

A decorative graphic consisting of a grid of dots in various shades of gray, with several dots highlighted in red. The dots are arranged in a way that suggests a world map or a network of connections.

# The Universal Periodic Review: A Work in Progress

An Evaluation of the First Cycle of the New UPR Mechanism  
of the United Nations Human Rights Council

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September 2012

- The Universal Periodic Review (UPR), the purpose of which is to deepen respect for human rights through the provision of feedback to member states on their human rights performance, has concluded its first cycle. By March 2012, all member states of the United Nations have been reviewed under the UPR mechanism.
- On the positive side, state participation has been excellent. In many cases, the UPR resulted in heightened communication and dialogue between governments and non-state actors. It also created a baseline set of documentation.
- The UPR also triggered self-evaluations by states, with the prospect of a future review before the Human Rights Council, leading many states to engage in a process of internal review and inter-ministerial discussion. One has to admit, however, that many states may feel that they have to “go along” with it, but may have little interest in seeing it further developed.
- There are a range of recommendations to further strengthen the UPR mechanism. To list a few: Heighten engagement of Non-Governmental Organizations; emphasize the role of National Human Rights Institutes; provide more action-oriented recommendations; make meaningful mid-term reporting the norm; and limit recommendations making either generic appeals to the international community to provide assistance or simply calls for an action or policy to be continued.





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The author and FES gratefully acknowledge research assistance provided by Matthew Pescatore and UPR-Info for their cooperation and development of its database.



## List of Acronyms

<b>APRM</b>	African Peer Review Mechanism
<b>CHR</b>	Commission on Human Rights
<b>EU</b>	European Union
<b>EEG</b>	Eastern European Group
<b>G-77</b>	Group of 77
<b>GRULAC</b>	Group of Latin America and Caribbean Countries
<b>HRC</b>	Human Rights Council
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IGO</b>	Intergovernmental Organization
<b>NGO</b>	Non-Governmental Organization
<b>OECD</b>	Organization of Economic Cooperation and Development
<b>OIC</b>	Organization of Islamic Cooperation (formerly: Conference)
<b>OHCHR</b>	Office of the High Commissioner for Human Rights (also UNHCHR)
<b>R2P</b>	Responsibility to Protect
<b>SuR</b>	State under Review
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNGA</b>	United Nations General Assembly
<b>UPR</b>	Universal Periodic Review
<b>WEOG</b>	Western European and Others Group

## 1. Executive Summary

The Universal Periodic Review (UPR) mechanism of the UN Human Rights Council (HRC) provides a platform for UN member states to make recommendations to fellow states on how to improve their promotion and protection of human rights. It officially ended its first four year cycle in March 2012. As the UPR has the potential to become an important part of anchoring universal human rights norms in practice, this report discusses the development of the UPR. It then examines how the mechanism has functioned, and what dynamics have emerged in how the mechanism is used. This includes analysis of the types of recommendations, who makes them, to whom they are directed, and to what extent are they accepted by the States under Review (SuRs).

### Steps of the UPR process

The UPR process involves several steps, including:

- preparation of documentation, including a national report, a summary of NGO reports, and information on engagement and compliance with UN-related human rights commitments;
- assessment of national report and preparation of recommendations by recommending states;
- review of SuR in Working Group;
- document containing recommendations by states and voluntary commitments by the SuR;
- preliminary adoption of the report; and
- final adoption of the document during a plenary session of the HRC.

### The Review of the UPR

A 2010-2011 review, mandated by the General Assembly, resulted in at best modest reforms to strengthen the mechanism. These include:

- strengthening the office of the HRC president;
- further integrating non-state actors into the process;
- ensuring clear SuR responses to recommendations;
- providing more time for SuR reviews;
- encouraging sustained follow-up by recommending state and SuR to previous accepted recommendations;
- rationalizing the process for determining speakers to ensure balanced participation in the interactive dialogue portion of the review; and

- strengthening the role of National Human Rights Institutions (NHRIs).

### Analysis of the first UPR cycle

Analysis of the data from the first cycle reveals the following trends:

- The UPR is universally accepted. Although there is no legal obligation, all UN member states participated.
- The mechanism is well-used; almost all states participated at a high level and the number of recommendations appears to have plateaued at just over 2,000 recommendations per session.
- Slightly over two-thirds of all recommendations are accepted, a percentage which increased moderately over the life of the first cycle. Acceptance rates are lower for more specific and action-oriented recommendations, and for those which SuRs to consider taking those types of recommendations.
- Three-quarters of all recommendations are action-oriented, although somewhat over half of these are of a vague and general nature.
- While recommendations are distributed regionally in proportion to UN membership, a large plurality of recommendations are made by the Western European and Other (WEOG) group.
- African and Asian states are more likely to make softer recommendations (i.e. to continue what a (SuR) is already doing, or to take a general action) while WEOG states are relatively more likely to issue specific action-oriented recommendations.
- The most common recommendations address issues related to international instruments, women's and children's rights, torture and the administration of justice.
- While it is difficult to aggregate data on Economic, Social, Cultural as compared to Civil and Political Rights, the former appear to have a higher acceptance rate.
- More democratic states tend to make more action-oriented recommendations. This is true across regions.

### Conclusions

We conclude that the UPR is a compromise, born out of the need to have a meaningful instrument to promote universal human rights norms while respecting the reality of a consensus-based decision-making process. The first cycle resulted in some tangible benefits. These included:

- heightened attention within governments;
- improved dialogue between some governments and civil society, both on a national and international level;
- the development of some useful precedents such as the issuance of mid-term compliance reports; and
- some increase in cross-regional common perspectives, especially among more democratic states.

While positive, these results are modest, reflecting the reality that the process will be evolutionary, rather than revolutionary.

### Recommendations

This analysis leads to several recommendations. They include:

- involve NGOs more;
- emphasize verifiable and action-oriented recommendations;
- make meaningful follow-up second cycle recommendations;
- ensure that mid-term reporting becomes norm;
- encourage healthy and critical debate and dialogue regardless of state region or global power; and
- promote serious and sustained SuR engagement. For example, SuRs should avoid to the extent possible accepting recommendations on the basis that what they are already doing is being requested. In the same vein, recommending states should refrain from such recommendations.

## 2. Introduction

### 2.1 Background

A central contemporary challenge facing the international community, especially standards-based intergovernmental organizations (IGOs), is how to promote both a vision of and adherence to commonly agreed-upon norms. It includes the promotion of universal norms regarding human rights, which has gained momentum in recent years. This has become an increasingly salient question with the growth of globalization in general and the heightened number and impact of IGOs in particular. One method which has been adopted by some organizations and which has begun to attract heightened attention more broadly is the development of peer-based initiatives to create shared perspectives, assess

performance and make recommendations on improving adherence with shared norms. One such notable example is the Development Assistance Committee peer review process of the Organization of Economic Cooperation and Development; another is the African Peer Review Mechanism. In this regard, a notable addition has been the Universal Periodic Review (UPR) mechanism, instituted by the UN HRC.

The UPR is a process, begun in 2008, in which each year 48 UN member states' human rights performances are examined by fellow UN member states, especially those on the HRC. A three-member HRC committee oversees the preparation and presentation of information from the SuR, NGOs and the UN regarding the SuR's adherence to a range of human rights criteria. Each SuR then presents a self-assessment of its human rights record. Member states comment on this and issue recommendations. The government of the SuR has the choice to accept, reject, provide a general answer, or ignore these recommendations. The state is obliged to seek to fulfill its accepted recommendations. The UPR's purpose is to promote and deepen respect for human rights through this provision of feedback to member states on their human rights performance.

The UPR is widely seen as one of the most innovative and notable arrows in the HRC quiver of actions to promote and defend human rights.<sup>1</sup> The UPR's importance within the HRC thus lies not only in its function, but also in its symbolic value. How it fares, and how credibly its work is viewed, impacts considerably on broader perceptions of the HRC. Various stakeholders in the international community have been willing to give the HRC a trial period to develop a track record and »get its legs under it«. Increasingly, however, attention is being placed on its results and whether the HRC as a whole can prove to be a durable and effective promoter of human rights on the global stage. This has been accentuated by the 2011 conclusion of the first cycle of the UPR's examination of all 192 UN member states.

It is important to note that the U.N. is not a monolithic body. Different stakeholders have varying interests and perspectives on the highly sensitive and complicated role and functioning of the HRC, including the UPR.

1. The HRC itself is an innovation, emerging from the widely discredited UN Commission on Human Rights in 2006.

As the HRC's membership is chosen by the UN General Assembly, it can be viewed as sort of a microcosm, or proxy, of that body. The ability of the HRC to undertake its ambitious mandate is complicated by the range of human rights perspectives of member states. The current 47 member state composition ranges, for example, from China to the US.<sup>2</sup> Geo-strategic interests and varying cultural imperatives have combined at times to create deep cleavages between governments. State delegations from varying geographic and other affinity voting blocs have often acted and voted in unison, which has had the effect of further differentiating between regions. The HRC thus reflects many of the broader constituencies, interests and stresses at play within the UN system.

Examination of the UPR is a thus compelling and timely topic as it deals with the practical implications of one of the great experiments in contemporary international organizations. It also takes place when the promise embodied in the most influential human rights document of the post-World War II era (and arguably of all time), the Universal Declaration of Human Rights, has been challenged by continuing human rights violations around the world. But it is also a time of great promise, as bodies such as the International Criminal Court have come into existence, reflecting the growth of international efforts to promote human rights globally.

In addition, the new Responsibility to Protect (R2P) doctrine offers a potential opportunity for more coordinated and concerted international action to promote and protect human rights. R2P and the peer review mechanisms can be considered bookends of attempts to strengthen adherence to universal human rights values. Pillar 3 of R2P calls for international military intervention in extremis cases in which governments actively and massively violate their own peoples' human rights.<sup>3</sup> R2P can thus be considered to include an extremely muscular and top-down exercise of protection of universal rights over the traditional concepts of national sovereignty. Peer reviews, by contrast, are based on the consent and participation of national governments in the process.

2. For a list of current HRC members see <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>.

3. Baskets 1 and 2 of R2P relate to support to the responsibility of national governments, and of the international community to support national governments in the promotion of human rights. Pillar 3 has been employed sparingly to date, most recently in international actions related to the Libyan 2011 revolution.

They are consensual and largely voluntary in nature and thus represent an evolutionary rather than revolutionary move towards embracing these universal norms. But both approaches are anchored in the language of compliance with commonly-agreed universal norms and values.

The UPR, the purpose of which is to deepen respect for human rights through the provision of feedback to member states (and other interested parties) on their human rights performance, is now into its fifth year of activity. Analysis of the UPR can provide information on how the mechanism is viewed and utilized by member states. Wide variations exist, but there are also important points of commonality and shared perspectives across regions regarding human rights – a point which sometimes is subsumed by news headlines of ongoing human rights violations in various parts of the world. In addition, a frequently expressed statement among observers and participants in the UPR is that in contrast to other functions of the HRC and the UN General Assembly where regional affiliations and loyalties »lock-in« North-South conflict, the UPR recommendations process emphasizes bilateral, state-to-state relations. Most recommendations are developed by state delegations, either at the mission level in Geneva or in their home capitals, and are not the result of a dictate by the various regional grouping. This suggests that states have greater freedom to make UPR-related decisions and act apart from regional affiliation. A successful UPR process could thus serve as an example to create new and potentially more positive dynamics of interaction between states in the UN system.

Given its relatively recent vintage, to date there has been only limited aggregated analysis of the UPR and its functioning. With the end of the first UPR cycle, the time is opportune to assess the process and identify key themes and trends in the recommendation process. Data such as that provided in this report is now becoming available to provide an empirical basis for such an assessment. This can help to »paint the picture« of how the UPR is functioning, and whether it is beginning to achieve its goals of promoting global human rights observance.

