
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.