-General's Chambers 1 x National Security Council 2 x Education 2 x Unity, Culture, Arts and Heritage 2 x Sarawak State Government 1 x Prime Minister's Office

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
<i>Malaysia cont.</i>					
Canada	Mr John SIMS, Deputy Minister, Department of Justice	19	7:12	7:12	<ul style="list-style-type: none"> 1 x Defence 1 x Police 7 x Geneva mission
					<ul style="list-style-type: none"> 1 x Deputy Minister Department of Justice 1 x Deputy Minister of Justice and Deputy Attorney-General 2 x Indian and Northern Affairs 2 x Foreign Affairs 2 x Canadian Heritage 1 x Relations Internationales 1 x Human Resources and Skills Development 1 x Justice 7 x Geneva mission
Vanuatu	Ms Roline Lesines, Labour Department, Vice-Chairperson of the Vanuatu UPR Committee	4	2:2	0:4	<ul style="list-style-type: none"> 1 x Vice-Chairperson of the Vanuatu UPR Committee 1 x State Law Office 1 x Foreign Affairs 1 x Land
Belize	Ms Judith Alpuche, Chief Executive Officer, Ministry of Human Development and Social Transformation	4	3:1	0.2:2	<ul style="list-style-type: none"> 1 x Chief Executive Officer, Ministry of Human Development and Social Transformation 1 x New York mission 1 x Belgian mission 1 x Foreign Affairs and Foreign Trade

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
Malta	Dr Peter Grech, Deputy Attorney-General	10	4:6	3:7	1 x Deputy Attorney-General 1 x Foreign Affairs 1 x Foundation for Social Welfare 1 x Commissioner for Children 1 x Health 2 x Justice and Home Affairs 2 x Geneva mission
New Zealand	Hon. Simon Power, Minister of Justice	12	6:6	5:8	1 x Minister of Justice 1 x Private Secretary to Minister 1 x Deputy Solicitor-General 1 x Justice 1 x Labour 1 x Corrections 1 x Foreign Affairs and Trade 5 x Geneva mission
Brunei Darussalam	H.E. Mr Pehin Dato Lim Jock Seng, Minister of Foreign Affairs and Trade II	16	10:6	2:14	1 x Minister of Foreign Affairs 4 x Foreign Affairs 3 x Attorney-General's Chambers 2 x Home Affairs 1 x Prime Minister's Office 2 x Geneva mission
Cyprus	Ms Leda Koursoumba, Law Commissioner	13	7:6	4:9	1 x Law Commissioner 2 x Foreign Affairs 1 x Justice and Public Order 1 x Education and Culture 1 x Labour and Social Insurance 1 x Interior 1 x Health 4 x Geneva mission

Country	Head of delegation	Total in delegation	Female: male ratio	Geneva: capital ratio	Which ministries?
Dominica	H.E. Mr Crispin S Gregoire, Permanent Representative of Dominica to the UN	1	0:1	0.0:1	1 x Permanent Representative of Dominica to the UN, New York

Annex 3

Statistics of UPR Stakeholder Reports, 2008–2009

Data on stakeholders submitting reports to the UPR:

Country	Total stakeholder reports	International	National	Coalition of international and national NGOs	NHRI
Session 1					
South Africa	18	9	7	1	1
India	37	27	7	2	1
UK	20	12	7	0	1
Session 2					
Zambia	8	7	0	1	0
Sri Lanka	34	27	4	3	0
Tonga	3	2	1	0	n/a
Pakistan	21	19	1	1	n/a
Ghana	9	7	0	1	1
Session 3					
Botswana	4	2	1	1	n/a
Tuvalu	6	3	3	0	n/a
Bahamas, The	2	2	0	0	n/a
Barbados	2	2	0	0	n/a
Session 4					
Cameroon	10	4	2	3	1
Mauritius	6	3	2	0	1
Nigeria	12	9	1	1	1
Bangladesh	18	14	2	2	n/a
Malaysia	12	6	4	1	1
Canada	49	10	36	2	1
Session 5					
Vanuatu	6	4	1	1	n/a
Belize	4	3	0	1	n/a
Malta	4	3	0	1	n/a
New Zealand	17	3	9	4	1
Session 6					
Brunei					
Darussalam	4	4	0	0	n/a
Cyprus	4	2	1	1	n/a
Dominica	3	3	0	0	n/a
Totals	309	184	89	26	10

UPR Calendar, First Cycle

Annex 4

	1st Session (2008)	2nd Session (2008)	3rd Session (2008)	4th Session (2009)	5th Session (2009)	6th Session (2009)	7th Session (2010)	8th Session (2010)	9th Session (2010)	10th Session (2011)	11th Session (2011)	12th Session (2011)
1	Morocco	Gabon	Botswana	Cameroon	Central African Republic	Côte d'Ivoire	Angola	Guinea	Liberia	Mozambique	Seychelles	Swaziland
2	South Africa	Ghana	Burkina Faso	Djibouti	Chad	Democratic Republic of the Congo	Egypt	Guinea-Bissau	Libyan Arab Jamahiriya	Namibia	Sierra Leone	Togo
3	Tunisia	Mali	Burundi	Mauritius	Comoros	Equatorial Guinea	Madagascar	Kenya	Malawi	Niger	Somalia	Uganda
4	Algeria	Zambia	Cape Verde	Nigeria	Congo	Eritrea	The Gambia	Lesotho	Mauritania	Rwanda	Sudan	United Republic of Tanzania
5	Bahrain	Benin	Turkmenistan	Senegal	Vanuatu	Ethiopia	Qatar	Kiribati	Lebanon	Sao Tome and Principe	Palau	Zimbabwe
6	India	Japan	Tuvalu	Bangladesh	Vietnam	Bhutan	Fiji	Kuwait	Maldives	Myanmar	Papua New Guinea	Syrian Arab Republic
7	Indonesia	Pakistan	United Arab Emirates	China	Yemen	Brunei Darussalam	Iran (Islamic Republic of)	Kyrgyzstan	Marshall Islands	Nauru	Samoa	Tajikistan
8	Philippines	Republic of Korea	Uzbekistan	Jordan	Afghanistan	Cambodia	Iraq	Lao People's Democratic Republic	Micronesia (Federated States of)	Nepal	Singapore	Thailand
9	Argentina	Sri Lanka	Colombia	Malaysia	Uruguay	Cyprus	Kazakhstan	Grenada	Mongolia	Oman	Solomon Islands	Timor Leste
10	Ecuador	Tonga	The Bahamas	Saudi Arabia	Belize	Democratic People's Republic of Korea	Bolivia	Guyana	Honduras	Paraguay	St Vincent and the Grenadines	Trinidad and Tobago

	1st Session (2008)	2nd Session (2008)	3rd Session (2008)	4th Session (2009)	5th Session (2009)	6th Session (2009)	7th Session (2010)	8th Session (2010)	9th Session (2010)	10th Session (2011)	11th Session (2011)	12th Session (2011)
11	Brazil	Guatemala	Barbados	Cuba	Chile	Costa Rica	Nicaragua	Haiti	Jamaica	St Kitts and Nevis	Suriname	Venezuela (Bolivarian Republic of)
12	Netherlands	Peru	Israel	Mexico	Malta	Dominica	El Salvador	Spain	Panama	St Lucia	Belgium	Antigua and Barbuda
13	Finland	France	Liechtenstein	Canada	Monaco	Dominican Republic	Italy	Sweden	United States	Australia	Denmark	Iceland
14	United Kingdom	Switzerland	Luxembourg	Germany	New Zealand	Norway	San Marino	Turkey	Andorra	Austria	Greece	Ireland
15	Poland	Romania	Montenegro	Russian Federation	Slovakia	Portugal	Slovenia	Armenia	Bulgaria	Estonia	Hungary	Lithuania
16	Czech Republic	Ukraine	Serbia	Azerbaijan	The Former Yugoslav Republic of Macedonia	Albania	Bosnia and Herzegovina	Belarus	Croatia	Georgia	Latvia	Moldova

Annex 5

List of Participants in the Commonwealth Mid-Term Review of the UPR

Commonwealth Mid-Term Review of the Universal Periodic Review

11–12 March 2010

Marlborough House

London, United Kingdom

Sponsored by the Foreign and Commonwealth Office, UK

STATE REPRESENTATIVES

THE BAHAMAS

H.E. Ambassador Joshua Sears

Director General

Ministry of Foreign Affairs

BRUNEI DARUSSALAM

H.E. Pengiran Dato Maidin Hashim

Brunei Darussalam High Commissioner

Brunei Darussalam High Commission, London

BARBADOS

Joseph Hunte

Foreign Service Officer

Ministry of Foreign Affairs, Foreign Trade and International Business

GHANA

Evelyn Keelson

Senior State Attorney

Ministry of Justice

THE GAMBIA

Anna Dibba

State Counsel

Attorney-General's Chambers and Ministry of Justice

MALAYSIA

Andrew Khoo

Chair, Human Rights Committee

Malaysian Bar Council

MALTA

Nicole Miller
Counsellor
Permanent Mission of Malta to the UN, Geneva

MAURITIUS

Aruna Devi Narain
Assistant Solicitor General
Attorney-General's Office

NIGERIA

H.E. Ambassador Martin I Uhomoibhi
Permanent Secretary, Ministry of Foreign Affairs, Nigeria
(Former President of the UN Human Rights Council)

John Gana
Minister
Permanent Mission of Nigeria to UN, New York

TONGA

Lopeti Senituli
Adviser to the Prime Minister
Office of the Prime Minister

UNITED KINGDOM

Susan Hyland
Head of Human Rights Democracy and Good Governance Group
Foreign and Commonwealth Office

Jenny Pickrell
Head of UN and EU
Human Rights Division, Ministry of Justice

Elsbeth Rainbow
Human Rights Division, Ministry of Justice

NATIONAL HUMAN RIGHTS COMMISSION REPRESENTATIVES

CANADA

David Langtry
Deputy Chief Commissioner
Canadian Human Rights Commission

GHANA

Richard Quayson
Deputy Commissioner
Ghana Commission on Human Rights and Administrative Justice

MALDIVES

Mohamed Zahid
Former Vice-President
Human Rights Commission of the Maldives

MAURITIUS

Sandrine Valere
Principal Assistant Secretary
Prime Minister's Office

SOUTH AFRICA

Advocate Lawrence Mushwana
Chairperson
South African Human Rights Commission

CAMEROON

Dr Banda Chemuta Divine
Chairperson
National Commission on Human Rights and Freedoms

NGO REPRESENTATIVES

BANGLADESH

Sultana Kamal
Executive Director
Ain o Salish Kendra (ASK)

CYPRUS

Anthoula Papadopolou
Steering Committee Member
KISA – Action for equality, support, antiracism

GHANA

Patricia Essel
Programme Manager
Women in Law and Development in Africa (WiLDAF)

MALAYSIA

Andrew Khoo
Chair, Human Rights Committee
Malaysian Bar Council

MAURITIUS

Narghis Bundhun
Chairperson
SAFIRE

NIGERIA

Anne Adidu-Lawal
Programme Officer
BAOBAB for Women's Human Rights

PACIFIC REGION

Sandra Bernklau/Seema Naidu
RRRT Project Manager/Human Rights Adviser
Regional Rights Resource Team

Filipo MaSuRa
Human Rights Expert
Pacific Islands Forum Secretariat

NEW ZEALAND

Peter Hosking
Executive Director
Human Rights Foundation

RESOURCE PERSONS

Roland Chauville
Director
UPR Info

Cynthia Gervais
President, CGervais International Inc
(Former Director of Rights and Democracy, European Office)

Luca Lupoli
Human Rights Officer
Universal Periodic Review Section
Office of the High Commissioner for Human Rights

Iniyen Ilango
Advocacy Programme Consultant
Commonwealth Human Rights Initiative

Annex 6

Commonwealth Secretariat Submission to Intergovernmental Working Group on the Review of the Human Rights Council

About the Commonwealth Secretariat

The Commonwealth is comprised of 54 member states in Africa, Asia, the Caribbean, Europe and the Pacific. We represent over a quarter of the world's countries, and since May 2010 our countries have made up one quarter of the membership of the Human Rights Council.

Since 2008, one of the biggest programmes of the work of the Secretariat's Human Rights Unit has been on Universal Periodic Review (UPR), engaging with almost all of our member states through UPR observations and seminars. A Commonwealth Mid-Term Review of UPR was held in March 2010 which brought together participants from government, NHRI and NGO representatives from 18 of the 27 Commonwealth countries who had by that point undergone UPR. We contribute to this important review of UPR on the basis of this experience.

The Commonwealth is pleased to make the HRC aware of the view of member states that the mechanism is seen as one of the most innovative and successful of the Human Rights Council. States have shown commitment to UPR and have approached it in a spirit of goodwill, seeing the Review as a means to strengthen in-country developments on human rights. It has been seen as both exacting and an opportunity to share good experiences. It has been welcomed, as has the possibility to progress conversations on multi- and bi-lateral co-operation of implementation.

The Commonwealth Secretariat offers the following points for consideration:

Objective of review

The mechanism has been perceived in some quarters as an 'examination', which must be passed. HRC Resolution 5/1 sets out the objectives of UPR as including 'the improvements of the human rights situation on the ground'. Greater profiling of this objective might serve to deepen the nature of state engagement with the process.

Timelines

One of the most significant successes of the UPR is that all states scheduled to do so

have attended Geneva for their Interactive Dialogue. A momentum has built in the first cycle that might be endangered by any lapse in the process, for example a year's break. The Commonwealth Secretariat considers an immediate move to the second cycle to be desirable.

Domestic NGO involvement

Our work shows that national civil society in various parts of the Commonwealth is not aware of UPR and the potential therein to promote national human rights aims. This is evidenced by the absence or small number of national stakeholder reports from several Commonwealth countries. The Commonwealth Secretariat has raised such awareness and would be pleased to work with the HRC and OHCHR to explore ways in which such initiatives might be enhanced.

Recommendations

Strength of recommendations

The formal commitment of states to international human rights standards, for example through ratifications, provides a set of legal obligations that might be made explicit when they form the basis of recommendations.

Constructive recommendations

It is noted that some individual recommendations can present challenges for either being too vague or cover a too wide range of issues. Individual recommendations that refer to too many themes at once, or are of a very general nature are not easy to understand nor easy to use by government actors and civil society representatives during UPR follow-up. We encourage recommendations to be constructive, specific and measurable.

Clustering of recommendations

Many states have received and accepted a large number of recommendations. It has been suggested that they might be clustered by theme before the adoption of the report. The Commonwealth Secretariat lends its support to this proposal, whether done with the assistance of the Troika or the OHCHR or both. Any editorial changes would need to be agreed by the receiving and the recommending states.

Response to recommendations

The Commonwealth Secretariat would like to encourage States to make use of the 'Addendum 1' document to record definitive responses to recommendations. In this way responses are clearly articulate and provide guidance for UPR follow-up.

In addition, the Commonwealth Secretariat highlights HRC Resolution 5/1 which provides that "Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations... will be noted".

Implementation of recommendations

At the advanced stage of the first UPR cycle attention is turning to the implementation phase. Some states have chosen to report back to the HRC on progress. This seems to be a helpful way both to encourage scheduling of a state's follow-up work as well as allowing the HRC to have a sense of in-country progress on UPR. Such practices could be further encouraged by the HRC.

Involvement of small states

The Commonwealth membership includes 32 small states; hence we have a particular interest in their challenges and needs. Small missions and states with no mission in Geneva struggle to engage with various stages of the UPR process. Based on discussion with our small states, the Commonwealth Secretariat encourages the HRC review to consider ways in which to enhance opportunities for small states' engagement with the UPR. This could be done, for example, by allowing states and stakeholders to make oral interventions via video submissions or video link.

The Commonwealth intends to open a Small States Office in Geneva in 2011. A human rights programme there will enhance support for small Commonwealth States to engage in human rights processes, including UPR.

It is unlikely that this stage of the HRC review will receive many views from small states without missions in Geneva, although more may participate when discussion moves to the General Assembly in New York. The Commonwealth considers there to be a need for further exploration of the ways in which small states' engagement can be facilitated. Again, the Commonwealth Secretariat is ready to participate in any such future discussions.

Speakers' list

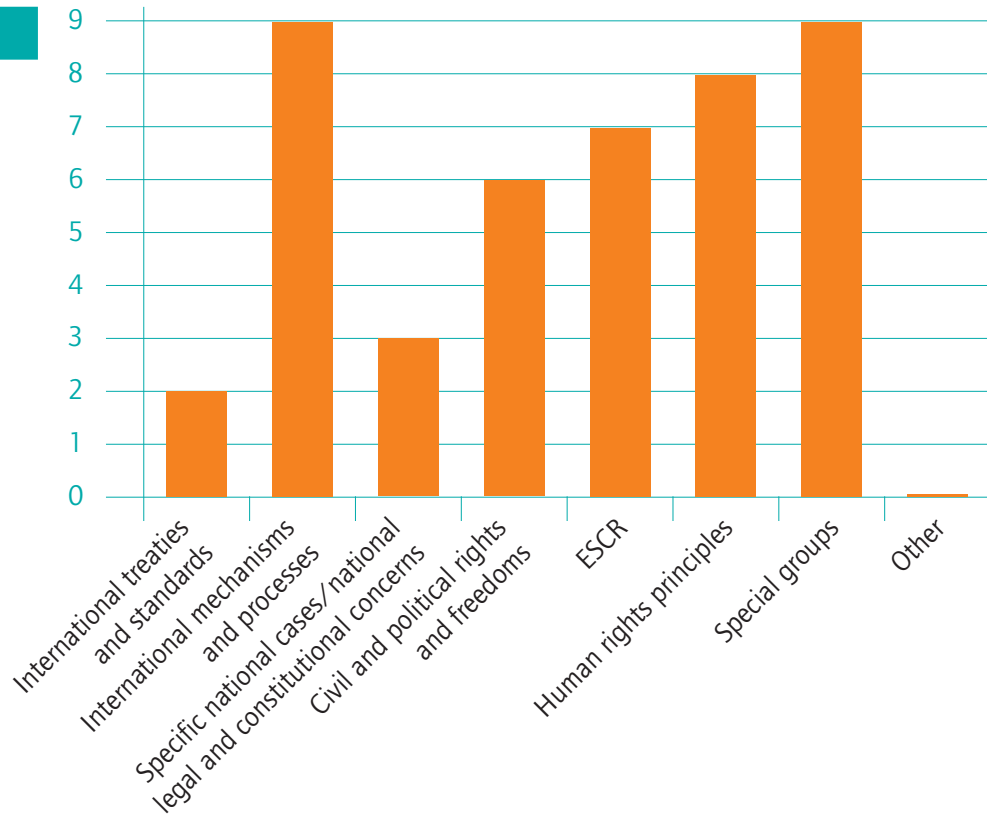
The Commonwealth Secretariat is aware that the challenges relating to the speakers' list is one of the most contentious in relation to the HRC review. We do not wish to add our voice to the many on this issue, apart from to say this challenge deserves attention to ensure it does not continue to detract from the potential the UPR holds to improve the human rights situation on the ground.

