
UPR Year One

The UK, India and South Africa took part in the UPR at the Human Rights Council in April 2008. Ghana, Pakistan, Zambia, Sri Lanka and Tonga appeared in May 2008 and Botswana, The Bahamas, Barbados and Tuvalu appeared in December 2008, making a total of 12 Commonwealth states in the first year of the UPR. All but one of these countries attended a preparatory seminar on the UPR run by the Secretariat in March 2008.

Each country took its own approach to the preparation of its report (Annex 6), including the consultation element. Each composed its delegation on its own lines and is drawing up its implementation plans according to its own circumstances. A strong message that emerges from this work is that there is no single model for either consultation or preparation of the report. The approaches of Zambia and Tonga, for example, differ greatly, yet both are perfectly valid. This publication seeks to bring some of this information to the larger debate about the UPR and to assist states that are now preparing, or will soon be considering how they will prepare, for the UPR. It also shares the initial experiences of stakeholders and considers how they can maximise the UPR process.

Preparation and consultation: Zambia and Tonga

Zambia and Tonga face very different local conditions.

Tonga has a small population of just over 100,000 (2008) and is made up of over 170 small islands. It relies on tourism for much of its income and is making moves towards democracy. 2006 saw the eruption of political violence. The country has a small government infrastructure and felt the need to bring in external expertise for consultation and the production of its report.

The UPR preparation and process was seen by the government as a positive opportunity to build new processes nationally and focus attention on the future. The primary lens was not to see this as an additional burden that had somehow to be borne, but as a positive path to be followed for national benefit.

As Tonga's Deputy Permanent Representative at the UN, Viliami Malolo, acknowledges in section 2 of this report, the consultation process was not always easy: it was 'difficult at times', but made possible a valuable conversation about Tonga's human rights record. Respect was necessary, notes Mr Malolo, and was ensured, resulting in a report that enjoyed support from many stakeholders. He also appreciated hearing the input of stakeholders.

In contrast, Zambia is a large landlocked country with a population of more than 12 million. The Ministry of Justice took responsibility for the UPR report production process and undertook a major country-wide consultation that covered all nine provinces. These consultation sessions, each lasting three days, shared information about state obligations under international human rights law and the UPR process, as well as gathering material for the national report. Five ministries were involved in this process and a draft report was circulated to stakeholders. A final consultation, held in Lusaka, involved 31 government institutions, eight statutory and constitutional bodies, six media organisations and 43 CSOs.

The first year of the UPR saw an impressive wave of ratifications, signatures and removal of reservations across the Commonwealth

While the Tongan process is unlikely to be replicable in the Zambian context, the reverse is also true. Each was appropriate for the country and showed a commitment to the UPR process. Both countries produced reports that fully accepted the process, that were frank in their assessment of the local context and that were very well received in the Geneva review discussion.

The UPR as motivation for compliance: The Bahamas and Pakistan

The Geneva dialogue process enables states to share both achievements and challenges in the domestic human rights agenda; arising from these it is expected that there will be agreement on steps for further action. Many states are realising that significant steps can be taken either in the run-up to or at the Geneva element of the process: ratification of international treaties is among these possibilities. Some countries undertake ratifications before they appear at the HRC; some announce their intention to ratify during their presentation.

The first year of the UPR saw an impressive wave of ratifications, signatures and removal of reservations across the Commonwealth (see Annex 7). While it cannot be definitively concluded that a causal link exists between these events, it is reasonable to assume that there may indeed be a positive association.

There were 30 ratifications and signatures of international treaties and/or their protocols in 2008.¹³ Sixteen of these were by states undergoing UPR in 2008 and 2009; that is over 50 per cent of all Commonwealth ratifications and signatures that took place in 2008. Three reservations to treaties were removed by Commonwealth countries in 2008, all against the Convention on the Rights of the Child (one by Mauritius and two by the UK).

Notable examples in terms of ratifications include The Bahamas, which promised to accept international standards during its UPR presentation and then ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and afterwards signed the Convention Against Torture (CAT); and Pakistan, which ratified the ICESCR.

Themes raised – general and specific

This report includes a set of graphs that present information about the Geneva elements of the UPR as experienced by Commonwealth members. Drawing from the interactive dialogues, the graphs present the themes that were raised in comments, questions or recommendations for each of the 12 states. These are themes, not recommendations. The purpose of the HRU in undertaking this analysis is to show the nature of the interest shown in the first year of the UPR and this is indeed instructive. The UNHCHR outcome documents record the recommendations and their acceptance or otherwise by the states under review; the HRU does not duplicate these. Instead, the graphs analyse themes by country and by the most popular themes across Commonwealth countries.

