

SENATE STANDING COMMITTEE ON HUMAN RIGHTS

THE UNIVERSAL PERIODIC REVIEW OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL

CHALLENGES AND OPPORTUNITIES FOR CANADA

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INTRODUCTION

I wish to thank the Senate Standing Committee on Human Rights for this invitation to participate in your deliberations with regard to the United Nations Human Rights Council and more particularly the Universal Periodic Review. The Senate of Canada, through this committee, has played an essential leadership role with respect to this fundamental area of foreign affairs and international human rights. We thank you for your important contribution.

Following the abolition of the Commission on Human Rights (established in 1948) and the creation of the Human Rights Council in June 2006, we have observed some significant changes in the international mechanisms for the promotion and protection of human rights. One of the most important changes, and which has the potential for improving the respect for human rights around the world, is the Universal Periodic Review (UPR).

Every four (4) years, each one of the member States of the UN will come before a Working Group composed of the 47 member States of the HRC for an assessment of progress, challenges, and areas for improvement for the realisation of human rights on the ground. The very first session of the Working Group of the HRC on the UPR was held in April 2008. Notwithstanding the fact that this new process for evaluating the human rights situation at the national level of all member States of the UN is still very young, there are already some important observations that can be made about the challenges and opportunities that it presents.

Rights & Democracy has been engaged for a number of years on the development of human rights norms at the international level and on the strengthening of UN human rights mechanisms to give effect to these norms. We undertake this work as part of our legislated mandate “to help reduce the wide gap that sometimes exists between the formal adherence of states to international human rights agreements and the actual human rights practices of those states.”

In fulfilling our mandate, in 2007 we developed a project to ensure the effective participation of all stakeholders, and particularly civil society and national human rights institutions (NHRI) in the UPR process. This project has already generated some interesting results, and we are pleased to share with you today some of our experiences, as well as some lessons learned, best practices and recommendations for the future effectiveness of the UPR.

OVERVIEW OF RIGHTS & DEMOCRACY INVOLVEMENT IN THE UPR

Rights & Democracy's work on the UPR process has focused primarily on the preparation and review stages. Nevertheless, we are now in the process of developing concrete initiatives to ensure that the recommendations and plans of action by governments are implemented on the ground.

We see the UPR process as an important means to fulfilling human rights obligations at the domestic level, not as an end in and of itself.

- I. **Preparation:** Rights & Democracy has developed a specialized training programme on the UPR, which it has provided to civil society organizations in our priority countries as well as in Canada; and to governments and national institutions such as Human Rights Commissions. The training focuses on the preparation of the human rights information and documentation and on dialogue and consensus building strategies at the national level.
- II. **The Review:** Rights & Democracy provides support to its partners from priority countries to enable them to participate in the activities surrounding the interactive dialogue that takes place in Geneva between the State under review and the other Member States of the United Nations.

This includes support and advice to our partners in the preparation of briefing documents, proposed questions and recommendations they would like to submit to their governments; the provision of policy advice on key debates within the Council and among key interlocutors; and the facilitation and accompaniment of our partners to meetings with officials in Geneva.

- III. **Follow up:** Rights & Democracy is currently developing mechanisms to support continued dialogue between civil society and governments at the national level for the implementation of the recommendations issued through the UPR.

Rights & Democracy began its work before the formal commencement of the UPR cycle, and played a critical role in building initial awareness and public knowledge of the process within the human rights community. Initial workshops in Geneva and Ottawa provided an opportunity for Rights & Democracy and its partners to exchange views on the emerging UPR process, and assess the needs of stakeholders intending to participate in the review.

Following the initial needs assessment, Rights & Democracy developed and delivered a number of international and national workshops on the UPR process in Geneva, Nairobi, Kuala Lumpur, and Kinshasa. This was done in partnership with key international institutions, including the Office of the High Commissioner for Human Rights, the Commonwealth Secretariat and the Organisation internationale de la Francophonie, as well as local human rights actors.

We also provided financial and technical support to our partners in the preparation of their UPR submissions most recently in the case of Colombia and the Democratic Republic of Congo. Rights & Democracy has also prepared human rights reports for submission to the Council on its own behalf in priority countries, such as in the context of the upcoming UPR of Afghanistan, specifically related to our work on women's human rights and the reform of the family law.

During the review process itself, we assisted our partners in preparing their meetings with representatives of key stakeholders in Geneva – including representatives of Permanent Missions and international human rights organizations. In the upcoming session in May 2009, we will be organizing an information session event in support of the UPR of Afghanistan with the participation of women's rights groups from Afghanistan, our Afghan experts implementing our CIDA-funded project in the field, and the government of Canada.