Annex 7

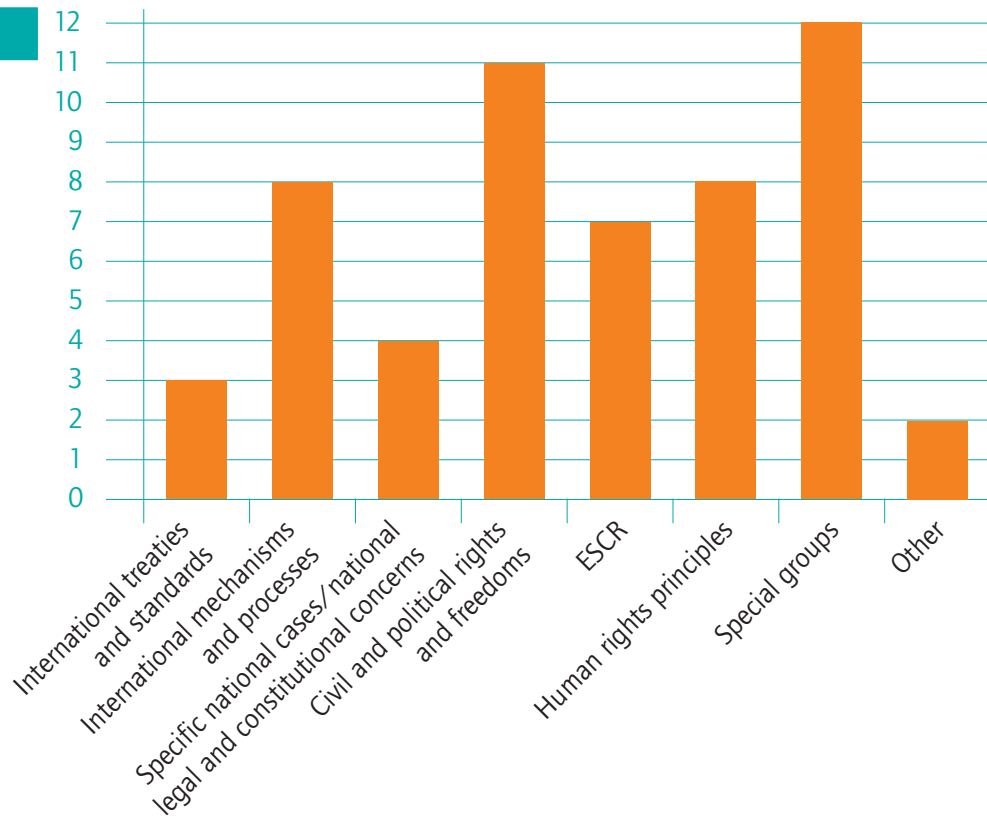
Graphs on Commonwealth Data

Themes

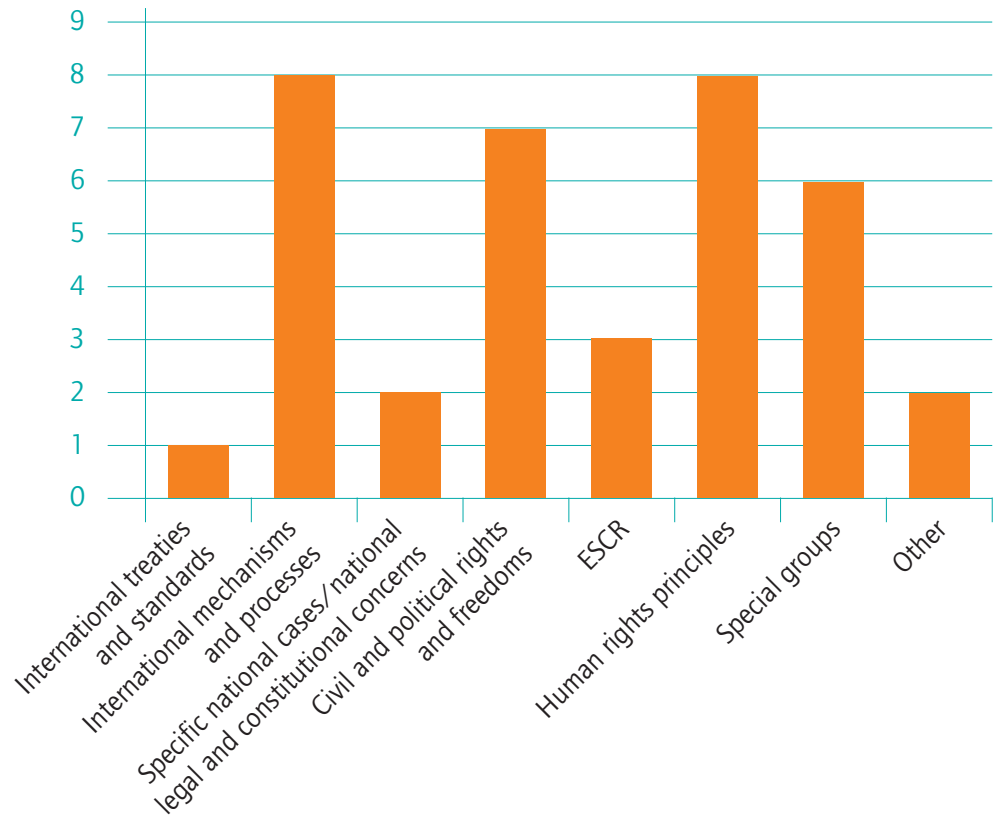
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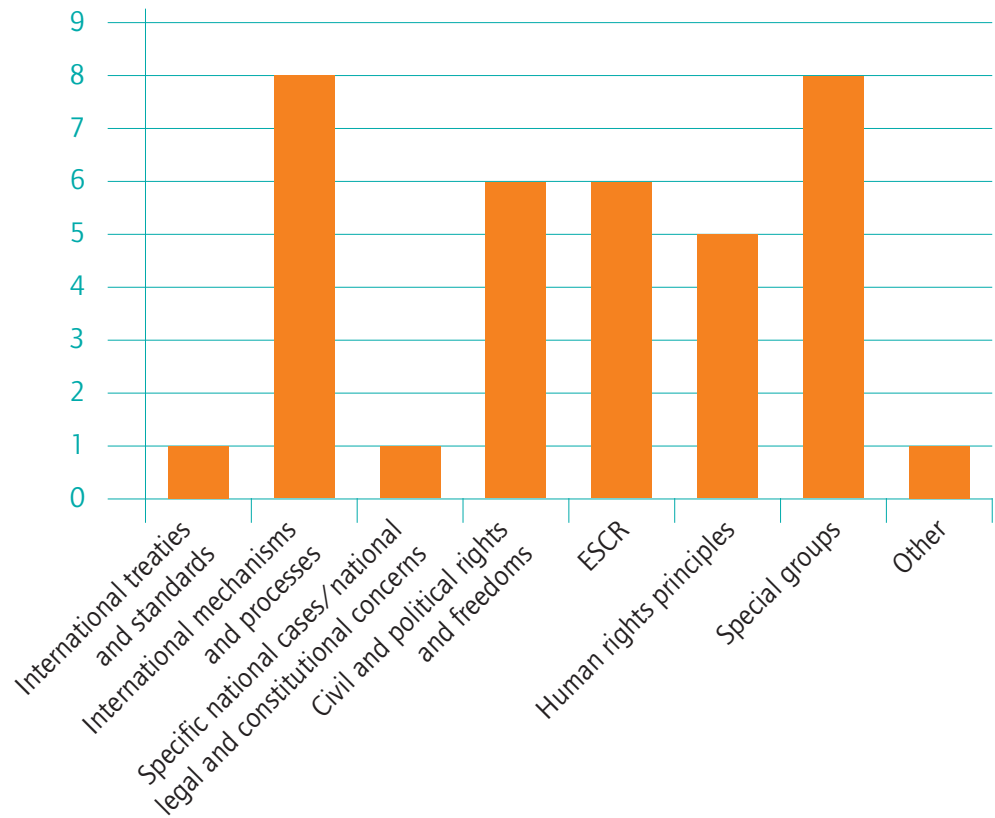
Bangladesh