## 2.2 Report Structure

The fundamental issue is whether the UPR reflects the old pattern of sterile and polarized regional group interactions or whether, by contrast, it represents a new approach, successfully creating collective action in favor of the promotion of human rights. Key subsidiary questions include: First, to what extent can an organization made up of governments (with a wide range of definitions, perspectives, and levels of respect for human rights) promote the integration of respect for human rights into existing international norms and standards? Second, and more specifically, can the HRC and its member states imbue the UPR with real meaning and value? This report examines whether the UPR contributes to the HRC's mandate to promote human rights world-wide. It assesses the extent to which the UPR mechanism reflects a potential bridge for building consensus among nations on core principles and pragmatic policy elements inherent in the protection of human rights.

The report first outlines the UPR's origins, and describes its functioning. It then discusses the 2010-2011 HRC, including the UPR, reform process which was mandated in the HRC founding documents. The report then provides an empirically-based analysis of the first cycle of the UPR.

As data is beginning to be available on SuR implementation of recommendations from the first cycle, a wealth of analytic information about state behavior in the UPR can begin to be garnered from study of the recommendations. It is possible to analyze this data to determine what is being asked of states, and how they have been responding, i.e. to what extent are they committing themselves to take meaningful actions as a result of the UPR. This report examines patterns of recommendations and responses by the SuRs, as well as issues raised. It includes a unique analytic tool to assess the types of recommendation, based on the primary action verb contained in the recommendation. This reveals patterns regarding which states and regions tend to make and accept easier, as opposed to more challenging, recommendations.<sup>4</sup> The report concludes with a set of integrative reflections and a set of recommendations based upon the analysis contained in the report.

4. This finding is presented and discussed in Section 4.2. It is also contained in the database, which can be found at <http://www.upr-info.org>.

One caveat is necessary here. The issue of SuR compliance with accepted recommendations lies at the heart of the eventual success or failure of the UPR. With the end of the first cycle, increasing attention is rightfully being directed to this need.<sup>5</sup> This report does not directly deal with this issue for two key reasons. First, it is still early to be seeking definitive conclusions on this, especially as many states have not even yet reached the two-year mid-point after their first reviews. Second, given the need for contextual and factual accuracy, providing an accurate picture of compliance will require a sophisticated and multi-faceted methodological approach beyond the scope of this report. We suggest, however, that this report provides some markers and indicators of areas of interest to those who will be assessing compliance in the near-to-medium term future.

## 3. UPR's Development and Functions

### 3.1 UPR Origins

The HCR's predecessor, the Commission on Human Rights (CHR), was influenced by the Cold War and other international events that shaped the views of member-states and the composition of different blocs of allegiance. The need to compromise limited the effectiveness of the CHR. Over its life it represented the fruit of a negotiation process based on consensus, in which the lowest common denominator tended to be paramount. It is worth noting that the CHR developed a similar »periodic reporting process« in the early 1960s; this was eventually abolished because the reports it generated on state performance generated a paucity of attention and proved to be of little use.

Its eventual demise was assured both as a result of the growth of power and activism on the part of the developing world and the spread of democracy in recent decades, heightening expectations and pressures on the CHR, which it generally failed to meet.

5. Information concerning SuR compliance with recommendations accepted during the first cycle can be found at <http://www.upr-info.org/followup/> and <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>. The former site contains NGO and other independent analyses of state compliance while the latter site includes official, state responses. To date this information is disaggregated; more research into this data is necessary to ensure a maximum level of objective detail so that analysis can be calibrated for quality control purposes. It would then be possible to aggregate it to identify trends in compliance.



The CHR should not, however, be viewed as a total failure. In a limited way, it spawned positive initiatives which have some staying power and which carry the potential for future development. These include the development of special procedures, country reporting (which has now evolved into the UPR), and advances in the consolidation of internationally-recognized human rights standards.

Two key U.N. reports laid the groundwork for the metamorphosis of the CHR into the HRC. The High-level Panel on Threats, Challenges and Change issued a document in 2004 which reinterpreted the concept of sovereignty to be one of governmental responsibility towards its citizens, rather than based solely on territorial control considerations.<sup>6</sup> In this view, rights should be protected not because they are intrinsically good, but »because they are necessary to achieve the dignity, justice, worth and safety of their citizens«. In addition, Secretary-General Annan put his own blueprint more specifically on reform plans in his 2005 report, »In Larger Freedom: Development, Security and Human Rights for All«. In this landmark report he criticized the CHR, stating that: »The Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole«.<sup>7</sup>

The Secretary-General also stressed the importance of a new and more stream-lined and empowered HRC to reaffirm the U.N.'s stance on, and priority for human rights protection. The choice of the new name was purposeful, as Annan sought to heighten its institutional profile along the lines of the Security Council or the Economic and Social Council.

The successful conclusion of the reform process culminated in the establishment of the HRC in 2005. This in and of itself represented a considerable achievement, given the kaleidoscope of stakeholders, constituencies and interests with a hand in its gestation. The HRC has expanded powers compared to its predecessor organi-

zation, as well as an apparently more rigorous membership selection process. Its creation was accompanied by high hopes that it could more effectively promote observance of human rights than did its discredited predecessor organization.<sup>8</sup>

The HRC's creation, however, did raise concerns in some quarters. A prominent feature of the landscape had been the evolution of regional blocs, in which states tended to act in concert with like-minded states. Some of these blocs were thematically-based, such as the Organization of Islamic Cooperation (OIC) and the Non-Aligned Movement (NAM) grouping of developing world states, but regionally-focused groups also came to play a central role. Although lacking an explicit juridical or legal basis within the UN system, five such groups emerged in the UN General Assembly context; the African, Asian, East European, GRULAC (Latin America) and WEOG (Western European and Other) blocs. These came to be the vehicles through which decisions regarding which states would seek election to UN leadership roles would occur. Other regional affiliations, such as with the European Union, also impact on some aspects of the HRC's functioning.

Governmental representatives from a number of G-77 countries feared that it could become another tool through which the OECD member states could promote its globalization agenda in general, and to criticize those governments which did not meet their particular criteria regarding human rights protection and promotion in particular. These states thus sought to gain increased power within the new HRC. They also claimed that western interpretations of human rights ignored culturally relevant issues such as respect for the tenets of Islam.<sup>9</sup>

Conversely, some in the OECD member states, including many NGO human rights groups, expressed grave concerns that the newly-constituted HRC would actually prove to be more sympathetic to autocratic and human rights abusing states, especially given a slight but significant proportional geographic allocation increase in seats from the developing world member states. The states and NGOs also expressed concerns whether the HRC would prove to be any more capable than the CHR in

6. United Nations (2004): A More Secure World: Our Shared Responsibility. New York.

7. Kofi Annan (2005): In Larger Freedom: Development, Security and Human Rights for All. New York: United Nations.

8. Lars Muller (2007): The First 365 Days of the United Nations Human Rights Council, Geneva: Swiss Ministry of Foreign Affairs, 41

9. See, for example, the Cairo Declaration on Human Rights at <http://www.oic-oci.org/english/article/human.htm>.

making strong and consistent critiques of human rights violator states. This, therefore, is the context from which the HRC (including the UPR) began functioning.

Much of the literature on the HRC in its early years focuses on the shortcomings of the previous system, the reform ideas which had been both proposed and actually incorporated into the new HRC, and the new body's prospects for success. Few observers (or participants) of the HRC appear to have been prepared to assign high odds to its success, which was understandable in light of the CHR's history and demise. In fact, no consensus even existed on how such an outcome would specifically be defined, perhaps in part because of the hasty manner in which the reform was decided. Much of the comment on the HRC ranged from the expression of strong support and the belief that it could have a significant impact on human rights, to skepticism that it would prove to be any more effective than its predecessor organization.

During its first year the HRC largely focused on organizing itself and developing the specific modalities regarding its functioning; its founding document required it to finish this »institution-building« housekeeping by June 2007.<sup>10</sup> This proved to be a particular challenge for two main reasons. First, there had been a lack of specific detail on the new HRC's structure and functioning accompanying its creation. This was due in large part to Secretary-General Annan's desire to expedite the reform process, perhaps based on his recognition that given the regular pace of U.N. deliberations, it would risk getting bogged down and never be enacted, at least not before his term had ended. Second, power relationships amongst member states and regions reflected ongoing and profoundly divergent views on the mandate and scope of the CHR's work. This continued to manifest itself in the new HRC.

### 3.2. UPR Initial Process and Actions

UN General Assembly (UNGA) Resolution 60/251 authorized the establishment of the UPR »based on objective and reliable information«. The Resolution further states that the UPR should be conducted »in a manner which ensures...equal treatment with respect to all States«. HRC Decision 6/102 stated that UPR reports

should identify country »achievements, best practices, challenges and constraints«. While the CHR had instituted a formal process of states issuing reports on their adherence to human rights standards and practices, the UPR reflected a potentially significant step forward in that it is designed to utilize peer review – and its heightened profile and attendant public exposure – to effect changes that promote human rights. The UPR's *raison d'être* is to promote and deepen respect for human rights through the provision of feedback to member states on their human rights performance. At its core the UPR, a product of compromise and consensus, has thus represented a new and untested but promising forum in which states make policy recommendations to each other.

UNGA Resolution 60/251 emphasized that the UPR process should be cooperative, constructive, non-confrontational and non-politicized. The Institution-building Package defined the functioning of the UPR. This included the process by which states would be selected for review, the sequence of the reviews, and the general guidelines for the preparation of relevant documentation. It was also crafted to be inter-governmental in nature and U.N. member-driven, and to be realistic. It was also explicitly designed not to be overly burdensome or long, and not to absorb a disproportionate amount of human and financial resources. The lack of punitive sanctions attached to the process was very likely a *sine qua non* for the support of many G-77 states, which feared that the UPR could turn into a one-sided mechanism for OECD member states to criticize their human rights records, warranted or not.

At the same time, however, the Institution-building Package stated that the process should be »action-oriented« and »not diminish the Council's capacity to respond to urgent human rights situations«. As with other aspects of the HRC, the UPR's structure represents a compromise between states with greater and lesser commitments to human rights protection, and between states with vastly differing perceptions of what should be the role and function of the HRC and the UPR. An illustrative set of examples by which this was manifested included: a) the limited role of NGOs, b) circumscribed times for member state oral interventions, c) no reference for mid-term reporting for SuRs, and d) limited resources for UPR administration.

10. UNGA Resolution 60/251, 4.3.2006.

The document established that all member States of the Council would be reviewed during their term of membership. In addition, non HRC member states were to be also reviewed, as the mechanism was designed to examine all U.N. member states.

During the selection phase of the first UPR cycle, states were split per regional group. The number of states chosen for review was in proportion to their number in regional groupings.<sup>11</sup> Each regional group list was then organized such that the first states to be reviewed were those whose terms of membership had ended in June 2007, followed by those whose terms of membership were to end in June 2008, and then those who volunteered for examination in the UPR process. The list of countries was then assigned in alphabetical order starting with the country drawn by lot by the HRC President. The subsequent stages of the process are as follows:

- *Preparation of national report.* In terms of specific UPR functioning prior to its review, the SuR first prepares a self-study, according to general guidelines laid out by the HRC. In order for the report to reflect country realities to the maximum extent, the SuR government is supposed to involve the non-governmental sector in this process, although to date there appears to have been wide variance concerning the extent of SuR adherence to this important proviso.<sup>12</sup>

- *Preparation of Stakeholder and UN documentation.* Information provided by »other relevant stakeholders« to the universal periodic review, is summarized by the OHCHR in a document. Stakeholders may include, inter alia, NGOs, NHRIs, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.