In Colombia and Indonesia, we are working with our partners, including civil society and, in the case of the latter, the National Human Rights Institution on identifying activities to promote the implementation of the outcome recommendations from the Review.

Finally, as part of our work to strengthen the capacity of the state to fulfil its human rights obligations, we are working to build the capacity of Haiti's Office of the Ombudsman to prepare Haiti's submission to the Human Rights Council for the UPR in February 2010. As part of our CIDA-funded project to strengthen democratic governance and human rights in Haiti, we will be

providing this support throughout the entire UPR cycle, from preparation, through to the follow-up on the outcome of the UPR at the national level over 4 years.

OTHER IMPORTANT ASPECTS OF THE UN HUMAN RIGHTS SYSTEM

While we are focusing on the UPR process in this presentation, Rights & Democracy also works with, and makes use of, other international human rights mechanisms.

- Rights & Democracy believes the special procedures mandates are the “crown jewels of the UN human rights system”, to paraphrase former Secretary General Kofi Annan. We continue to support the work of the Special Rapporteurs on the Right to Food, on the Rights of Indigenous Peoples, on Burma, on Sudan, on Violence Against Women and on Freedom of Religion or Belief. We also work closely with the Independent Expert on Human Rights in Haiti and the Independent Expert on Human Rights and Extreme Poverty.
- Rights & Democracy also contributes expertise on other issues of debate within the Human Rights Council, both during regular and special sessions. Most recently, Rights & Democracy participated in the Council’s special sessions on the Democratic Republic of Congo, insisting on the importance of taking into account sexual violence against women, on Burma and on the Right to Food.
- Rights & Democracy is also working closely with international networks of National Human Rights Institutions, particularly through the International Coordinating Committee, to promote their role as interlocutors within the UN human rights system.

CHALLENGES FOR THE UNIVERSAL PERIODIC REVIEW

The Human Rights Council and the UPR mechanism are still very young and are constantly evolving. While it is still early, some lessons can be drawn from the use of the mechanisms so far that would be beneficial for future Canadian engagement and support. The challenges and opportunities presented below are organized around the three aspects of the cycle, but must be seen as integral elements of a comprehensive process to defend and promote international human rights obligations at the national level.

I. Preparation

The preparation of State reports to the Human Rights Council's UPR requires concerted involvement of the State and civil society in the country under review. National consultations are an essential part of the process to ensuring that the report submitted by the state reflects the human rights reality of the country in question. The following challenges were identified:

- The **lack of awareness** on the existence and functioning of this new mechanism by key stakeholders at the national level is a cause for concern. This is true not only for civil society groups, National Human Rights Institutions and the media, but also for State representatives and civil servants who are charged with preparing their government's submission.
- The **weakness or non-existence of consultation mechanisms** between the State and civil society on human rights. Where the consultation mechanisms are weak or do not exist, the political will of the State under review to engage seriously in the review process, especially follow-up, is difficult to generate.
- The **level of participation of civil society at the national level** depends on the degree to which freedom of association is respected and on the existence and representativity of national civil society networks. The participation of GONGOs (Governmental Non Governmental Organizations) can dilute or distort the information in the "Stakeholders Report".
- The **absence of key stakeholders in the preparation process** diminishes the quality of the report and the viability of genuine follow-up. At the national level, there is a lack of involvement of key stakeholders including: Parliamentarians, Bar Associations, the judiciary, and local human rights NGOs. These stakeholders should be included in all steps of the process.

The development of the capacity of National Human Rights Institutions, where these exist, to play a bridge building role in this process needs to be supported.

- The **quality of the reports** submitted to the Council is challenged by:
 - the degree to which the State under review is prepared to recognise, in its report, challenges and need for improvement in key areas;
 - the degree to which the State is prepared to balance the presentation of achievements with the presentation of challenges;
 - the degree to which the State is prepared to take voluntary commitments on key challenges upon which progress can be measured in four years;
 - the degree to which civil society is prepared to contribute to constructive solutions to each of the issues raised;
 - the level of precision in the measures that the State takes to address human rights challenges identified.

II. The Review

During the review process itself, significant challenges are being identified in the Council with respect to the actions of States under review, the actions of States participating in reviews, and the participation of civil society in the review process itself.