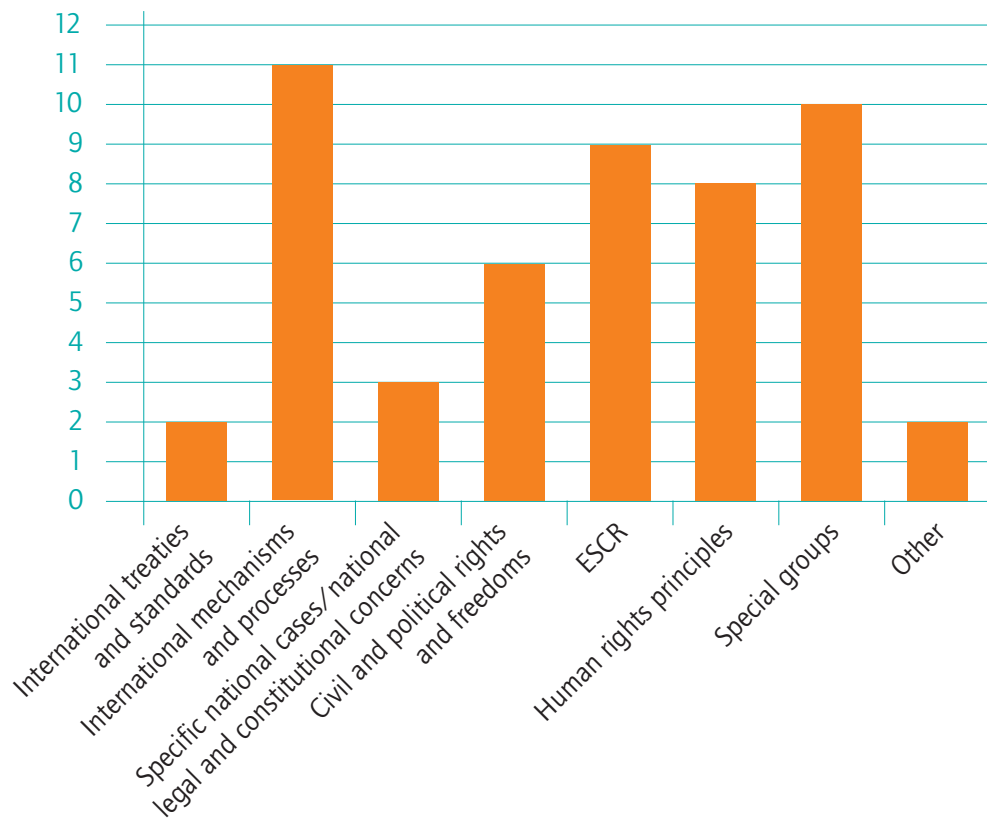
Barbados



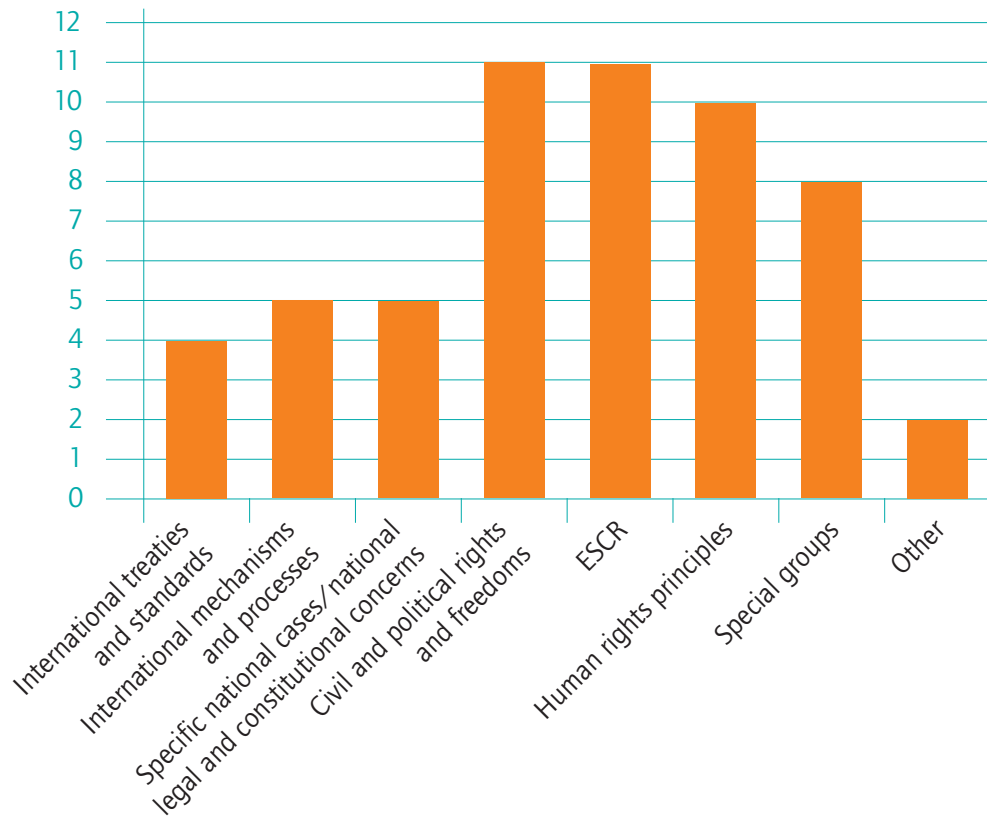
Belize



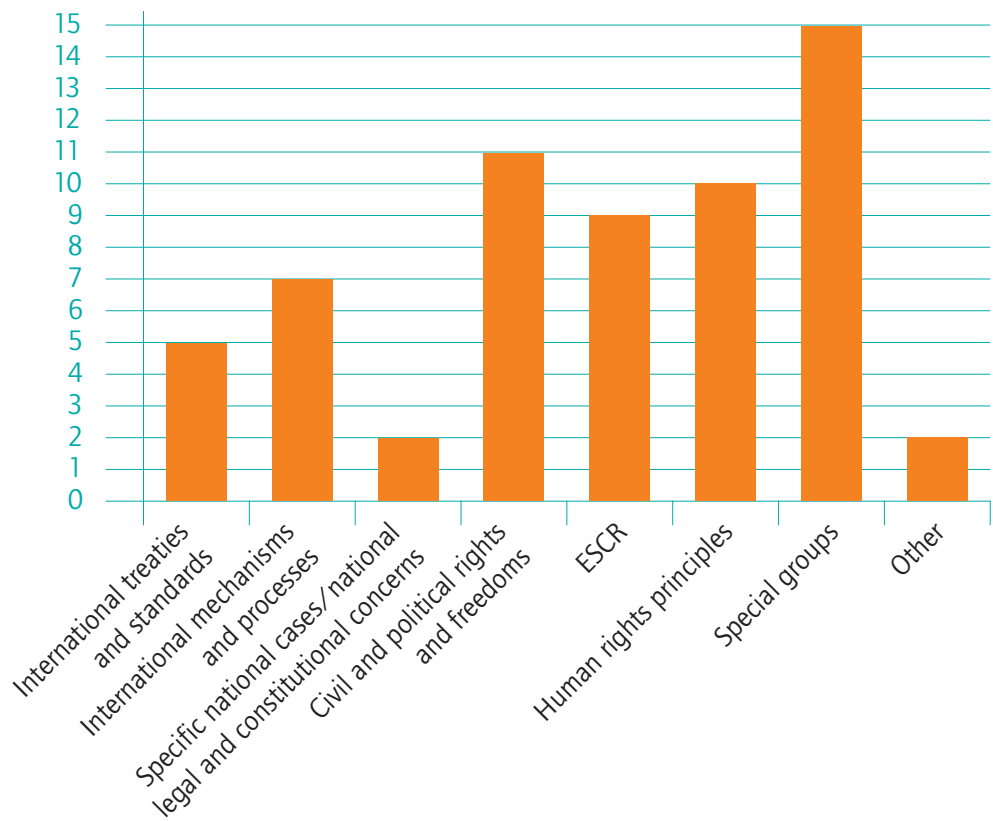
Botswana



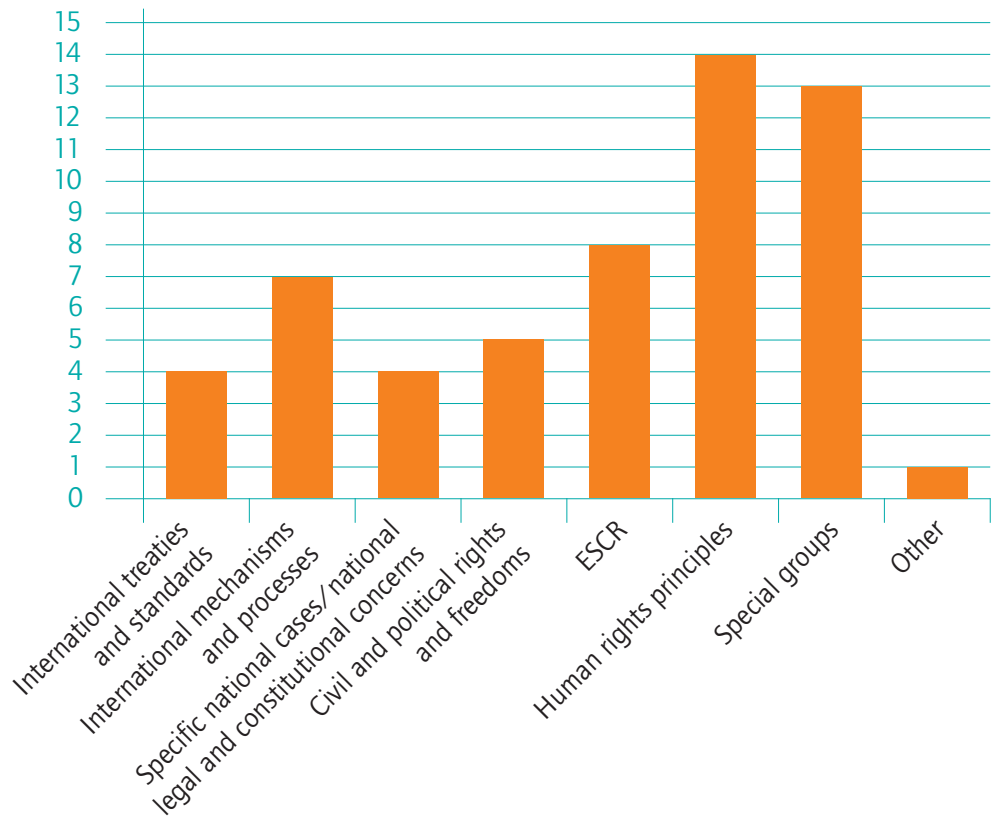
Brunei Darussalam



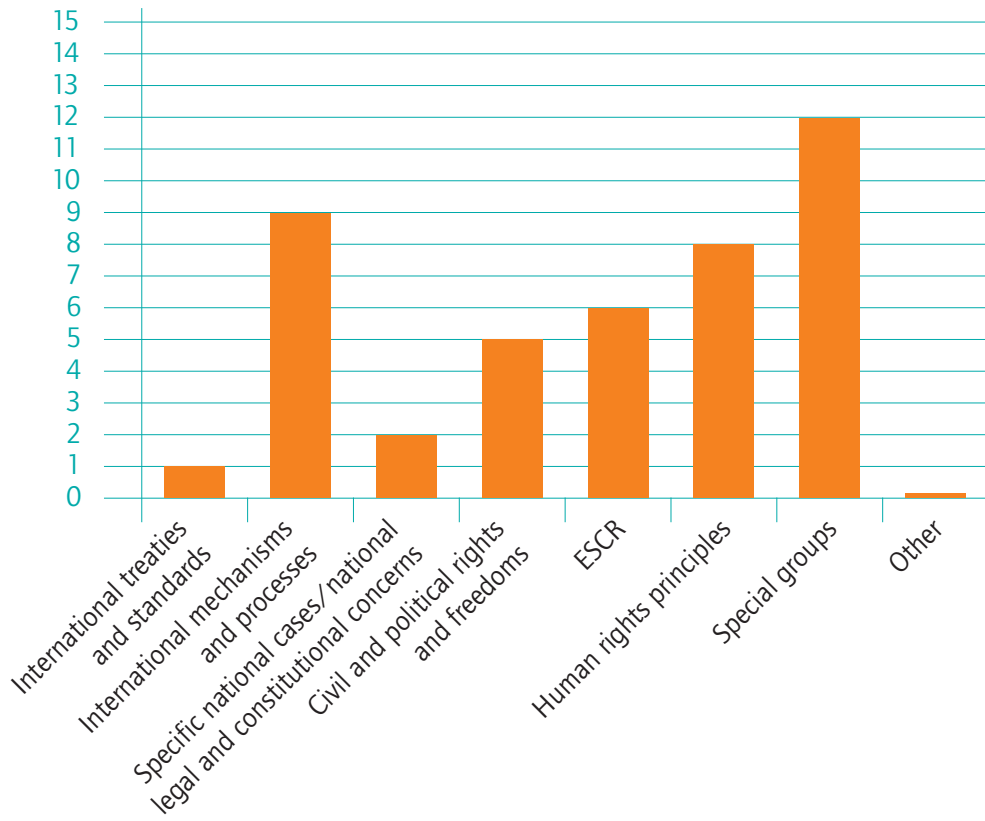
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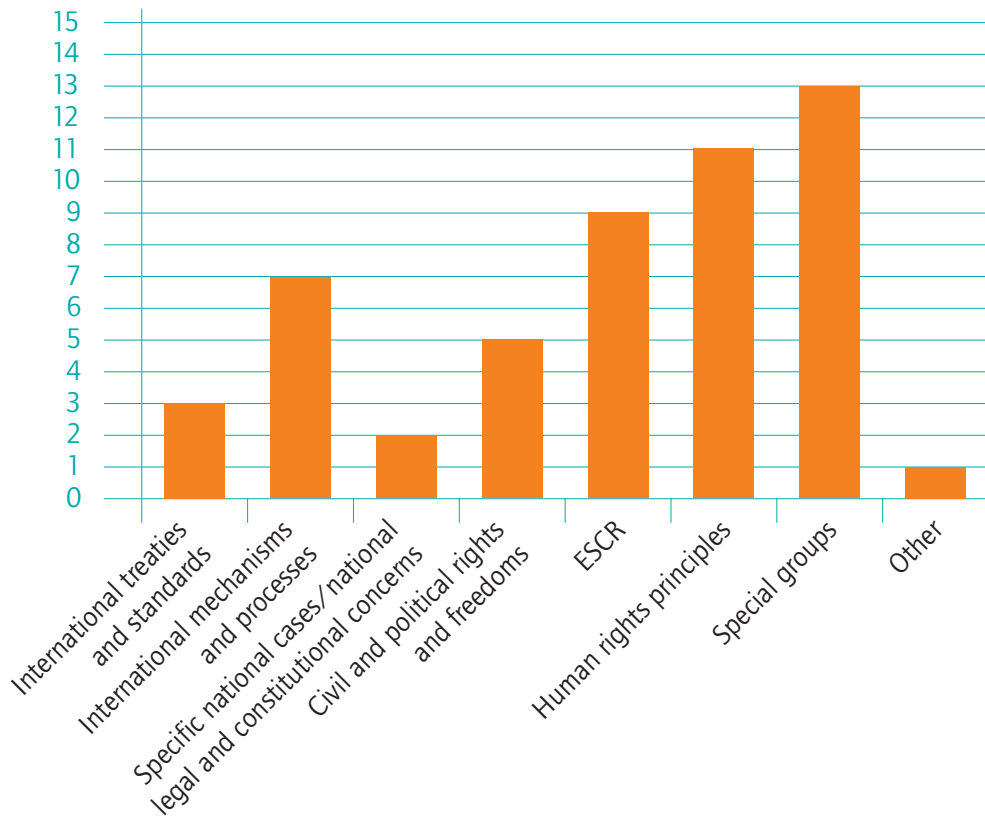
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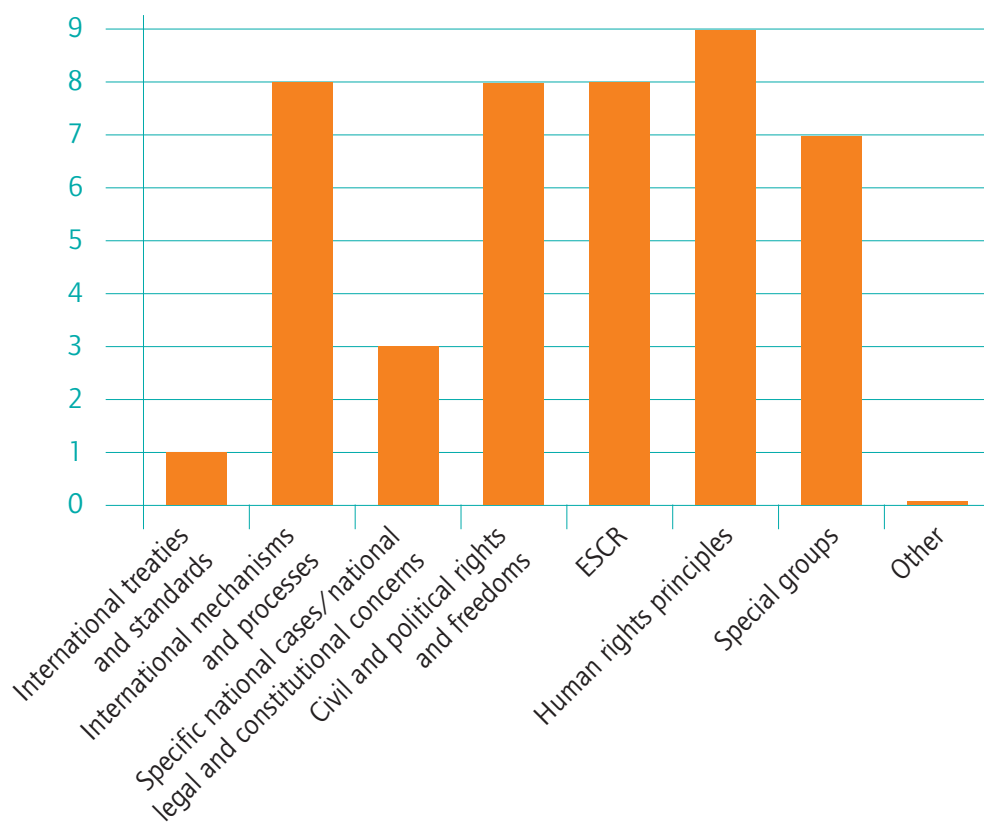
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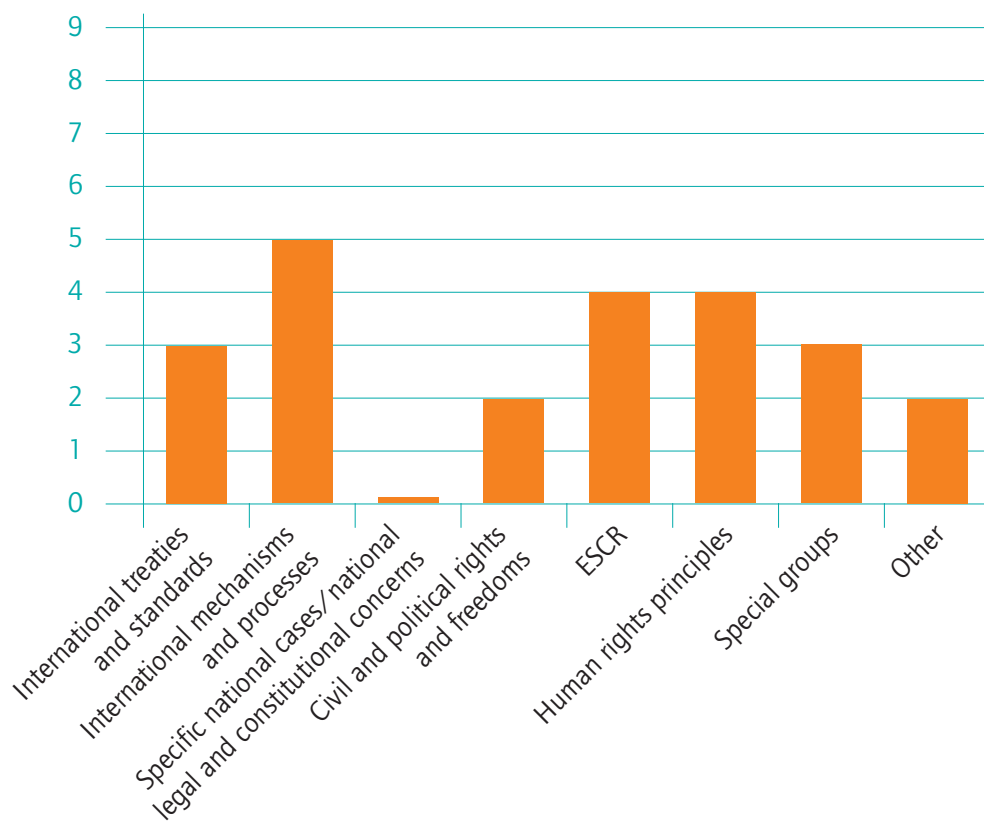
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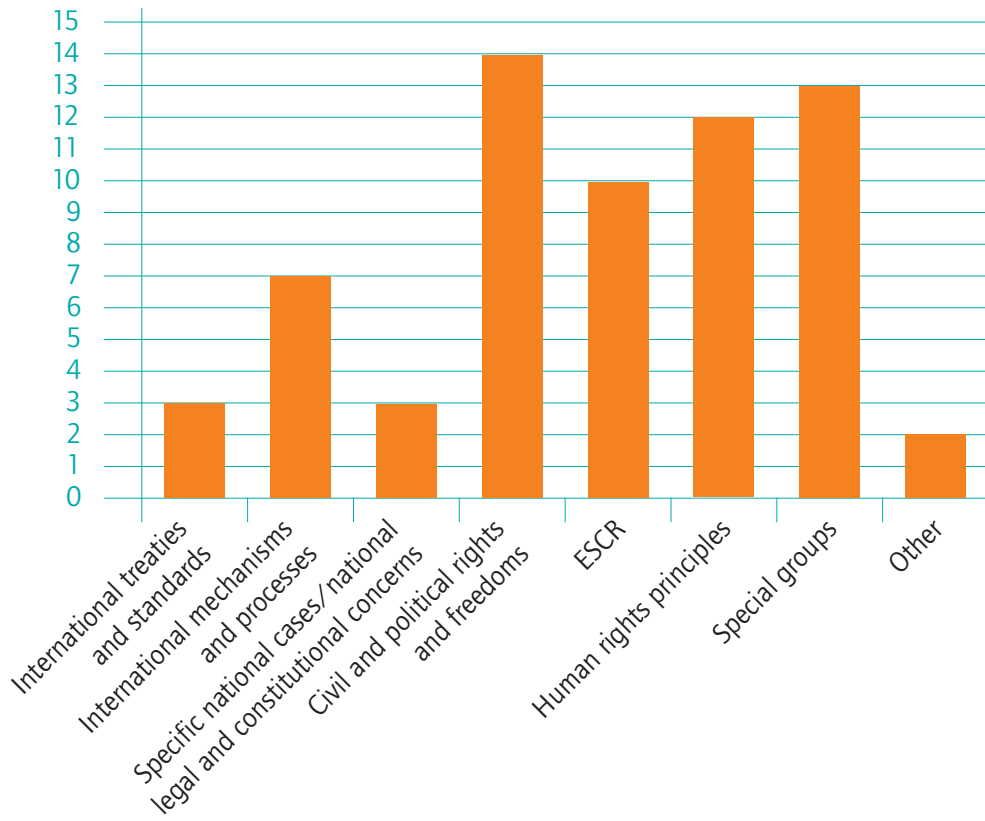
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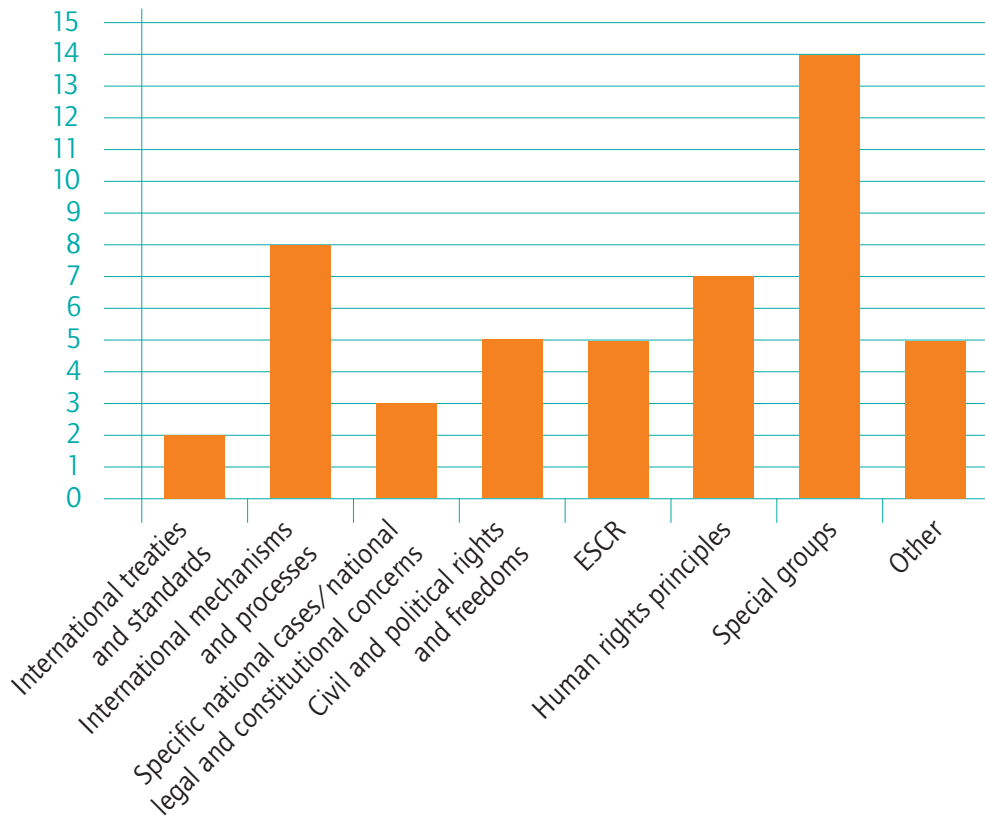
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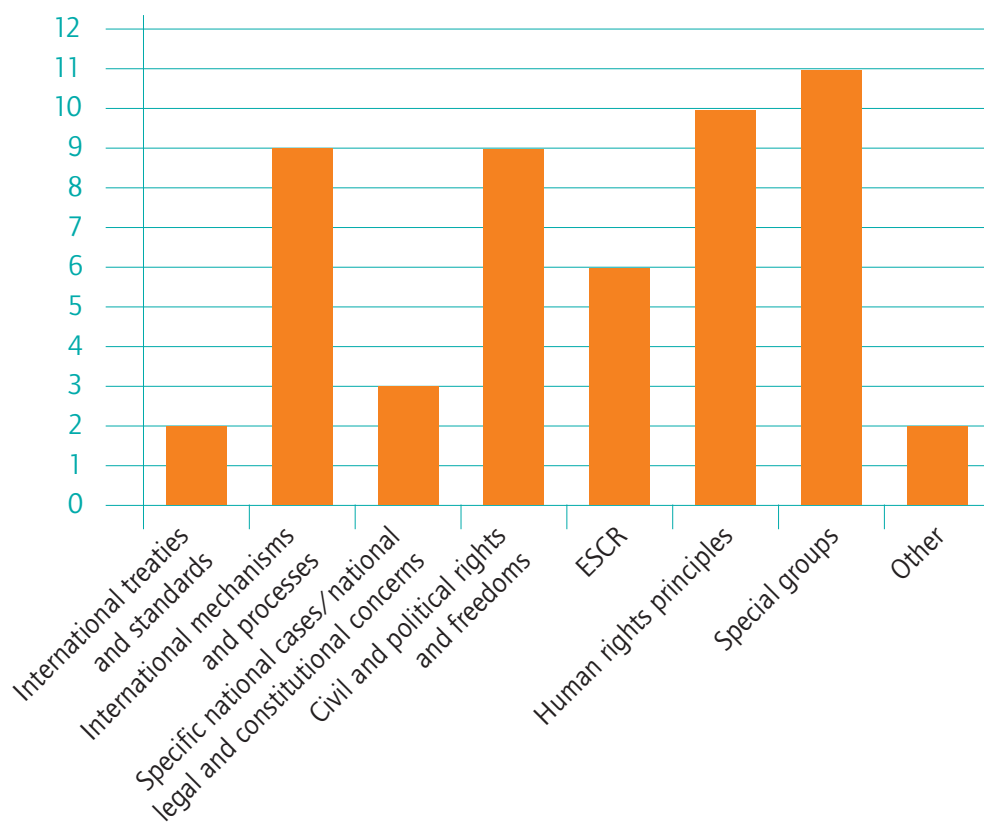
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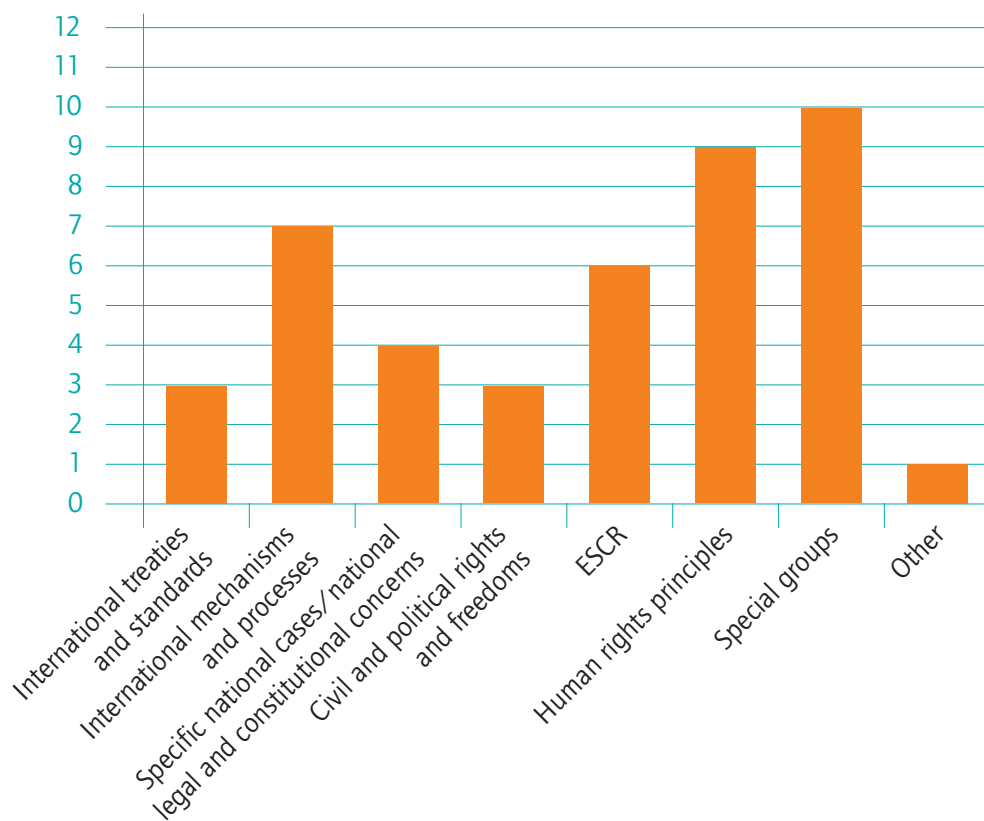
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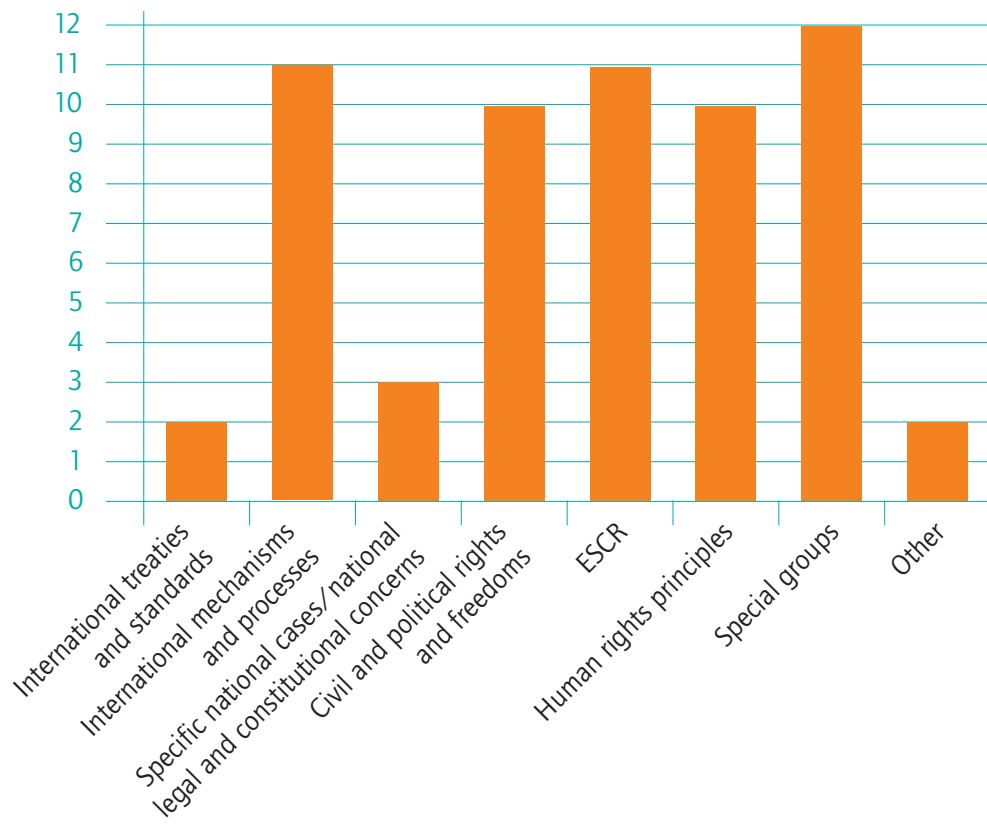
Mauritius