- *Assessment of national report and preparation of recommendations by recommending states.* A Working Group (WG) composed of all member-States of the HRC and chaired by the President of the Council then examines the SuR's human rights record and performance. The WG is assisted by a secretariat, known by the term Troika, of three state delegations, which are selected by the drawing of lots among members of the HRC and from different regional groups. Each WG includes a presentation by the SuR of its national report as well as the answers to the written questions and issues it had received in advance. Those questions/issues have to be submitted in advance by States to the Troika. The Troika then relays the list of questions to the Secretariat which transmits them to the SuR at least 10 working days prior to the review. The Troika also prepares a summary of state adherence to various human rights treaties and commitments.

- *Review of SuR in Working Group.* The next stage is an interactive three and a half hour dialogue during which States take the floor to ask more questions and to make recommendations about the documentation provided on the SuR's human rights practices as well as the human rights situation in the country (NGOs can attend the WG but not speak). During this phase, member-States of the HRC have three minutes of speaking time while observer states have two minutes. The SuR then presents its concluding remarks.

- *Document containing recommendations by states and voluntary commitments by the State under Review.* This three-hour WG session is followed by a report prepared by the Troika with the involvement of the SuR and the assistance of the HRC Secretariat. This report contains the summary of the interactive dialogue, responses by the SuR, and recommendations by States and voluntary commitments by the SuR. The SuR then responds indicating which comments it accepts and which it rejects. It may also make a general response or not response at all, which emphasizes the voluntary and non-coercive nature of the process.

- *Preliminary adoption of the report.* After the report has been adopted in principle, states have two weeks to request any modifications.

- *Final adoption of the document during a plenary session of the HRC.* The last stage of the process is for the report to then be approved at a plenary session of the

11. Through the first four sessions of the UPR, 19 of the 64 countries (30 per cent) examined were from the Asia group; 17 (26 per cent) were from Africa, 7 (11 per cent) were from Eastern Europe Group (EEG) and Eurasia, 11 (17 per cent) were from Latin America and the Caribbean (GRULAC), and 10 (16 per cent) were from the Western European and Others group, which includes North America and Australia/New Zealand.

12. A number of reports on the UPR's functioning have emphasized the need for greater NGO involvement. See, for example, the Friedrich Ebert Stiftung Report on The Human Rights Council's Performance To-date, November 2010 or the Human Rights Monitor Quarterly 2.2012 [http://www.ishr.ch/document-stuff/browse-documents/doc\\_download/1440-universal-periodic-review-hrmq2-2012-](http://www.ishr.ch/document-stuff/browse-documents/doc_download/1440-universal-periodic-review-hrmq2-2012-).

HRC by a resolution or decision. One hour of the plenary is allocated to the adoption. Twenty minutes are allocated to the SuR to reply to questions and issues that were not sufficiently addressed during the WG, and respond to recommendations that were raised by states during the interactive dialogue. A further 20 minutes are provided to member and observer States to take the floor and express their opinion on the outcome of the review. The final 20 minutes are reserved for NGO and other stakeholders to make general comments.

The SuR has the primary responsibility to implement the recommendations contained in the final outcome. In principle the UPR's aim is to ensure that all countries are accountable for progress or failure in implementing these recommendations.

One important feature of the UPR are voluntary commitments that SuRs make in the context of the review process. They may be made at the beginning of the review, during the interactive dialogue, or after the dialogue. These are commitments to undertake reforms on specific issues to strengthen and improve respect for human rights in their states. According to the UPR Info database on voluntary pledges, a total of 537 such pledges were made in the first session covering a wide range of human rights-related issues. Approximately 40 per cent consisted of specific and verifiable commitments while another 40 per cent represented more general statements of intent. Asian states accounted for 40 per cent followed by GRULAC and WEOG at slightly less than 20 per cent each. EEG states made about 5 per cent of the commitments.

### 3.3 UPR Reform Process from First to Second Cycle

As mandated by its founding document, in 2011 the member states of the HRC conducted a review of its functioning, including some reforms designed to enhance the functioning of the UPR. This review process took place in 2010-2011 and included a wide range of consultations, meetings and deliberations.<sup>13</sup> Resolution 16/21, adopted in March 2011, contained the revised modalities for the functioning of the HRC. In June 2011

the HRC completed the review process by adopting decision A/HRC/17/L.29 on the Follow up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review.<sup>14</sup>

While the final reform package omitted a number of far-reaching proposals to strengthen the HRC and the UPR, it did contain some modest reforms. Key elements in the final review package included:

- *Special Procedures.* National Human Rights Institutions can nominate candidates for special procedures mandate holders. The HRC should streamline requests to special procedures to ensure meaningful discussion of their reports. Additional emphasis should be placed on following-up Special Procedures' recommendations. The need for adequate funding for special procedures was emphasized.

- *HRC Administration.* The Council cycle is to be for the calendar year. An Office of HRC President is to be established, but must be funded within the existing budget. The use of information technology to enhance participation and dialogue is encouraged.

There were a number of decisions taken specifically regarding the UPR. These included:

- *Responses to Recommendations:* States should clearly communicate to the Council, in a written format preferably prior to the Council plenary, its positions on all received recommendations (para. 16, resolution A/HRC/RES/16/21).

*Comment.* This was designed to ensure that states would be on record regarding their response to the recommendation; it was designed to bring greater clarity to this aspect of the process.

- *Role of NGOs:* States are encouraged to conduct broad consultations with all relevant stakeholders on the follow-up (para. 17, resolution A/HRC/RES/16/21).

13. Deliberations took place, inter alia, at Wilton Park in the UK, in Algiers, Montreux, Mexico City, Bangkok, Seoul, and Paris.

14. For a detailed discussion of the review process, including various perspectives of different states and participants in the process, see the following three documents by Theodor Rathgeber (2010): *Reviewing the UN Human Rights Council, Perspectives from Civil Society*, Friedrich Ebert Stiftung, Geneva; Friedrich Ebert Stiftung (2011): *The Human Rights Council after the Review: Tangible Changes or Business as Usual?*, Geneva; and Friedrich Ebert Stiftung (2012): *New Prospects for Human Rights? The Human Rights Council between the Review Process and the Arab Spring*, Geneva.

*Comment.* State adherence to the principle of widespread input into the report process was extremely uneven in the first cycle; this reform was designed to emphasize the importance of all relevant (including non-state) stakeholders having a voice in the process.

- *Follow-Up:* Other relevant stakeholders are encouraged to include in their contributions information on the follow-up to the preceding review (para. 8, resolution A/HRC/RES/16/21).

*Comment.* This was designed to encourage non-state stakeholders to provide views and perspective on state compliance with accepted recommendations.

- *Number of Sessions per Cycle:* There will be 14 sessions per cycle (para. 3, resolution A/HRC/RES/16/21).

- *Number of States per Session:* Only 14 States will be reviewed per session (part I, decision A/HRC/17/L.29).

- *Duration of the Review:* Each review will last three and one half hours. The SuR will be given 70 minutes and other States 140 minutes (part III, decision A/HRC/17/L.29).

- *Length of the Next Cycles:* The second and subsequent cycles will last four and one half years (para. 3, resolution A/HRC/RES/16/21).

*Comment.* Many complaints were raised concerning the limited time available for each country review; these reforms were designed to address this problem, at least in part.

- *List of Speakers:* The list of speakers will open on the Monday of the week preceding the beginning of the WG session. For each review, States will be arranged in English alphabetical order and the beginning of the list will be drawn by lot. States will be able to swap place (part IV, decision A/HRC/17/L.29). All States will be given the floor. If needed, time per speakers will be reduced to two minutes each or the 140 minutes will be divided by the number of speakers.

*Comment.* The previous first-come-first-served process was open to manipulation and at times resulted in unbalanced speakers' lists in favour of the SuR. The limited amount of time also led to many states not being able

to speak in a substantive fashion, and some not to speak at all.<sup>15</sup> Anecdotal evidence includes stories of diplomats lining up in the pre-dawn darkness the day of a state review to register to speak. This reform represents an attempt to address this problem.

- *General Guidelines:* The General Guidelines Decision 6/102 for the drafting of the three reports that form the basis of the review were slightly modified to give greater emphasis on the need for States to report on the implementation of recommendations (part II, decision A/HRC/17/L.29).

- *Mid-term Reports:* States are encouraged to provide the Council, on a voluntary basis, with a midterm update on follow-up to accepted recommendations (para. 18, resolution A/HRC/RES/16/21).

*Comment.* These two reforms represent modest additional provisions to enhance state accountability regarding accepted recommendations. Mid-term reporting is merely voluntary (although precedents have been established which is making this practice increasingly a norm of procedure).

- *Focus of the next cycles:* The second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the SuR (para. 6, resolution A/HRC/RES/16/21).

*Comment.* One of the weaknesses of the initial procedures was the lack of reference to follow-up reporting by SuRs. Some states preferred to maintain flexibility on this point while others argued that for the UPR to be a meaningful process it was important to have a mandated reporting process including interim or mid-term follow-up reporting so that compliance measurements could be established. The end result was a compromise which makes reference to midterm reports, but on a voluntary basis only.

15. A number of reports cited the key need for better time management of the Review process. These included the Preliminary Report on the Strengthening of the Human Rights Council, Paris, France 1.25-26.2010 [http://www2.ohchr.org/english/bodies/hrcouncil/docs/Report\\_Paris\\_meeting.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/Report_Paris_meeting.pdf) and the Summary Report of the Open-Ended Seminar on the Review of the Human Rights Council, Montreux, Switzerland 4.20.2010 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/RapportMontreuxFinal.pdf>.

■ *Role of National Human Rights Institutions:* National Human Rights Institutions (NHRIs) with “A status” will have a dedicated section in the summary of other stakeholders’ information (para. 9, resolution A/HRC/RES/16/21)<sup>16</sup>. NHRIs will be given the floor directly after the SuR during the adoption at the HRC plenary session (para. 13, resolution A/HRC/RES/16/21).

*Comment.* NHRIs can make a significant contribution to the UPR process by providing independent, up-to-date and credible information on their country’s human rights situation although at times they find themselves in challenging positions. While officially sanctioned by the government they also must remain independent of it, and responsive to international norms.

The UPR also serves as a means of emphasizing the importance of NHRIs; most of the over 700 recommendations dealing with NHRIs in the first cycle of the UPR emphasized ways of heightening NHRIs visibility and influence in protecting human rights. The UPR creates additional opportunities for NHRIs to assert their pivotal role nationally, as the national guardians of human rights, and internationally, through reporting and intervening before the HRC.

The steps taken in the UPR review generally appear to be useful and respond to perceived needs. They certainly do not appear to have weakened the HRC; on the contrary the mechanism can be considered to have been modestly strengthened. But, reflecting the consensus nature of the decision-making process, many of the important reform ideas brought up in the process leading up to the adoption of the final report were not addressed; many of those that were resulted only in minor fixes or adjustments. For example, no reforms emerged regarding Situations of Concern. And potentially important UPR reforms, such as strengthening the role of the Troika, or mandating mid-term reports, also failed to achieve the needed consensus to be included.

16. In 1993 the UN General Assembly adopted a set of principles designed to enhance the role of officially designated national human rights institutions (The Paris Principles). Human rights organizations that are determined to be fully compliant with the Paris Principles are accorded “A” status.

## 4. Data Presentation and Analysis

This section of the report examines state behavior in the UPR through the cataloguing and analysis of the approximately 20,000 recommendations made in the 12 sessions from April 2008 through October of 2011. Some key questions include: How do states approach this process? How do they use it as a meaningful process to improve human rights? What are similarities and differences between countries from different regional blocs in how they approach the UPR?