As is to be expected, some themes raised are specific to the country under review. For example, the issue of an independent judiciary in Pakistan, child soldiers in Sri Lanka, judicial accountability in Ghana and a specific court case in Tuvalu were raised in discussion. The human rights dimensions of contemporary or historical events can rightly be raised in the interactive dialogue. By way of preparation, states may wish to consider and be prepared to respond to, or even proactively raise, contextual human rights concerns.

Emerging common themes

The first year of the UPR witnessed the emergence of a number of common areas of interest that were raised across countries. While analyses that have been undertaken by other agencies may show a broader picture, the HRU offers here an indication of the most popular themes raised in the interactive dialogues of Commonwealth states. Graph 13 highlights four dominant themes: gender equality and violence against women; child rights; human rights institutions; and ratification of international treaties. A year's data are not enough for firm conclusions to be reached, but they do reveal patterns that may become trends. These four areas suggest that there is an international consensus that:

- Supports and encourages gender equality;
- Opposes and seeks the end of violence against women;

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- Strongly supports the rights of children, including the right to be free of physical punishment;
 - Considers there is a need for national mechanisms that promote and protect human rights, especially NHRIs;
 - States must sign up to and implement human rights standards, as set out in human rights treaties.

Furthermore, although they were not numerically dominant, other themes were raised for most Commonwealth states. They included the need for human rights training for various uniformed and legal professionals; prison conditions and the treatment of prisoners; HIV/AIDs and human rights; same-sex relationships; the death penalty (in countries which have not already abolished it); poverty and economic rights; and engagement with UN special procedures.

Once again, being aware of these areas of interest can help states in their preparation for the interactive dialogue.

Delegations

Several states under review sent high-level delegations to Geneva for the UPR mechanism (Annex 8). These often included ministers, as well as senior officials, and on occasion delegations were quite large. Both small states and others have taken this approach, signalling the seriousness with which they take the UPR and suggesting goodwill and intent for the promotion of human rights in their national contexts. Such profiles have been noted and appreciated in Geneva.

Another impact of high-level delegations is that they can encourage high-level engagement in the interactive dialogue from diplomatic missions in Geneva. If this does become the norm, it will give the UPR a profile that can offer further potential towards buy-in at government level for the promotion of human rights on the ground – that is, the *process* discussed in this report, as well as the *mechanism*.

The meaning of universality

The word 'universal' in the Universal Periodic Review, is intended to indicate that all states are subject to the review process. Implicit in this is the principle of equal treatment for all states – all have to go through the same mechanism and are treated in the same way procedurally.

Yet the word universal has a long history in human rights discourse and struggles. The Universal Declaration of Human Rights maps out a wide range of rights, drawing together areas subsequently separated and fought over: civil and political rights on

the one hand, and economic, social and cultural rights on the other. It speaks to all humans – not only to women, children or the disabled, or any other specific group of people. Treaties that speak to specific groups – of people and rights – have an important role and should continue to enjoy full recognition and monitoring.

The UPR complements these and does so in a way that allows the situation or needs of specific groups to be brought to the fore, and allows either 'group' of rights to receive attention. Countries that have felt or argued the relative neglect of economic, social and cultural rights in international discourse can pay attention to these in their reviews. To do this at the expense of other rights would be problematic, but to draw all rights together into one conversation is a valuable exercise. The UPR can thereby complement treaty body mechanisms and special procedures and should not replace them.

Commonwealth participation

This report draws on the experiences of Commonwealth members undergoing the UPR in 2008 (Annex 9). Discussion has so far centred on the states under review. Yet the participation of member states in the dialogues is also worth consideration. The graphs that follow show not only the themes raised in the interactive dialogues, but also whether they were raised by Commonwealth members or by others.

In 2008, 12 members¹⁴ of the HRC were Commonwealth states, though all states can participate in the interactive dialogue. During the 12 interactive dialogues involving Commonwealth member states, the 12 missions raised a range of issues – from violence against women and children to the death penalty, the need for ratification of human rights conventions, prison concerns, vulnerable groups, climate change, homosexuality and NHRIs. It is clear that there is an interest in the the whole range of human rights issues across the Commonwealth.