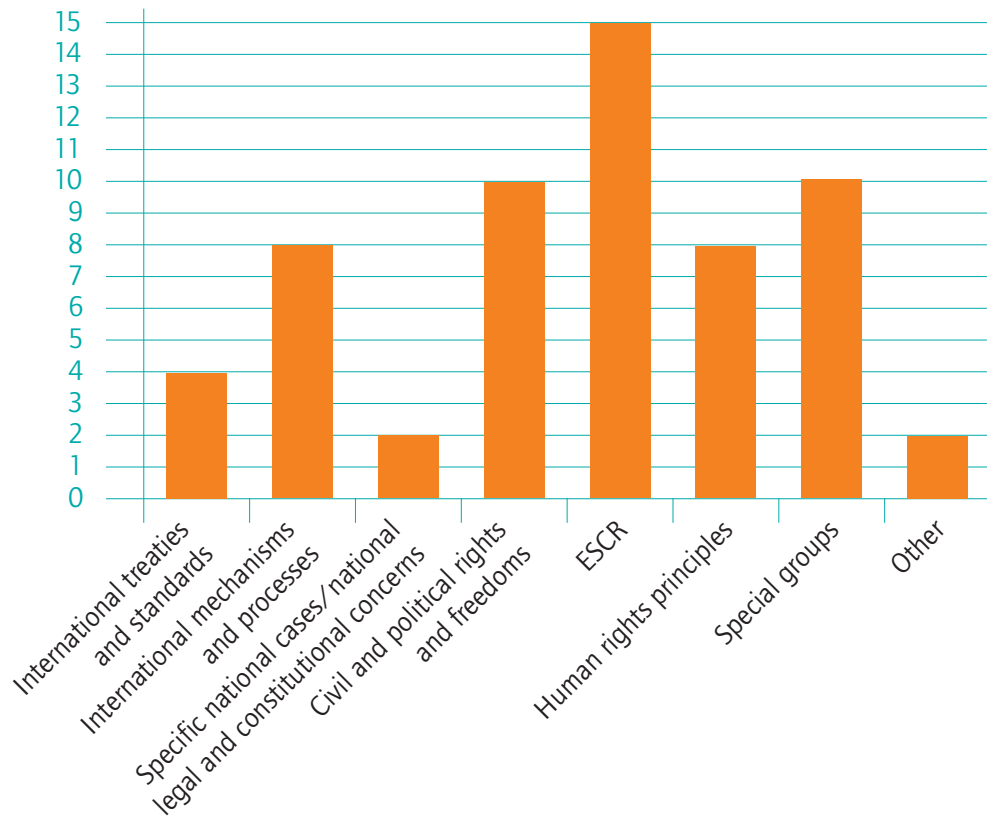
New Zealand



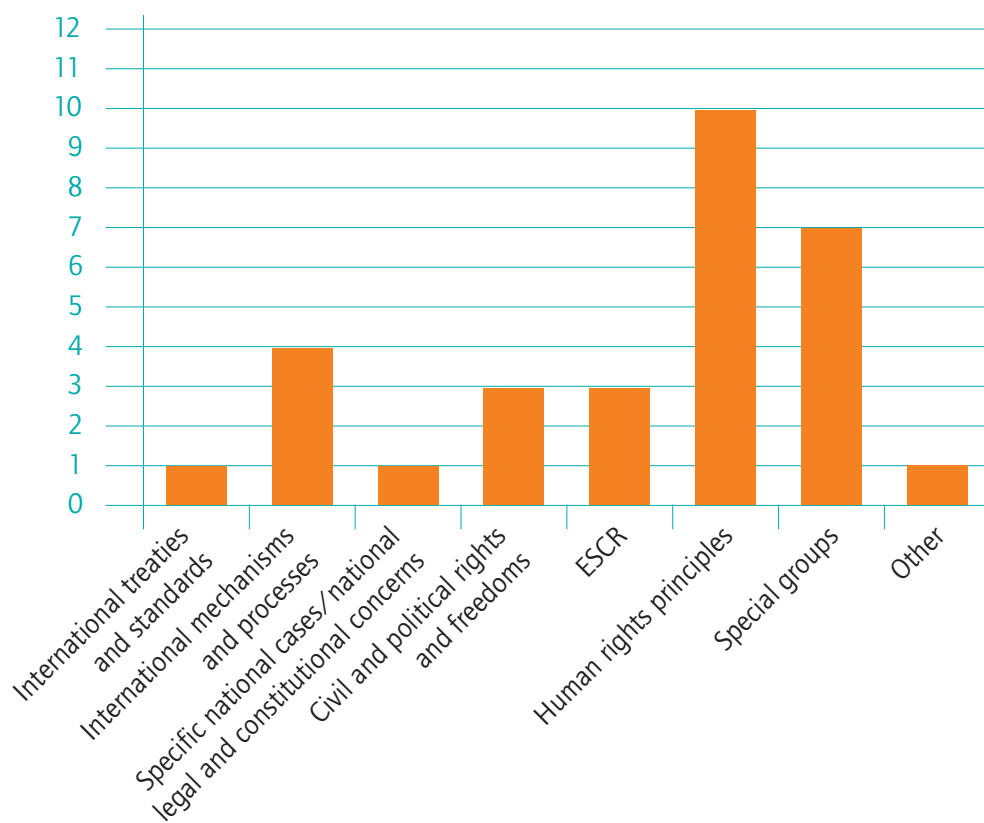
Nigeria



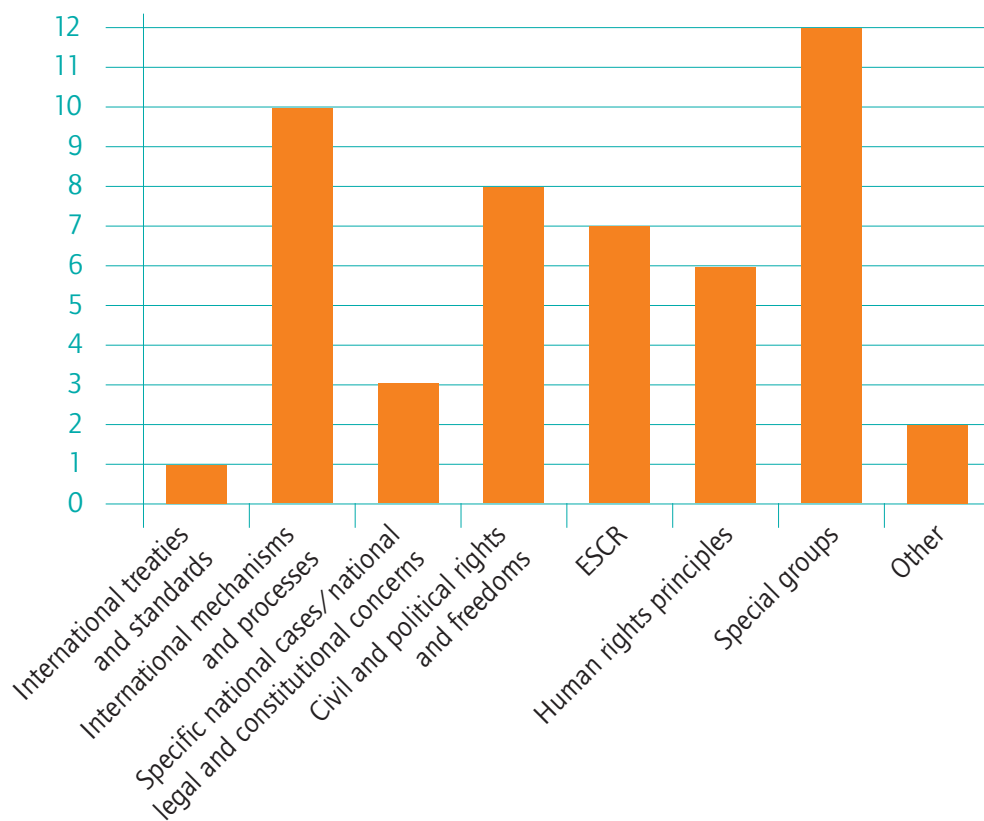
Pakistan



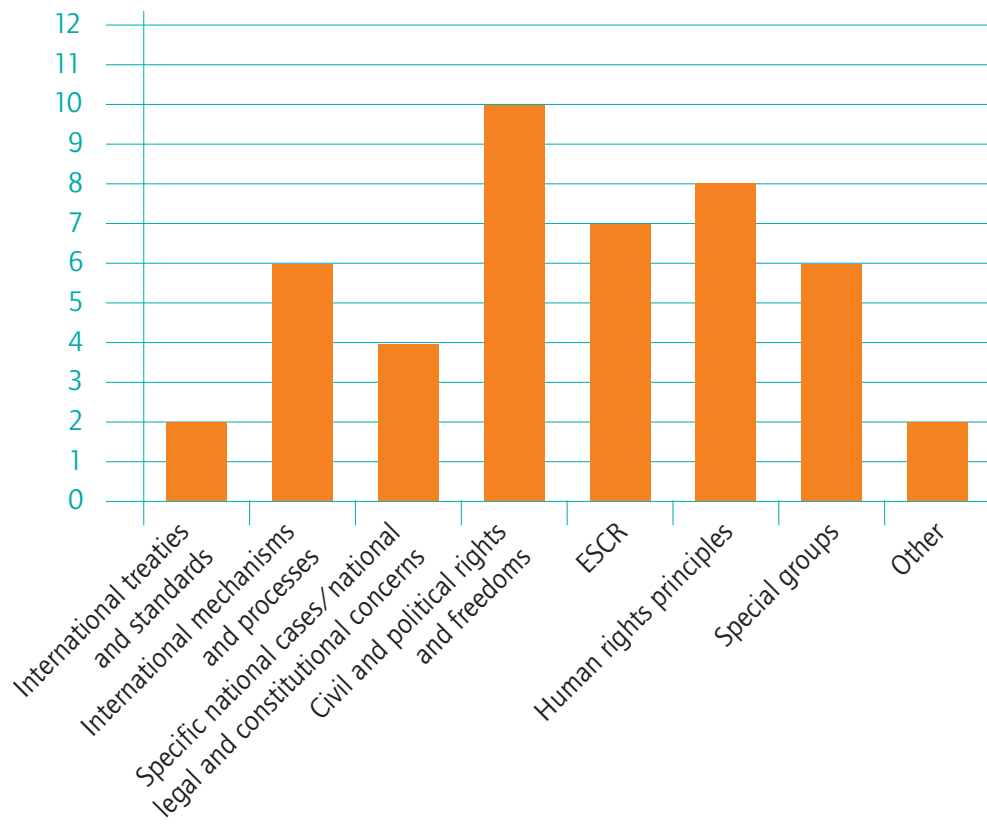
South Africa



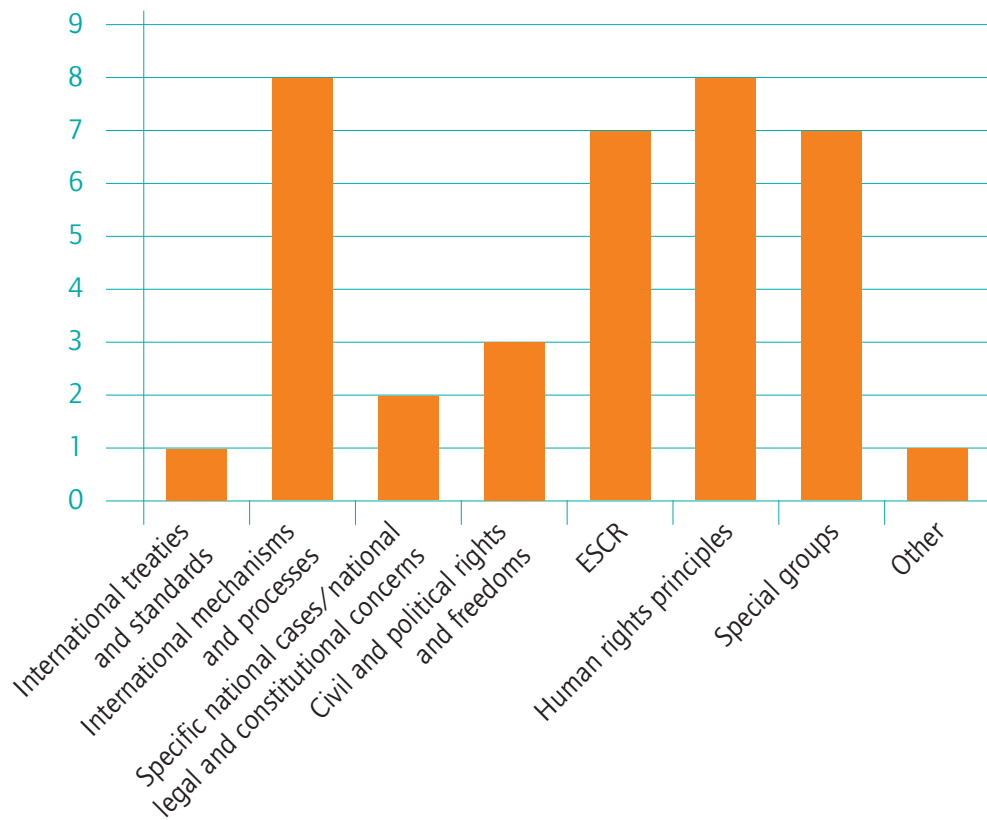
Sri Lanka



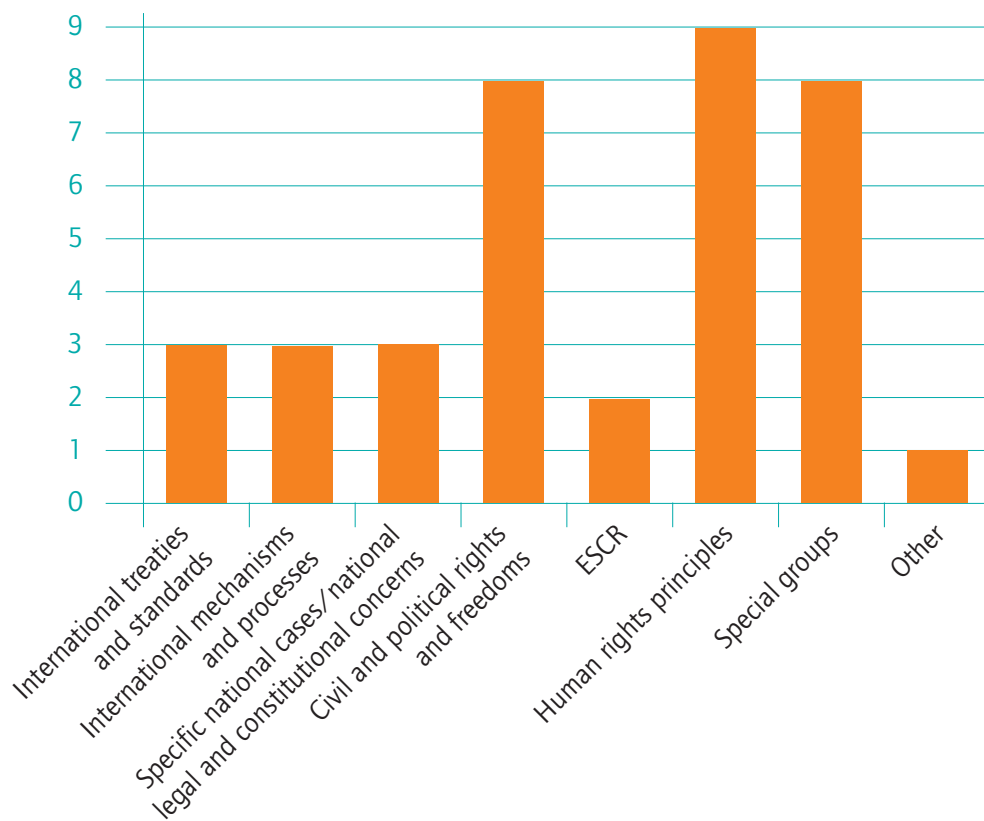
Tonga



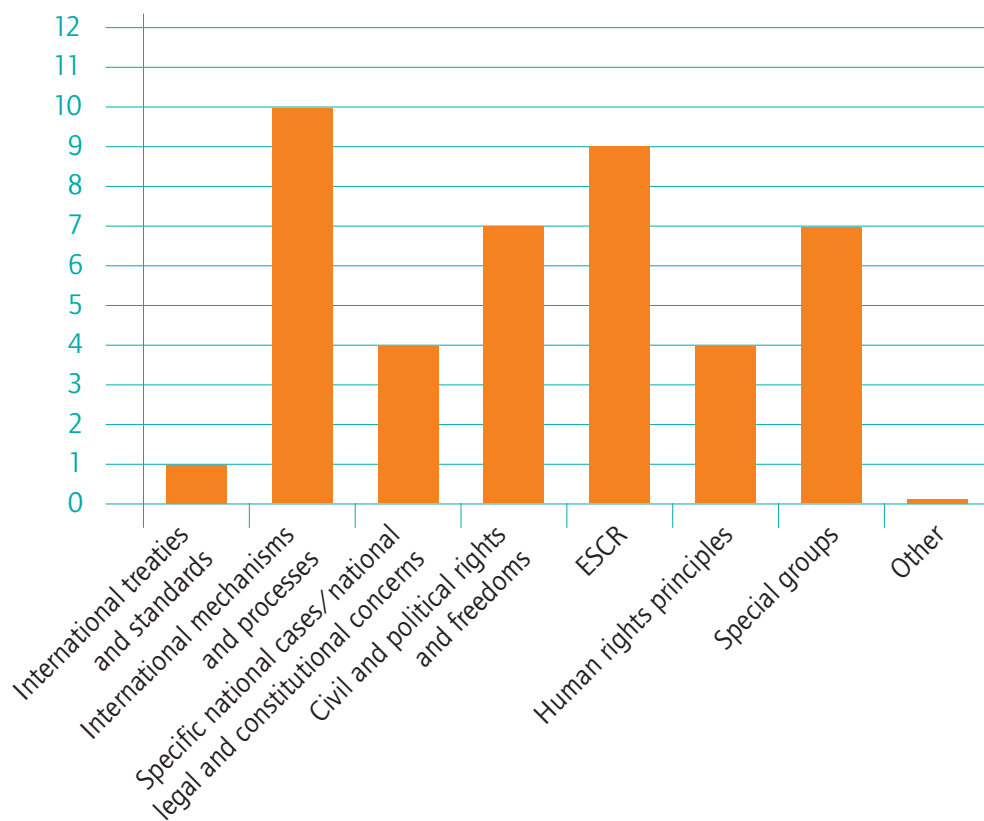
Tuvalu



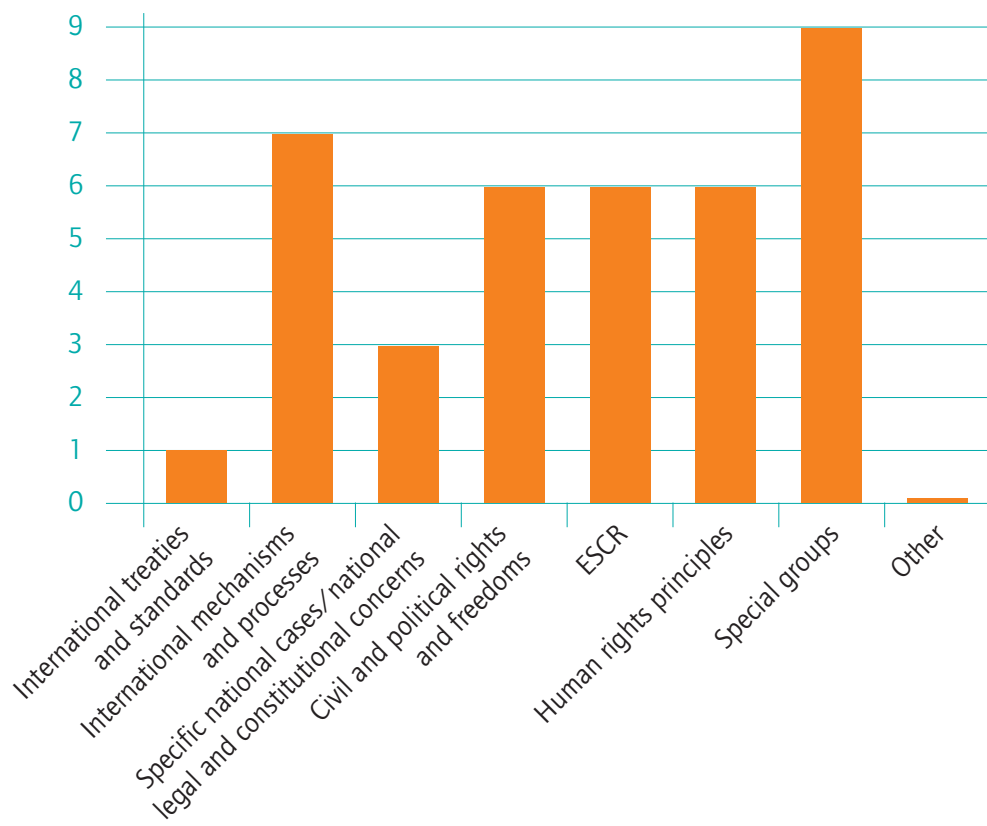
United Kingdom



Vanuatu

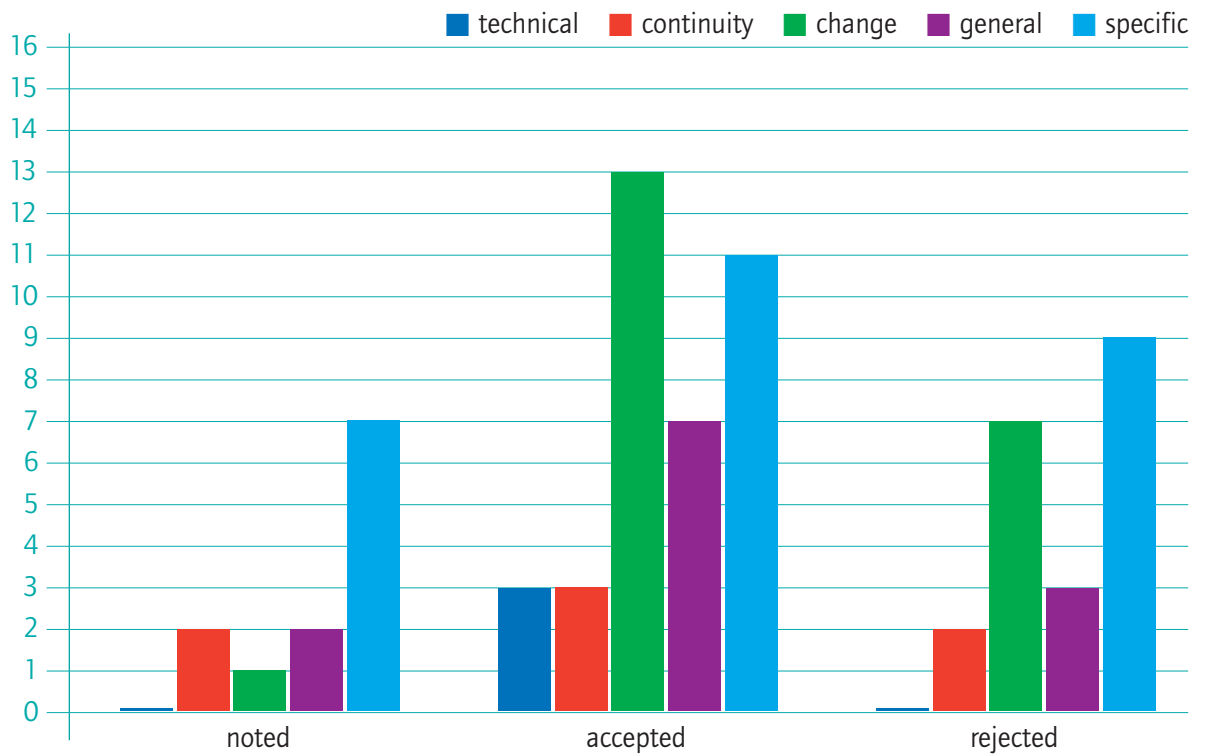


Zambia

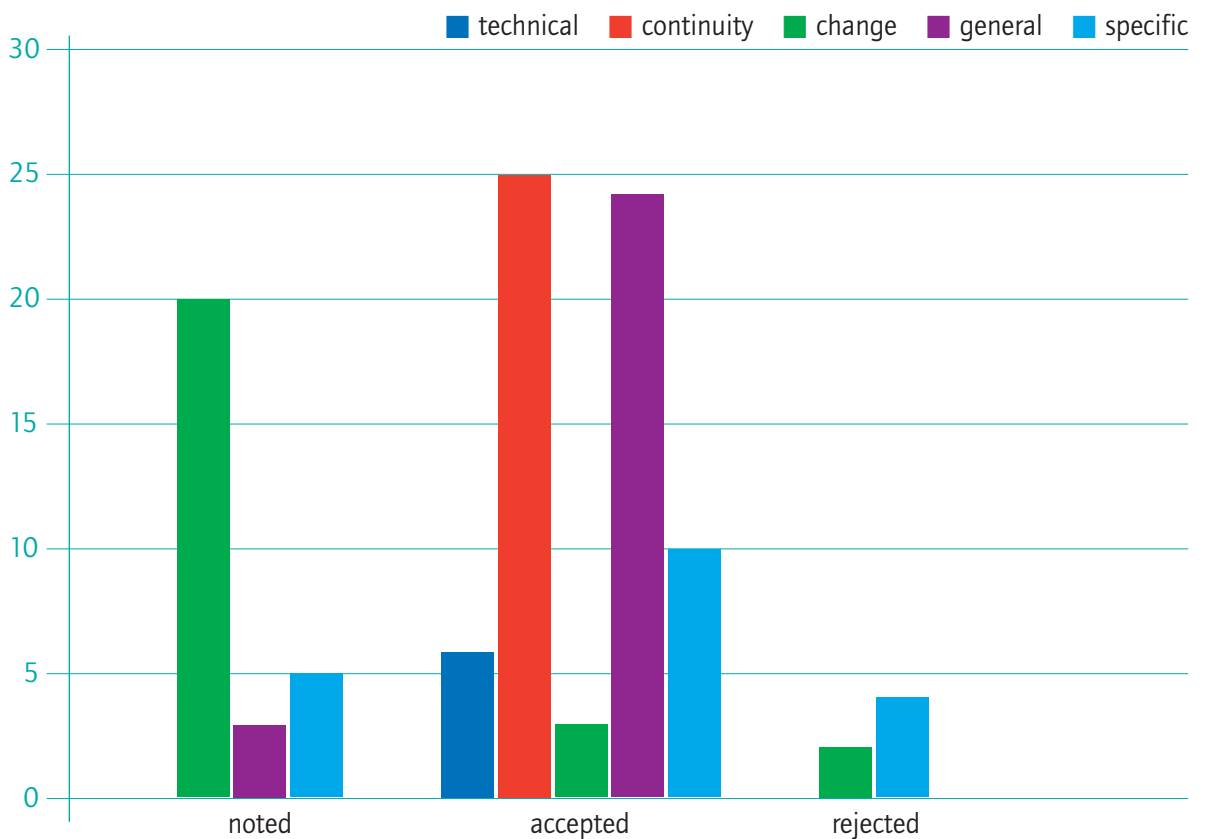


Responses to recommendations

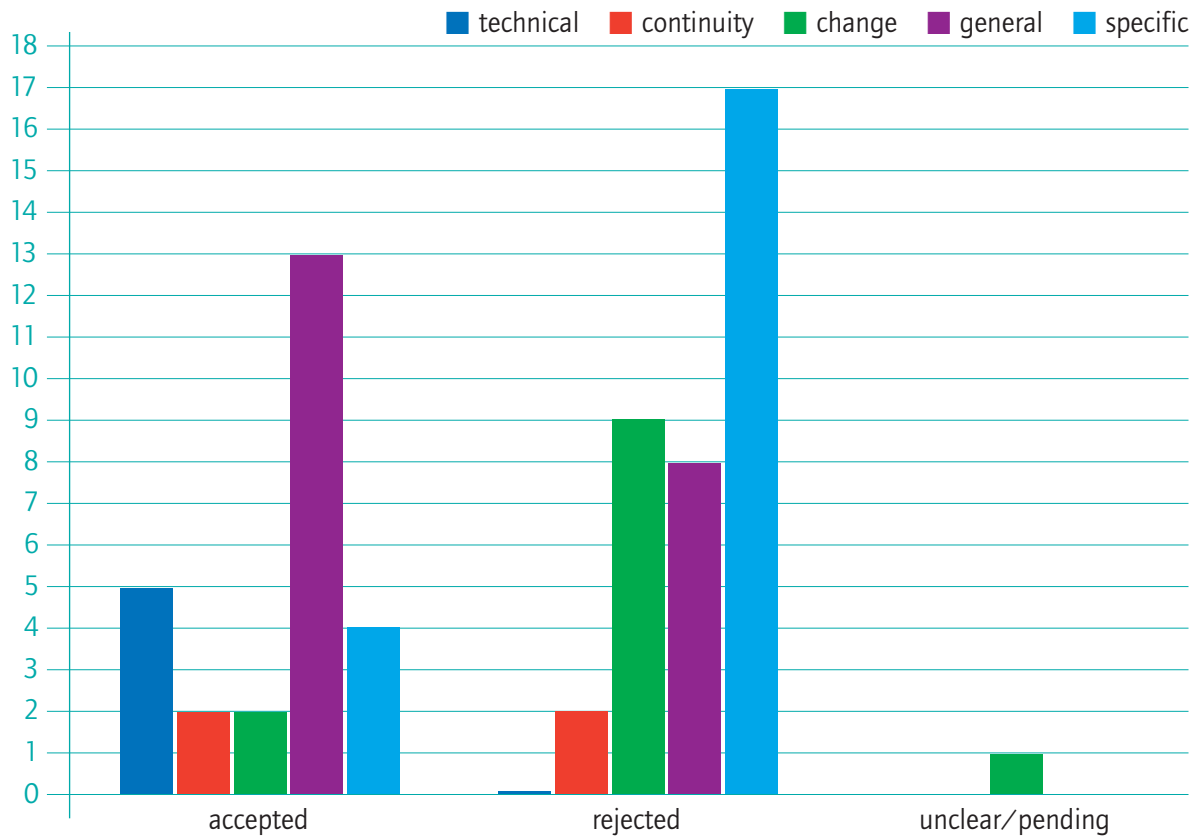
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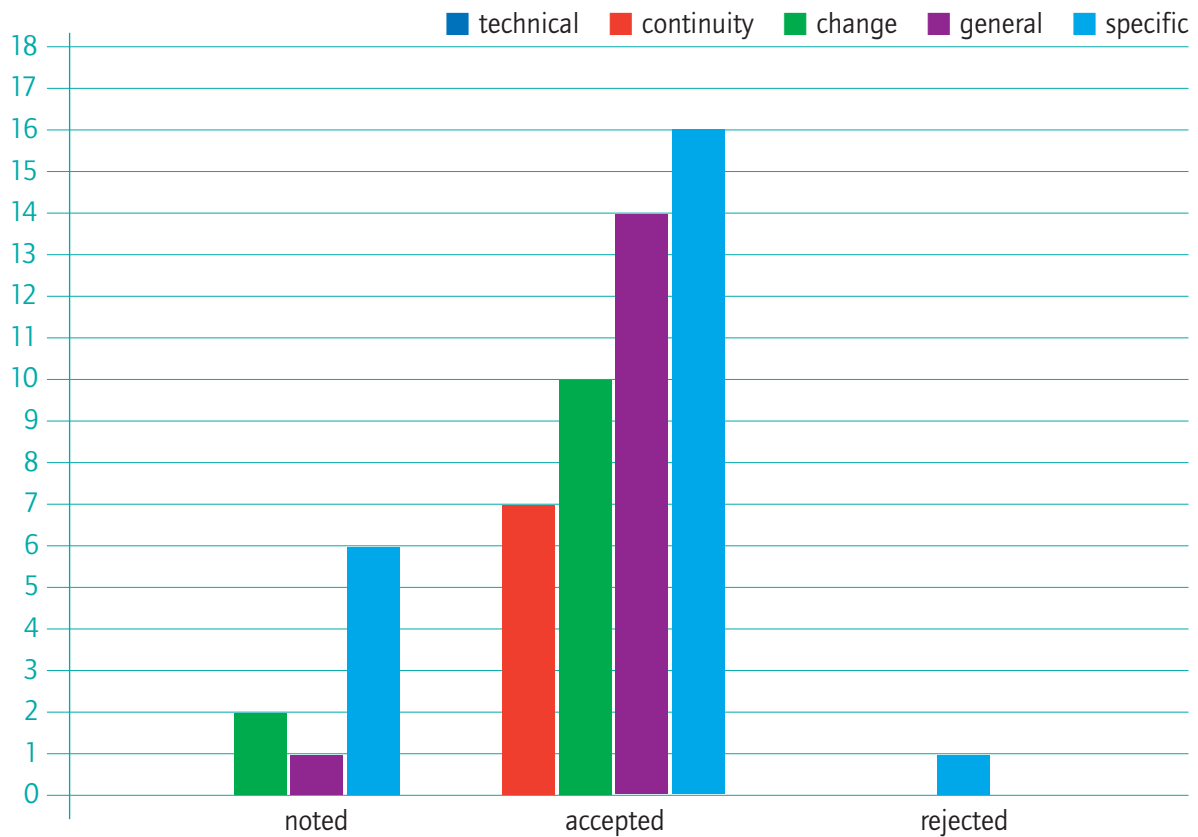
Bangladesh