The core of this report focuses on data developed by analysis of the actual recommendations. This provides information on how the UPR process functions in an overall sense, and is also disaggregated by regions, issues and types of recommendations. These include:

- total number of recommendations;
- accepted/other recommendations by recommending region to SuR region;
- recommendation breakdown by action categories;
- response to recommendations by category;
- distribution of recommendations by action category and region;
- distribution of recommendations by issue theme by both SuR region and recommending states regions.

Analysis of this data can be instructive in guiding policymakers and others on how the mechanism is functioning and ways that it could be strengthened in the future.

### 4.1 Analysis by Other Affinity Groups

Table 1: Acceptance and Recommendations Among OIC, Commonwealth, and with African/Asian States under Review

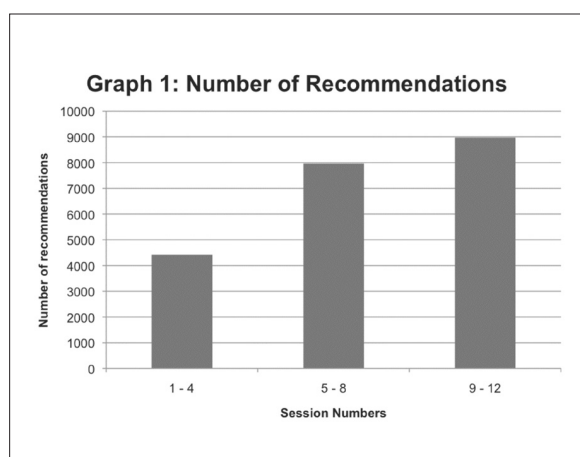
	Acceptances (SuR)	Category 5 Recommendations (SuR)
OIC	73%	32%
Africa/Asia	72%	35%
Commonwealth	70%	53%
World	73%	56%



As a precedential note, we point out that this report takes as its main basis of analysis regional groupings as articulated within UN bodies such as the General Assembly and the HRC. In theory, analysis could be deepened by the utilization of other affinity groupings (e.g. the Organization of Islamic Cooperation, the International Organization of la Francophonie or the Commonwealth) through which to present the data. And those who have a particular focus on these organizations may wish to do so. For the purposes of this report, however, it suffices to note that the data that emerges from such analysis largely reflects the regional anchoring of the member states of these organizations. Thus, for example, OIC member states come mainly from Africa and Asia. It is, therefore, not surprising to see that their voting closely tracks the analysis presented by examining actions of states in those two regions.

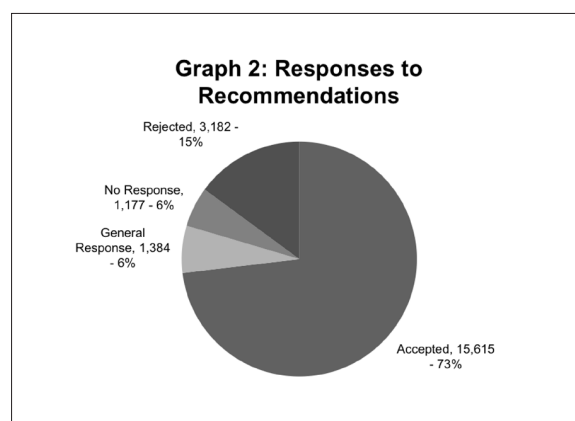
By the same token, since an organization such as The Commonwealth consists of states reflecting a broad geographic range (and other factors including varied human rights records), we would expect analysis of its actions in the UPR would be more varied, and reflect overall, global, UPR results. This is borne out in the Table 1 data.

#### 4.2 Data



Graph 1 demonstrates that the UPR mechanism was increasingly utilized over the life of the first cycle. The total number of recommendations increased considerably between Sessions 1-4 and the subsequent sessions. This was most likely due to increased familiarity with the

UPR process.<sup>17</sup> Under the current rules of procedure, it would appear unlikely that the number of recommendations per session would increase significantly over the total generated in Sessions 9-12.<sup>18</sup> States only have a total of three minutes each to make recommendations and only those which are orally presented during the UPR working session are entered into the record. In the past this resulted in situations in which SuRs solicited the input of friendly states, often with promises of reciprocal treatment when the recommending state's turn to be examined arrives.

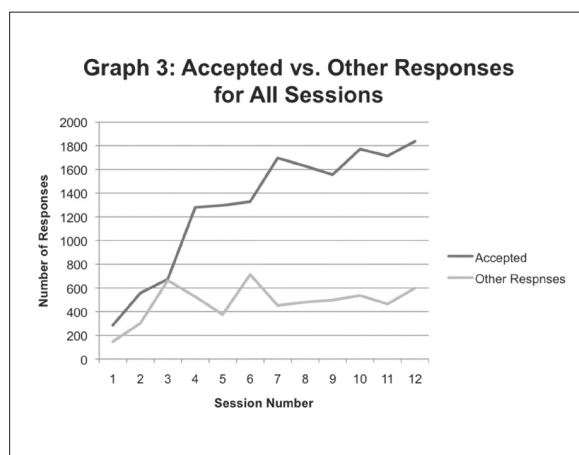


Graph 2 demonstrates that overall, 73 per cent of all recommendations are accepted. A number of different dynamics are probably at play to explain the high acceptance rate. First, states are likely to want to have as high an acceptance rate as possible, either because they agree that the recommendations are useful and valid, and/or because they are concerned about the perception of not accepting a large number of recommendations. As a Mexican diplomat put it: »Countries are on the world stage during their Review. No one wants to look bad«. Similarly, a Bangladeshi government official stated that »not wanting to be seen to be doing poorly creates a sort of competition to see who has done the most«. In addition, recommending states would appear to have an interest in making their recommendations palatable to the SuRs, either by making them general in nature or avoiding making recommendations on es-

17. For a detailed discussion on the first three UPR sessions see International Service for Human Rights Human Rights Monitor: Overview of the Universal Periodic Review in 2008, 37-50ff.

18. Recommendations for Session 13 (the first session of the second cycle totalled about 2000. According to UPR-Info (<http://www.upr-info.org/newsletter/archive.php?x=106&listID=1&layoutID=3&pagerows=15&pagenum=1>) the reforms instituted to provide more even-handed access to the speaker's list appeared to be fulfilling their function in Session 13.

pecially sensitive human rights issues. According to a U.K. diplomat, some participating states may view recommendations, of which they only have time to make a very limited number, that are not accepted as »wasted« since SuRs have no obligation to take action on them. Another dynamic relates to the fact that some states »accept« recommendations with the stated rationale that they are already doing what the recommendation requests. This in turn, however, raises the question as to why such a recommendation is made in the first place. Two possible answers are that a) the recommending state was unaware that the issue had already been addressed by the SuR, or b) there is a difference of opinion as to whether the issue has in fact been addressed, either in part or in whole.



Graph 3 shows an increased trend in recommendations throughout the life of the first cycle. The percentage rate increased from 63 per cent in Sessions 1-4, to 75 per cent in Sessions 5-8, and 77 per cent in sessions 9-12. The increase in acceptances has been drawn more from the general response category than the rejection or non-response segments. This suggests that states may become more comfortable with the process as they gain experience from it. The established parameters of the UPR mechanism and the consensus-driven nature of the HRC's decision-making processes mitigate against an adversarial and confrontational recommendations process. This is demonstrated by the fact that rejections account for just under 15 per cent of the recommendations.<sup>19</sup>

19. Per session rejection rates for the first five sessions were all within the 10-17 per cent range.

This data deserves further consideration. The U.K. delegate suggested that responses of a general nature, or no responses at all in many circumstances, appear to be designed to reject a recommendation without going on the record to do so. Depending on the combination of dynamics in play, the high acceptance rate can reflect the political nature of the process. This, in turn, raises the question whether states are prepared to participate more in the process by accepting recommendations for meaningful effect, or whether they have determined that the »cost« or potential adverse effects of accepting recommendations is limited and that they can, in essence, pretend to be engaged by accepting recommendations. Over the course of the first cycle which produced over 20,000 recommendations, both factors likely to have come into play.

Table 2: Action Categories

#### Category 1

Recommendations directed at non-SuR states, or calling upon the SuR to request financial or other assistance from, or share information with, non-SuR states (verbs in this category may include share, seek, request)

#### Examples:

Seek contributions from the international community in the Government's efforts to promote rights (Ghana to Botswana, Session 3).

Share its experiences and best practices with other countries in establishing national legislation and mechanisms and pursuing international cooperation to curb human trafficking (Philippines to United Arab Emirates, Session 3).

#### Category 2

Recommendations emphasizing continuity in actions and/or policies (key action verbs: continue, persevere, maintain)

#### Examples:

Continue its efforts to develop the work of its national institution for human rights, as an effective human rights watchdog (Egypt to Bangladesh, Session 4).

Continue the efforts to combat trafficking in persons with a special emphasis on women and children (Canada to Japan, Session 2)



**Category 3**

Recommendations to consider change (key action verbs: consider, reflect upon, review, envision)

**Examples:**

Consider subsequent measures towards the complete abolition of the death penalty (Switzerland to Cuba, Session 1).

Consider becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Azerbaijan to Mauritius, Session 4).

**Category 4**

Recommendations of action that contain a general element (key action verbs: take measures or steps towards, encourage, promote, intensify, accelerate, engage with, respect, enhance)

**Examples:**

Further improve the professionalism of the police force (Netherlands to Barbados, Session 3).

Take the necessary steps to reduce discriminatory practices and violence against women (France to Mali, Session 2).

**Category 5**

Recommendations of specific action (key action verbs: undertake, adopt, ratify, establish, implement, recognize – in international legal sense)

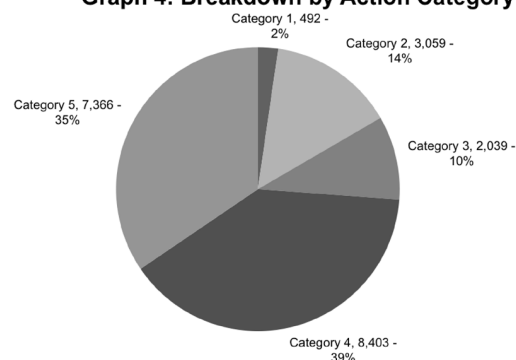
**Examples:**

Abolish the death penalty (Chile to Burkina Faso, Session 3).

Adopt legislative measures to outlaw domestic violence if it has not done so already (South Africa to Russian Federation, Session 4).

As a key value-added element of the database, this category requires particular explanation. It would be highly subjective and of no utility to attempt to assess recommendations on the basis of whether they are »good« or »bad«. It is possible, however, to make a more objective assessment based on a characterization by level of action, as expressed by verbs contained in the recommendation. A 1-5 scale is utilized which provides a characterization by level of action, as expressed by verbs contained in the recommendation. In general Category 1 requires the least cost and effort to the SuR, while Category 5 represents the greatest potential cost, as specific and tangible actions are being requested.<sup>20</sup> We hypoth-

esize, based on rational choice theory, that the percentage of recommendations accepted will tend to decline as the perceived cost to the state of accepting these recommendations increases. States should find Category 1 recommendations easiest to accept and those from Category 5 hardest to embrace. We also suggest that Category 5 recommendations will generally tend to be the farthest-reaching and most important. Table 2 lists the different recommendation action categories and provides examples.

**Graph 4: Breakdown by Action Category**

It is important to note in Graph 4 that the largest numbers of recommendations fall into Categories 4 and 5, i.e., recommendations of a general action (Category 4) and specific action (Category 5) nature.<sup>21</sup> The fact that just over two-thirds of all recommendations are action-oriented suggests that states are taking the UPR seriously in that they are using it to ask that states take reform actions. The distribution of these data remained remarkably consistent over the course of the individual sessions of the first cycle.