The 12 Commonwealth states reviewed in 2008 received 291 recommendations from states, including 18 to South Africa; 21 to Tonga; 35 to Sri Lanka; and 23 to Barbados. While the range of issues raised by Commonwealth states was wide (Table 1), the numerical profile of the states making recommendations was limited. Of the 291 recommendations, 62 (one-fifth) came from the Commonwealth.

One factor that features in this profile is that many small states do not have representation in Geneva. Only one-third of the Caribbean states and none of the Pacific island states maintain offices there. The appearance of the first Pacific small island state, Tonga, was met with much appreciation and a warm welcome. Commonwealth engagement in the UPR would be strengthened by a wider representation for these states in Geneva. Initiatives are under discussion to address this gap.

Table 1

| State under review | Recommendations by Commonwealth states | Recommendations by non-Commonwealth states |
|--------------------|--|--|
| UK | 4 | 12 |
| India | 5 | 13 |
| South Africa | 2 | 16 |
| Ghana | 2 | 16 |
| Pakistan | 6 | 33 |
| Zambia | 4 | 15 |
| Sri Lanka | 3 | 32 |
| Tonga | 4 | 17 |
| Botswana | 10 | 25 |
| The Bahamas | 9 | 18 |
| Barbados | 7 | 16 |
| Tuvalu | 6 | 16 |
| Total | 62 | 229 |

It has not been possible to provide an analysis of the recommendations accepted – which and how many – by each country. States under review have adopted various models in accepting, rejecting or otherwise dealing with recommendations (Annex 10). This has proved to be a difficult dataset to compile for a number of reasons: some states have accepted some, but not all, of one or several recommendations (if a recommendation is complex, a state may agree with part but not all of it); some have decided that consultations with colleagues in the capital are required and we do not know the outcome of those discussions. There will need to be a systematic recording of these in order to make for a sensible and informed discussion in the second round of appearances in Geneva in four years time.

It is hoped that over time Commonwealth states will become increasingly committed to the UPR process and that they will become a stronger collective voice. This will demonstrate in a clear way that the Commonwealth is promoting one of its fundamental organising principles – respect for human rights.

Follow-up

The UPR process is about the enabling of co-operative efforts in the promotion of human rights on a domestic stage. It is in the post-Geneva phase that the many or few recommendations accepted by the SuR need to be implemented.

One method through which implementation can be addressed is the adoption of

a national action plan on human rights. Here, consultations and strategic planning can together shape timely follow-up. Such a plan can also help identify which ministries or other agencies take the lead on a recommendation, what resources and expertise are available in-country and what is needed from partners. A timeline can also be established with a group to monitor and review implementation.

The Commonwealth publication, *Commonwealth Model National Plan of Action on Human Rights*, is a useful follow-up tool. It is available from the Commonwealth Secretariat.

The human rights team at the Secretariat is also available to assist with implementation in specific ways. Areas of work include: human rights training for police officers, government officers, judges and magistrates; advice and support in the establishment of NHRIs; and advice on ratification of international human rights treaties. The team is ready to discuss these and other relevant inputs with member states.

Conclusion

The UPR is not a panacea for addressing all human rights issues; nor is it a perfect mechanism in itself. It is a novel approach to the promotion of human rights, one which is based on important principles – co-operation, universality, equality – and has garnered considerable goodwill.

The UPR has to face and deal with some difficulties. For example, the number of states wishing to be involved in the three-hour dialogue extends beyond the time available; the SuR is able to ignore recommendations if it wishes to, even though they may address accepted international norms or standards; and the entry of stakeholders in the Geneva agenda comes at a very late stage. Some interventions have been of such a nature that it is not clear if they just make comments, or if they also make recommendations. Sometimes they are both: sometimes neither. On the other hand, the number of recommendations put to states has in some cases been considerable and questions have been raised as to the practicability of such a massive task list, if it is not matched by a commensurate commitment of resources and expertise – and political will.

The Secretariat notes that the potential of the UPR is considerable and the first year of operation has shown much promise. States have shown admirable commitment to the process and have welcomed the new approach that is transparent¹⁵ and supports co-operation across countries. One year into the Geneva reviews many are positively impressed not only by the effort and goodwill brought to the debate, but also that there are increasingly substantive discussions of human rights, and not the political or ideological game-playing that some had feared.