- The **willingness of the State under review** to recognise the human rights challenges and the need for improvement in key areas during the interactive dialogue, and in accepting recommendations. This is particularly true for economic, social and cultural rights, which have figured prominently in stakeholder submissions, but much less so in final outcome reports.
- The **willingness of the States that participate in reviews** of peers to ask tough questions and make recommendations on challenges and need for improvement in key areas;
- The **lack of precision of the recommendations** on specific measures to be taken by States to overcome the challenges identified; and in the level of progress to be achieved that could be measurable in four years.

- The **protection of stakeholders who contribute to the review process** is a cause for concern. Human rights defenders are sometimes threatened and even attacked for their activities aiming at contributing to the review.

III. Follow-Up

The follow-up is arguably one of most important parts of the UPR cycle. The mechanism will only be deemed efficient to the extent that it has an impact in improving the human rights practices of States and contributes to reducing the gap between international norms and the lives of individuals and communities. Some of the challenges identified include:

- **The absence of a mandatory, systematic, follow-up mechanism.**
- **The absence of a mandatory interim follow-up mechanism before the subsequent review.** Although a standing item devoted to the UPR is now on the agenda of the Council (Item 6), reporting on progress achieved with regard to the implementation of the outcome of the review is voluntary. There is therefore a risk that States would wait until the next review, in four years, to report on the advancement on the UPR recommendations that it has accepted.
- **The degree of precision of recommendations and measurability of progress.** The degree to which the recommendations are concrete, precise, and refer to specific measures, laws, policies and programmes, for which progress and results can be measured in four years is crucial to the effectiveness of the UPR. A number of State representatives have improved in this regard from one session to another.
- **The degree to which States accept or reject recommendations.** A significant weakness of the UPR is the fact that States can reject recommendations made to it. However, counter arguments include:
 - the fact that recommendations that have been accepted may be stronger than the ones coming from treaty bodies or special procedures which often never receive any response;

- the fact that a specific human rights issue, even if rejected, has been raised and discussed publicly in the Council, is an achievement in itself;
- the rejection of a recommendation may itself be an indicator for relevant stakeholders of areas on which further international and national advocacy work must be undertaken;
- the fact that some State recommendations may actually encourage continued human rights violations. For example, when a recommendation is made to maintain the death penalty.

To mitigate the risk of spurious rejection of recommendations, the practice should develop in such a way that the State under review be required to present a clear and detailed explanation for each refusal before the adoption of the UPR outcome by the Council.

RECOMMENDATIONS – THE ROLE OF CANADA IN CONTRIBUTING TO BUILDING A CREDIBLE AND EFFECTIVE UNIVERSAL MECHANISM FOR THE REALISATION OF HUMAN RIGHTS ON THE GROUND

Canada has played an important role as a member of the Human Rights Council, particularly through the Permanent Mission in Geneva, to support the participation of civil society in the process and to encourage states to fulfil their human rights obligations. As Canada prepares to leave its seat on the Council at the end of its current term, there are important contributions that we can continue to make in support of international human rights through this important mechanism.

Strengthen the Capacity of States and Stakeholders

- Strengthen the capacity of willing States through technical assistance to prepare their reports, including through interdepartmental coordination and meaningful consultation with civil society, throughout the process, and particularly during the time between the interactive dialogue and the decisions made on the UPR recommendations.
- Contribute to the capacity of States, including through the creation and strengthening of national human rights institutions, to follow-up on recommendations and implement

- Continue to support the participation of civil society and other important stakeholders in the process, from preparation of stakeholder submissions through to follow-up, especially through Canada's diplomatic presence in Geneva and in development cooperation partner countries. The UPR consultation process can be a useful tool to build stronger state-society relations around human rights issues.
- Encourage the UPR process to continue to address the broader issues of accountability and responsiveness to the human rights treaty body observations, and promote respect for human rights treaty commitments through the creation of effective institutional structures of human rights accountability in domestic law or through administrative processes.
- Promote awareness of and follow up on the UPR within developing country partners through CIDA human rights and governance programming, and through continued support to Canadian NGOs operating in the field.

Strengthen the Human Rights Council and the UPR mechanism

- Contribute to the evaluation of the Human Rights Council and the UPR in the coming years.
- Promote the establishment of practices of systematic UPR progress reports and accountability mechanisms within the Council to measure progress, according to specific timetables, of States that have been reviewed.
- Promote the development of a protection mechanism for stakeholders participating in the UPR process, and hold governments to account for human rights violations committed as a result of participation in the UPR.

- Contribute to the two UN Trust Funds have been created to support States from developing countries in their participation in the UPR. The first is to support the preparation of State reports, including training, and to support the participation of official delegates to the UPR in Geneva. The second is aimed at supporting the follow up implementation of the UPR recommendations.
- Promote the creation of an additional Trust Fund to support the participation of civil society and other stakeholders in the UPR process, and contribute financially to the Fund.