This perspective, however, needs to be tempered somewhat in analyzing the content of the recommendations, especially those in Category 4. The generality of those types of recommendations facilitates governments' acceptance of them, as the government has considerable leeway to define how it fulfils the recommendations. It is thus possible to view Category 4 recommendations through two different lenses. First, they may represent

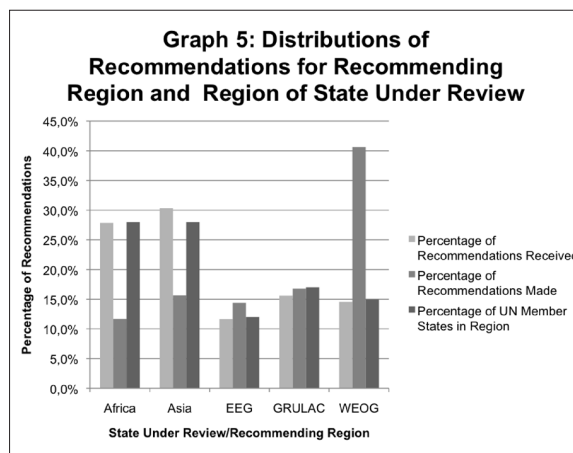
20. The term cost is employed broadly here and it can mean utilization of financial, personnel, physical, or political capital.

21. For reference purposes, an example of a Category 4 recommendation, »Take further steps to eliminate torture and other cruel, inhuman or degrading treatment or punishment and to ensure an effective and impartial judicial system«. A Category 5 example is, »Accede to the Rome Statute of the International Criminal Court«.

efforts to encourage states to take meaningful steps to improve human rights without backing them into a corner of defining which exact actions they need to take. Alternatively, a more realist, if not cynical, interpretation would be that some states may determine that it is in their best interest to make more general recommendations which are easier for the SuR to say it has met, in the expectation that the recommending states would receive reciprocal treatment when their turn to be reviewed arrives, or in the hope that they would receive preferential treatment in other aspects of their bilateral relationships.

An African diplomat, for example, suggested that African states view UPR as a means to »protect« and »support« each other, especially in the face of criticism emanating from mainly WEOG states. He would think twice before producing a criticism of western states who are donors, such as the U.S. and the U.K. He was surprised that western states might be critical of each other. He equated criticism with lack of support, and argued that it was natural for countries in the same regions to »take it easier« on each other. In another »horse-trading« example, according the director of a human rights NGO, an ambassador from a south east Asian country reminded his Timorese colleague of the help his country provided for Timorese independence, and asked for the favour back in the form of a UPR assessment and recommendations.

In temporal terms, the distribution of recommendations by action category has remained remarkably consistent throughout the cycle. The only modest exceptions are Category 2 recommendations, which declined from 16 per cent to 12 per cent between Sessions 1-4 and Sessions 9-12, and Category 5 input, which grew from 31 per cent in both sessions 1-4 and 5-8, to 39 per cent in sessions 9-12. Both changes are possible indicators of greater discipline and specificity in recommendations, and thus provide some grounds for optimism regarding the evolution of the UPR. Finally, it is of interest to note that the action category distribution of recommendations by SuR region was highly equivalent across regions; all five showed the greatest number of recommendations to be in Categories 4 and 5.

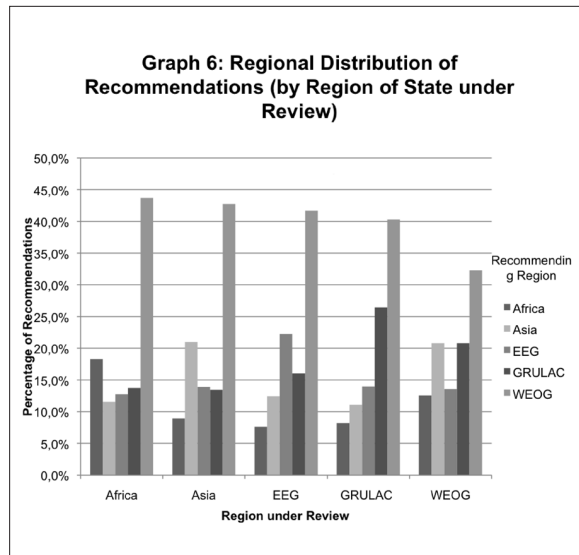


In considering the Graph 5 data it is useful to note the variations in percentage of U.N. member states that belong to each regional grouping. Africa and Asia, with 53 and 54 countries respectively, each total approximately 28 per cent of the U.N. membership. The Latin American states of the GRULAC grouping account for 33 states, or 17 per cent of the total, followed by the WEOG (28, 15 per cent) and EEG (23, 12 per cent) states. The distribution of recommendations to SuR by region was almost exactly proportional to their membership in the U.N. It also stayed very constant over the life of the UPR's first cycle. This is in one sense not surprising since the selection process for which countries would be reviewed in which cycle took into consideration regional proportionality. Nonetheless, the distribution pattern (Asia receiving about one-third, Africa one-quarter and the other three regions in the middle teens) also indicates that Africa and Asia figure as regions of the world of relatively greater focus in terms of numbers of recommendations made; it is likely that this pattern will continue in future cycles.

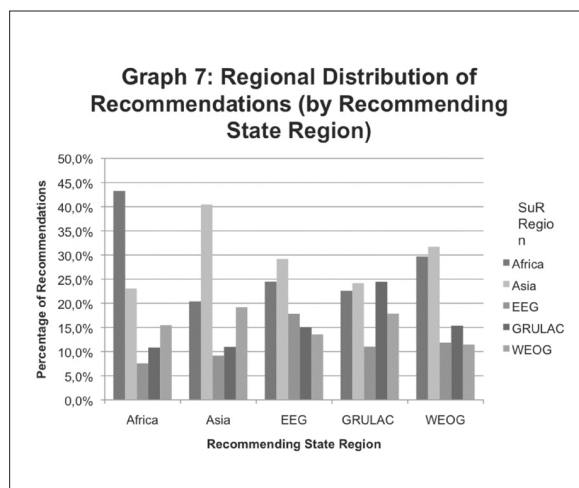
We note in Table 5 the distributional commonalities shared between Africa and Asia in which the number of recommendations equals approximately half the number of member states. EEG and GRULAC demonstrate a pattern in which the number of recommendations almost equals the number of member states. By contrast, WEOG far surpasses the other four regions, with recommendations representing close to three times the number of member states.

We should be careful to recognize that there can be other factors influencing these figures; there are no doubt other reasons that states do not make recommendations

beyond not placing emphasis on the UPR. For example, they may have limited staff at their U.N. Geneva missions, or have a lack of interest and knowledge of specific human rights conditions in countries in other parts of the world.

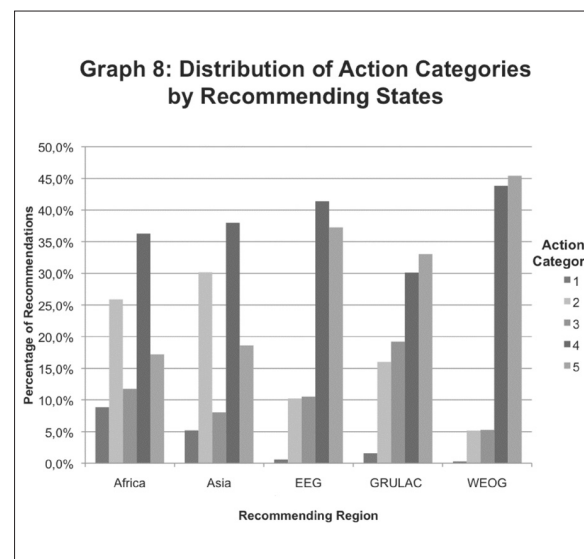


We see that the plurality of recommendations come from WEOG. A common feature, not surprisingly, is that regions made the plurality of their recommendation within their own region. WEOG made relatively more recommendations to other regions.

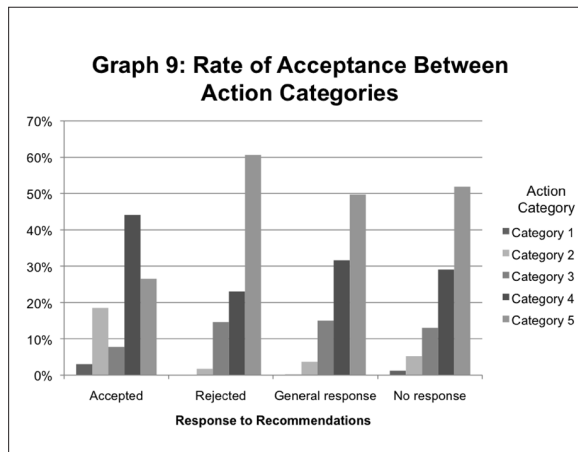


Graph 7 also reflects a remarkably similar distribution pattern between Asia and Africa given that most recommendations are directed within and between these two regional groupings. They both make over 40 per cent within their own region, with about 23 per cent

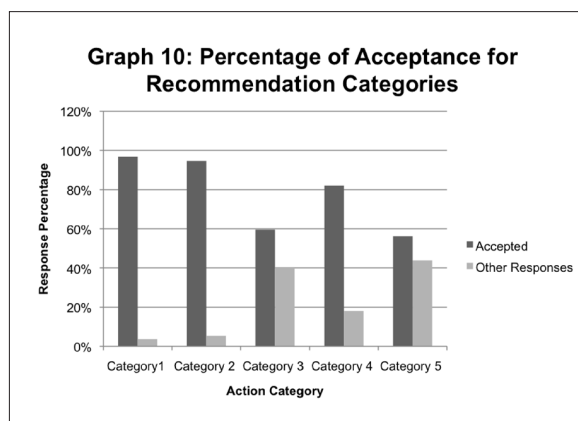
of Africa's recommendations directed to Asia. The latter region also directs almost 20 per cent of its recommendations to Africa, and an approximately equal number to WEOG. There is a concurrent similarity between EEG and GRULAC, with a smaller range of recommendation variation by region compared to Africa and Asia, demonstrating a broader geographic utilization of the UPR process. WEOG's distribution pattern fell in-between the other two groups of regions.



In examining the regional distribution of recommendations in Graph 8 by action categories, we see that Africa and Asia place highest emphasis on Categories 2 and 4. By relative contrast EEG, GRULAC and most notably WEOG emphasize Categories 4 and 5. The regional differentiation between emphasis on Category 2 and Category 5 clearly reflects the fundamental difference towards the UPR between Africa and Asia, as opposed to EEG, GRULAC and WEOG. Category 5 recommendations averaged 35 per cent for the latter three regions, while for Africa and Asia they equalled 17 per cent. The reverse was true for Category 2 recommendations; for Africa and Asia they amounted to 33 per cent of their total recommendations while EEG, GRULAC and WEOG had only 10 per cent of their recommendations in Category 2. Over time, while Africa and Asia's percentages remained fairly constant, WEOG demonstrated increasingly reliance on Categories 3 and 5.



A central finding in Graph 9 is that almost 60 per cent of the rejections are found in Category 5. This, combined with high levels of Category 5 general and non-responses, reflects the controversial nature of recommendations which call upon the SuR to undertake a specific and actionable reform. It supports the hypothesis articulated in the description of the action categories that the Category 5 action recommendations carry increased costs in financial or political terms and are more likely not to be accepted.<sup>22</sup> Further analysis of the Category 5 recommendations reveals that slightly more than half of them come from WEOG states.



Graph 10 shows that the large majority of Categories 1, 2 and 4 recommendations are accepted, while only slightly over than half of Categories 3 and 5 recommendations are accepted. The latter two categories

also have higher rates of general and non-responses, which appear to largely serve as proxies for rejections, and have been aggregated within this graph as »Other Responses«.<sup>23</sup> In fact, the breakdown of percentages for Category 3 and Category 5 is very similar. And few Category 1 or Category 2 recommendations are rejected or receive general responses; their respective breakdown is also similar.