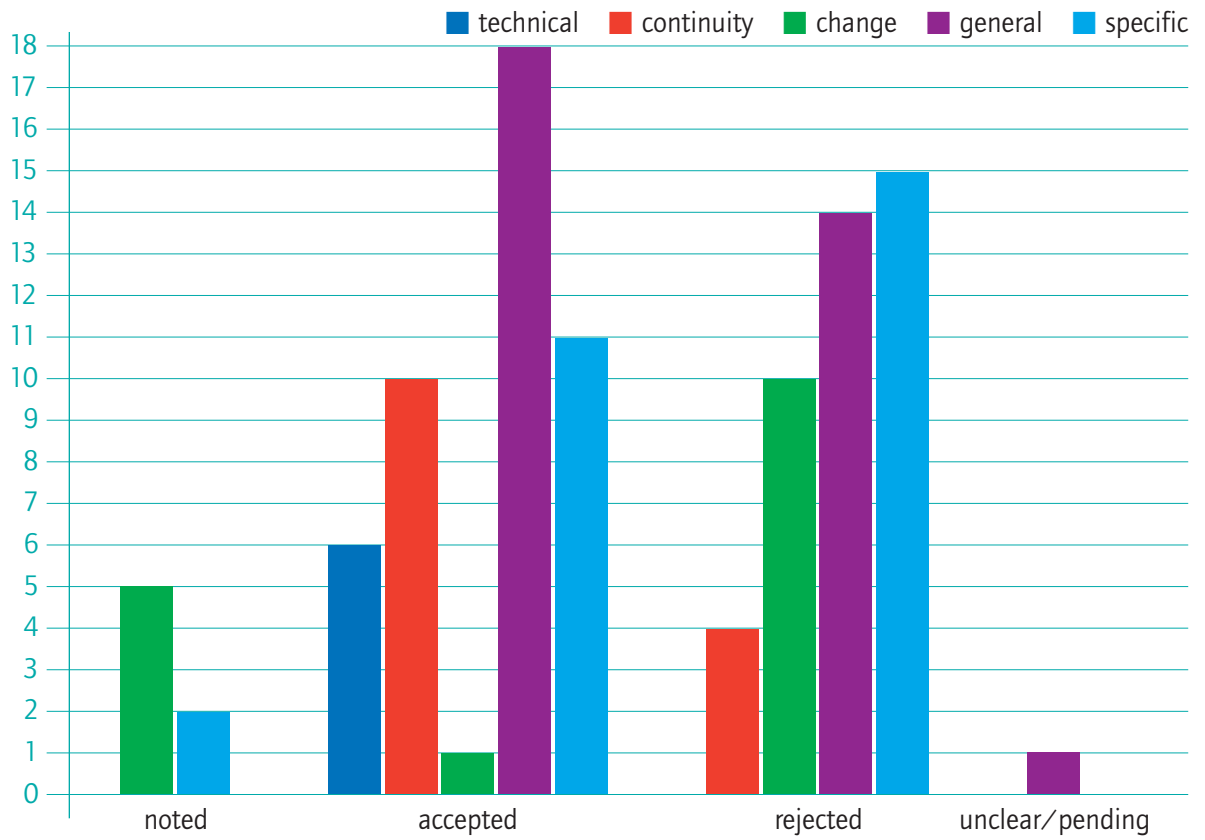
Barbados



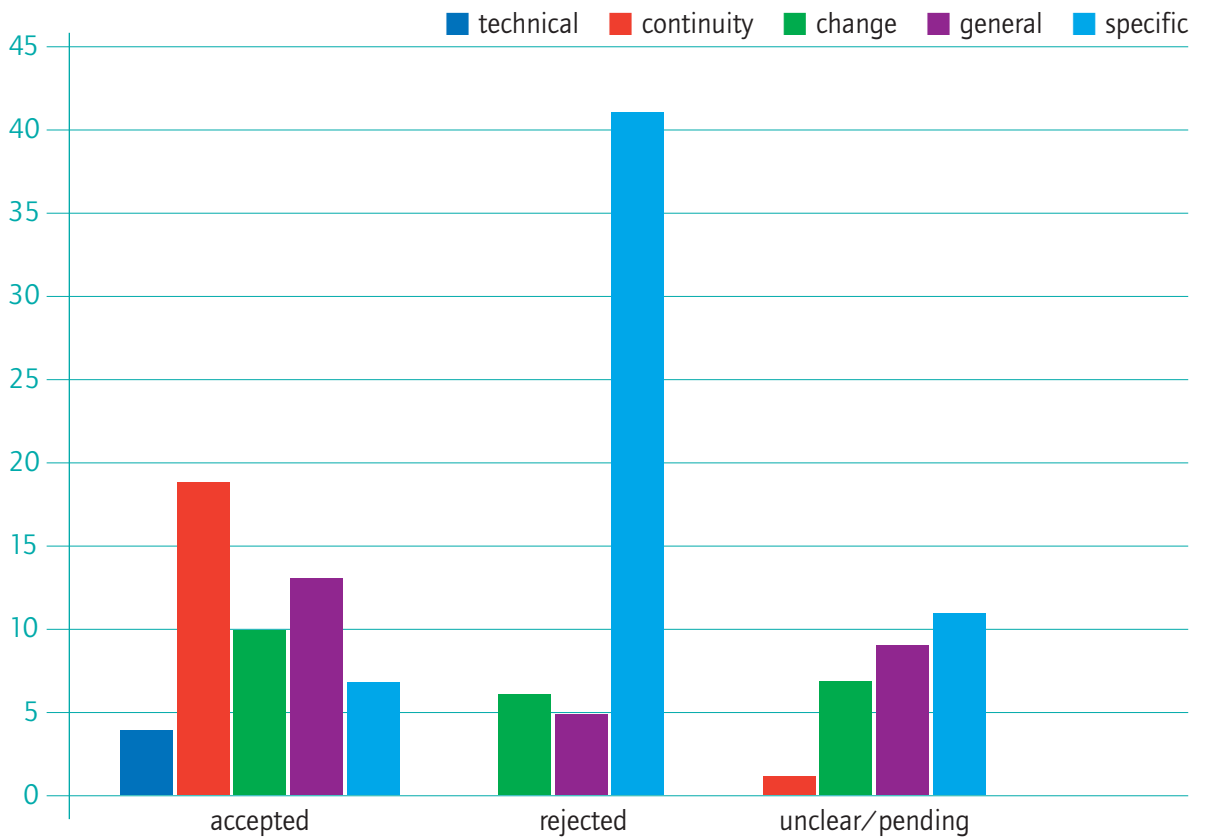
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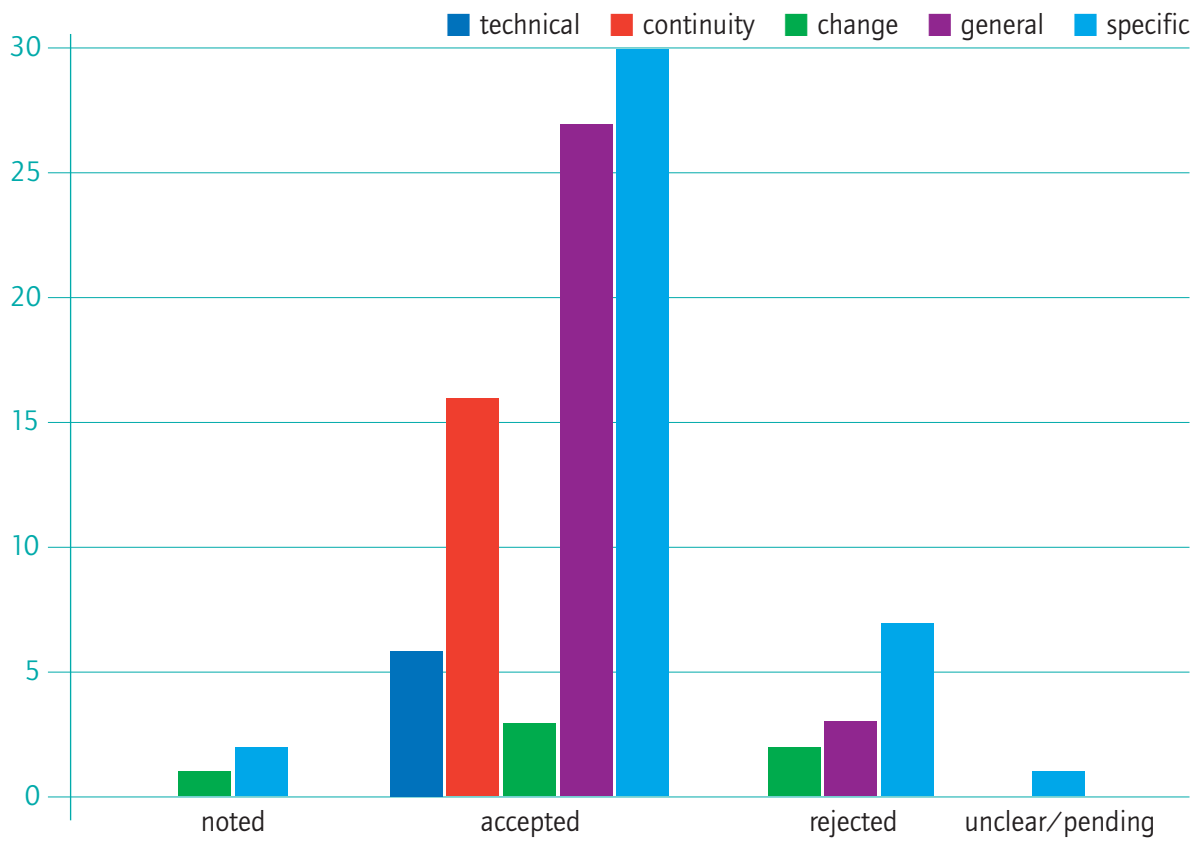
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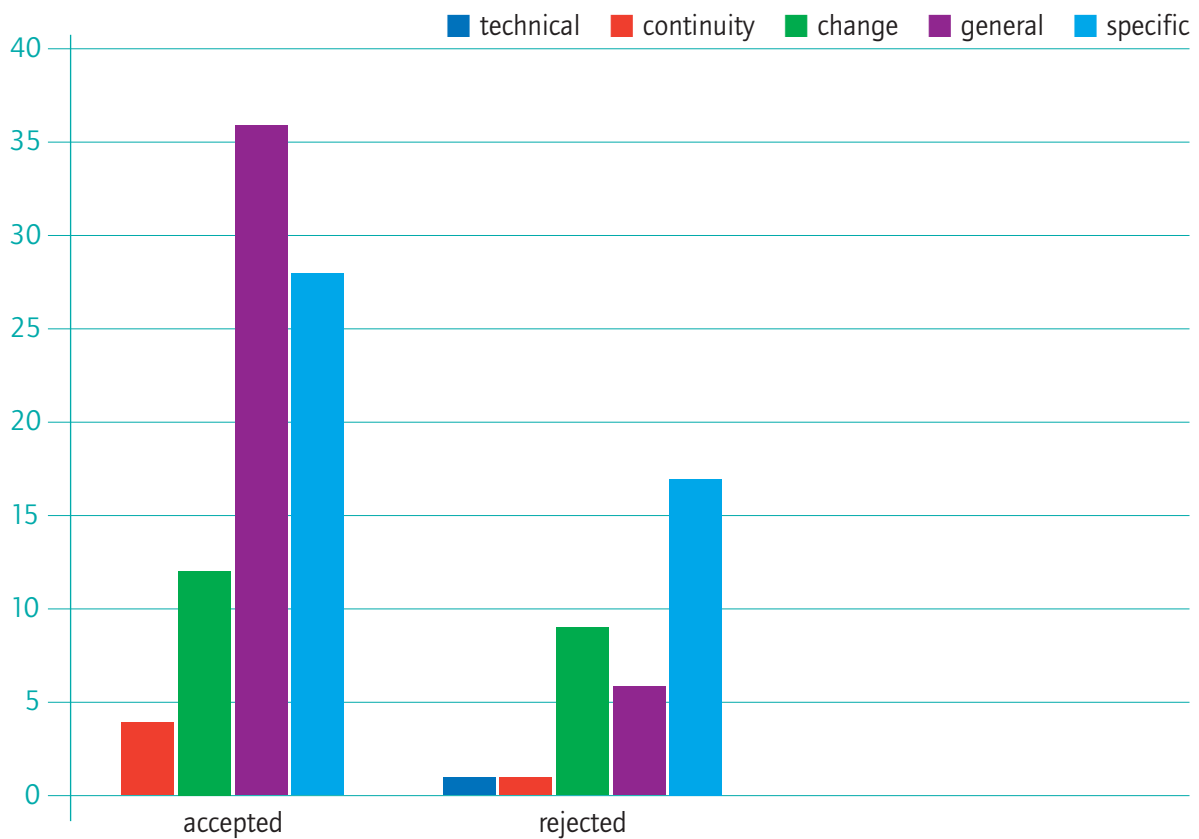
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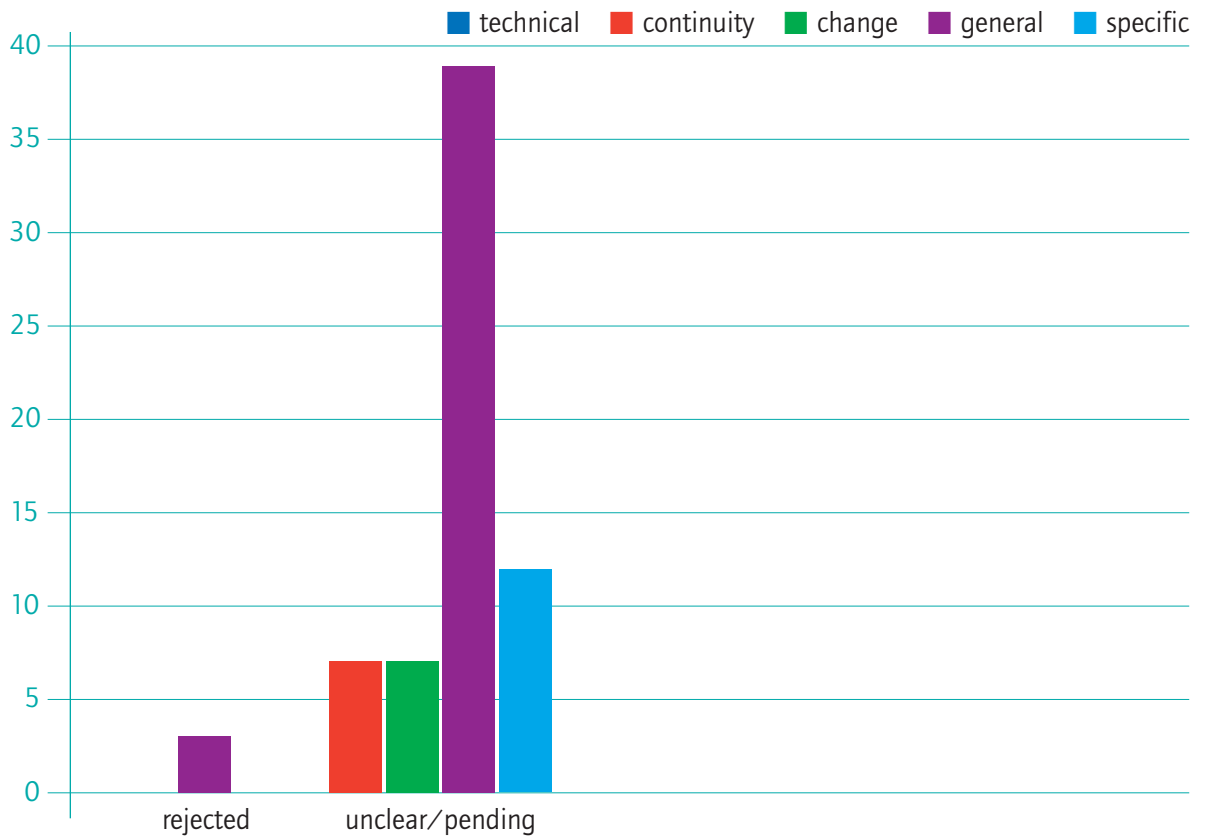
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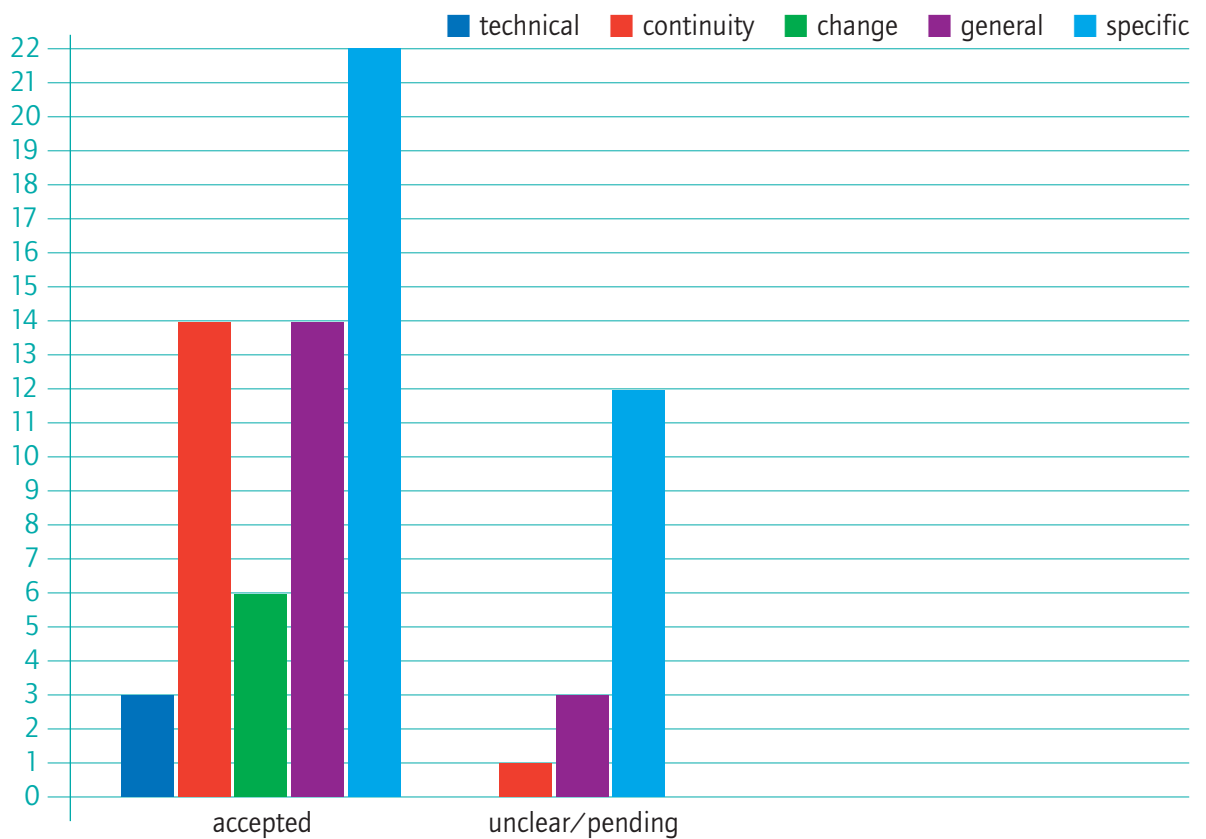
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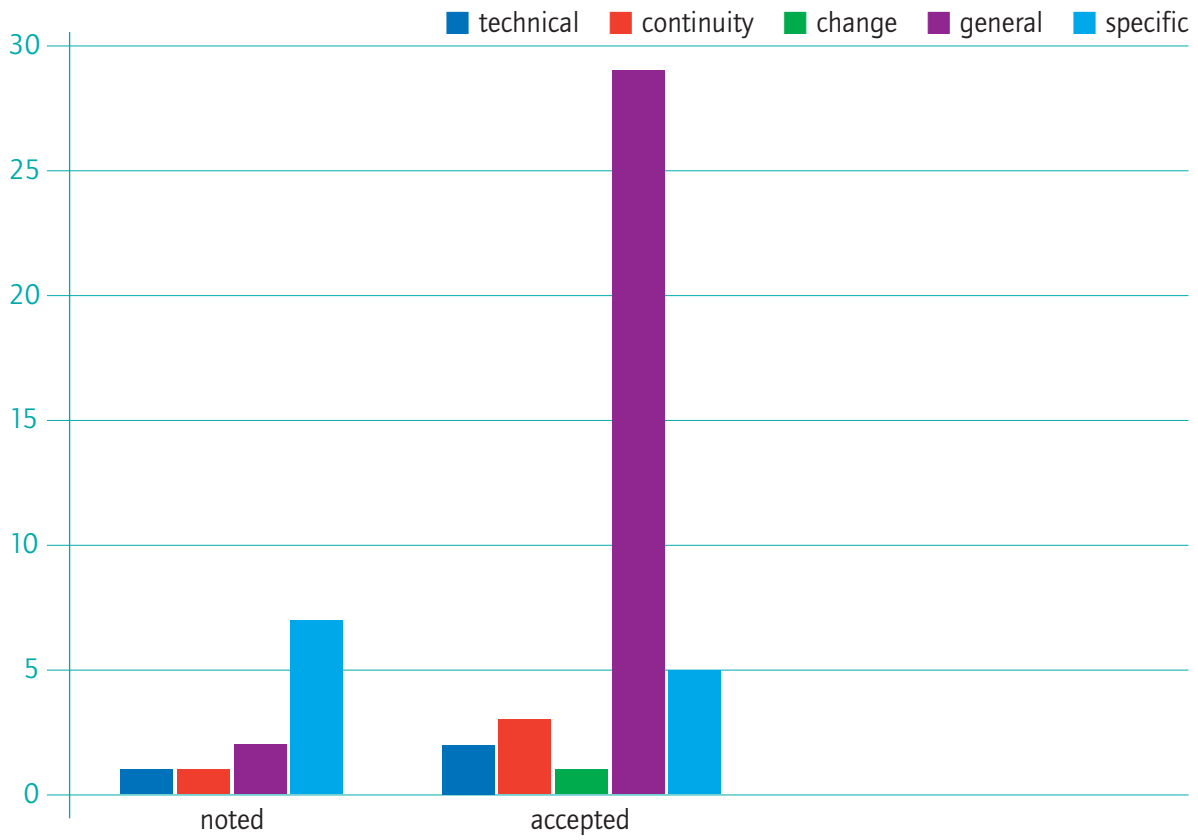