ANNEX

LIST OF RIGHTS & DEMOCRACY INITIATIVES ON THE UPR (2007-2009)

RIGHTS & DEMOCRACY WORKSHOPS AND PRESENTATIONS – PREPARATION, REVIEW & FOLLOW UP

1. Rights & Democracy workshop on the UPR for civil society and National Human Rights Institutions (NHRIs), Geneva, 8-9 December 2007(focused on Phase 1)
2. Rights & Democracy public event on the UPR, Palais des Nations, 11 December 2007 (focused on the collaboration between NHRIs and civil society in the UPR, with the participation of the Chair of the Canadian Human Rights Commission (CHRC))
3. Rights & Democracy Workshop on the UPR, Geneva, March 15, 2008 (focused on the time frame between Phase I and Phase II of the UPR)
4. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Rights & Democracy and the OHCHR workshop on the UPR, Geneva, 17-18 April 2008 (focused on the role of NHRIs in the UPR. With the participation of the Chair of the CHRC, who is also Chair of the ICC).
5. Asia Pacific Forum of National Human Rights Institutions (APF), Rights & Democracy and the OHCHR workshop, Kuala Lumpur, 28 July 2008 (focused on the three phases of the UPR).
6. ICC, Rights & Democracy and the OHCHR workshop on the UPR, Nairobi 19-20 October 2008 (focused on the complementarity between the UPR and the other UN human rights mechanisms: the treaty bodies and the special procedures). This was done in partnership with the Organisation internationale de la Francophonie (OIF) and the Commonwealth Secretariat. With the participation of the President of the UN Human Rights Council.

7. Rights & Democracy and the Carter Center workshop on the UPR, Kinshasa, 26 February 2009 (focused on preparing civil society for reporting to the UPR of the Democratic Republic of Congo, as well as on consultation mechanisms between civil society and the State. With the participation of representatives of the DRC government).
8. OHCHR workshop on the UPR and the other UN Human Rights Mechanisms, Geneva, 26-27 March 2009 (focused on the Americas, with the participation of the Canadian Ambassador, Permanent Representative to the UN in Geneva, and the Chair of the CHRC, as Chair of the ICC).
9. Workshop on the UPR and Indigenous Peoples Rights, in partnership with the OHCHR (forthcoming).

Rights & Democracy increasingly receives requests from civil society, NHRIs and State representatives to contribute with its expertise on the UPR in various seminars and workshop around the world. Presentations include:

1. A seminar organised by DFAIT for Canadian stakeholders (Ottawa, Canada, June 2008), in preparation of Canada's UPR.
2. Regional Seminar on the UPR for the Balkans, Dubrovnik, Croatia, November 2009.
3. DFID and the UK Foreign Office (London, UK, 17-19 March 2009) on UPR, development and human rights : in preparation of a white paper, to be published in the coming months.
4. Presentation to the Canadian Council for International Cooperation, Ottawa, March 31st, 2009.
5. Training for the Kenya Human Rights Commission in preparation of Kenya UPR in May 2010.

5. Seminar for the Network of NHRIs from the Francophonie (declined, due a lack of resources).

RIGHTS & DEMOCRACY SUPPORT IN PRIORITY COUNTRIES

Rights & Democracy also supports our civil society and government partners from developing countries in preparing their submissions to the UPR, most recently in February 2009 in the Democratic Republic of the Congo UPR scheduled for December 2009. We are also supporting the establishment of state-civil society consultations.

Rights & Democracy also prepares its own submissions to the UPR for priority countries, such as Afghanistan in October 2008.

Rights & Democracy has supported its partners in activities prior to the interactive dialogue and to attend the UPR Session of the Working Group in Geneva:

1. Indonesia UPR (March 2008, for the April 2008 UPR session). Notably through the Canadian Network of NGOs with programming in Indonesia.
2. Colombia UPR (December 2008), Geneva with a focus on the rights of indigenous peoples.
3. Haiti: Rights & Democracy will provide support to stakeholders in Haiti at all three main steps of the UPR (Preparation, Review and Follow-up) for the upcoming UPR of Haiti, scheduled for May 2010. The initiative, which is made possible thanks to financial support from CIDA, will begin in May-June 2009 and continue for the full UPR cycle over 4 years, until the next preparation for the review of Haiti in 2013-2014. In addition to support to civil society, Rights & Democracy will strengthen the capacity of Haiti's national human rights institution, the Office de la protection du citoyen, to play a lead role in the UPR reporting process and national consultations.