It may at first appear counterintuitive that Category 3 recommendations, which do not even require states to implement any policy reforms, find fewer acceptances than Category 4 recommendations, which do call for actions to be taken. The rationale for this, however, becomes clear when we consider further the nature and context of the recommendations included in this category. Analysis of the Category 3 recommendations reveals that many of them contravene deeply held beliefs or policy positions of the governments, and possibly also the populations involved. One clear example of this is recommendations that many western states make to African states for decriminalization of same-sex relations.<sup>24</sup> Other frequent issues contained in non-accepted Category 3 recommendations include abolishing the death penalty and torture, and ratification of international instruments. These types of recommendations are hyper-sensitive in political, social and/or cultural terms to many governments, rendering it toxic for the SuR to even appear to be considering internally or dialoguing about with other sectors of the population, much less adopting the reforms. If Category 3 recommendations are accepted, however, they can potentially lead to dialogue and evolution in host country attitudes on the issues.

In contrast to Category 3 recommendations, the Category 4 recommendations, by virtue of their lack of specificity, can often prove to be low-hanging fruit for a SuR to pick. Their generality makes it easier for a government to choose how success in achieving that recommendation is to be defined. Examples include Italy's recommendation to Algeria in Session 1 to »take appropriate measures to address violence against children« or Haiti's call for France to »intensify its struggle against racism« in Session 2. Compared to Category 5 recommendations,

22. Two illustrative examples are Canada's recommendation in Session 5 to Afghanistan to amend the Shia Personal Status Law consistent with its international human rights obligations to ensure equal respect for the human rights of all Afghans, including women; and Brazil's Session 3 recommendation to Bangladesh to establish a moratorium on executions with a view to abolishing the death penalty.

23. Roland Chauville and Saida Manieva (2010): 15f.

24. WEOG made 101 of the 161 recommendations coded for sexual rights. One illustrative example is the Session 3 recommendation from The Netherlands to Botswana, which it rejected, to decriminalize consensual same-sex activities between adults.

governments have a relatively easier task of taking actions in response to the more general Category 4 recommendations which they can then present as evidence of fulfilment of the recommendation.

Particular emphasis should be placed on the Category 5 recommending state regional distribution. WEOG, GRULAC and Poland, Slovenia and the Czech Republic from the EEG region combined for 77 per cent of all Category 5 recommendations, even though they only account for about 34 per cent of the U.N. membership. By contrast Asia, Africa and the remainder of EEG states combined for only 23 per cent of these recommendations while they consist of about two-thirds of the U.N. membership. The number of rejections of WEOG Category 5 recommendations was high for Africa, Asia and GRULAC and lower for EEG and WEOG.

Table 3: Percentages of Acceptance Rates for Selected Region Pairs (bold fewer than 80%)

Region	Overall % accepted
Africa-Africa	90
Africa-Asia	88
Africa-EEG	85
Africa-GRULAC	88
Africa-WEOG	<b>58</b>

Region	Overall % accepted
Asia-Africa	94
Asia-Asia	92
Asia-EEG	92
Asia-GRULAC	94
Asia-WEOG	<b>62</b>

Region	Overall % accepted
WEOG-Africa	<b>63</b>
WEOG-Asia	<b>55</b>
WEOG-EEG	<b>79</b>
WEOG-GRULAC	<b>75</b>
WEOG-WEOG	<b>62</b>

This table compares acceptance rates of recommendations made by Africa and Asia, on the one hand, and WEOG on the other. It shows much higher rates of acceptances for Africa and Asia, except for recommendations made to WEOG. The acceptance rates of WEOG recommendations to the other four regions were significantly lower. This is not surprising when the relative propensity of WEOG to make recommendations in action Categories 3 and 5, with their higher rates of rejection, is taken into account. Conversely, note the WEOG-WEOG acceptance rate of 62 per cent as compared to the Africa-Africa and Asia-Asia acceptance rates of 90 per cent and 94 per cent respectively, in light of the high rate of »softer« and more acceptable Categories 2 and 4 recommendations made between and within the African and Asian regions.

#### 4.3 Issues

So far the focus has been on overall recommendation trends and processes. To deepen our understanding of the UPR mechanism and how it is being used by participating states we can examine the specific topics or issues that form the core of the recommendations. We have identified a total of 56 different issues covering a wide range of topics.<sup>25</sup> These include, *inter alia*, women's rights, children, torture, justice, migrants, death penalty, and freedom of the press.<sup>26</sup> In this section we examine a) what issues are raised most frequently by recommending states (and, by inference, those that are not), b) states from which regions made them, c) to which SuRs were they are addressed, and d) what regional dynamics may have been at play in both the selection of and response to the particular sets of issues raised. We also consider which recommendations fit more into the economic, social and cultural category (ESC), and which are more civil and political in nature (CP).

Many recommendations covered more than one issue. Only three of the 56 issue categories appeared in more than 10 per cent of the recommendations, and only five figured in more than 5 per cent of the total recommendations. By contrast, 26, or almost half of the total number of issues, were found in at least 2 per cent of the recommendations.

25. Category I in the database provides recommendations by issues raised

26. A full list of the issues can be found at <http://www.upr-info.org/database/>, click on advanced search.



The following is the list of the 10 most frequently cited issues.

Table 4: Common Issues in Recommendations

	%
International instruments	20.1
Women	17.3
Children	16.1
Torture	8.1
Justice	7.3
Human rights education and training	4.4
Detention conditions	4.3
Special Procedures	4.1
Minorities	3.9
Treaty Bodies	3.8

The most frequently cited recommendations included CP rights, such as torture, and those focusing on ESC rights, such as the rights to education. Others were both procedurally and substantively oriented; the single greatest number of recommendations regarded international instruments. Many of these concerned aligning national laws to international human rights conventions to which the state was a signatory, or adhering to these legal in-

struments. Many recommendations were both procedural and substantive (i.e. ESC or CP) in nature.<sup>27</sup>

The distribution of recommendations by issue remained extremely consistent over the first cycle. The only modest exception was the increase in recommendations regarding the rights of children, from 13 per cent in sessions 1-4 to 17 per cent in sessions 9-12.

The plurality of these recommendations was consistently directed to Africa and Asia although the highest single percentage (43 per cent) was to East European states regarding treatment of minorities, especially the Roma. Asian states also received 40 per cent of recommendations for use of HRC Special Procedures, typically visits of HRC-mandated experts known as Special Rapporteurs on geographic or thematic issues. Africa and Asia also both received 30 per cent or over of recommendations pertaining to torture and women's issues and human rights training and education. Reflecting concerns over the lack of equitable and effective legal enforcement, the only issue above 25 per cent made to GRULAC were recommendations relating to the justice sector, for example recommendations to reduce or eliminate impunity in illegal offenses. Issues of focus directed to the WEOG region were protection of minorities, especially the Roma (26 per cent), adherence to treaty bodies (19 per cent), use of international instruments (19 per cent), and detention conditions (19 per cent).

Table 5: Issues by Percentage - SuR Regional Distribution Sessions (25% and over are bolded)

	Region of State under Review					Total
	Africa	Asia	EEG	GRULAC	WEOG	
International instruments	<b>25</b>	<b>32</b>	9	15	19	100
Women	<b>32</b>	<b>31</b>	11	15	11	100
Children	<b>34</b>	<b>26</b>	11	17	12	100
Torture	<b>37</b>	<b>29</b>	9	14	11	100
Justice	<b>32</b>	<b>30</b>	11	20	7	100
Human rights education and training	<b>35</b>	<b>27</b>	12	15	11	100

27. For example, Slovenia's recommendation to Algeria in Session 1 that it should »Integrate the gender perspective in the follow-up process to the UPR « is coded for both UPR Process (procedure) and Women's Rights (substance).





Table 6: Issues by Percentage - Recommending Regional Distribution (25% and over are bolded)

	Recommending Region					Total
	Africa	Asia	EEG	GRULAC	WEOG	
International instruments	10	9	14	<b>27</b>	<b>39</b>	99
Women (ESC)	10	15	14	17	<b>42</b>	99
Children (ESC)	10	15	18	19	<b>37</b>	99
Torture (CP)	4	6	17	23	<b>50</b>	99
Justice (CP)	8	12	14	15	<b>51</b>	99
Human rights education and training	16	20	16	10	<b>37</b>	99

WEOG’s activist approach to the UPR is reflected by its across the board prominence in making recommendations; it made at least a third of the recommendations in all of these issue categories and more than 50 per cent in justice, and torture and detention conditions, reflecting WEOG’s focus on these types of issues. As we have seen previously, Africa and Asia exhibit common approaches to the UPR. Here they had very similar patterns of recommendations by issue and consistently made the fewest recommendations with the exception of minorities and human rights education and training. EEG recommendations were very evenly distributed across the board. GRULAC focused most on the use of international instruments and Special Procedures, i.e. the process of international protection of human rights, more than on specific thematic areas. Africa and Asia tend to make slightly more ESC than CP recommendations while WEOG does the opposite.

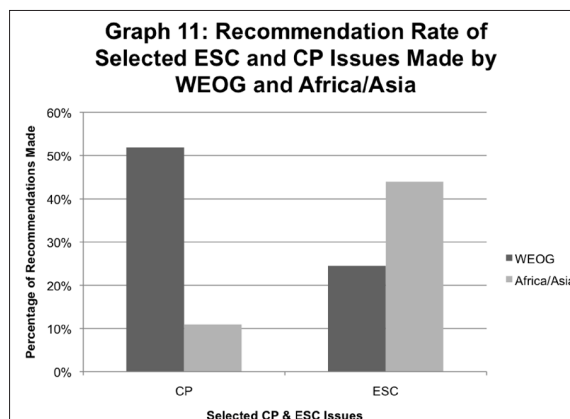
#### 4.4 Economic, Social and Cultural Rights/Civil and Political Rights Treatment

Given ongoing debates about Economic, Social and Cultural Rights (ESC) and Civil and Political (CP) rights, we considered undertaking aggregated analysis to determine how these rights are addressed in the UPR context. Some questions include: Would rights from one category figure more prominently in recommendations? Would certain regions be more inclined to focus on one type of rights over the other? To whom would these recommendations be addressed? Would acceptance rates differ?

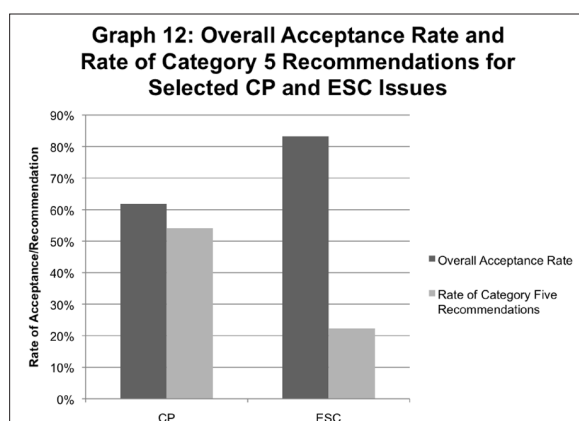
Undertaking this analysis proved to be complicated and challenging. It became clear that many of the issues addressed in the process do not neatly translate into ESC or

CP rights; they relate very much to the individual country context. Depending on the situation, a recommendation to strengthen women’s rights, for example, might focus on their lack of access to jobs (ESC right) or impediments to them voting (CP rights) or both. In addition, some recommendations are procedural and non-issue specific in nature (i.e. Special Procedures visit invitations, adherence to human rights treaties). They could be classified only as ESC or CP in the country context of the particular recommendation unless the recommendation explicitly regarded a special thematic area.

While undertaking broad aggregated analysis therefore proved to be problematic, we have chosen for illustrative purposes several specific issues below for analysis which are relatively clear cut. For CP these include CP Rights-General, Freedom of Assembly, and Torture. For ESC they include ESC Rights-General, the Right to Education, and the Right to Health. Since they do not reflect all CP or ESC recommendations, these findings should be treated with caution, but we include them for illustrative purposes.