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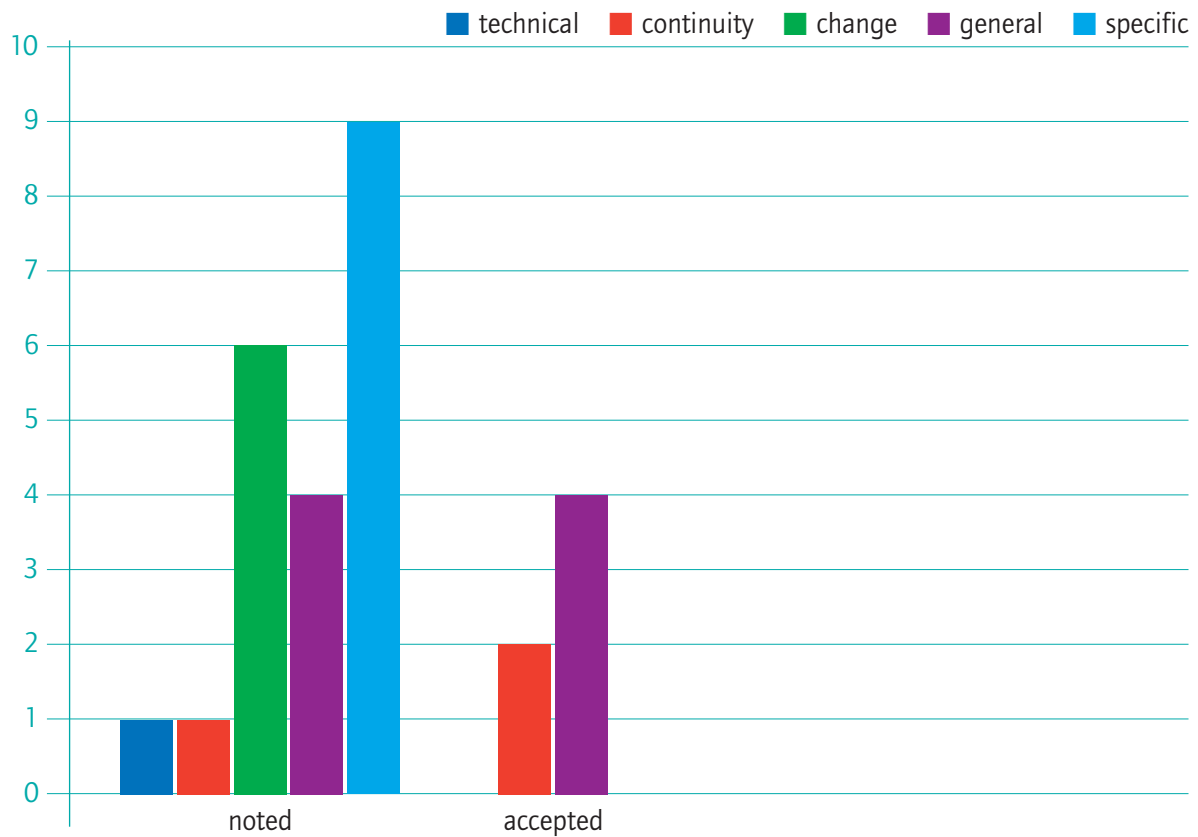
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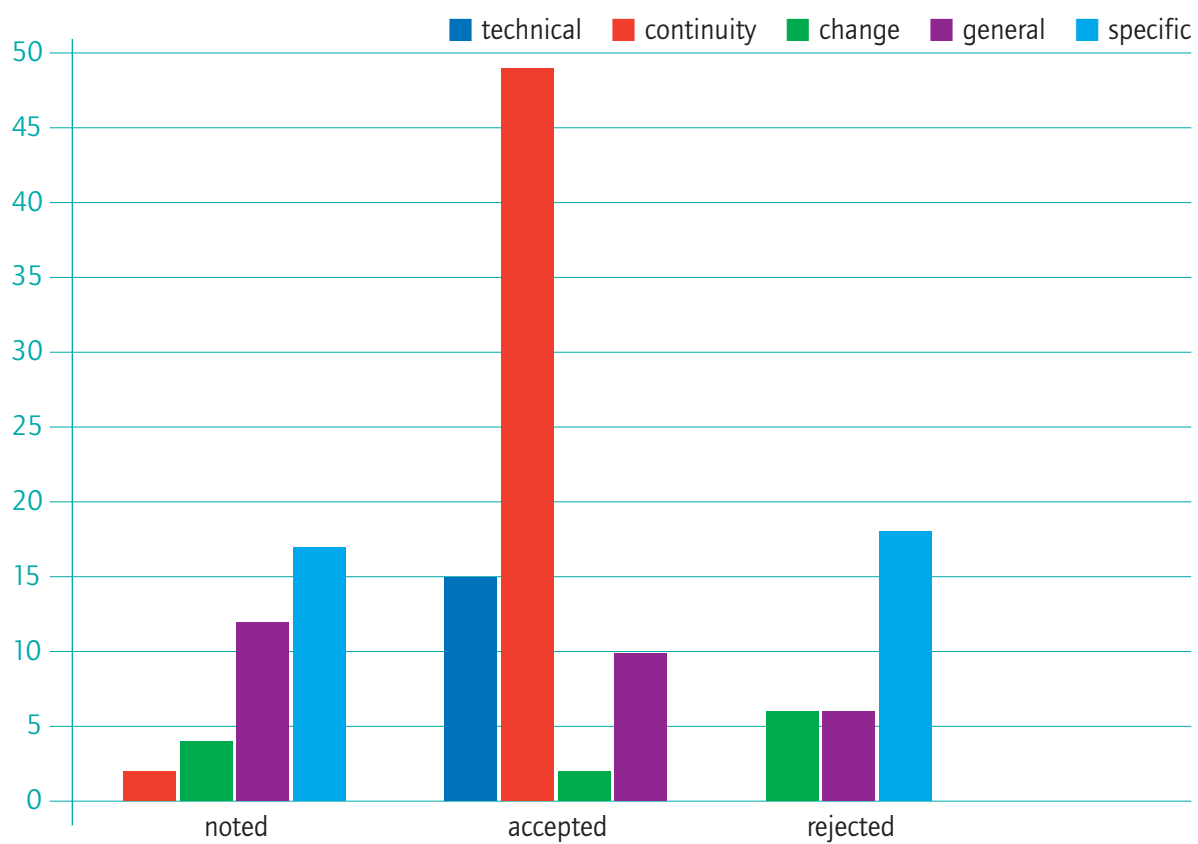
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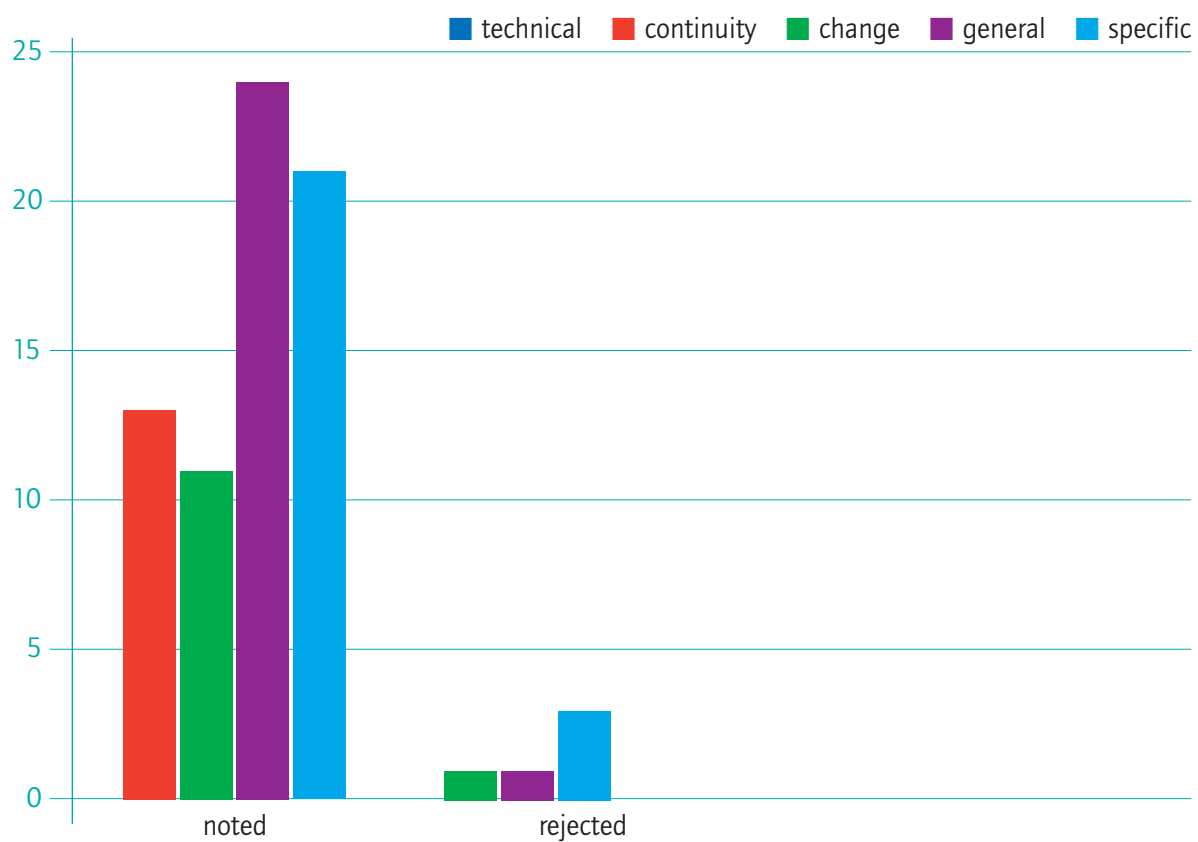
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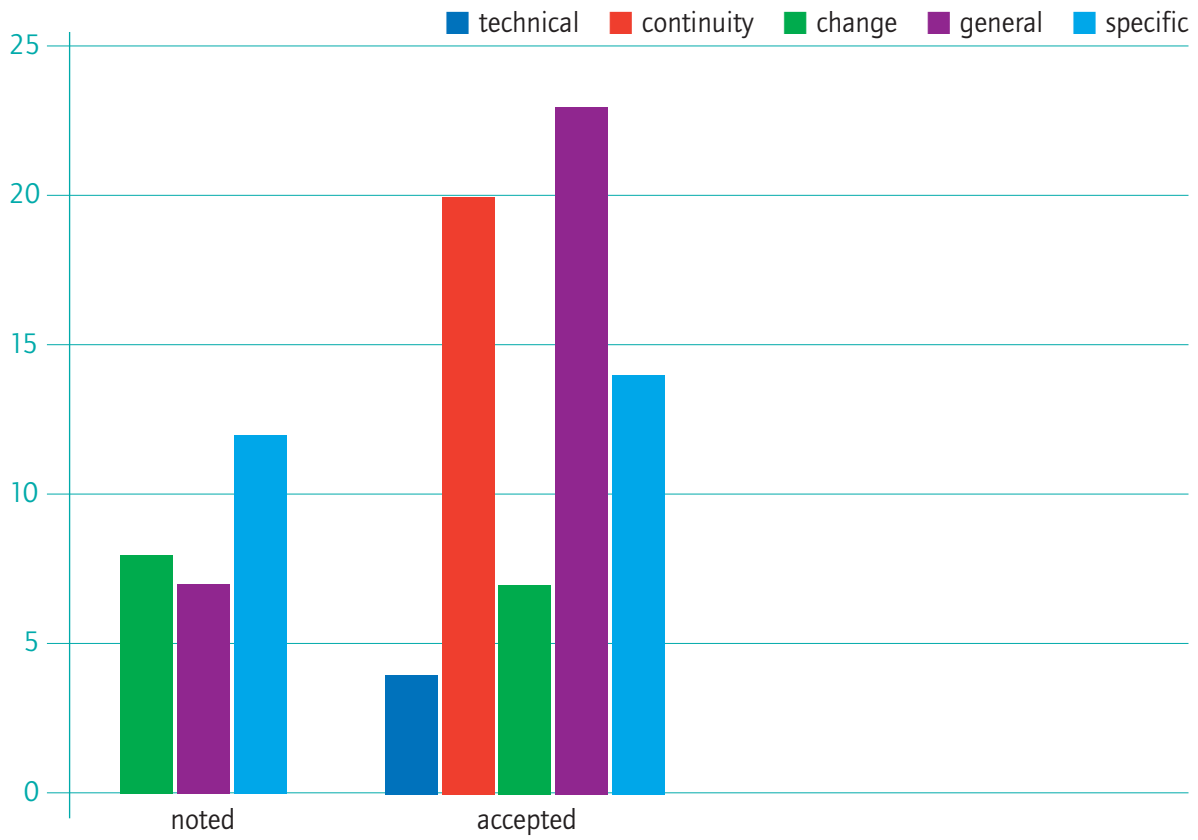
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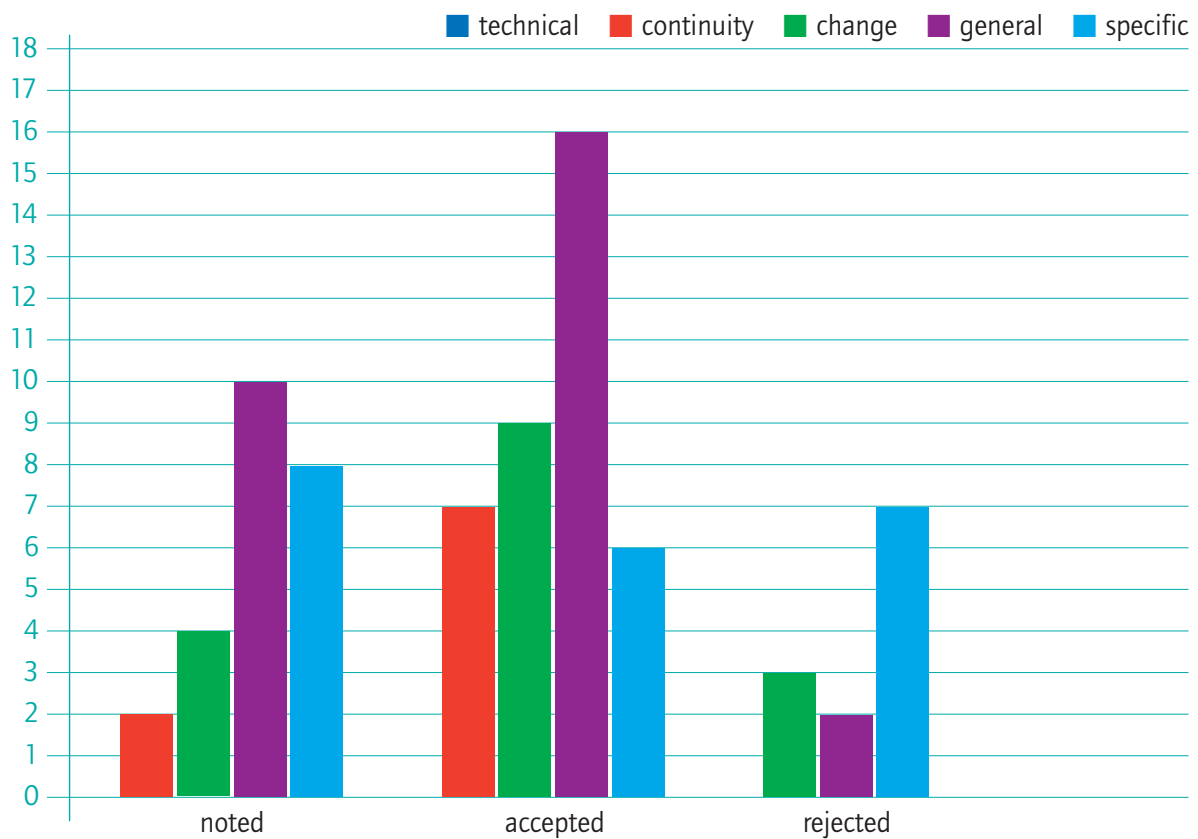
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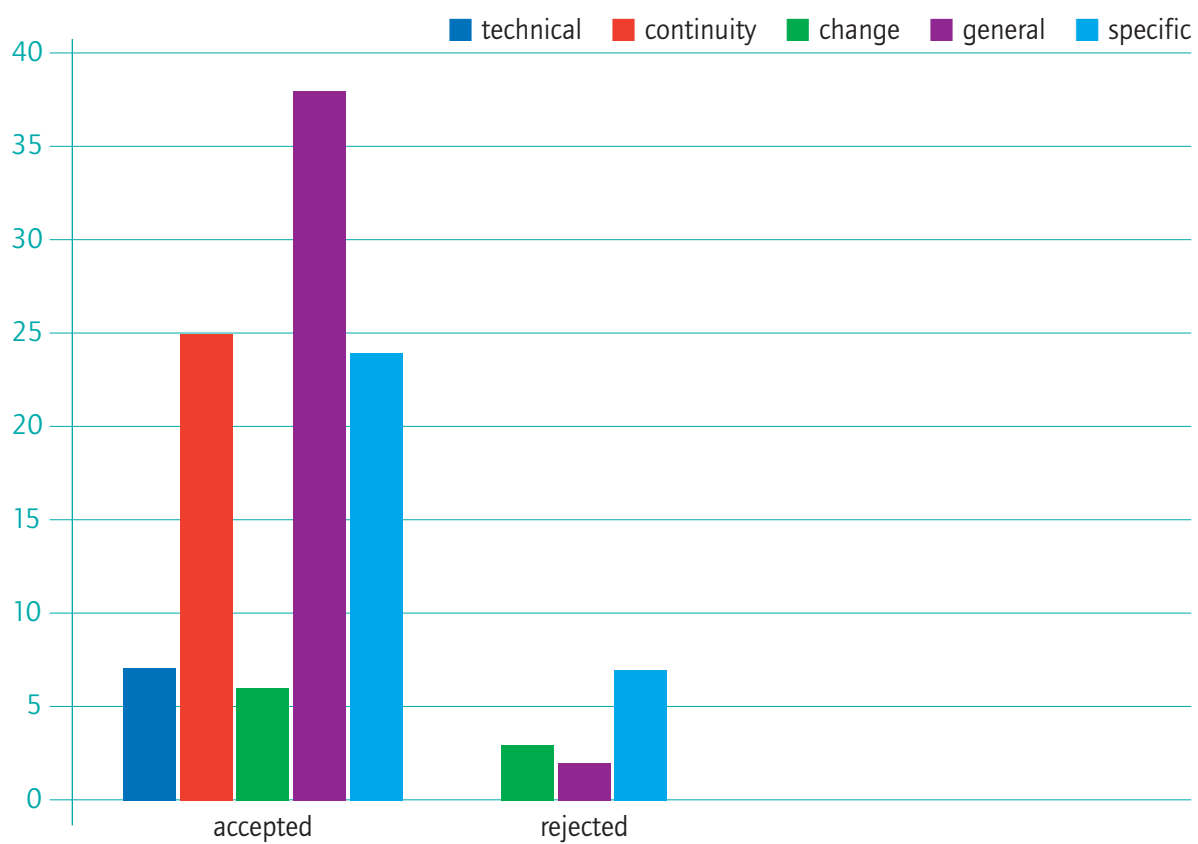
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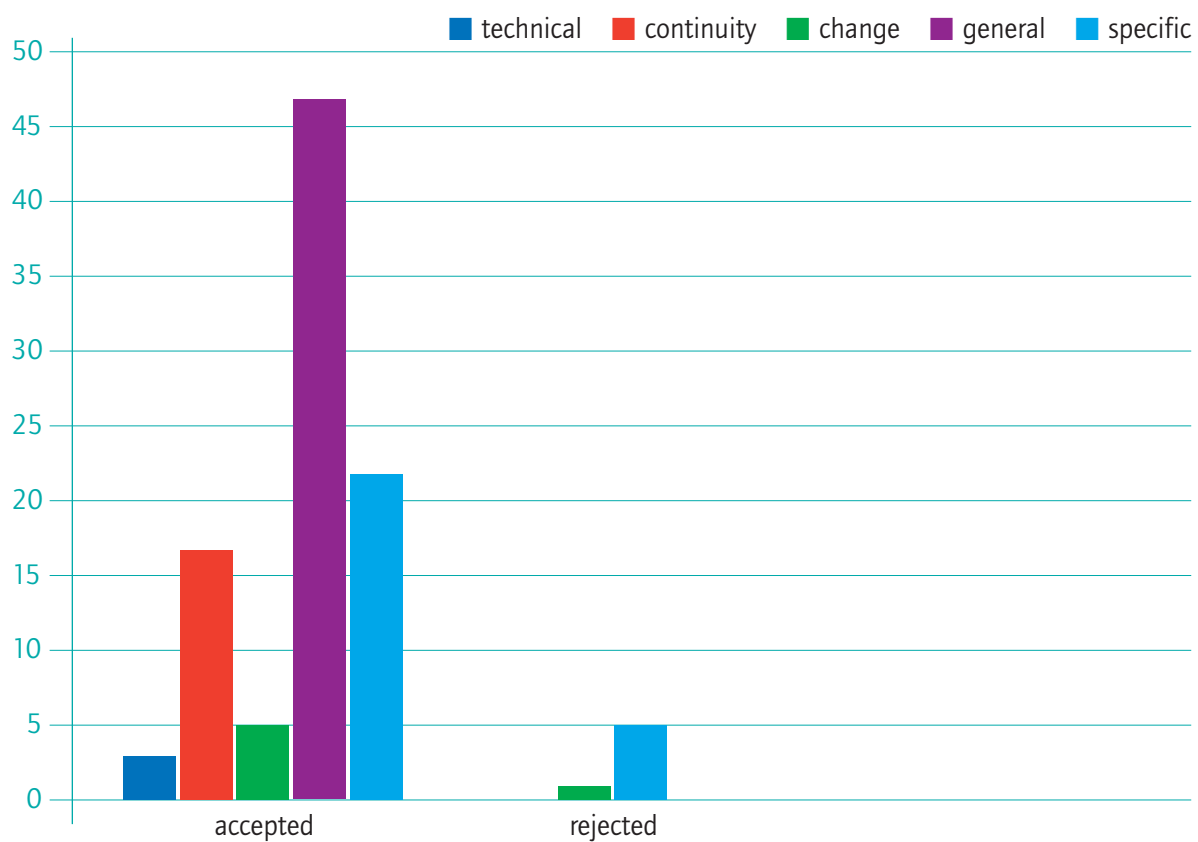