The data show that WEOG makes significantly more CP recommendations than Africa or Asia (GRULAC and EEG present intermediary profiles). Conversely, Africa and Asia are more active in making ESC-related recommendations, a finding which is all the more notable given those regions' relatively smaller percentage of overall recommendations.



Graph 12 shows a significant difference in acceptance rates between CP (61 per cent) and ESC (84 per cent) recommendations. It also demonstrates that ESC Category 5 recommendations are a much lower percentage of ESC recommendations when compared to Category 5 and CP recommendations.

Not surprisingly, the more sensitive and politically charged issues resulted in lower acceptance rates. Only 21 per cent of death penalty, 32 per cent of sexual rights, and 48 per cent of Special Procedures (mostly requests for permission for visits by relevant U.N. human rights experts) recommendations were accepted. By contrast, recommendations concerning ESC issues such as the Right to Education (93 per cent acceptance) and Right to Development (96 per cent) achieved high acceptance rates. The higher percentage of Category 5 recommendations (which are more likely to be not accepted) are found in CP recommendations (54 per cent) as opposed to ESC variety (22 per cent).

#### 4.5 State Levels of Freedom within Regions and Recommendation Patterns

As a capstone to this report, it is important to identify the extent to which state levels of political liberties correlate with certain patterns of recommendation issuance, e.g. do more democratic states make stronger recommendations?

**Table 7: Regional Groups' Recommendation Action Categories and Levels of Democracy**  
Mean action category of recommendations by regional group of state making recommendation

Regional group of State making recommendation	Mean action category
Africa	2.85
Asia	2.86
EEG	3.64
GRULAC	3.70
WEOG	3.83

Polity IV level of democracy	Mean action category
Autocracy	2.84
Anacracy	2.82
Democracy	3.30

This table presents the mean levels of action recommendations by region. Not surprisingly, Africa and Asia make weaker ones, while EEG, GRULAC, and WEOG make stronger recommendations. We also introduce here data developed from the Polity IV research project<sup>28</sup>, which provides a typology of countries as authoritarian (autocracy), democracies, or intermediate, with some elements of both (anocracies). The data above shows that autocracies tend to make weaker recommendations, while democracies make stronger, more action oriented recommendations.<sup>29</sup>

**Table 8: Mean Action level for Recommendations Rated Democracy/Anacracy/Autocracy Classification**

Regional group	Overall	Auto-cracy	Ana-cracy	Demo-cracy
Africa-Africa	2.85	2.74	2.83	2.95
Africa-World	3.03	3.03	2.99	3.19
Asia- Asia	2.83	2.75	2.64	3.10
Asia- World	3.05	2.88	2.73	3.19
EEG-EEG	3.54	3.44	3.44	3.70
EEG-World	3.74	3.16	3.55	3.88

28. <http://www.systemicpeace.org/polity/polity4.htm>

29. N.b. for Tables 20 and 21: I had to transpose action levels 3 and 4 to reflect the previously noted reality of the gradation of action levels from 1-5.



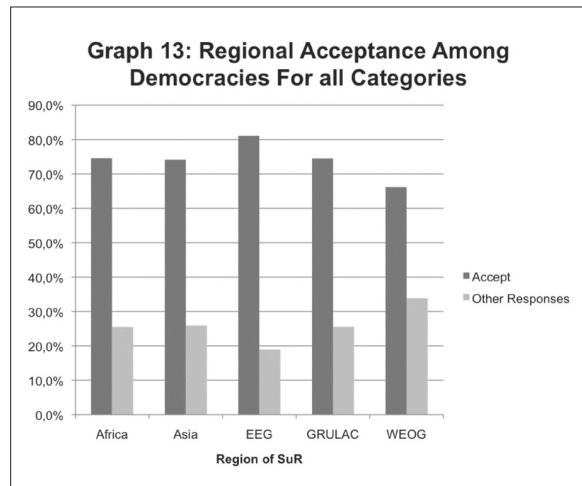
We now focus on considering the data in terms of differentiation by regime type and recommending region. The aim is to determine if states that are rated as democratic a) share their region's recommendation patterns in terms of action levels, or b) whether the regional dynamic pulls countries towards making the same categories of recommendations notwithstanding their levels of freedom. This analysis focuses on the Africa, Asia and EEG regions. States in the WEOG and GRULAC regions are almost all rated as democracies and thus have little overall variance in state levels of freedom. The methodology outlined below would thus not yield any useful analysis from these regions.

To arrive at this data generation we first added up total number of recommendations for all regions per action level, and then divided by number of recommendations. This provides the regional mean of all recommendations. We then added up the total number of recommendations in each region by democracy, anacracy or autocracy status states per region per action level. We then divided by the number of recommendations by status level.

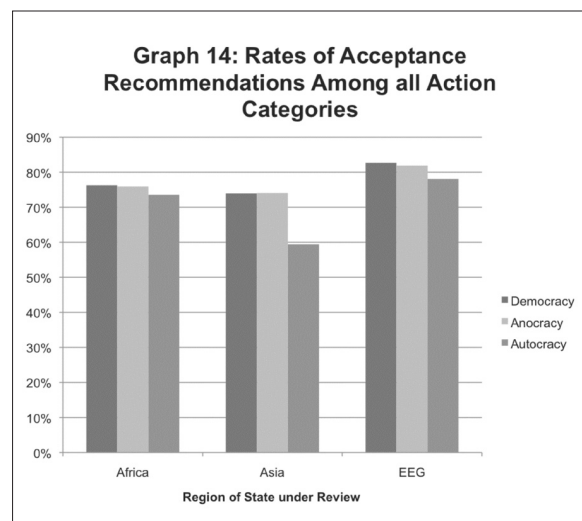
Table 8 demonstrates the positive relationship of all three region's democratic states to the mean. There is a negative difference of five of six anacratic and autocratic states, and a very small positive difference of the sixth. The positive relationships of democratic state to the mean show that states are more likely to make stronger recommendations, even within regions. This is a very interesting finding as it suggests that the centrifugal effect exercised within regional groupings containing a range of democracies, anacracies and autocracies to adhere to the mean is mediated by the level of freedom within states. This would appear to support the hypothesis that the freer states will make the stronger UPR recommendations, irrespective of their region of membership.

Parenthetically, it is interesting to note that while the EEG deviation from the mean was less for anacracies than for autocratic states, as would be expected, this was not the case for the Asia or Africa region states. In other words, the autocratic states in the latter two regions made slightly stronger recommendations than the anacracies. The differences are small but we have not been able to identify a reason why it would exist at all. Perhaps anacracies seek to avoid drawing attention to themselves and avoid »rocking the boat« while auto-

cratic states which view themselves as having less to lose are more likely to address strong action recommendations to democratic states, especially in WEOG.



This graph demonstrates that democracies in four of the five regions have acceptance rates either meeting or surpassing the overall global average of 73 per cent. Interestingly, the one exception is WEOG. This is perhaps due to its member states receiving a modestly greater number of recommendations than the average global percentage of Categories 3 and 5 recommendations, which carried with them lower acceptance rates than recommendations in Categories 1, 2 and 4.



Graph 14 shows that autocracies have somewhat lower rates of acceptance of recommendations than anacracies, which in turn have slightly lower acceptance rates than democracies. The three regions are compared in

this graph because they contain a range of different regime types while GRULAC and WEOG mostly consist of democracies.

An interesting subject for further research is the extent to which states themselves adhere to or implement recommendations they make to others? In other words, is there a marked disconnect from what they are recommending and what they do themselves at home? This is beyond the scope of the current study, but limited research suggests that states may tend to stay relatively more silent on subjects regarding which they themselves are the object of recommendations. With only a couple of exceptions, for example, states which were the object of recommendations regarding freedom of association did not make such recommendations themselves.<sup>30</sup>

## 5. Conclusions

The first cycle of the UPR has resulted in many positive elements. To begin with, states appear to care about the process and how their performance is reflected through it. State participation has been excellent, with quasi-universal participation of states in submitting written national reports, and 80 per cent of states having been represented at at least the Ministerial level at the »inter-active dialogue« stage of the review process.

The UPR has also resulted in many cases of heightened communication and dialogue between governments and non-state actors. It has also created a baseline set of documentation. In addition to reports summarizing information received from stakeholders, NGOs and national human rights institutions in preparation for each country's review before the Council, states have had to go on record regarding their human rights performance through the preparation of their national reports (which can be accessed at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>). The UPR has also become an important tool for identifying areas where technical assistance and capacity building is needed.

In some cases the prospect of an upcoming review serves as an incentive for states to ratify more human rights treaties or to extend an invitation to the special

procedures of the HRC. The UPR has also triggered self-evaluations by states, with the prospect of a future review before the Council leading many states to engage in a process of internal review and inter-ministerial discussion.<sup>31</sup>

In addition, some diplomats and observers of the UPR process suggest that unlike the other HRC functions – and the UN General Assembly – the UPR process is not principally regionally driven; that states make their recommendations largely on an individual basis. And in some significant ways the UPR is utilized in an apparently uniform fashion. For example, the distribution of recommendations by SuR region shows that all regions receive recommendations in close proportion to their membership in the U.N. It is also clear that in all regions most recommendations received fall into wither Categories 4 or 5. And the popularity of Category 4 recommendations is cross-regional in nature. If this dynamic deepens it could help lead to a diminution of the regional bloc dynamic which has tended to create blockages in global relations, especially in universal fora such as the United Nations.

The analysis contained here, however, also reflects that in important ways the UPR still functions through a regional prism. Analysis of the recommendations demonstrates that patterns exist reflecting the polarized nature of the contemporary international community, and different approaches to dealing with human rights issues. Frankly put, states in Asia and Africa tend to take a softer approach to addressing human rights issues amongst themselves. This is clearly depicted, for example, in the results of China's review. That state accepted all 41 of Asia and Africa's recommendations, 38 of which fell into Categories 1, 2 and 4. By contrast, China only accepted eight of WEOG's 69 recommendations, two-thirds of which were in Categories 3 and 5. This may represent a desire on the part of African and Asian states either not to antagonize China or it may represent a less confrontational cultural orientation with a fellow state still seen to have much in common with developing nations.

Closer examination of this situation, however, yields some grounds for optimism. In recent decades the expansion of democracy around the world presents a

30. Two states which did, Azerbaijan and the Democratic People's Republic of Korea, made the recommendations to Armenia and the Republic of Korea respectively, states with which they have been in conflict.

31. Joanna Harrington (2012): UN Human Rights Council Brings to an End the First Cycle for Universal Periodic Review, EJIL Analysis, <http://www.ejiltalk.org/un-human-rights-council-brings-to-an-end-the-first-cycle-for-universal-periodic-review/>.

possibility of more concerted and stronger approaches to protection and promotion of human rights in fora such as the HRC, including the UPR. For example, the Latin American region finds itself in-between WEOG on the one hand, and Asia and Africa on the other, in how its member states utilize the UPR. EEG data is somewhat consonant with that of WEOG. Both the GRULAC and EEG regions demonstrate that respect for human rights is not the preserve of any one geographic region. GRULAC, for example, can be generally considered »southern« as a result of its colonial heritage and role in the global economy, while its stance on human rights reflects greater consonance with WEOG's interpretation of the universal nature of human rights. This has useful policy implications in that GRULAC could play a greater leadership role in creating common purpose among states from different regional groups.

We have also sought to identify a range of issues which demonstrate both the fashion in which states acted along regionally-oriented lines, and differences and similarities between regions. Through the presentation of data on UPR performance related to levels of democracy and freedom by state within regions, we see that in Africa, Asia and the EEG regions more democratic states are more willing to both make and accept more action-oriented recommendations. The overwhelming percentage of Category 5 recommendations come, for example, from countries that are rated as democratic in the Polity IV database.<sup>32</sup> This suggests that should the number of democratic states increase around the world, the robust use of international human rights procedures such as the UPR should also increase, notwithstanding regional dynamics in Africa and Asia which have tended to emphasize national sovereignty over the application of universal values.

We have previously noted that WEOG, GRULAC and Poland, Slovenia and the Czech Republic from the EEG region combined for three-quarters of all Category 5 recommendations, even though they only account for about one-third of the U.N. membership. By contrast Asia, Africa and the remainder of EEG states combined for only one-quarter of these recommendations while they consist of about two-thirds of the U.N. member-

ship. The number of rejections of WEOG Category 5 recommendations was high for Africa, Asia and GRULAC, and lower for EEG and WEOG. These data reflect regional differences in approach to the UPR.

So the jury is still out. Many states, especially in the south, continue to conflate the concept of »cooperation« with only praise or positive statements regarding the conduct of other states. This is especially true for states with significant political, policy or other affinities or interests in common. States thus have a tendency to ignore or downplay poor human rights situations in certain other states. The UPR's second cycle will be a key test of whether greater discipline can be exercised. The review of China, for example, will be closely watched to see if it proves merely to be a repetition of soft recommendations on the part of many African and Asian states which largely ignore that state's limitations on human rights. More generally, the extent to which second cycle recommendations will follow-up on those made in the first cycle will be an indicator of sustained attention and focus on addressing key human rights issues.

The long-term success of the HRC will depend upon states being able to recognize that criticism, including that emanating from the UPR process, can be a component of cooperation. Otherwise, there would be little likelihood of making progress.

The overall results of this analysis suggest that while the UPR's support may be broad, it is not necessarily deep in terms of creating a more robust mechanism. Many states may feel that they have to »go along« with it, but they are either sceptical of its impact or, on the other hand, may fear it and have little interest in seeing it further develop. The job of reforming the HRC is thus one of working from the inside, and strengthening both specific functions such as the UPR and more generally shoring up the supporting constituency within the U.N. Given the consensus-based nature of the UN HRC decision-making process, it is not surprising that it is evolutionary rather than revolutionary in nature. To develop and successfully implement a strategy for enhancing the UPR with increased ability to effectively promote and protect human rights globally is a sensitive and delicate task, which must be done very carefully. It must take into account the multi-polar context in which the various regional groupings hold veto power.

32. There are several democracy assessment methodologies which could have been used here but the widely referenced and utilized Polity IV methodology provides an aggregated scale which was appropriate for this research.

The process has worked imperfectly but it does have some positive results to date and represents real potential for further institutionalizing respect for human rights in state norms and practices. While the UPR appears to be unlikely to be a total failure, it is important to be alert to the «emperor wears no clothes» syndrome, which demonstrates that simply wishing something to be the case does not make it so.

This report concludes on a more general note. International organization peer reviews such as the UPR take place in context of greater global respect for human rights as reflected, for example, in the Responsibility to Protect doctrine. R2P includes a «hard», top-down international community-based approach while peer reviews embrace a «soft», bottom-up and state-centric ethos. R2P represents «tough love» while peer reviews take the opposing bookend of a participatory, less critical approach to nurturing human rights. Both, however, can enmesh states within the dynamic of heightened respect for universal human rights norms and reflect moves to adopt more flexible interpretations of the national sovereignty concept. R2P has focused on international action in the face of egregious violations of human rights and enforcement of universal norms.

By contrast, peer reviews reflect a consensual approach, chipping away at the national sovereignty argument, and over less egregious issues than those addressed by R2P. Peer review mechanisms may strengthen R2P by deterring future human rights abuses, thus minimizing the need for R2P military intervention. These complementary approaches can serve an important purpose in helping to stitch human rights and related norms into the fabric of governance.

## 6. Recommendations

Based on the experience of the UPR over the first cycle, there are a range of recommendations that can be identified which could help to further strengthen the UPR mechanism. They could contribute to ensuring its long-term role as an important instrument in the mainstreaming of universal human rights norms into regular state practice. Most of these recommendations do not require additional reform or review; they could simply be implemented by voluntary state practice within existing rules. An illustrative list could include the following:

- *Heighten Engagement of NGOs.* Continued emphasis and attention must be placed on providing an enabling environment in which NGOs can provide their input into the various stages of the UPR process. These range from having a meaningful and substantive role in the preparation of the national report, having a recognized role in the Geneva country review process, and engaging in oversight of SuR state compliance with accepted recommendations subsequent to the review.

- *Emphasize the Role of NHRIs.* There are also a number of reforms that can be taken to strengthen the role of NHRIs, including the development of further judicial and quasi-judicial mechanisms to enhance their independence, dedicated funding streams that are not subject to political manipulation; more frequent visits and interaction with mandate holders from international and regional human rights mechanisms; and expansion of the practice of issuing shared reports and coordinating follow up recommendations.

- *Provide more action-oriented Recommendations.* Verifiable and concrete recommendations must be at the core of the UPR process. Non-specific recommendations give great latitude to SuRs to define how they are to be achieved, which can serve to undermine the utility and impact of the recommendations.

- *Emphasize Second Cycle Follow-Up.* Recommending states should, in the second cycle, make as needed follow-up recommendations to those posed in the first round, and not simply duplicate recommendations from their first review.

- *Make meaningful mid-term reporting the norm.* In line with strengthened follow-up procedures, the process to institutionalize mid-term reports two years after the country review should be accelerated. An increasing number of states are doing so even though it is not a mandatory practice, and was not included in the original precepts establishing the UPR.<sup>33</sup> It is now commonly recognized that mid-term reports allow for states to highlight progress, and to note challenges in the implementation of their accepted recommendations. It can also permit consideration by the state and the international

33. In Lebanon, for example, NGOs created an implementation calendar covering the 4 years to the next UPR review. They have established a joint NGO-government committee which oversees implementation and facilitates periodic reporting back to the HRC.



community of ways that compliance can be enhanced prior to SuR's second cycle review four years after the initial one took place.

- *Promote serious and sustained SuR engagement.* For example, SuRs should avoid to the extent possible accepting recommendations on the basis that what they are already doing is being requested.

- *Limit recommendations making either generic appeals to the international community to provide assistance or simply calls for an action or policy to be continued.* Analysis of the recommendations shows that African, Asian and Latin American countries are much more likely to use their recommendations to suggest that the SuR seek international assistance, i.e. to make Category 1 recommendations mostly to each other. Recommendations from other regions are much more likely to focus on direct actions that governments themselves can take. In some cases such a recommendation may serve a legitimizing function and help to raise the profile of an issue or otherwise serve as encouragement for a state to seek assistance. In many cases, however, they may provide an excuse for a state to deflect responsibility for resolving an issue onto the international community. And states do not need recommendations to ask for help from international community. Category 1 recommendations should be carefully and sparingly made.

Similarly, Category 2 recommendations should also be limited. In some cases it may be helpful to encourage states to continue with a particular policy; it may encourage a government to do so or even provide a rationale for a government to undertake a policy which otherwise may be politically unpopular, even if it is designed to strengthen respect for human rights. But the large majority of these types of recommendations seem to be hortatory and congratulatory in nature, with little substance implied.



## References

**Annan, Kofi** (2005): *In Larger Freedom: Development, Security and Human Rights for All*. Executive Summary of the Report of the Secretary-General. New York: United Nations.

**Banks, Arthur, Thomas Muller, and William Overstreet** (2006): *Political Handbook of the World 2007*, Cq Pr.

**Chauville, Roland, and Saida Manieva** (2010): *Analytic Assessment of the Universal Periodic Review, 2008-2010*, UPR Info, Geneva; available at: [http://www.upr-info.org/IMG/pdf/UPR-Info\\_Analytical\\_assessment\\_of\\_the\\_UPR\\_2008-2010\\_05-10-2010.pdf](http://www.upr-info.org/IMG/pdf/UPR-Info_Analytical_assessment_of_the_UPR_2008-2010_05-10-2010.pdf)

**Friedrich-Ebert-Stiftung**: Report on The Human Rights Council's Performance To-date, November 2010 or the Human Rights Monitor Quarterly 2/2012 [http://www.ishr.ch/document-stuff/browse-documents/doc\\_download/1440-universal-periodic-review-hrmq2-2012](http://www.ishr.ch/document-stuff/browse-documents/doc_download/1440-universal-periodic-review-hrmq2-2012).

**Harrington, Johanna** (2012): UN Human Rights Council Brings to an End the First Cycle for Universal Periodic Review. *Blog of The European Journal of International Law*; available at: <http://www.ejiltalk.org/un-human-rights-council-brings-to-an-end-the-first-cycle-for-universal-periodic-review/>

**International Service for Human Rights** (2008): Overview of the Universal Periodic Review in 2008, in: *Human Rights Monitor*.

**Organisation of Islamic Cooperation** (1990): *The Cairo Declaration on Human Rights in Islam*; available at: <http://www.oic-oci.org/english/article/human.htm>

**Polity IV** (2010): Polity IV Project. *Political Regime Characteristics and Transitions, 1988 – 2010*; available at: <http://www.systemicpeace.org/polity/polity4.htm>

**Rathgeber, Theodor** (2010): *Reviewing the UN Human Rights Council, Perspectives from Civil Society*, Berlin, Friedrich-Ebert-Stiftung, FES International Policy Analysis.

– (2011): *The Human Rights Council after the Review: Tangible Changes or Business as Usual?* Geneva, Friedrich-Ebert-Stiftung, FES Conference Report

– (2012): *New Prospects for Human Rights? The Human Rights Council between the Review Process and the Arab Spring*, Geneva, Friedrich-Ebert-Stiftung, FES International Policy Analysis.

**UNGA (UN General Assembly)** (2006): *Resolution Adopted by the General Assembly 60/251*, Human Rights Council, Document A/RES/60/251, New York.

**United Nations** (2010): The United Nations Office of the High Commissioner for Human Rights. *A/HRC/17/L.29 on the Follow up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review*.

– (2012): UN Web Service Section, Department of Public Information. *A More Secure World: Our Shared Responsibility*. New York, 2004.

**Universal Periodic Review** (2012a): *Database of UPR Recommendations (Data Set)*; available at: <http://www.upr-info.org/database>

– (2012b). *Newsletter 31 (Newsletter)*; available at: <http://www.upr-info.org/newsletter/archive.php?x=106&listID=1&layoutID=3&pagerows=15&pagenum=1>.





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### Dialogue on Globalization

As part of the international work of the Friedrich-Ebert-Stiftung, Dialogue on Globalization contributes worldwide to the debate on globalization and global governance. It is based on the premise that – through an inclusive and responsive global policy approach – globalization can be shaped into a direction that promotes peace, democracy and social justice. The program draws intensely on the international network of the Friedrich-Ebert-Stiftung – a German non-profit institution committed to the principles of social democracy with offices, programs and partners in more than 100 countries. Dialogue on Globalization addresses »movers and shakers« both in developing countries and in the industrialized parts of the world. The program is coordinated by the head office of the Friedrich-Ebert-Stiftung in Berlin and by the FES offices in New York and Geneva.

The Friedrich-Ebert-Stiftung office in Geneva serves as a liaison between the United Nations offices and agencies, other Geneva-based International Organizations and FES field offices as well as partners in developing countries to strengthen the voice of the Global South. It contributes to the debates in »International Geneva« on trade and sustainable development, decent work and social norms, environment and climate policies, human rights and peace and security issues. FES Geneva's activities include conferences, seminars, expert workshops and dialogue sessions, training and information programs with international participation, studies, consultancy reports and publications.

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This publication is printed on paper from sustainable forestry.



ISBN 978-3-86498-241-5