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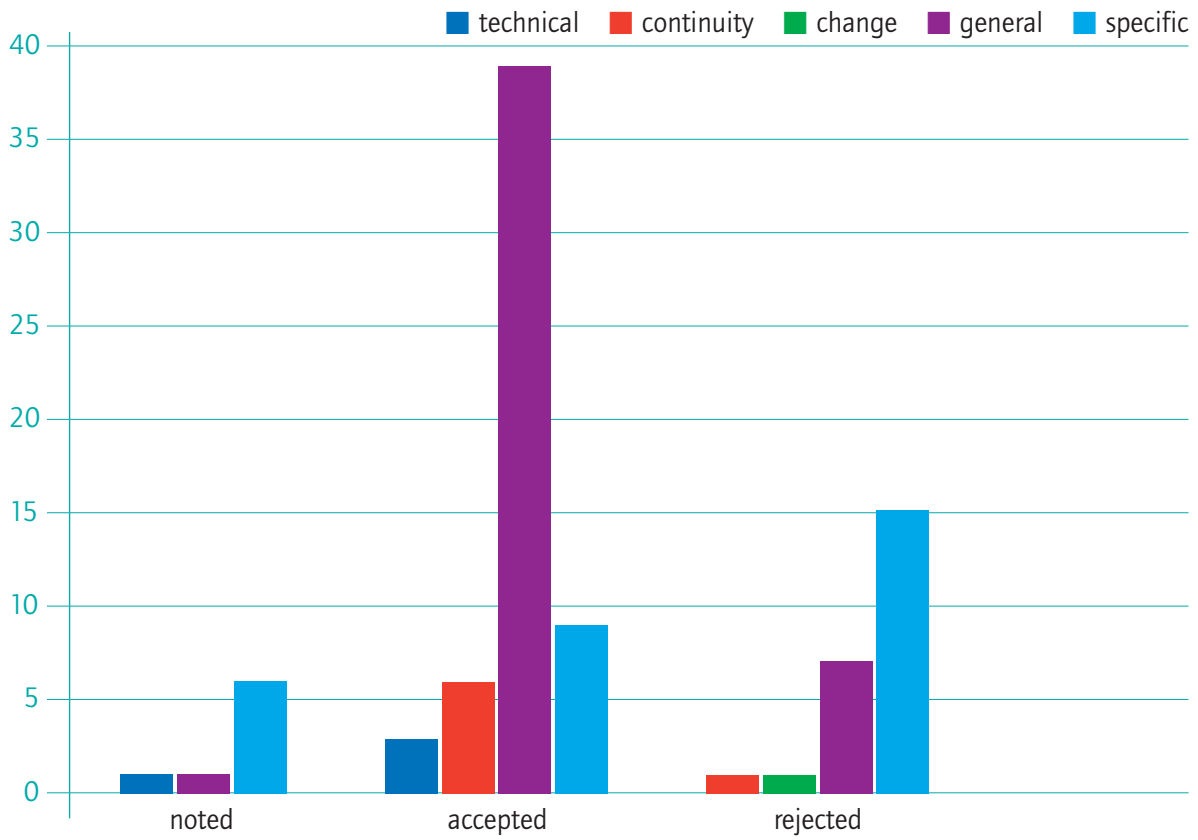
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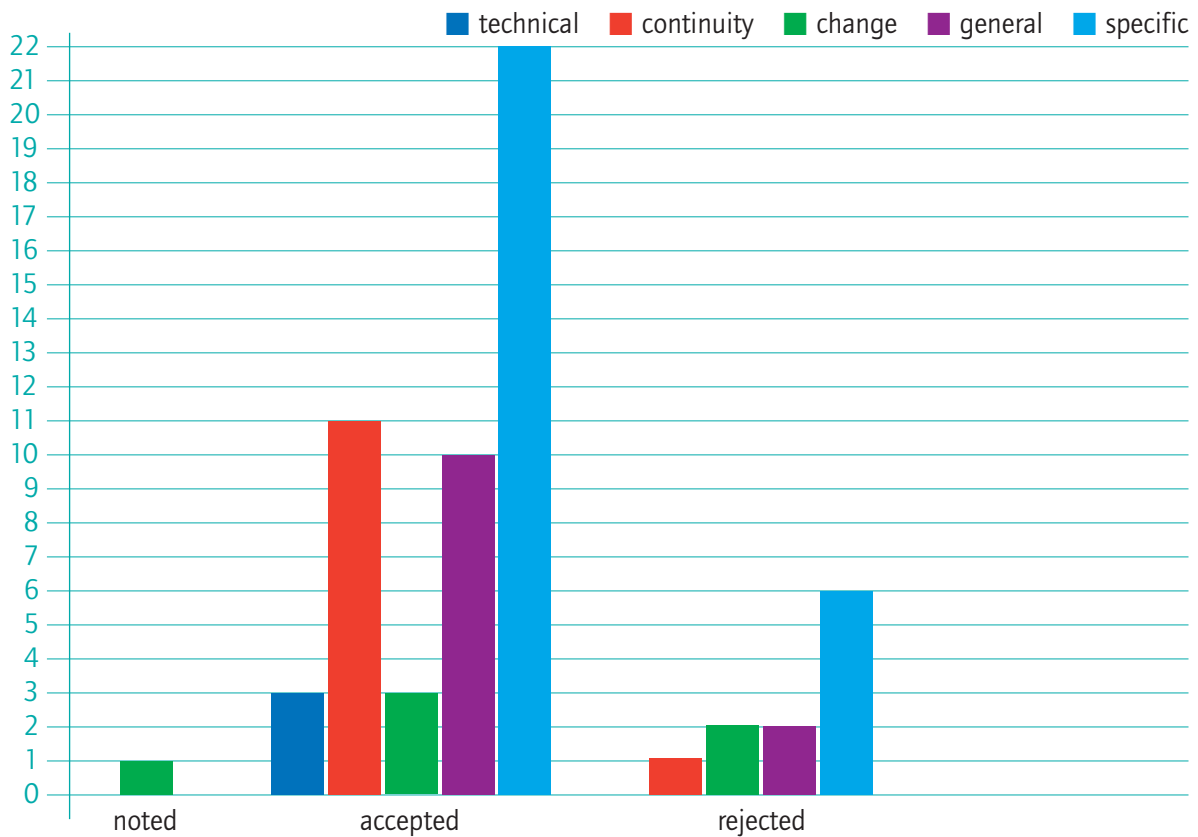
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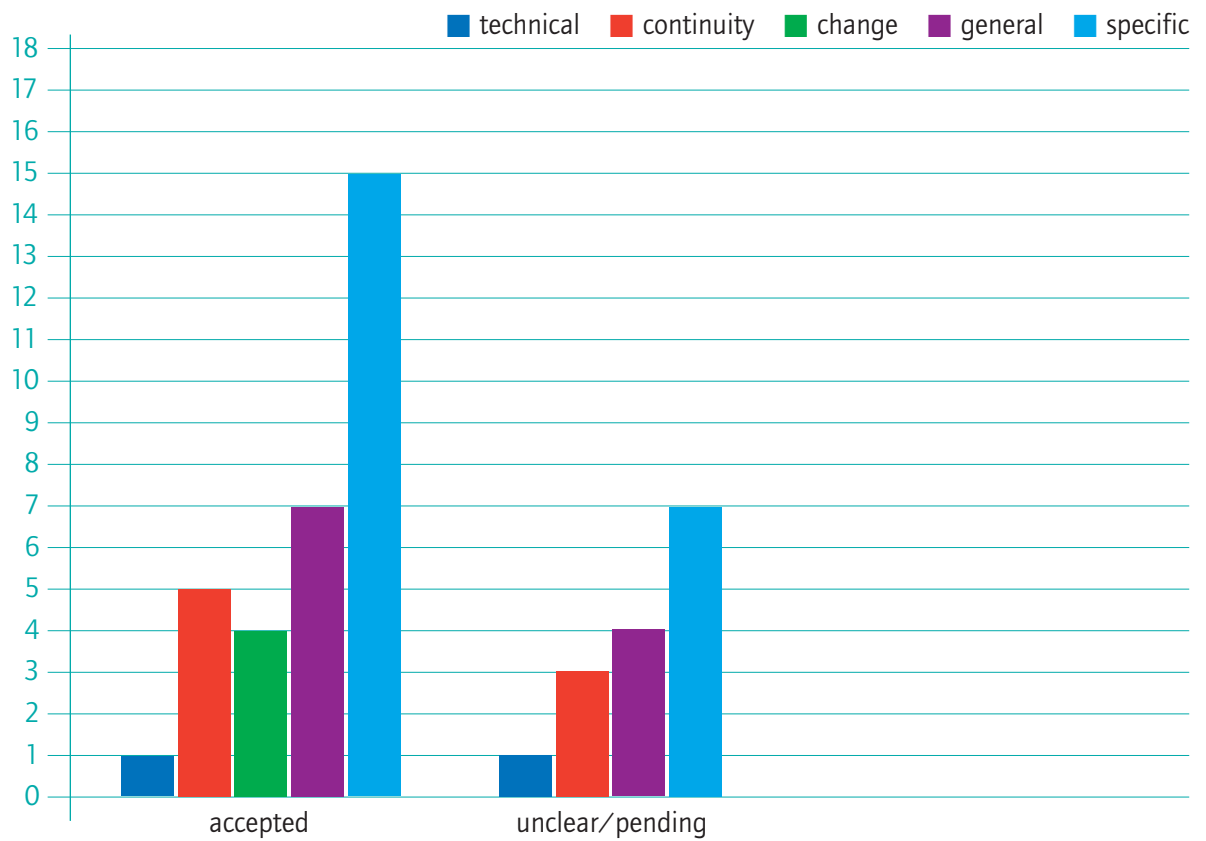
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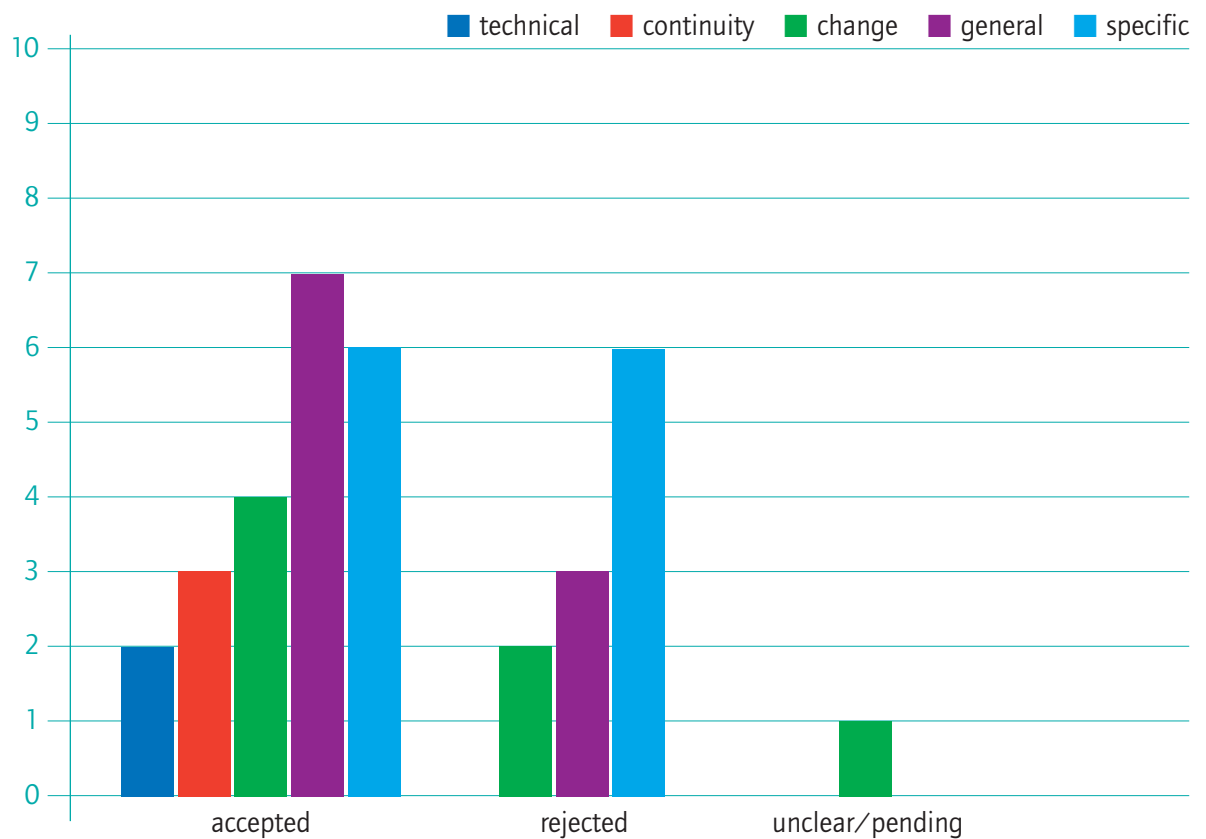
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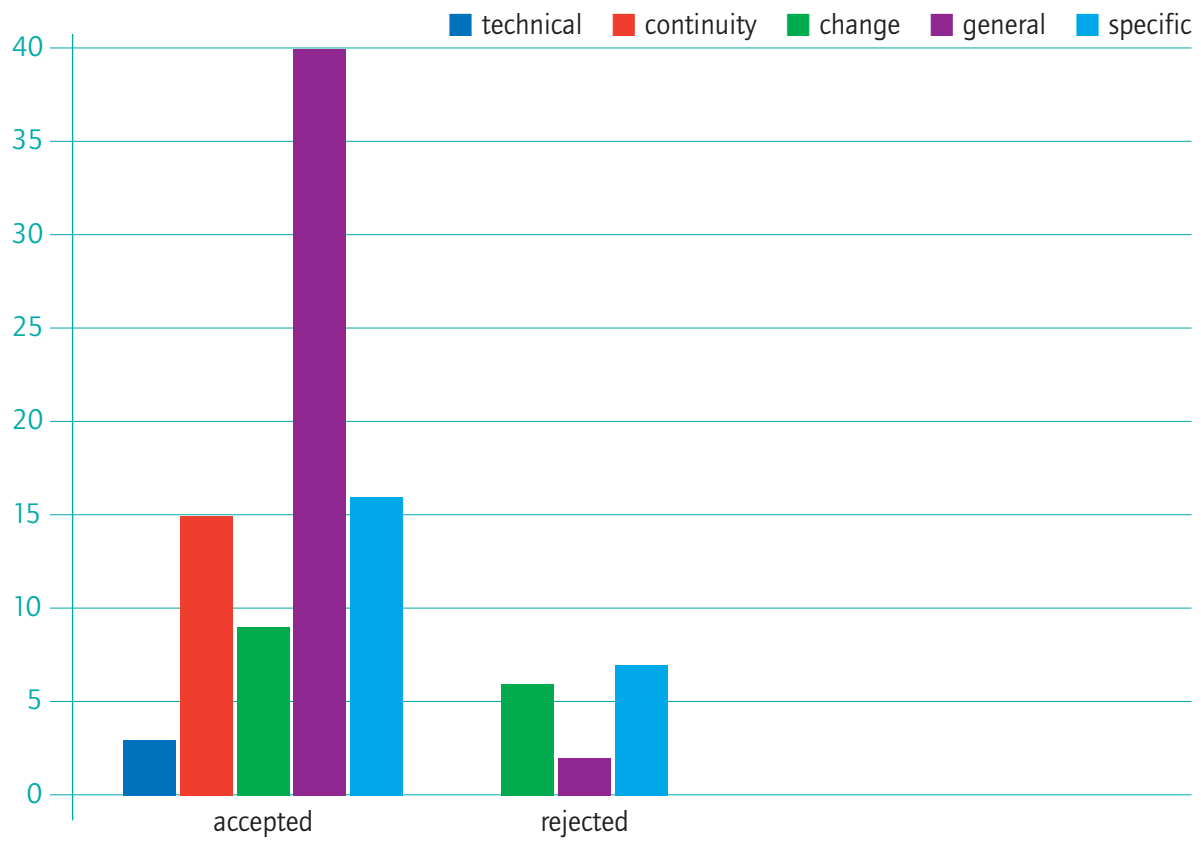
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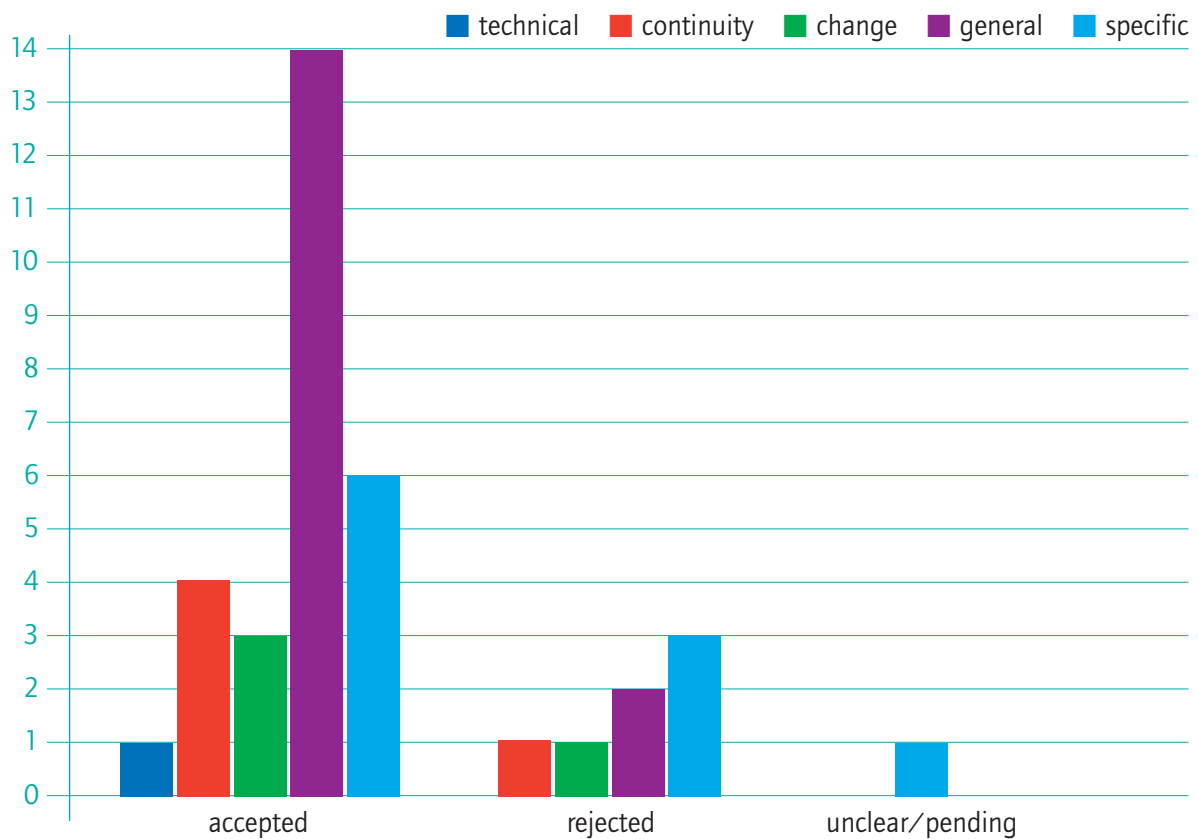
United Kingdom



Vanuatu



Zambia



UPR Follow-up: What Can the Human Rights Unit Do to Assist?

After the Geneva discussions, the challenge remains to ensure that the recommendations are taken forward at a national level. Each state bears the responsibility for implementing the accepted recommendations. Accordingly, the Commonwealth Secretariat is refocusing UPR assistance from preparation to implementation of recommendations.

The Secretariat's assistance will identify, support and disseminate good practice for states, to encourage coherent and strategic approaches to the range of recommendations accepted. This is intended to strengthen the ability of Commonwealth states to engage with the second cycle of the UPR, in which the implementation of recommendations will be considered.

Through ongoing work with a range of actors, the HRU ensures that its support is of a unique nature – the dialogues promoted through preparatory work will be followed through into the follow-up and implementation work. This will involve working with states, NHRIs and NGOs in all our seminars. We work with these three groups of national actors to encourage consultation and partnership, core messages of the UPR.

Regional seminars

At a regional level for Africa, Asia, the Caribbean, Europe and the Pacific, the HRU will bring together key UPR focal points from the three actors listed above to participate in seminars. These seminars will allow countries that share regional similarities to discuss, develop and share good practices and lessons learned with regard to implementation of accepted recommendations.

We are aware that countries are experiencing many constraints with regard to implementing a multitude of accepted recommendations. The seminars allow peer group learning and discussion of different models for UPR follow-up action and implementation of recommendations.

Bilateral assistance

The HRU provides a variety of human rights assistance to Commonwealth member states relating to thematic areas which touch on those raised in UPR recommendations. It can:

- strengthen (or assist in the establishment of) key institutions that promote or protect human rights, through technical assistance and advice;

-
- promote human rights education and awareness, including through targeted programmes for uniformed services, government agencies, the judiciary, the media and universities;
 - assist countries to develop national plans of action for human rights;
 - assist member states in becoming party to human rights treaties and in fulfilling their treaty body reporting, taking capacity and data limitation into account.

Preparation for the second cycle of the UPR

The HRU intends to continue supporting Commonwealth states and stakeholders in their preparation for the second cycle, and has begun initial discussions with the UPR section of the OHCHR on co-operation in this regard.

For more information, please contact us:

Human Rights Unit

Email: hru@commonwealth.int

Phone: +44 (0) 207 747 6423

Fax: +44 (0) 207 747 6418

Commonwealth Secretariat

Marlborough House

Pall Mall

London, SW1Y 5HX

UK

Universal Periodic Review

The UN Human Rights Universal Periodic Review (UPR) mechanism has been in place for over two years. 2008 and 2009 saw this mechanism succeed in promoting dialogues on human rights in countries from all continents and all regions, including 25 Commonwealth states.

Since the inception of the UPR, the Commonwealth Secretariat has engaged with Commonwealth countries on UPR. It has offered training and helped share information and good practices, research and observations.

Governments have held consultations, prepared national reports, responded to questions and recommendations during the review in Geneva and are now beginning to implement those recommendations. National human rights institutions and civil society organisations have engaged with the process through stakeholder reports and advocacy.

This publication presents the experiences of key UPR actors, as shared at the Commonwealth Mid-Term Review of UPR held in 2010. It then provides timely analysis and evaluation of the UPR mechanism at all three stages of the process: preparation of the UPR report, the review in Geneva; and UPR follow up and implementation, including country by country analysis of recommendations received by each Commonwealth country.

Universal Periodic Review: Lessons, Hopes and Expectations draws together the lessons of Commonwealth countries' experiences in 2008 and 2009, and hopes and expectations for the future of UPR.

ISBN: 978-1-84929-043-2



Cover photo credit: UN Photo / Jean-Marc Ferré
Photo shows the Human Rights and Alliance of Civilizations Room where the Universal Periodic Review takes place in the Palais des Nations, Geneva